

H.?. An Act Relating to Miscellaneous Agricultural Subjects

Section by Section Summary

***** Accessory On-farm Business *****

Sec. 1. 24 V.S.A. § 4412. Definition of Accessory On-farm Business

- Amends the requirements for accessory on-farm businesses to clarify that a business can qualify as an accessory on-farm business if 50% of the total sales from that business are from qualifying products produced on the farm where the business is located.
- Currently law provides that the 50% of the total annual sales must be from the of sale qualifying products principally produced on the farm. “Principally produced” is defined as 50% or more of the product by weight or volume is produced on the farm. This creates confusion in that 50% of sales have to be from products 50% of which are produced on the farm.
- The amendment clarifies that for a business to qualify as an accessory on-farm business, 50% of sales must be from qualifying products produced on the farm.

***** General Powers; Administration *****

Sec. 2. 6 V.S.A. § 1. Electronic Service

- Authorizes the Agency of Agriculture (AAFM) to serve persons using electronic service instead of personal service or certified mail, provided that AAFM proves the person received service or the person subject to service agrees to electronic service.
- AAFM may prove receipt of service whenever the person acknowledges receipt or otherwise responds in a manner that demonstrates actual service.
- Service may not be proved solely by an automated electronic read receipt message.
- A person or entity may agree to accept service through email by written consent.

Sec. 3. 6 V.S.A. § 22. Pending Allegations or Past Violations; Timely Applications

- Adds a new section to AAFM’s general administration authority, allowing AAFM to consider an applicant’s pending violations or past history of compliance with AAFM requirements.
- AAFM may deny an application based on pending allegation of noncompliance or based on history or compliance, provided that AAFM provides the applicant with notice of the decision and an opportunity for a hearing under 6 V.S.A. § 16.
- The section also provides that if an applicant makes a timely application for a renewed permit or other form of approval or is seeking a new permit or other approval for an ongoing activity, the existing permit or other approval remains effective until AAFM acts on the final application or until the last day a person can seek review of a denial.

***** Produce Inspection *****

- In 2015, the General Assembly granted AAFM authority to enforce U.S. FDA’s Food Safety Modernization Act (FSMA), Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption. This grant of authority was necessary because the VT Department of Health is the State agency normally authorized to enforce FDA rules.
- The FSMA rules have evolved since 2015, and AAFM has requested changes to State statute to ensure that it continues to have the necessary authority to enforce FSMA.

Sec. 4. 6 V.S.A. § 851. Definitions under AAFM FSMA Authority

- Sec. 4 amends the definition of “adulterated” under AAFM’s FSMA authority to cross reference the definition of “adulterated” used by the VT Department of Health to maintain consistency in enforcement of FDA rules.
- Sec. 4 also amends the definition of “farm” under AAFM’s FSMA authority to cross reference the FDA FSMA rule’s definition of “farm” to ensure the scope of farms where AAFM has FSMA authority is the same as FDA’s authority.

Sec. 5. 6 V.S.A. § 852. FSMA Enforcement Authority

- Sec. 5 amends AAFM’s FSMA authority by clarifying that AAFM shall have the same or similar powers as FDA to enforce FSMA. Sec. 5 also provides that AAFM may use the criteria in the FSMA rules for determining whether produce is adulterated.

Sec. 6. 6 V.S.A. § 853. Farm Inspection Authority

- Sec. 6 clarifies that AAFM has authority to inspect a produce farm to determine its eligibility for and conformity with the exemptions and modified under the FSMA produce rules.

*** * * Mosquito Control * * ***

Sec. 7. 6 V.S.A. § 1085. Mosquito Control Grant Program

- AAFM provides grants to mosquito control districts for application of mosquito larvicides. The grants require the districts to pay a 25% match, but statute allows the districts to pay the match through in-kind services, including the district costs of applying mosquito adulticides.
- Because of legal issues, including ongoing litigation, regarding the application of adulticides, AAFM requested that the costs of adulticide application no longer qualify as in-kind services.
- Sec. 7 makes that change by striking adulticide application as an eligible in-kind service for purposes of the control district match.

*** * * Hemp * * ***

Sec. 8. 6 V.S.A. chapter 34. State Hemp Program

- Since 2014, Vermont AAFM has been operating a State Hemp Pilot Program under authority granted by Congress under the federal Farm Bill.
- In the 2018 federal Farm Bill, USDA and qualifying states were authorized to administer the cultivation of hemp and the production of hemp products, subject to USDA rules.
- In 2019, the General Assembly authorized AAFM to operate the State Hemp Program under the authority in the 2018 Farm Bill.
- In 2020, USDA issued the rules for cultivation of hemp and production of hemp products. The rules required states that sought to administer and enforce requirements for hemp cultivation receive USDA approval of a state plan for enforcement and administration. The State plan needed to meet all requirements of the USDA rules.
- USDA approved the AAFM plan in 2021, and certain changes need to be made to statute to maintain conformity with the USDA rules.
- Throughout the chapter, the term “industrial hemp” is replaced with “hemp”.
- In 6 V.S.A. § 562, the definition of process is amended to include the manufacturing of hemp products or hemp-infused products from hemp concentrate as authorized by USDA rule.

- In 6 V.S.A. § 568, the alternatives available to a hemp producer to manage hemp crops that exceed the allowable THC level are amended to conform to the USDA rules.
 - The USDA rules require hemp exceeding the allowable THC level to be destroyed.
 - The authority under the Vermont State programs to sell hemp exceeding the THC level to a medical marijuana dispensary consequently needed to be repealed.
- Sec. 568 also clarifies how AAFM will issue enforcement orders if hemp exceeds THC levels.

***** Water Quality; Permitting; Certification *****

Sec. 9. 6 V.S.A. § 4858(c)(1). Medium Farm Inspections

- Under current statute, when a medium farm applies for coverage under the medium farm general permit or when a farm renews coverage under the general permit, AAFM is required within 18 months to visit the farm determine if it has unpermitted discharges.
- But, AAFM is also required under statute to inspect medium farms under the general permit every three years. AAFM also must respond to any complaint of a discharge on a farm.
- Sec. 9 limits the requirement that AAFM visit a farm for purposes of determining unpermitted discharges. AAFM will only be required to visit a farm when the farm first applies for coverage under the general permit. All farms under the general permit will continue to be inspected every three years.

Sec. 10. 6 V.S.A. § 4871. Small Farm Certification

- Current statute requires a person who owns or leases a certified small farm to notify AAFM of a change of ownership or change of lease owner for the small farm.
- Sec. 10 strikes the requirement that small farms notify AAFM of a change of ownership, as AAFM now better understands where small farms are located, and small farms are still required to annually certify compliance with RAPs and are subject to inspection at any time, but no less than 7 years.

***** Small Farm; Composting *****

Sec. 11. 10 V.S.A. § 6001(42). Act 250 Definition of Small Farm

- Last year, the General Assembly addressed the issue of whether farms that import food residuals for composting should remain as farms regulated by AAFM or whether they should be regulated by ANR and potentially require an Act 250 permit.
- To address the issue, the General Assembly amended Act 250 to provide that farms that import food residuals for compost production are exempt from Act 250 and remain farming regulated by AAFM if the farm is principally using the compost on the farm; or if the compost is produced on a certified small farm that raises or manages poultry.
- However, a certified small farm must have a minimum of 2,250 laying hens, which would significantly limit which small farms could qualify for the composting exemption.
- Sec. 11 amends the definition of “small farm” under Act 250 to clarify that a small farm qualifies for the Act 250 composting exemption if they are a certified small farm or they are a small farm subject to the RAPs, but which is not required to be certified.
- Non-certified small farms are only required to have 100 ore more laying hens.

***** Effective Date *****

Sec. 12. Effective Date. The act shall take effect on July 1, 2022.