

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Planning
(DLS Control No. 20-002)**

Overview and Legal and Fiscal Impact

These regulations rewrite the current chapter of COMAR on the certification of county agricultural land preservation programs consistent with several recent legislative changes.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies beyond that which was accounted for in the fiscal and policy note for House Bill 620 of 2018 (Chapter 294).

Regulations of COMAR Affected

Department of Planning:

Land Use: Certification of County Agricultural Land Preservation Programs:
COMAR 34.03.03.01 through .11

Legal Analysis

Summary of Regulations

The regulations set forth the purpose, definitions, and goals of the chapter on the certification of county agricultural land preservation programs, requirements for eligibility and certification of programs, the process for applying for certification and application review, the process for recertification, the effect of certification, reporting requirements, and the effect of changes to a county priority preservation area.

Eligibility and Certification Requirements

The regulations establish eligibility requirements for the certification of county agricultural land preservation programs. Before a program can be certified, the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation (foundation) must determine that certain requirements are met regarding: (1) the county program, (2) the priority preservation land element within the county's local plan, (3) the county's program for the purchase of development rights and financial enhancements related to the purchase of development rights, and (4) the county's commitment to making qualifying expenditures.

Application for Certification

An application for initial certification (or for certification after the period for recertification has lapsed) must be submitted to the department and the foundation, and also serves as an application for certification by the department and the foundation of the county's priority preservation area element for specified purposes.

The regulations establish the required contents of an application for certification, including: (1) the authorization by the county agricultural preservation advisory board and county governing body; (2) a program evaluation, summary of how certain land preservation easement acquisition programs will permanently preserve lands in the county's priority preservation area at a rate to achieve State and local land preservation goals, and an evaluation of how farming assistance programs operate to support profitable agricultural and forestry activities in the priority preservation area; (3) certain information on the properties within the priority preservation area, and (4) verification that the local plan includes a priority preservation area element that meets certain requirements.

Application Review

The regulations set forth the time frames for the review of an application, including review for completeness by the department, and approvals by the Secretary of Planning, and the Board of Trustees. An application may be approved, approved with conditions, or disapproved the application. If an application is disapproved, the Secretary or Board, as applicable, must identify in writing the changes required to meet certification requirements. If the Secretary and Board disagree on approval, the department shall give notice to the county of the reasons for disapproval or failure to agree on an approval and instructions for resubmittal. A notice of approval by the department constitutes certification of the county's program and the county's priority preservation area.

Recertification

A county that has a certified program can apply for recertification. The final required annual report can serve as the application. A program can only be recertified during the recertification period. The time frames and procedures for review of a recertification application are the same as those for an initial certification. The regulations set forth the requirements for recertification.

Certification and Recertification Periods

Certification lasts for three fiscal years after approval and recertification starts at the end of the third fiscal year of certification. If, at the time of a recertification, a county program is determined to be consistently effective in achieving preservation goals, the recertification is effective for an additional five fiscal years.

Effect of Certification or Recertification

A certified county program is eligible for certain funds available to counties as additional funds under § 2-508.1 of the Agriculture Article and §13-306 of the Tax-Property Article and additional funds provided by the foundation. The regulations also set forth the purposes for which the funds may be used.

Reporting Requirements

A county with a certified program must submit an annual report to the department and the foundation. The report must contain specified financial information, including information on revenues and expenditures related to the county's agricultural land transfer tax and other funds. The report must also include information on certain properties.

Changes to a County Priority Preservation Area

The department and the foundation shall review a county program if the county has made certain changes to a priority preservation area and may revoke a certification or recertification if they determine that the change is inconsistent with certain requirements.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-103(b) and 2-518 of the Agriculture Article; §§ 5-203(b)(2) and 5-408 of the State Finance and Procurement Article; and § 13-306 of the Tax-Property Article as statutory authority for the regulations.

Section 2-103(b) of the Agriculture Article authorizes the Secretary of Agriculture to adopt regulations to carry out the provisions of the Agriculture Article. Section 2-518 defines a priority preservation area and authorizes counties to include a priority preservation area element in the county comprehensive plan. The section also requires the department and the foundation, in accordance with § 5-408 of the State Finance and Procurement Article, to certify or recertify and program and review updates to the county comprehensive plan or certain other changes.

Section 5-203(b)(2) of the State Finance and Procurement Article requires the Secretary of Planning to review and have the power to approve or disapprove or revise the regulations of all boards, commissions, divisions, and other agencies within the department's jurisdiction. Section 5-408 establishes a program to certify effective county agricultural land preservation programs within the department. This section also requires the department and the foundation to adopt regulations to administer the certification program.

Section 13-306 of the Tax-Property Article sets forth the requirements for the distribution of revenues from certain agricultural land transfer taxes and surcharges.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies beyond that which was accounted for in the fiscal and policy note for House Bill 620 of 2018 (Chapter 294).

Agency Estimate of Projected Fiscal Impact

The regulations primarily implement provisions of Chapter 294 of 2018 (House Bill 620), which allow an effective county agricultural land preservation program to be recertified for five years, rather than three years. The department advises that the regulations have no impact on the State, but that the regulations may reduce a county's administrative costs relating to recertification. Part C of the department's economic impact statement also refers to the provision of Chapter 294 that permits counties to use revenue received from the agricultural land transfer tax for six years, rather than three years, before funds must be remitted to the State if not spent or committed.

The Department of Legislative Services disagrees; the regulations primarily implement provisions of Chapter 294 and have no impact beyond that which was accounted for in the fiscal and policy note. The fiscal and policy note did not address any potential for a decrease in a county's administrative costs. In addition, the regulations do not specifically address the provision of Chapter 294 that allows counties to retain revenue that otherwise might be remitted. In any event, the fiscal and policy note for House Bill 620 indicated that providing counties six years, rather than three years, in which to use revenue received from the agricultural land transfer tax may help counties avoid any remittance of that revenue to the State. Therefore, the fiscal and policy note concluded that county revenues and expenditures may increase minimally (as a result of retention of revenue that would otherwise be remitted, and subsequent spending of that revenue).

The other provisions of the regulations – that do not implement provisions of Chapter 294 – have no impact on State or local governments.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs and notes that the regulations primarily implement provisions of Chapter 294. The fiscal and policy note for House Bill 620 indicated that the bill would have minimal impact on small businesses in the State.

Contact Information

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