

Mass.gov

APR Change of Ownership

Options to Purchase at Agricultural Value (OPAV) and Rights of First Refusal (ROFR)

As of July 26, 2019, the Department has updated the APR regulations to include sections outlining the approach the Department must take when considering whether to exercise its options to purchase APR land at the time of sale. The new regulations outline the process that MDAR must follow when reviewing APR transfers, describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the ALPC for landowners. Here is a summary of how it works:

In 1985, the APR program implemented two tools that give the Commonwealth the ability to purchase APR protected farmland when it is put up for sale. These tools, called an “Option to Purchase at Agricultural Value” (OPAV) and “Right of First Refusal” (ROFR) enable, but do not require the Commonwealth to purchase APR protected land when it is up for sale. Since 1985, most APRs have included a purchase option:

1. APRs acquired between 1985 and the first half of 1994 include a ROFR.
2. APRs acquired from the second half of 1994 onward include an OPAV

In practice, unlike state agencies such as DCR and DFW, MDAR does not purchase APRs. Yet under certain circumstances, MDAR may be required to transfer this right to purchase APRs at the time of sale to an interested buyer other than the original buyer. In the vast majority of transfers, MDAR chooses to “waive” its OPAV or ROFR and not become involved in the transfer.

When an APR landowner has a bona-fide offer from an interested buyer the APR landowner, where the APR document contains an OPAV or a ROFR provision, must notify MDAR of their intent to sell and offer the land to the Commonwealth to purchase. Along with this notification, a landowner can also include a request that MDAR waive its right to purchase. Upon receiving the notification MDAR reviews the details of the sale and decides whether to waive its right or elect to utilize its right to purchase the land. If MDAR elects to utilize, or exercise, its right to purchase the APR, it will not actually purchase the land but will instead seek to transfer or assign its right to purchase to another person or entity, usually a farmer. The Department will do this through a public bidding process. Owners of APRs that do not include an OPAV or a ROFR provision do not have to notify the Department when selling their APR land.

Over the course of the 40-year history of the APR program, MDAR has waived its right to purchase the APR in the vast majority of cases. MDAR has only transferred its right on four occasions. This transfer of rights (also known as “Assignments”) is rare and has only occurred when MDAR’s review of a proposed sale has concluded that the proposed buyer was not a farmer or where the property was for sale at a greatly inflated price above agricultural value.

At the 2018 APR Listening Sessions, some comments about the waiver process for ROFRs and OPAVs were brought forward. Later, a state audit of the APR program provided recommended changes; one of these specifically gave a landowner the right to withdraw from the waiver process. Legislation subsequently mandated changes.

As of August 2019, MDAR updated the APR regulations to address how requests for waivers of ROFRs or OPAVs will be managed when submitted. The new regulations outline the process that MDAR must follow when reviewing APR sales; and describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the Agricultural Land Preservation Committee (ALPC) for landowners. The following is a summary of the main changes to the APR regulations:

- An Automatic Waiver requires that MDAR waive its right to purchase when all these criteria are met:
 - The landowner received a good faith offer and submitted to MDAR a certified copy of an executed Purchase and Sale Agreement.
 - The landowner provides justification, deemed valid by MDAR, when a purchase price is 20% or greater than the *Fair Market Agricultural Land Value*. (*Agricultural Land Value does not include dwellings that may be on the APR or the value of an Agricultural Business*).
 - The buyer has been a farmer for at least two of the five years immediately preceding the landowner's notice of intent to sell.
 - The buyer submits a Farm Business Plan for review by MDAR and presents a viable and achievable plan that is compatible with the APR and APR parcel.
 - The buyer has no record of a prior violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).
- If the criteria for an Automatic Waiver are not met, the Department may choose to issue a discretionary waiver when:
 - The buyer is a Farmer or Beginning Farmer or a non-profit corporation organized for the purposes of leasing land to one or more farmers or beginning farmers.
 - The buyer submits a Farm Business Plan for review by MDAR and MDAR determines the plan is complete and presents a viable and achievable plan that is compatible with the APR and APR parcel.
 - The buyer has no record of a prior significant APR violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).
 - The buyer provides justification, deemed valid by MDAR, when the purchase price is 20% or greater than the *Fair Market Agricultural Value*. (*Fair Market Agricultural Value includes dwellings that may be on the APR and the value of an Agricultural Business*).
- A landowner may withdraw from the Waiver process at any point prior to MDAR exercising its right or transferring its right to purchase.
- A landowner may appeal MDAR's decision regarding a waiver by contacting ALPC which will then hold a hearing to consider the appeal.
- MDAR is always available to discuss the waiver process with the landowner. Future APR documents will require a meeting with MDAR, the landowner and potential buyer to discuss the ROFR, OPAV, and waiver before the sale of an APR.

The actual [regulations are available here \(/regulations/330-CMR-2200-agricultural-preservation-restriction-program\)](/regulations/330-CMR-2200-agricultural-preservation-restriction-program) and can be consulted for details. A landowner can also consult his/her APR document to review individual APR seller requirements. If you would like a printed copy of the regulations, please contact Dorothy Du at dorothy.du@mass.gov (mailto:dorothy.du@mass.gov) or 617-626-1741.

CONTACT

Taylor Arsenault

Phone

617-655-3870 (tel:6176553870)

Online

Taylor.Arsenault@mass.gov (mailto:Taylor.Arsenault@mass.gov)

RELATED

[Template for Farm Business Plan](https://www.mass.gov/doc/template-for-farm-business-plan/download) (https://www.mass.gov/doc/template-for-farm-business-plan/download)

[APR Transfer Due Diligence Checklist](https://www.mass.gov/doc/apr-transfer-due-diligence-checklist/download) (https://www.mass.gov/doc/apr-transfer-due-diligence-checklist/download)



[\(1\)](#)

[All Topics \(/topics/massachusetts-topics\)](/topics/massachusetts-topics)

[Site Policies \(/site-policies\)](/site-policies)

[Public Records Requests \(/topics/public-records-requests\)](/topics/public-records-requests)

© 2023 Commonwealth of Massachusetts.

Mass.gov® is a registered service mark of the Commonwealth of Massachusetts. [Mass.gov Privacy Policy \(/privacypolicy\)](/privacypolicy)