



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-20
VAC Chapter title(s)	Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law
Action title	Amendments in response to periodic review comments
Date this document prepared	September 26, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Land Use Assessment Law (Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia (Va. Code § 58.1-3229 et seq.)) authorizes localities that adopt a land-use plan to adopt an ordinance to provide for the use value assessment and taxation of real estate classified in Va. Code § 58.1-3230. Section 58.1-3230 establishes four special classifications of real estate for the purposes of the Virginia Land Use Assessment Law, including “real estate devoted to agricultural use” and “real estate devoted to horticultural use.” The definitions of both real estate devoted to agricultural use and real estate devoted to horticultural use require the Commissioner to prescribe uniform standards for the classification of real estate as devoted to agricultural or horticultural use in accordance with the Virginia Administrative Process Act (Va. Code § 2.2-4000 et seq.). As directed by this requirement, the Commissioner promulgated 2 VAC 5-20, *Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law*, which first became effective in 1988.

The Commissioner intends to consider amendments to 2 VAC 5-20 in response to comments received during a periodic review of the regulation that concluded in October 2025. One commenter requested that subsection B of Section 20 be amended, and two commenters requested that alternative language be used for subsection A of Section 40. With respect to subsection B of Section 20, which establishes which real estate devoted to the production of trees or timber products may qualify for classification as real estate devoted to agricultural use, the Commissioner will consider amendments pertaining to real estate that is producing trees or timber products incidental to other farm operations. With respect to subsection A of Section 40, which provides a list of documents that may be useful for demonstrating that a parcel of real estate meets the standards established in 2 VAC 5-20, the Commissioner will consider clarifying amendments.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Commissioner” means the Commissioner of Agriculture and Consumer Services.

“Land Use Assessment Law” or “Law” means Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This Notice of Intended Regulatory Action is being initiated in response to comments received during a periodic review that closed October 2025. One commenter requested that subsection B of Section 20 be amended, and two commenters requested that alternative language for the certification process be used for subsection A of Section 40.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 3.2-102 of the Code of Virginia (Code), in relevant part, vests with the Commissioner other powers and duties as may be prescribed by law.

Section 58.1-3230 of the Land Use Assessment Law authorizes the Commissioner to prescribe uniform standards for the classification of real estate devoted to agricultural and horticultural use.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulation currently prescribes uniform standards that localities must use when determining for the purpose of land-use value assessment and taxation whether certain real estate is real estate devoted to agricultural use or real estate devoted to horticultural use. Without this regulation, local Commissioners of the Revenue or assessing officers would not have uniform standards with which to determine whether certain real estate is real estate devoted to these uses. The standards established in this regulation ensure equitable tax treatment of similar land uses across the Commonwealth and support the economic welfare of both localities and citizens.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Commissioner intends to consider amendments to 2 VAC 5-20 in response to comments received during a periodic review of the regulation that concluded in October 2025. One commenter requested that subsection B of Section 20 be amended, and two commenters requested that alternative language be used for subsection A of Section 40. With respect to subsection B of Section 20, which establishes which real estate devoted to the production of trees or timber products may qualify for classification as real estate devoted to agricultural use, the Commissioner will consider amendments pertaining to real estate that is producing trees or timber products incidental to other farm operations. With respect to subsection A of Section 40, which provides a list of documents that may be useful for demonstrating that a parcel of real estate meets the standards established in 2 VAC 5-20, the Commissioner will consider clarifying amendments.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The Commissioner considered not amending the regulation in response to the public comments received during the recent periodic review and determined this would not be an appropriate response to stakeholders seeking improvements to the land use assessment program.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Commissioner is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Kevin Schmidt
Virginia Department of Agriculture and Consumer Services
102 Governor Street
Richmond, VA 23219
Phone: 804 786-1346
Email: kevin.schmidt@vdacs.virginia.gov

A public hearing will not be held following the publication of the proposed stage of this regulatory action.