

AGRICULTURE & MUNICIPALITIES

A GUIDE TO AGRICULTURAL REGULATORY AUTHORITY
FOR VERMONT MUNICIPALITIES



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FARMS AND FARMING

All operations that meet the threshold of a farm are regulated under the Required Agricultural Practices (RAPs).

The threshold that defines a farm is found in section 3.1 of the Required Agricultural Practices (RAPs):

Persons engaged in farming and agricultural practices as defined in Section 3.2 of the RAP rule and who meet the minimum threshold criteria for applicability of this rule as found in Section 3.1(a) – (g) must meet all applicable Required Agricultural Practices conditions, restrictions, and operating standards. Persons engaged in farming who are in compliance with these conditions, restrictions, and operating standards, as applicable, shall be presumed to not have a discharge of agricultural wastes to waters of the State.

FARMING IS DEFINED AS:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
- (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or
- (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the

farm;

(g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines, and, if located on a jurisdictional farm, or

(h) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:

(i) the compost is principally used on the farm where it is produced; or

(ii) the compost is produced on a small farm that raises or manages poultry.

COMPLIANCE WITH THE REQUIRED AGRICULTURAL PRACTICES RULE IS REQUIRED IF A PERSON:

(a) is required to be permitted or certified by the Secretary, consistent with the requirements of 6 V.S.A. Chapter 215 and this rule; or

(b) has produced an annual gross income from the sale of agricultural products of

\$2,000.00 or more in an average year; or

(c) is preparing, tilling, fertilizing, planting, protecting, irrigating, and harvesting crops for sale on a farm that is no less than 4.0 contiguous acres in size; or

(d) is raising, feeding, or managing at least the following number of adult livestock on a farm that is no less than 4.0 contiguous acres in size:

(1) four equines;

(2) five cattle, cows, or American bison;

(3) 15 swine;

(4) 15 goats;

(5) 15 sheep;

(6) 15 cervids;

(7) 50 turkeys;

(8) 50 geese;

(9) 100 laying hens;

(10) 250 broilers, pheasant, Chukar partridge, or Coturnix quail;

(11) three camelids;

(12) four ratites;

(13) 30 rabbits;

(14) 100 ducks;

(15) 1,000 pounds of cultured trout; or

(16) other livestock types, combinations, or numbers as designated by the Secretary based upon or resulting from the impacts upon water quality consistent with this rule; or

(e) is raising, feeding, or managing other livestock types, combinations, and numbers, or managing crops or engaging in other agricultural practices on less than 4.0 contiguous acres in size that the Secretary has determined, after the opportunity for a hearing, to be causing adverse water quality impacts and in a municipality where no ordinances are in place to manage the activities causing the water quality impacts; or
(f) is managed by a farmer filing with the Internal Revenue Service a 1040(F) income tax statement in at least one of the past two years; or
(g) has a prospective business or farm management plan, approved by the Secretary, describing how the farm will meet the threshold requirements of this section.





REQUIRED AGRICULTURAL PRACTICES

MUNICIPAL BYLAWS CANNOT REGULATE FARMS OR FARMING.

Section 4413(d) of Title 24 (Municipal and County Government) of Vermont Statutes Annotated (V.S.A.) limits the application of municipal land use regulations on farm operations regulated under the Required Agricultural Practices Rule, including the construction of farm structures.

When asked, the Agency of Agriculture, Food and Markets (The Agency) will provide a determination on whether the operation meets minimum thresholds for the applicability of the rule, and that the activities on the parcel are agricultural practices and constitute farming.

A determination by the Agency that a building is a farm structure does not relieve a property owner of the requirement under the law to notify the town of construction of farm structures. If at any point during farm constructions planning which requires a farm structure to be relocated on the property post Agency determination, an operator must again notify the town with a sketch of the proposed location, and possibly the Agency if the changes warrant additional consideration, such as compliance with municipal setbacks.

The Agency has zoning requirements for farm structures within the RAPs and focuses on maintaining local setbacks, as well as right of ways, except in circumstances where no other options are available.

The Agency will provide a determination on whether the operation meets minimum thresholds for the applicability of the Rule, and the activities on the parcel are farming and agricultural practices.

Under the RAPs, farm water quality inspections by The Agency can occur as often as annually to at least every seven years, depending on the size of the farm. Additionally, any environmental complaint about water quality submitted to the Agency will be investigated.

The Agency inspects farms for their compliance with the RAPs, which contain siting requirements for farm structures, erosion standards, floodplain and tile drain management requirements, streamside and ditch buffers and manure setbacks, requirements for livestock exclusion from surface waters, nutrient management (including seasonal manure application) as well as educational requirements for farmers and custom operators.

If there is a potential risk to water quality, the municipality should submit an environmental complaint report online or by calling 802-828-2430. Agency personnel will investigate the complaint. If the investigation determines that there is no risk to water quality, then the Agency will refer the issue to the municipality.

ACCESSORY ON-FARM BUSINESSES

A business meeting the definition of an "accessory on-farm business", will only be reviewed under site plan review and performance standards by the local municipality. Individuals (farmer, farm resident, or farm lessee) who are interested should understand that the business must be located on a farm regulated by the Agency of Agriculture, Food & Markets under the Required Agricultural Practices (RAPs) Rule. It must also be accessory to the primary farm operation. These on-farm accessory businesses are limited to the following;

- the storage, preparation and sale of products, provided that the qualifying products are produced on a farm; the sale of products that name, describe, or promote the farm or accessory on-farm business, including merchandise or apparel that features the farm or accessory on-farm business; or the sale of bread or baked goods,
- educational, recreational, and social events that feature agricultural practices and /or qualifying agricultural products.

Municipalities apply the revisions in the municipal law, as well as local site plan review and performance standards for the accessory on-farm business. The individual applying for a permit will be responsible for providing sufficient evidence to the municipal regulatory authority that their business meets the definition of an accessory on-farm business, as well as illustrate how the proposed business meets all applicable standards. Evidence could include a list of agricultural products produced on the farm, a business plan that incorporates education and social events with farm tours and agricultural products, and outlines their frequency, and/or estimated gross sales of agricultural products principally produced on the farm, as well as the estimated sales of qualifying products brought onto the farm and offered for sale.

The individual must also contact the Department of Environmental Conservation, Regional Permit Specialist to understand what other permits may be needed to operate the business, such as potable water supply, wastewater, and fire safety permits. When an operator receives a local permit for an accessory on-farm business and applies agricultural pesticides, they are required to meet EPA's "worker protection standard," and post signs in the areas of application if the accessory on-farm business takes place in the same area.



Municipalities with zoning regulations cannot prohibit accessory on-farm businesses in the same location as a "farm".

ACT 250 CRITERION 9B



If a project subject to Act 250 jurisdiction contains agricultural soils that are mapped by the Natural Resource Conservation Service as “prime”, “statewide”, or of “local” importance, The Agency of Agriculture, Food and Markets (The Agency) will review the application and provide recommendations under Criterion 9(B). In order to complete a thorough and timely review, The Agency requests that applicants contact their Act 250 Coordinator and submit an Intake Form (link below).

Criterion 9(B) requires that development on primary agricultural soils (PAS) provide suitable mitigation for any proposed reduction in the agricultural potential of PAS. The burden under Criterion 9(B) is on the applicant to provide suitable mitigation (10 V.S.A. § 6093), unless the Agency’s review indicates the soils have previously lost agricultural potential or no longer meet the PAS definition.

If on-site mitigation (the default out of designated areas) is proposed, applicants provide the Agency’s Act 250 Coordinator with a site plan showing the proposed on-site mitigation area for review.

Off-site mitigation consists of a payment to the Vermont Housing & Conservation Board for the purpose of preserving other PAS

for commercial or economic agricultural use, with an emphasis on conserving “prime” soils. Outside of designated areas, off-site mitigation requires the applicant to demonstrate “appropriate circumstances” – please contact the Natural Resources Board (NRB) District Coordinator for more information. Off-site mitigation rates by are updated annually to reflect the recent, per-acre cost of conservation in each Act 250 District (see the Agency’s Criterion 9(B) web page for more info).

Contact your NRB District Coordinator to inquire about whether your property is subject to an existing Act 250 permit, or to request a jurisdictional opinion (JO) regarding whether any proposed development requires an Act 250 application for a new permit or amendment.

USEFUL WEBPAGES:

AAFAM ACT 250 WEBPAGE: <https://agriculture.vermont.gov/land-use/act250>

AAFAM CRITERION 9(B) INTAKE FORM: <https://vermontworkinglands.wufoo.com/forms/act-250-9b-project-review-submission/>

ANR NATURAL RESOURCES ATLAS: <https://anr.vermont.gov/maps/nr-atlas>

Contact your District Coordinator (Natural Resources Board) to inquire about whether your property is subject to an existing Act 250 permit or if proposed development requires an Act 250 application.



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