



State of Vermont
Water Quality Division
116 State Street
Montpelier, VT 05620
Agriculture.Vermont.gov

Agency of Agriculture, Food and Markets

[phone] 802-828-2431
[fax] 802-828-2361

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TO: Legislative Committee on Administrative Rules
FROM: Laura DiPietro, Director – Water Quality Division, and Steven Collier, General Counsel,
Vermont Agency of Agriculture, Food and Markets
RE: 24-P27 Technical Service Provider Certification Rule

On September 24, 2024, the Vermont Agency of Agriculture, Food and Markets submitted the final proposed Technical Service Provider Certification Rule to the Legislative Committee on Administrative Rules.

The Technical Service Provider (TSP) Certification Rule is a new rule that applies to providers who prepare Nutrient Management Plans (NMPs) and/or offering farm consulting services to any farm they do not own, lease, or manage. The rule establishes standards for providers who help farms comply with the Required Agricultural Practices, Medium Farm Operations (MFO) Rule and Permits, and/or Large Farm Operation (LFO) Rules and Permits.

The rule establishes a certification process and quality assurance standards for TSPs and enables the Agency to enforce those requirements if TSPs' services fail to meet the standards.

The Agency invited public comments from July 17 through September 9, 2024, and held a hybrid public hearing with both in person and remote attendance options on August 29th in Montpelier, VT. The Agency also held multiple meetings with Technical Service Providers to discuss the proposed rule and answer related questions. The Agency publicized its efforts to solicit public comments, but did not receive any public comments on the proposed rule. Efforts to encourage and facilitate public engagement included the following:

- Agriview article released in August 2024 issue outlining this rule revision process and the opportunity for public comment. Agriview is a print and online newspaper managed by our Agency to share information with the agricultural community. This publication has roughly 4,800 online subscribers, and 4,280 print subscribers.
- Direct email outreach was shared with the following partner agencies and organizations – Agency of Natural Resources Department of Environmental Conservation, Champlain Valley Farmers Coalition, Farmers Watershed Alliance of Franklin and Grand Isle Counties, Connecticut River Watershed Farmers Alliance, Friends of Northern Lake Champlain, Center for an Agricultural Economy, Vermont's 14 Conservation Districts, Vermont Association of Conservation Districts, Missisquoi River Basin Association, USDA NRCS, UVM Extension, Vermont Housing and Conservation Board, Northeast Organic Farming Association, and all Technical Service Providers currently operating in Vermont. Some of these organizations chose to include information about the rule revision process and opportunity for public comment in their newsletters.



- Notice was provided in the [Vermont Agricultural Water Quality Partnership \(VAWQP\)](#) monthly newsletter which has 369 subscribers, who are primarily staff and individuals that work within VAWQP organizations and agencies.
- Meetings with Technical Service Providers were held Wednesday August 21st, 2024 (via Microsoft teams) and Friday August 30th, 2024, in person to dialogue with Technical Service Providers about the proposed rule.

Since the end of the public comment period for the rules on September 9, 2024, there have been changes to the proposed rule that are included in the final proposed filing. These changes are intended to improve the accuracy and formatting of language throughout the document and align certain sections with their statutory reference to ensure the rule is compatible with the requirements of 3 V.S.A. § 833.

The changes to the proposed Technical Service Provider Certification rule are as follows:

- Acronyms were made consistent throughout the document for conciseness.
- Various edits were made to improve readability.
- Information considered duplicative, such as descriptions within the rule that were already included in a definition, were removed.
- Section 3.4 and 3.5 were combined to provide clarity and to better align with what is written in 6 V.S.A. § 4989.
- Section 4 was updated to read that “the Agency will—consistent with legal requirements—provide TSPs with *reasonable notice* before implementing the new requirements.” This section previously indicated that TSPs would be given at least one year’s notice on new requirements, which may not be within the Agency’s authority given the General Assembly’s authority to more promptly change requirements.
- Section 6 was updated to include the potential for TSPs who violate the Rule to be ineligible for recertification for a period of time.

Thank you for the opportunity to testify regarding this proposed final rule. We appreciate your consideration and look forward to meeting with the Committee.

Laura DiPietro, Director – Water Quality Division
Steven Collier, General Counsel
Vermont Agency of Agriculture, Food and Markets

Enclosure:

1. Clean Text – Final Proposed Rule

Please note that a Responsiveness Summary was not included in the materials enclosed considering there were no public comments received.

Technical Service Provider Certification Rule

Section 1. General

- (1) Purpose: The Technical Service Provider (TSP) Certification Rule establishes procedures and standards to certify consultants in Vermont to prepare and maintain nutrient management plans and related farm operation permitting and certification materials. The TSP certification program is designed to ensure that farms in Vermont use nutrient management plans that meet or exceed the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard for Nutrient Management Code 590 (USDA NRCS 590 Standard), the Required Agricultural Practices (RAPs) Rule, the Medium and Small Farm Operation Rules for Issuance of General and Individual Permits (MFO Rules and Permits), and Large Farm Operations (LFO) Rules and Permits. This Rule is intended to improve water quality by reducing and mitigating cropland erosion, sediment losses, and nutrient losses through professionally certified nutrient management planning, farm permitting and certification services.
- (2) Authority: 6 V.S.A. § 4989 Certification of nutrient management plan technical service providers

Section 2. Definitions

- (1) Nutrient Management Plan (NMP) means a written plan which satisfies the requirements of the RAPs, MFO Rules and Permits, LFO Rules and Permits, and the USDA NRCS 590 Standard.
- (2) Secretary means the Secretary of the Agency of Agriculture, Food & Markets.
- (3) Technical Service Provider (TSP) means a person who is compensated for preparing a nutrient management plan or providing related consulting services to a farm they do not own, lease, or manage to satisfy water quality requirements, including the RAPs, MFO Rules and Permits and LFO Rules and Permits.

Section 3. Certification

- (1) Each TSP shall be individually certified by the Secretary to be eligible to provide NMP services in the State and shall comply with all requirements of the RAPs, MFO Rules and Permits, LFO Rules and Permits, and the USDA NRCS 590 Standard. Beginning 45 days after the effective date of this Rule, a TSP shall not create an NMP, nor provide related regulatory consulting services for a farm unless first certified by the Secretary.
- (2) To be certified by the Secretary, a TSP shall:
 - (a) be actively certified in Vermont to provide technical services for USDA NRCS 590 Standard and other relevant conservation practices by the USDA NRCS, and
 - (b) request TSP Certification by the Secretary in a format prescribed by the Secretary.
- (3) TSP certification shall be valid for five years from the date of issuance. The certification year will extend from July 1 through June 30.
- (4) Certified TSPs shall complete eight hours of training as approved by the Secretary in each five-year period of certification. Training records shall be preserved and maintained in a manner prescribed by the Secretary. Completing all five-year training requirements satisfies the requirements for recertification. Trainings shall provide information regarding:

- (a) calculating manure and agricultural waste generation;
- (b) taking soil and manure samples;
- (c) identifying and creating maps of all natural resource features;
- (d) use of erosion calculation tools;
- (e) reconciling plans using records;
- (f) use of nutrient index tools; and
- (g) requirements within the RAPs, MFO Rules and Permits, and LFO Rules and Permits.

Section 4. Regulatory Requirements

- (1) Certified TSPs shall prepare and furnish NMPs for client farms which satisfy all regulatory requirements found in the RAPs, MFO Rules and Permits, LFO Rules and Permits, the USDA NRCS 590 Standard, and any other related requirements applicable to the farm operation. This includes taking professional responsibility for any data or analysis in the NMP.
- (2) Certified TSPs that prepare annual reports, application forms, create other documentation, or submit information to the Agency as part of the nutrient management plan for permitting or certification programs must ensure that all information and records satisfy the regulatory requirements found in the RAPs, MFO Rules and Permits, LFO Rules and Permits, the USDA NRCS 590 Standard, and other related requirements applicable to the farm operation.
- (3) Certified TSPs shall maintain records for a period of at least five years and provide those records to the Agency upon request. The records shall include field management activities provided by the farm, or farm contractor, including:
 - (a) crop type and nutrient applications,
 - (b) all farm imports and exports of nutrients and/or agricultural waste, and
 - (c) any records provided by the farm to the TSP that were utilized to develop a NMP or to submit application materials or records to the Agency.
- (4) In every NMP, certified TSPs shall certify whether the farm has the required land base and waste storage to adequately meet the RAPs, the USDA NRCS 590 Standard, and either the MFO Rules and Permits or LFO Rules and Permits, as applicable to the farm. A NMP can be appropriately written for a farm with inadequate storage or land base, but the TSP must then require export in the plan.
- (5) Certified TSPs shall prepare NMPs, and related permit and certification materials in a manner and format prescribed by the Secretary.
- (6) When major modifications to rules, procedures, standards, and tools related to TSPs' work occurs, the Agency will—consistent with legal requirements—provide TSPs with reasonable notice before implementing the new requirements. The Agency will take input from TSPs on the timing and extent of the required changes prior to determining when the new requirements must be implemented.
- (7) Certified TSPs are subject to Agency audits to validate the accuracy of NMP and the underlying details. Certified TSPs shall furnish all requested information, including but not limited to calculations for nutrient recommendations, calculations for erosion, fields with patterned tile drainage, calculations and methods for waste generation, inputs into nutrient index tools, and results from laboratory soil and waste analyses.

Section 5. Professional Responsibility

Certified TSPs shall certify that each NMP and all related permit or certification documents, annual reports or other related documents developed for a farm meet the requirements of the RAPs, MFO Rules and Permits, LFO Rules and Permits, and the USDA NRCS 590 Standard, as applicable.

Section 6. Enforcement

- (1) Violations of this Rule are subject to enforcement by the Secretary and the Attorney General under the provisions of 6 V.S.A. Chapter 1, Chapter 215 §§ 4991 – 4996, and/or any additional mechanisms available to the State.
- (2) Violations of this Rule can result in enforcement actions, including penalties and/or the revocation or suspension of a TSP's certification to provide NMP services in the State. TSPs who violate the Rule may also be ineligible for recertification for a period of time.

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