

### Final Proposed Filing - Coversheet

**Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Best Management Practices Rule**

\_\_\_\_\_  
Nicole Dubuque /s/ , on 9/23/2024  
(signature) (date)

Printed Name and Title:  
Nicole Dubuque, Chief Operations Officer  
Vermont Agency of Agriculture, Food and Markets

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

**Best Management Practices Rule**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

24P028

3. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Laura DiPietro

Agency: Vermont Agency of Agriculture, Food and Markets

Mailing Address: 116 State Street Montpelier, VT 05620

Telephone: 802-595-1990 Fax: 802-828-2361

E-Mail: Laura.DiPietro@Vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://agriculture.vermont.gov/BMPRule>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Nina Gage

Agency: Vermont Agency of Agriculture, Food and Markets

Mailing Address: 116 State Street Montpelier, VT 05620

Telephone: 802-622-4098 Fax: 802-828-2361

E-Mail: Nina.Gage@Vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

6 V.S.A. § 4810, 4810a, 4811, 4815, 4820-4826, and 4991-4996.

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

6 V.S.A. § 4821 (b) (1) states " The Secretary shall administer the State assistance program...and shall adopt rules pursuant to 3 V.S.A. chapter 25 concerning farmer application and eligibility requirements, financial assistance award priorities, and other administrative and enforcement conditions."

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (**150 WORDS OR LESS**):

The Best Management Practice Program provides technical assistance and financial assistance to Vermont farmers to support construction of on-farm improvements designed to abate water quality risks from agricultural pollution. This rulemaking corrects findings from a 2018 audit that found the rule misaligned with current statute and practice. Updates reflect current terminology, statutes, process and procedures for project prioritization, operation and maintenance requirements, as well as the petition process that have evolved since the last filing in 1996.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

A 2018 Audit of the Best Management Practice (BMP) Program completed by the State Auditor found several provisions in the current BMP rules that do not align with statute or current practice.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is required to implement the BMP assistance program and provides a basis for technical and financial assistance services as required of the Secretary in statute (6 V.S.A. § 4821-4826). The decisions made by the Secretary regarding these regulations are factually based, rationally connected to those factual bases, and would make sense to a reasonable person.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Farmers regulated under the Required Agricultural Practices (RAPs) as defined under Section 3.1 of the same rule.

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

All farm operations in Vermont that are regulated under the Required Agricultural Practices (RAPs) are eligible to receive technical and financial assistance under the BMP Rules. Provision of this assistance program is expected to positively impact farms required to make substantial investments in order to comply with agricultural water quality requirements by providing direct financial support for projects that are implemented.

**19. A HEARING WAS HELD.**

**20. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 8/29/2024

Time: 03:00 PM

Street Address: 116 State Street, Montpelier VT

Zip Code: 05620

URL for Virtual: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NDU2MDQzZTUtOGY2MC00NTI0LTliNDQtOWJmZTZjZWViNzA5%40thread.v2/0?context=%7b%22Tid%22%3a%220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%220fc302e7-39f6-4f65-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDU2MDQzZTUtOGY2MC00NTI0LTliNDQtOWJmZTZjZWViNzA5%40thread.v2/0?context=%7b%22Tid%22%3a%220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%220fc302e7-39f6-4f65-)

b5de-5837a7bf967d%22%7d

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

9/9/2024

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Best Management Practices

Agriculture

Required Agricultural Practices

Water Quality

BMP Grant Program



**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

September 23, 2024

Legislative Committee on Administrative Rules  
C/O Legislative Counsel  
115 State Street  
Montpelier, VT 05633-5701

The proposed revised Best Management Practices Rule has undergone changes since the proposed filing that are included in the final proposed filing. The changes are as follows:

- Section 1.3 – References to enforcement authority were expanded to include 6 V.S.A Chapter 1 and in addition to Chapter 215.
- Section 1.4 –
  - An interpretation of the rule was added to describe the intent of the rule.
- Section 2 –
  - Additions to definitions were included to cite the definition source where those definitions are derived from statute or rule for accuracy and clarity.
  - Definition of a person was added.
  - Definition of the United States Department of Agriculture was added.
- Language throughout the document was altered for accuracy, readability, and conciseness.
- Sections that repeated language used earlier in the document or language already established in law were removed.
- Sections 5 and 6 numbering was updated for accuracy.
- Section 7.3 updated to include item (e) “A description of the cost of all requested BMPs and an analysis of whether each requested BMP will be practical and cost effective for the farmer(s) to implement...”
- Section 8 was removed in entirety as this is written in law and considered duplicative to include in this proposed rule.

Sincerely,

Anson Tebbetts, Secretary  
Vermont Agency of Agriculture, Food and Markets





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**Agency of Agriculture Food & Markets**

116 State Street  
Montpelier, VT 05620  
[www.Agriculture.Vermont.gov](http://www.Agriculture.Vermont.gov)

## Memorandum

To: Kristin Clouser, Secretary, Agency of Administration

From: Anson Tebbetts, Secretary, Agency of Agriculture, Food & Markets

Date: December 5, 2023

Re: Request for Bulletin 3.3 Waiver

DocuSigned by:  
*Anson Tebbetts*  
C202F4AA11D8436...

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As has been past practice, the Agency of Agriculture, Food & Markets requests a waiver of Agency of Administration Bulletin 3.3 to allow Nicole Dubuque, Director of Administrative Services IV, a classified employee, to serve in an Appointing Authority role.

With the reduction to only one Deputy Secretary, Nicole Dubuque is needed in this capacity to assist the Agency. The purpose of Bulletin 3.3, assuring personal accountability of officials, is well maintained with the Agency's internal executive team of Tebbetts, Eastman & Dubuque.

Thank you for your time and consideration of this request.





Agency of Administration
Delegation of Authority for Signature Authorization



Summary: Authority for signing the documents listed below rests solely with the exempt Agency Secretary; Department Commissioner; Elected Official; Exempt Department Head; and heads of divisions, boards, committees and commissions not reporting to an agency secretary or department commissioner (collectively "Appointing Authority").

Agency/Dept. Name: Agriculture, Food & Markets Appointing Authority Name (print): Anson Tebbetts

For Calendar Year (YYYY): 2024

Appointing Authority Title: Secretary

[ ] I choose not to delegate authority at this time; OR

By signing below, I certify that I am the exempt Appointing Authority for the Agency/Department listed above, and hereby delegate authority to the following individual(s) for the documents listed below:

Table with 5 columns: Business Unit(s) (BU#), Employee 5-digit #, Designee Title (print), Designee Name (print), Designee Signature. Rows include Alyson Eastman (Deputy Secretary) and Nicole Dubuque (Director of Administrative Services IV).

If above designee is an emergency non-exempt appointment, during what period is this designation valid?

From: To:

Documents Requiring Appointing Authority Signature:

- 1. State Land and Building Assets: Deeds and easements, purchase and sales agreements, options, and leases;
2. Grant Applications: Applications for and acceptance of grants from federal or other external sources;
3. Budget/Appropriation Forms: Revised estimates of anticipated receipts; Request to expend excess receipts; Transfer of funds between appropriations pursuant to 32 VSA 706 (a) and (b); Request to establish or change an imprest (petty cash) fund;
4. Contracts and Grants to Others: All contract approval requests and certification; contracts and grant awards to all individuals and organizations, public and private; all amendments to those contracts or awards; and all sole source and waiver requests; in accordance with Administrative Bulletins 3.5, Procurement & Contracting Procedures and 5, Policy for Grant Issuance & Monitoring;
5. Finance & Management (FIN) and VISION Forms: VISION System Operator Access Request for Signature Authority; all FIN and year-end reporting forms so noted as requiring signature by department head, agency head, organization head, or appointing authority;
6. Travel & Expense: Any items so noted as "by Department Head only or by Appointing Authority" in Administrative Bulletin 3.4, Employee Travel & Expense Policy;
7. Human Resources (DHR) and VTHR Forms: All Department of Human Resources and VTHR forms so noted as requiring signature by department head, agency head, organization head, or appointing authority;
8. Internal Control: For SAIC purposes only the TOP Appointing Authority can "Certify" the annual form. Delegation is not permitted.
9. Statutorily Required: Any documents for which statute requires the department head, agency head, organization head, or appointing authority as signatory.

DocuSigned by: [Signature]
Appointing Authority Signature

12/6/2023
Date

NOTE: This form must be submitted annually between January 1st and January 15th and as necessary, within 30 days, due to staff change of Appointing Authorities or their designees. Please email form to: FIN.VISIONSecurity@vermont.gov

FOR INTERNAL USE OFFICE ONLY (VISION Security will work with the Secretary of Administration for approval)

DocuSigned by: Sean Brown
Secretary of Administration or Designee Signature

Date



## Adopting Page

### Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

**Best Management Practices Rule**

2. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log #96-05

Best Management Practices Regulations

January 27, 1996



## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** July 8, 2024, virtually via Microsoft Teams  
**Members Present:** Chair Sean Brown, Jared Adler, Jennifer Mojo, Michael Obuchowski, and Nicole Dubuque  
**Members Absent:** John Kessler and Diane Sherman  
**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the May 13, 2024 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- Note: An emergency rule titled 'General Assistance Emergency Housing Assistance Emergency Rules', provided by the Agency of Human Services, Department for Children and Families, was supported by ICAR Chair Brown on June 25, 2024.
- No public comments made.
- Presentation of Proposed Rules on pages 2-6 to follow.
  1. Marriage Ceremony For Incarcerated Individuals, Department of Corrections, page 2
  2. Best Management Practices Rule, Agency of Agriculture, Food and Markets, page 3
  3. Technical Service Provider Certification Rule, Agency of Agriculture, Food and Markets, page 4
  4. Prior Authorization, Agency of Human Services, page 5
  5. Vermont Saves Program Rule, Office of the State Treasurer, page 6
- No other business.
- Next scheduled meeting is August 12, 2024 at 2:00 p.m.
- 2:47 p.m. meeting adjourned.

**Proposed Rule: Best Management Practices Rule, Agency of Agriculture, Food and Markets**

**Presented By: Laura DiPietro and Nina Gage**

Motion made to accept the rule as presented by Sean Brown, seconded by Jared Adler, and passed unanimously except for Nicole Dubuque who abstained, with no recommendations.



## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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1. TITLE OF RULE FILING:

**Best Management Practices Rule**

2. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Farms: Each year, based on State Fiscal 2016-2023 data, an average of 40 Vermont farm operations receive on average \$73,000 each in financial assistance toward implementation of best management practices to reduce runoff and water pollution from agricultural operations.

There are no changes anticipated in the existing economic impacts of this rule and associated assistance program through the adoption of this revised rule.

Public: Citizens that wish to pursue the BMP petition process. The economic impact depends on the scope of the petition request. The petitioner will be responsible for mailing a copy of the petition to the farmer(s) subject to it.

4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

There are no anticipated economic impacts on schools.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

There are no anticipated economic impacts to schools, thus alternatives have not been considered.

6. IMPACT ON SMALL BUSINESSES:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

There are no new impacts anticipated for small businesses. Based on State Fiscal 2016-2023 data, an average of 40 Vermont farm operations receive on average \$73,000 each in financial assistance toward implementation of best management practices to reduce agricultural runoff and water pollution from agricultural operations.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Farm operations can request technical and financial assistance through the BMP Program in order to reduce the cost/burden of compliance with agricultural water quality regulations.

There are no changes anticipated in the existing small business compliance support of this rule and associated

assistance program through the adoption of this revised rule.

8. COMPARISON:

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

There are no anticipated separate requirements on small businesses through the adoption of this revised rule.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

This economic impact analysis provides the Agency's best assessment of the economic impact of this revised rule based on the information available and based on data from the BMP Program between State Fiscal Year 2016 to 2023.

# Environmental Impact Analysis

## **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

**Best Management Practices Rule**

2. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

The revised rule will improve farm waste management infrastructure which can contribute to reducing greenhouse gas emissions from agricultural activities.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

This program supports farm operations to reduce impacts to water quality by providing technical and financial assistance for the implementation of best management practices (BMPs). BMPs are site-specific on-farm conservation practices implemented in order to address

the potential for agricultural pollutants to enter the waters of the State.

5. **LAND: EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):**

The revised rule will improve the use, maintenance and operation of agricultural lands primarily in agricultural production areas (barnyards) to reduce the potential for agricultural pollutants to enter the waters of the State.

6. **RECREATION: EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:**  
No impact is anticipated.

7. **CLIMATE: EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:**

The revised rule will improve farm waste management infrastructure which can contribute to reducing greenhouse gas emissions from agricultural activities.

8. **OTHER: EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:**

No impact is anticipated.

9. **SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.**

This environmental impact analysis provides the Agency's best assessment of the environmental impact of this revised rule based on the information available.



## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

**Best Management Practices Rule**

2. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Agency of Agriculture will post this rule revision for public comment on the Agency's website.

A public hearing will be held to gather public comment on this proposed rule revision and offer both in-person and virtual attendance options.

The Agency will circulate the revised rule to agricultural community and stakeholders via standard informational channels including our monthly newspaper, and weekly email newsletter.

Public comments received will be reviewed for consideration for incorporation into the revised rule.

A responsiveness summary will be drafted to document the public comment period, comments received, and the Agency's response.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

**Public Input**

The proposed rule revision was reviewed multiple times by the Agency of Natural Resources Department of Environmental Conservation.

The following organizations will be contacted directly to provide notice of this proposed rule revision:

The Farmers Watershed Alliance of Franklin and Grand Isle

Connecticut River Farmer's Watershed Alliance

Champlain Valley Farmer's Coalition

Vermont Dairy Producers Association

Vermont's 14 Conservation Districts

United States Department of Agricultural Natural Resources Conservation Service (USDA NRCS)

## Scientific Information Statement

**THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.**

**PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

#### 1. TITLE OF RULE FILING:

**Best Management Practices Rule**

#### 2. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

#### 3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

The Best Management Practice Rule bases the conservation practices supported on the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standards. Each Conservation Practice Standard is detailed in the Field Office Technical Guide for Vermont. They contain technical information about the conservation of soil, water, air, and related plant and animal resources.

#### 4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

Vermont Field Office Technical Guide (FOTG). United States Department of Agriculture Natural Resources Conservation Service.  
[https://efotg.sc.egov.usda.gov/#/state/VT/documents/section=1&folder=15818.](https://efotg.sc.egov.usda.gov/#/state/VT/documents/section=1&folder=15818)

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE  
DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY  
OR OTHER PUBLISHING ENTITY:

Each individual Conservation Practice Standard and  
associated documents are available in Vermont's Field  
Office Technical Guide:

<https://efotg.sc.egov.usda.gov/#/state/VT/documents/section=1&folder=15818>

## Incorporation by Reference

**THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g., federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

#### 1. TITLE OF RULE FILING:

**Best Management Practices Rule**

#### 2. ADOPTING AGENCY:

Vermont Agency of Agriculture, Food and Markets

#### 3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

The Best Management Practice rule ensures that the conservation practices supported under this assistance program are designed to meet the conservation practice standards set by the U.S. Department of Agriculture Natural Resources Conservation Practice Standards or are determined by the Secretary to be equivalent. Additionally, the rule references the Vermont Agency of Agriculture, Food and Markets Required Agricultural Practices as established in statute.

#### 4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

See below:

#### 5. OBTAINING COPIES: (*EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

USDA NRCS Conservation Practice Standards:  
<https://www.nrcs.usda.gov/resources/guides-and-instructions/conservation-practice-standards>

VAAFM Required Agricultural Practices:  
<https://agriculture.vermont.gov/rap>

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

Run Spell Check

## BEST MANAGEMENT PRACTICE RULES

Effective Date: January 27, 1996 \_\_\_\_\_, 2024

### SECTION 1: GENERAL

- 1.1 Purpose: It is a policy of the State of Vermont to assist farmers with the implementation of Best Management Practices that will protect and maintain water quality by reducing agricultural ~~nonpoint source~~ pollution. The implementation of Best Management Practices (BMPs) is subsequent to the implementation of Required Accepted Agricultural Practices.
- 1.2 Authorities: 6 V.S.A. Chapter 215 (Agricultural Water Quality), including §§ 4810, 4810a, 4811, 4813, 4815, 4820-4826, and 4991-4996., ~~Sections 4810, 4821, 4822, 4823, 4824~~
- 1.3 Enforcement: The Secretary of the Vermont Agency of Agriculture, Food and Markets (VAAFMM) has the authority to enforce and/or solicit remedies for any violation of this Rule pursuant to 6 V.S.A. Chapter 1 and Chapter 215 §§ 4991 - 4996, and any other applicable Vermont law.
- 1.4 Interpretation: This Rule is created to meet the legislative intent in 6 V.S.A. § 4810(a) to create two distinct categories of land use regulations to meet the water quality requirements of 33 U.S.C. § 1329 for agricultural non-point source pollution. The Required Agricultural Practices (RAP) Rule is the first category of land use regulations which includes management standards applicable to all farms. This BMP Rule is the second category of land use regulations intended to exceed the management standards required by the RAP Rule that the Secretary mandates for a specific site as warranted. The two rules are intended to work together to create an effective framework. If the RAP Rule is amended, this Rule will be construed to align with pertinent changes and interpreted to form a congruent part of the broader comprehensive legal framework.

### SECTION 2: DEFINITIONS

When indicated, the following definitions are derived from statute or rule. The definitional language that existed upon Rule adoption is repeated here for convenience, but all definitions that are defined by another statute or rule shall be automatically amended to conform to any statutory and/or rule amendments.

- 2.1 Agency means the Vermont Agency of Agriculture, Food and Markets.  
AAPs means "Accepted Agricultural Practices" as defined in rule by the Secretary of Agriculture, Food and Markets pursuant to 6 V.S.A., Chapter 215.
- 2.2 Agricultural Nonpoint Source Waste means agricultural waste that reaches surface water or groundwater indirectly or in a diffuse manner as a result of farming. ~~means wastes that~~

reach the waters of the state via indirect discharge in a diffuse manner as a result of agricultural practices.

2.3 ~~BMPs~~ means “~~Best Management Practices.~~” Best ~~m~~Management ~~p~~Practices or (BMPs) ~~are~~ mean site specific on-farm conservation practices implemented to address the potential for agricultural pollutants to enter the waters of the State, remedies implemented either voluntarily or as required in order to address water quality problems and in order to achieve compliance with state water quality standards.

2.4 ~~Commissioner~~ means the Commissioner of Agriculture, Food and Markets.

2.5 ~~Department~~ means the Department of Agriculture, Food and Markets.

2.64 Farmer means

(a) ~~An agricultural producer eligible for federal agricultural conservation program or Public Law 83-566 cost share assistance or programs that succeed those programs; or~~

(b) ~~A a person engaged in farming as defined by the Required Accepted Agricultural Practice Rule.~~

2.5 Farming has the same meaning as defined in the Required Agricultural Practices Rule, and means:

(a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, 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; or

(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.

(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.

2.6 Good Standing has the same meaning as defined in 6 V.S.A. § 4802, and means the water quality program participant:

(a) does not have an active enforcement violation that has reached a final order with the Secretary; and

(b) is in compliance with all terms of a current grant agreement or contract with the Agency.

2.7 Groundwater has the same meaning as defined in the Required Agricultural Practices Rule, and means water below the land surface in a zone of saturation, but does not include surface waters.

2.7 FSA means the “Farm Service Agency” of the U.S. Department of Agriculture.

2.8 Person has the same meaning as defined in the Required Agricultural Practices Rule, and means:

(a) an individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership; or

(b) a municipality or state agency; or

(c) individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from agricultural management, including lessors and lessees.

2.8 NRCS means the “Natural Resources Conservation Service” of the U.S. Department of Agriculture.

2.9 RAPs means “Required Agricultural Practices” as defined in the Required Agricultural Practices Rule pursuant to 6 V.S.A. Chapter 215.

2.9 Secretary means the Secretary of the Vermont Agency of Natural Resources, or his or her designated representative.

2.10 Secretary means the Secretary of the Vermont Agency of Agriculture, Food and Markets.

2.10 Vermont Phosphorus Models means models developed by the Natural Resources Conservation Service to predict phosphorus loading to waters of the State from agricultural nonpoint sources.

- 2.11 Waters or Waters of the State Surface Waters has the same meaning as defined in the Required Agricultural Practices Rule, and means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it.
- 2.12 United States Department of Agriculture means the United States Department of Agriculture Natural Resources Conservation Service.
- 2.13 Waste or Agricultural Waste has the same meaning as defined in the Required Agricultural Practices Rule, and means material originating or emanating from a farm or imported onto a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse waste; and any other farm waste as the term "waste" is defined in 10 V.S.A. § 1251(12)
- 2.14 Waters of the State has the same meaning as defined in the Required Agricultural Practices Rule, and means surface water and groundwater as applied.

### **SECTION 3: ~~WATERSHED TREATMENT PRIORITIES FOR BMP~~ VOLUNTARY IMPLEMENTATION OF BMPs**

- 3.1 ~~State financial assistance available under this rule shall be allocated in each fiscal year according to the following priorities, except as provided by subsection 3.8.~~
- 3.2 ~~The boundaries of the Lake Champlain Basin and the Lake Memphremagog Basin are those defined by the state water quality plan prepared by the Vermont Agency of Natural Resources.~~
- 3.3 ~~First priority shall be given to funding BMP implementation on individual farms:~~
- ~~(a) in the Lake Champlain Basin or the Lake Memphremagog Basin; and~~
  - ~~(b) that cannot implement AAPs because of physical constraints on the farm; and~~
  - ~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~
  - ~~(d) in descending order of magnitude of their potential to load phosphorus to Waters of the State based on models such as the Vermont Phosphorus Models developed by the NRCS; or~~

~~(e) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

~~3.4 — Second priority shall be given to funding BMP implementation on individual farms:~~

~~(a) outside the Lake Champlain Basin or the Lake Memphremagog Basin; and~~

~~(b) that cannot implement AAPs because of physical constraints on the farm; and~~

~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~

~~(d) in descending order of magnitude of their potential to load agricultural nonpoint source wastes to Waters of the State.~~

~~3.5 — Third priority shall be given to funding BMP implementation on individual farms:~~

~~(a) located within the boundaries of the Lake Champlain Basin or the Lake Memphremagog Basin; and~~

~~(b) that wish to make improvements to control nonpoint source pollution on the farm; and~~

~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~

~~(d) in descending order of magnitude of their potential to load phosphorus to Waters of the State based on models such as the Vermont Phosphorus Models developed by the NRCS; or~~

~~(e) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

~~3.6 — Fourth priority shall be given to funding BMP implementation on all other individual farms:~~

~~(a) that are located outside the boundaries of the Lake Champlain Basin or the Lake Memphremagog Basin; and~~

~~(b) that wish to make improvements to control nonpoint source pollution on the farm; and~~

~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~

~~(d) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

3.7 — Fifth priority shall be given to funding BMP implementation on other individual farms located anywhere in the state:

(a) ~~for animal waste management systems which have not been approved for cost sharing by the NRCS or the FSA and where these animal waste management systems have been designed and certified by a professional engineer licensed in the State of Vermont to be equivalent to the performance standards contained in Sections 4.1 (a) or (b) of these rules; and~~

(b) ~~in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

3.1 The Secretary shall develop BMP financial assistance awards that incorporate priorities established by the Secretary and 6 V.S.A. Chapter 215.

3.28 Exceptions:

The ~~Secretary~~ Commissioner may award financial assistance under this section for BMPs on a farm that otherwise would not receive assistance under the priorities established in this section when the ~~Secretary~~ Commissioner determines a severe condition of agricultural pollution ~~nonpoint source waste discharge~~ exists that requires immediate abatement. Financial assistance will be awarded only if the farmer has not been notified in writing by either the state or the federal government that a specific practice must be performed to avoid enforcement actions being taken against the farmer.

#### **SECTION 4: ELIGIBILITY FOR STATE ASSISTANCE**~~**BMPs ELIGIBLE FOR COST SHARING**~~

4.1 — BMPs shall be eligible for cost sharing provided that they meet one of the following:

(a) ~~are components of the following BMP Systems contained in the NRCS's National Handbook of Conservation Practices that are eligible for cost share funding including, but not limited to: permanent vegetative cover; animal waste management; stripcropping; terraces; diversions; pasture and hayland management; waterways; cropland protection; conservation tillage; stream protection; permanent vegetative cover on critical areas; sediment retention, erosion or water control structures; tree planting; nutrient management; or conservation cropping; or~~

(b) ~~are the FSA Agricultural Conservation Program eligible practices that are defined in the FSA's handbook "1-ACP (Rev. 3) Amend. 3" or as subsequently amended; or~~

(c) ~~are integrated crop management systems designed to achieve the source reduction of nonpoint source agricultural wastes that are developed by certified crop advisors or~~

~~other agricultural professionals such as, but not limited to, the University Extension Specialists; and~~

~~(d) are consistent with a “nutrient management plan” prepared by the Vermont field office of the NRCS, or with an animal waste management plan based on standards equivalent to those of the NRCS.~~

4.1 Vermont farmers that are in good standing with the Secretary on all grant agreements, contract awards, or enforcement proceedings at the time of the BMP grant agreement shall may be eligible to receive available State financial assistance with the installation of on-farm improvements designed to abate water quality risks from agricultural pollution, provided that:

(a) when farmers also seek federal financial assistance for this purpose, the improvements are eligible for federal assistance through programs of the United States Department of Agriculture; or

(b) when farmers decline to request or accept federal financial assistance for this purpose, the improvements:

(1) are determined by the Secretary to be equivalent to those eligible for federal assistance through programs of the United States Department of Agriculture; or

(2) are practices that meet the purpose of this rule and are not otherwise addressed within this Section but are determined eligible by the Secretary.

## **SECTION 5: STATE FINANCIAL ASSISTANCE AWARDS AND APPLICATION PROCESS**

~~5.1 State financial assistance awarded under this Rule section shall be in the form of a grant agreement. When a state grant is intended to match federal financial assistance for the same on farm improvement project, the state grant shall be awarded only when the available federal financial assistance has also been approved or awarded and where the applicant has agreed to accept the maximum federal financial assistance available. An applicant for a state grant shall pay at least 15 percent of the total eligible project cost. The dollar amount of a state grant shall be equal to the total eligible project cost, less 15 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded or awards from other sources, except that a state grant shall not exceed 35 percent of the total eligible project cost where federal funds will be matched with the state grant. When there will be no federal funds to match the state grant, the state grant shall not exceed 50 percent of the total eligible project cost.~~

5.2 State financial assistance awards shall follow the priorities established by the Secretary, 6 V.S.A. Chapter 215 and all pertinent laws and State policies. Applications shall be

considered by the Commissioner on the basis of the watershed treatment priorities established in Section 3 of these rules.

5.3 ~~Farmers who request seeking funding under this program shall file an application on the Agency's designated form provided by the Agency, the following information:~~

~~(a) For those farmers who also seek federal financial assistance for this purpose:~~

~~(1) a photocopy of the completed USDA form or forms for BMP cost share assistance; and~~

~~(2) the department's BMP Grant Application Form 1.~~

~~(b) For those farmers who decline federal financial assistance for implementation of BMPs:~~

~~(1) the department's BMP Grant Application Form 2.~~

~~5.4 The BMP Grant Application Form 1 shall contain the following information: FSA farm number, farmer name, location, statement of need. The BMP Grant Application Form 2 shall contain the following information: farm number, farmer name, location, description of the practice according to the standards set out in Section 4.1 (e) of these rules, statement of need, estimated practice cost, cost share amount requested, and expected construction date.~~

~~5.5 Applications that are filed on or before October 1 of each year shall be given priority for funding in the next calendar year pursuant to the priorities contained in Section 3 of these rules.~~

~~5.6 Approval for State cost sharing for BMPs under these rules shall be obtained prior to commencement of construction of the BMP for which cost sharing is requested, except that between the effective date of these rules and March 30, 1996, the Commissioner may award grants according to the priorities established in Section 3 for eligible BMPs on which construction was started on or after April 26, 1995.~~

5.4 The Secretary may adopt a schedule for prioritizing project funding based on application filing dates. Any priority deadlines established by the Secretary will be noticed in advance.

5.5 Approval for any BMP that exclusively uses State funding shall not be final until a grant agreement is fully executed.

5.6 Applicants seeking federal assistance for a BMP are not guaranteed related State funding unless an executed State grant agreement exists.

## SECTION 6: OPERATION AND MAINTENANCE REQUIREMENTS CONTRACTS

- 6.1 Awards of funding for BMP implementation shall require that the BMP be operated and maintained under contract or agreement for the design life of the practice under contract or agreement, but not to exceed 10 years. BMP recipients shall ensure ongoing operation and maintenance of the BMP in accordance with the applicable operation and maintenance standards for the eligible practices listed in Section 4 of this Rule, for the design life of the practice.
- ~~6.2 — Contracts for state grants awarded to an applicant shall be awarded in accordance with a state contract containing terms substantially the same as those required for receipt of a federal award for the same purpose from the U.S. Department of Agriculture.~~
- ~~6.3 — The contract will include provisions relating to Departmental oversight of the BMP's construction, certification of its construction as designed, and compliance monitoring of its operation. In cases where the federal government has also cost shared the BMP, the contract will establish responsibility of the involved agencies for these activities.~~
- 6.2 BMP grant recipients shall be responsible for compliant operation and maintenance of all funded BMPs as described in the grant agreement.
- ~~6.4.3 Failure to operate and maintain the any BMP as specified in the grant agreement, or any other violation of the grant agreement, may contract will expose the recipient to state result in penalties including the obligation to repay the value of the grant remaining at such time as the Commissioner determines that the contract has been violated. all or a portion of the grant award.~~
- 6.4 Grant recipients are responsible for preserving maintaining the water quality benefit supported by the grant agreement. Should the use of a BMP change or the operation and maintenance requirements change or cease fail to be continued and maintained so that the abated water quality concern resurfaces, the Agency may recover any and all State funds expended pursuant to the grant agreement.
- 6.5 Operation and maintenance of a BMP system for the term of the contract shall be the responsibility of the BMP grant recipient. Failure to properly operate and maintain any BMP may impact the grant recipient's eligibility for additional and/or future Agency funding.

## SECTION 7: PROCESS FOR PETITIONING TO REQUIRE BASIN MANAGEMENT BMPs

### 7.1 General

The Commissioner, upon receipt of a petition from a A person with an interest in the agricultural nonpoint source pollution component of the basin planning process (in

accordance with 6 V.S.A. § 4813), may petition the Secretary to request BMPs, and the Secretary, or on his or her own motion, shall determine whether to may require BMPs beyond practices required in the RAPs-AAPs on farms or in a specific basin in order to achieve compliance with the water quality goals in 10 V.S.A. § 1250 Section 1250 of Title 10 and any duly adopted basin plan.

## 7.2 Sufficient Financial Assistance

- (a) If the Secretary requires a BMP to correct a water quality violation or achieve compliance with water quality standards in adjoining waters, the Secretary shall inform a farmer of the resources available to assist the farmer in implementing the BMP and complying with 6 V.S.A. Chapter 215. The BMP shall be practical and cost effective to implement, as determined by the Secretary.
- (b) A State grant agreement may be offered to a farmer when the Secretary requires BMP implementation. Any such grant agreement shall be based on the estimated total cost to install the BMP, the various funding streams available from federal, state and other sources, and shall follow the percentage contribution limits established for the program, except that the Secretary may consider the farmer's ability to pay and determine that the farmer's contribution be less than the usual minimum amount required in a standard State grant agreement.

If at any time implementation of a BMP is required by the Commissioner in order to correct a water quality violation or to achieve compliance with water quality standards in adjoining reaches of waters, receipt by a farmer of a grant of 85 percent of the total cost of a BMP's design, construction and the auxiliary equipment necessary to operate the system(s) from federal, state, or other sources shall be considered by the Commissioner to constitute sufficient financial assistance as required by 6 V.S.A. Section 4810. The Commissioner may consider the farmer's ability to pay and determine that a contribution of less than 15 percent of the total BMP cost by the farmer is allowed in some circumstances.

## 7.3 Content of Petitions to Request BMP(s)

Any petition to request a BMP shall be in writing and shall be served upon the Secretary as an original and three copies, and shall contain the following information unless the Secretary waives any such requirement in writing by the Commissioner:

- a) The name and complete mailing address of the farmer(s) whose actions allegedly violate water quality standards;
- b) All evidence and documentation of the alleged water quality violation including a study conducted in accordance with the Environmental Protection Agency's quality assurance quality control program standards for the Clean Water Act and research or evaluative studies. The data must reasonably demonstrate that there is a correlation



between the alleged water quality violation and the farmer(s) practices, including specific evidence of the source of the alleged water quality violation.

- c) A description of the specific action(s) sought by the petitioner requests, including applicable citations to the Rule citing the application provisions of these rules and State law;
- d) A detailed narrative of why the requested corrective action(s) is/are sought by the petitioner is consistent with this Rule, these rules including a and reason(s) why the RAPs are believed to be discussion of which AAP(s) is insufficient to achieve the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan and treatment; and
- e) A description of the cost of all requested BMPs and an analysis of whether each requested BMP will be practical and cost effective for the farmer(s) to implement; and
- f) Copies of all documents that the petitioner may intends to rely upon to in support of the petition.

#### 7.4 Determination of Complete Petition Filing

~~Upon~~ After the initial filing of the petition the ~~Secretary~~ Commissioner may determine that additional information is necessary. Within ~~30~~ 45 days of receipt of the petition the ~~Secretary~~ Commissioner shall notify the petitioner of ~~any additional~~ the required information ~~and~~. ~~At the same time, the Commissioner shall notify the petitioner of persons who petitioner shall serve in accordance with receive the petition as provided by Section 7.5 (d) of these Rules. Upon receipt of that additional information and proof of service from Section 7.5(d) of these Rules to the satisfaction of the Secretary, the petition shall be deemed to be complete filed with the Secretary, and the review and hearing process described as contained in subSection 7.6 begins shall start.~~

#### 7.5 Petition Distribution

The petitioner shall, at their own expense, in addition to filing and original and three (3) copies with the Commissioner, certify to the Secretary by written affidavit that a complete copy of the petition and documentation has been filed served by first class mail with upon:

- (a) the each farmer(s) who are the subject to any request in of the petition;
- (b) the Secretary of the Vermont Agency of Natural Resources; and
- (c) the water resources board; and

~~(c)(d)~~ other persons the Secretary determines should be notified of the petition as the Commissioner deems appropriate.

## 7.6 Review and Hearing Process

~~(1)~~ The ~~Secretary~~ Commissioner shall schedule a public hearing in the community where the farm(s) subject to the petition is/are located within 60 days of the Secretary's determination that the petitioner filed and served a complete petition receipt of complete petition. The ~~Secretary~~ Commissioner shall provide notice of the petition and the public hearing on the petition to all persons the petitioner was required to be served by Section 7.3 as well as to such any other persons as ~~he or she deems~~ deemed appropriate. The ~~Secretary~~ Commissioner shall also publish notice at the petitioner's expense of the petition and hearing in a local newspaper generally circulating in the area where the farm(s) is/are located not less than at least 30 days before the public hearing. Such notice shall also invite written comments about the petition to be filed with the Secretary within 30 days after the hearing provide not less than 30 days in which to file written comments on the petition.

~~(2)~~ The ~~Commissioner~~ shall hold a public hearing in the community in which the farm which is the subject of the petition is located within 60 days of the filing of the petition.

## 7.7 Notice of Decision

The ~~Secretary~~ Commissioner shall ~~make all practical efforts to issue a timely written decision in a timely manner.~~ The decision shall set forth the facts and reasons supporting his or her decision. The ~~Secretary~~ Commissioner shall provide copies of the decision to all persons served with the petition pursuant to Section 7.5, entitled to receive notice under subsections (5) and (6) above.

## 7.8 Appeal

Any person engaged in farming who ~~has been required by the Secretary~~ Commissioner requires to implement best management practices BMPs under this section or any person who has petitioned the ~~Secretary~~ Commissioner under this section may appeal the ~~Secretary's~~ Commissioner's decision to the Environmental Division ~~water resources board~~ de novo.

## **SECTION 8: PHOSPHORUS LOADING REDUCTION CREDITING**

~~8.1~~ The department's 1995 Vermont Dairy BMP Survey shall ~~create the baseline data for determining phosphorus reduction credits for discontinuing winter spreading of manure with the Lake Champlain Basin.~~

8.2 — The following practices shall be used to determine environmental credits for phosphorus reduction measured at the edge of the field following BMP implementation as part of a lake phosphorus allocation process:

- (a) Milk house waste treatment is the storage of the waste in an animal waste treatment system, treatment through a filter strip or other system designed and constructed for such treatment.
- (b) Waste utilization is a planned system to manage liquid and solid wastes, including runoff from concentrated waste areas, with ultimate disposal in a manner that does not degrade soil or water resources.
- (c) Barnyard runoff treatment is a system to collect, control, and treat agricultural wastes from barnyards, feedlots, and other outdoor livestock concentration areas for disposal in a non-polluting manner. Its purpose is to properly manage runoff from barnyards and related areas to minimize degradation of water quality and to conserve nutrients for use in crop production.
- (d) Erosion control is a system to reduce soil erosion and water pollution on sloping cropland to reduce overland transport of pollutants.
- (e) Grazing management is the exclusion of livestock from waters of the state other than from planned watering points.
- (f) Nutrient management is handling the amount, placement and timing of plant nutrient application including a prohibition on winter spreading and is intended to supply adequate plant nutrients for crop production and plant growth; to minimize entry of nutrients and pathogens to surface and ground water; and to maintain or improve the chemical and biological conditions of the soils.
- (g) A one-time phosphorus credit, because of a prohibition on winter spreading of animal manures (between December 15 and April 1) as required by the AAPs, shall be calculated at 0.15 pounds of phosphorus per animal unit for all farms identified as winter spreading in the department's 1995 Vermont Dairy BMP Survey.

8.3 — The numerical values and the basis for determining phosphorus reduction credits for practices identified in subsection 8.2 of these rules will be contained in a procedure adopted and periodically revised, as necessary, by the Commissioner in consultation with the Secretary. The credits shall be used to show progress towards attaining compliance with the phosphorus allocation plan necessary to meet in-lake standards for phosphorus within the Lake Champlain Basin.

## **SECTION 9: REPORTS**

~~9.1 — Annually by January 15 of each year, the Commissioner shall report to the general assembly regarding activities in support of the objectives of this rule, including use of state, federal and private funds:~~

- ~~(1) undertaken during the preceding fiscal year;~~
- ~~(2) in progress during the current fiscal year;~~
- ~~(3) projected for the following fiscal year; and~~
- ~~(4) remaining to be undertaken after the following fiscal year.~~

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## BEST MANAGEMENT PRACTICE RULES

Effective Date: \_\_\_\_\_, 2024

### SECTION 1: GENERAL

- 1.1 **Purpose:** It is a policy of the State of Vermont to assist farmers with the implementation of Best Management Practices that will protect and maintain water quality by reducing agricultural pollution. The implementation of Best Management Practices (BMPs) is subsequent to the implementation of Required Agricultural Practices.
- 1.2 **Authorities:** 6 V.S.A. Chapter 215 (Agricultural Water Quality), including §§ 4810, 4810a, 4811, 4813, 4815, 4820-4826, and 4991-4996.
- 1.3 **Enforcement:** The Secretary of the Vermont Agency of Agriculture, Food and Markets (VAAF) has the authority to enforce and/or solicit remedies for any violation of this Rule pursuant to 6 V.S.A. Chapter 1 and Chapter 215 §§ 4991 - 4996, and any other applicable Vermont law.
- 1.4 **Interpretation:** This Rule is created to meet the legislative intent in 6 V.S.A. § 4810(a) to create two distinct categories of land use regulations to meet the water quality requirements of 33 U.S.C. § 1329 for agricultural non-point source pollution. The Required Agricultural Practices (RAP) Rule is the first category of land use regulations which includes management standards applicable to all farms. This BMP Rule is the second category of land use regulations intended to exceed the management standards required by the RAP Rule that the Secretary mandates for a specific site as warranted. The two rules are intended to work together to create an effective framework. If the RAP Rule is amended, this Rule will be construed to align with pertinent changes and interpreted to form a congruent part of the broader comprehensive legal framework.

### SECTION 2: DEFINITIONS

When indicated, the following definitions are derived from statute or rule. The definitional language that existed upon Rule adoption is repeated here for convenience, but all definitions that are defined by another statute or rule shall be automatically amended to conform to any statutory and/or rule amendments.

- 2.1 Agency means the Vermont Agency of Agriculture, Food and Markets.
- 2.2 Agricultural Nonpoint Source Waste means agricultural waste that reaches surface water or groundwater indirectly or in a diffuse manner as a result of farming.

- 2.3 Best Management Practices or (BMPs) mean site specific on-farm conservation practices implemented to address the potential for agricultural pollutants to enter the waters of the State.
- 2.4 Farmer means a person engaged in farming as defined by the Required Agricultural Practice Rule.
- 2.5 Farming has the same meaning as defined in the Required Agricultural Practices Rule, and means:
- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, 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; or
  - (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.
  - (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.
- 2.6 Good Standing has the same meaning as defined in 6 V.S.A. § 4802, and means the water quality program participant:
- (a) does not have an active enforcement violation that has reached a final order with the Secretary; and
  - (b) is in compliance with all terms of a current grant agreement or contract with the Agency.

- 2.7 Groundwater has the same meaning as defined in the Required Agricultural Practices Rule, and means water below the land surface in a zone of saturation, but does not include surface waters.
- 2.8 Person has the same meaning as defined in the Required Agricultural Practices Rule, and means:
- (a) an individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership; or
  - (b) a municipality or state agency; or
  - (c) individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from agricultural management, including lessors and lessees.
- 2.9 RAPs means “Required Agricultural Practices” as defined in the Required Agricultural Practices Rule pursuant to 6 V.S.A. Chapter 215.
- 2.10 Secretary means the Secretary of the Vermont Agency of Agriculture, Food and Markets.
- 2.11 Surface Waters has the same meaning as defined in the Required Agricultural Practices Rule, and means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it.
- 2.12 United States Department of Agriculture means the United States Department of Agriculture Natural Resources Conservation Service.
- 2.13 Waste or Agricultural Waste has the same meaning as defined in the Required Agricultural Practices Rule, and means material originating or emanating from a farm or imported onto a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse waste; and any other farm waste as the term “waste” is defined in 10 V.S.A. § 1251(12)
- 2.14 Waters of the State has the same meaning as defined in the Required Agricultural Practices Rule, and means surface water and groundwater as applied.

### **SECTION 3: PRIORITIES FOR BMP IMPLEMENTATION**

- 3.1 The Secretary shall develop BMP financial assistance awards that incorporate priorities established by the Secretary and 6 V.S.A. Chapter 215.

### 3.2 Exceptions

The Secretary may award financial assistance under this section for BMPs on a farm that otherwise would not receive assistance under the priorities established in this section when the Secretary determines a severe condition of agricultural pollution exists that requires immediate abatement.

## **SECTION 4: ELIGIBILITY FOR STATE ASSISTANCE**

- 4.1 Vermont farmers that are in good standing with the Secretary on all grant agreements, contract awards, or enforcement proceedings at the time of the BMP grant agreement may be eligible to receive available State financial assistance with the installation of on-farm improvements designed to abate water quality risks from agricultural pollution, provided that:
- (a) when farmers also seek federal financial assistance for this purpose, the improvements are eligible for federal assistance through programs of the United States Department of Agriculture; or
  - (b) when farmers decline to request or accept federal financial assistance for this purpose, the improvements:
    - (1) are determined by the Secretary to be equivalent to those eligible for federal assistance through programs of the United States Department of Agriculture; or
    - (2) are practices that meet the purpose of this rule and are not otherwise addressed within this Section but are determined eligible by the Secretary.

## **SECTION 5: STATE FINANCIAL ASSISTANCE AWARDS AND APPLICATION PROCESS**

- 5.1 State financial assistance awarded under this Rule shall be in the form of a grant agreement.
- 5.2 State financial assistance awards shall follow the priorities established by the Secretary, 6 V.S.A. Chapter 215, and all pertinent laws and State policies.
- 5.3 Farmers who request funding under this program shall file an application on the Agency's designated form.
- 5.4 The Secretary may adopt a schedule for prioritizing project funding based on application filing dates. Any priority deadlines established by the Secretary will be noticed in advance.



- 5.5 Approval for any BMP that exclusively uses State funding shall not be final until a grant agreement is fully executed.
- 5.6 Applicants seeking federal assistance for a BMP are not guaranteed related State funding unless an executed State grant agreement exists.

## **SECTION 6: OPERATION AND MAINTENANCE REQUIREMENTS**

- 6.1 BMP grant recipients shall ensure ongoing operation and maintenance of the BMP in accordance with the applicable operation and maintenance standards for the eligible practices listed in Section 4 of this Rule, for the design life of the practice.
- 6.2 BMP grant recipients shall be responsible for compliant operation and maintenance of all funded BMPs as described in the grant agreement.
- 6.3 Failure to operate and maintain any BMP as specified in the grant agreement, or any other violation of the grant agreement, may result in penalties including the obligation to repay all or a portion of the grant award.
- 6.4 Grant recipients are responsible for maintaining the water quality benefit supported by the grant agreement. Should the use of a BMP change or the operation and maintenance requirements change or cease so that the abated water quality concern resurfaces, the Agency may recover any and all State funds expended pursuant to the grant agreement.
- 6.5 Failure to properly operate and maintain any BMP may impact the grant recipient's eligibility for additional and/or future Agency funding.

## **SECTION 7: PROCESS FOR PETITIONING TO REQUIRE BASIN MANAGEMENT BMPs**

### **7.1 General**

A person with an interest in the agricultural nonpoint source pollution component of the basin planning process (in accordance with 6 V.S.A. § 4813), may petition the Secretary to request BMPs, and the Secretary may require BMPs beyond practices required in the RAPs on farms or in a specific basin to achieve compliance with the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan.

### **7.2 Financial Assistance**

- (a) If the Secretary requires a BMP to correct a water quality violation or achieve compliance with water quality standards in adjoining waters, the Secretary shall inform a farmer of the resources available to assist the farmer in implementing the

BMP and complying with 6 V.S.A. Chapter 215. The BMP shall be practical and cost effective to implement, as determined by the Secretary.

- (b) A State grant agreement may be offered to a farmer when the Secretary requires BMP implementation. Any such grant agreement shall be based on the estimated total cost to install the BMP, the various funding streams available from federal, state and other sources, and shall follow the percentage contribution limits established for the program, except that the Secretary may consider the farmer's ability to pay and determine that the farmer's contribution be less than the usual minimum amount required in a standard State grant agreement.

### 7.3 Content of Petitions to Request BMP(s)

Any petition to request a BMP shall be in writing and shall be served upon the Secretary as an original and three copies, and shall contain the following information unless the Secretary waives any such requirement in writing:

- (a) The name and complete mailing address of the farmer(s) whose actions allegedly violate water quality standards;
- (b) All evidence and documentation of the alleged water quality violation including a study conducted in accordance with the Environmental Protection Agency's quality assurance quality control program standards for the Clean Water Act and research or evaluative studies. The data must reasonably demonstrate that there is a correlation between the alleged water quality violation and the farmer(s) practices, including specific evidence of the source of the alleged water quality violation.
- (c) A description of the specific action(s) the petitioner requests, including applicable citations to the Rule and State law;
- (d) A detailed narrative of why the requested corrective action(s) is/are consistent with this Rule and reason(s) why the RAPs are believed to be insufficient to achieve the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan;
- (e) A description of the cost of all requested BMPs and an analysis of whether each requested BMP will be practical and cost effective for the farmer(s) to implement; and
- (f) Copies of all documents that the petitioner may rely upon to support the petition.

### 7.4 Determination of Complete Petition Filing

After the initial filing of the petition the Secretary may determine that additional information is necessary. Within 30 days of receipt of the petition the Secretary shall notify the petitioner of any additional required information and notify the petitioner of persons who petitioner shall serve in accordance with Section 7.5 of these Rules. Upon

receipt of that additional information and proof of service from Section 7.5 of these Rules to the satisfaction of the Secretary, the petition shall be deemed filed with the Secretary, and the review and hearing process described in Section 7.6 begins.

#### 7.5 Petition Distribution

The petitioner shall, at their own expense, certify to the Secretary by written affidavit that a complete copy of the petition and documentation has been served by first class mail upon:

- (a) each farmer subject to any request in the petition;
- (b) the Secretary of the Vermont Agency of Natural Resources; and
- (c) other persons the Secretary determines should be notified of the petition.

#### 7.6 Review and Hearing Process

The Secretary shall schedule a public hearing in the community where the farm(s) subject to the petition is/are located within 60 days of the Secretary's determination that the petitioner filed and served a complete petition. The Secretary shall provide notice of the public hearing on the petition to all persons the petitioner was required to serve as well as to any other persons deemed appropriate. The Secretary shall also publish notice at the petitioner's expense of the petition and hearing in a local newspaper generally circulating in the area where the farm(s) is/are located at least 30 days before the public hearing. Such notice shall also invite written comments about the petition to be filed with the Secretary within 30 days after the hearing.

#### 7.7 Notice of Decision

The Secretary shall issue a timely written decision. The decision shall set forth the facts and reasons supporting his or her decision. The Secretary shall provide copies of the decision to all persons served with the petition pursuant to Section 7.5.

#### 7.8 Appeal

Any person engaged in farming who the Secretary requires to implement BMPs under this section or any person who petitioned the Secretary under this section may appeal the Secretary's decision to the Environmental Division de novo.

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 002 : Water Quality; Required Agricultural Practices and Best Management Practices**

(Cite as: **6 V.S.A. § 4810**)

#### **§ 4810. Authority; cooperation; coordination**

(a) Agricultural land use practices. In accordance with 10 V.S.A. § 1259(i), the Secretary shall adopt by rule, pursuant to 3 V.S.A. chapter 25, and shall implement and enforce agricultural land use practices in order to satisfy the requirements of 33 U.S.C. § 1329 that the State identify and implement best management practices to control nonpoint sources of agricultural waste to waters of the State. These agricultural land use practices shall be created in two categories, pursuant to subsections (b) and (c) of this section.

(b) Required Agricultural Practices. Required Agricultural Practices (RAPs) shall be management standards to be followed by all persons engaged in farming in this State. These standards shall address activities that have a potential for causing agricultural pollutants to enter the groundwater and waters of the State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The RAPs shall include, as well as promote and encourage, practices for farmers in preventing agricultural pollutants from entering the groundwater and waters of the State when engaged in animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming who are in compliance with these practices shall be presumed to not have a discharge of agricultural pollutants to waters of the State. RAPs shall be designed to protect water quality and shall be practical and cost-effective to implement, as determined by the Secretary. Where the Secretary determines, after inspection of a farm, that a person engaged in farming is complying with the RAPs but there still exists the potential for agricultural pollutants to enter the waters of the State, the Secretary shall require the person to implement additional, site-specific on-farm conservation practices designed to prevent agricultural pollutants from entering the

waters of the State. When requiring implementation of a conservation practice under this subsection, the Secretary shall inform the person engaged in farming of the resources available to assist the person in implementing the conservation practice and complying with the requirements of this chapter. The RAPs for groundwater shall include a process under which the Agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner. A farmer may petition the Secretary to reduce the size of a perennial buffer or change the perennial buffer type based on site-specific conditions.

(c) Best management practices. Best management practices (BMPs) are site-specific on-farm conservation practices implemented in order to address the potential for agricultural pollutants to enter the waters of the State. The Secretary may require any person engaged in farming to implement a BMP. When requiring implementation of a BMP, the Secretary shall inform a farmer of financial resources available from State or federal sources, private foundations, public charities, or other sources, including funding from the Clean Water Fund established under 10 V.S.A. § 1388, to assist the person in implementing BMPs and complying with the requirements of this chapter. BMPs shall be practical and cost effective to implement, as determined by the Secretary, and shall be designed to achieve compliance with the requirements of this chapter. The Secretary may require soil monitoring or innovative manure management as a BMP under this subsection. Soil monitoring or innovative manure management implemented as a BMP shall be eligible for State assistance under the Clean Water Fund established under 10 V.S.A. chapter 47, subchapter 7. If a perennial buffer of trees or other woody vegetation is required as a BMP, the Secretary shall pay the farmer for a first priority easement on the land on which the buffer is located.

(d) Cooperation and coordination. The Secretary of Agriculture, Food and Markets shall coordinate with the Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for reducing and eliminating agricultural nonpoint source pollutants and discharges from concentrated animal feeding operations. On or before July 1, 2016, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall revise the memorandum of understanding for the nonpoint program describing program administration, grant negotiation, grant sharing, and how they will coordinate watershed planning activities to comply with Pub. L. No. 92-500. The memorandum of understanding shall describe how the agencies will implement the antidegradation implementation policy, including how the agencies will apply the antidegradation implementation policy to new sources of agricultural nonpoint source pollutants. The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall also develop a memorandum of understanding according to the public notice and comment process of 10 V.S.A. § 1259(i) regarding the implementation of the federal Concentrated Animal Feeding Operation Program and the relationship between the requirements of the federal Program and the State agricultural water quality requirements for large, medium, and small farms under this chapter. The memorandum

of understanding shall describe Program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall be consistent with the Secretary's duties, established under the provisions of 10 V.S.A. § 1258(b), to comply with Pub. L. No. 92-500. The Secretary of Natural Resources shall be the State lead person in applying for federal funds under Pub. L. No. 92-500 but shall consult with the Secretary of Agriculture, Food and Markets during the process. The agricultural nonpoint source program may compete with other programs for competitive watershed projects funded from federal funds. The Secretary of Agriculture, Food and Markets shall be represented in reviewing these projects for funding. Actions by the Secretary of Agriculture, Food and Markets under this chapter concerning agricultural nonpoint source pollution shall be consistent with the water quality standards and water pollution control requirements of 10 V.S.A. chapter 47 and the federal Clean Water Act as amended. In addition, the Secretary of Agriculture, Food and Markets shall coordinate with the Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm. On or before January 15, 2016, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall each develop three separate measures of the performance of the agencies under the memorandum of understanding required by this subsection. Beginning on January 15, 2017 and annually thereafter, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall submit separate reports to the Senate Committee on Agriculture, the House Committee on Agriculture, Food Resiliency, and Forestry, the Senate Committee on Natural Resources and Energy, and the House Committee on Environment and Energy regarding the success of each agency in meeting the performance measures for the memorandum of understanding. (Added 1991, No. 261 (Adj. Sess.), § 4; amended 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 149 (Adj. Sess.), § 4, eff. June 3, 2004; 2005, No. 78, § 1, eff. June 24, 2005; 2007, No. 38, § 13, eff. May 21, 2007; 2009, No. 141 (Adj. Sess.), § 3b, eff. June 1, 2010; 2015, No. 64, § 12; 2017, No. 113 (Adj. Sess.), § 35.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 002 : Water Quality; Required Agricultural Practices and Best Management Practices**

(Cite as: 6 V.S.A. § 4810a)

#### **§ 4810a. Required Agricultural Practices; revision**

(a) The Secretary of Agriculture, Food and Markets shall maintain the Required Agricultural Practices in order to improve water quality in the State, ensure practices on all farms eliminate adverse impacts to water quality, and implement the small farm certification program required by section 4871 of this title. At a minimum, the Required Agricultural Practices shall:

(1) Specify those farms that:

(A) are required to comply with the small farm certification requirements under section 4871 of this title due to the potential impact of the farm or type of farm on water quality as a result of livestock managed on the farm, agricultural inputs used by the farm, or tillage practices on the farm; and

(B) shall be subject to the Required Agricultural Practices but shall not be required to comply with small farm certification requirements under section 4871 of this title.

(2)(A) Except as authorized under subdivision (C) of this subdivision (2), prohibit a farm from stacking or piling manure, storing fertilizer, or storing other nutrients on the farm:

(i) in a manner and location that presents a threat of discharge to a water of the State or presents a threat of contamination to groundwater; or

(ii) on lands in a floodway or otherwise subject to annual flooding.

(B) Except as authorized under subdivision (C) of this subdivision (2), manure stacking or piling sites, fertilizer storage, or other nutrient storage shall not be located within 200 feet of a private well or within 200 feet of a water of the State.

(C) The Secretary may authorize one or more of the following:

(i) siting of manure stacking or piling sites, fertilizer storage, or other nutrient storage within 200 feet, but not less than 100 feet, of a private well or surface water if the Secretary determines that the site is the best available site on the farm for the purposes of protecting groundwater quality or surface water quality; and

(ii) siting of a waste storage facility within 200 feet of a surface water or private well if the site is the best available site on the farm for the purposes of protecting groundwater quality or surface water quality and the waste storage facility is designed by a licensed engineer to meet the requirements of section 4815 of this title.

(3) Require the construction and management of barnyards, waste management systems, animal holding areas, and production areas in a manner to prevent runoff of waste to a surface water, to groundwater, or across property boundaries.

(4) Establish standards for nutrient management on farms, including:

(A) required nutrient management planning on all farms that manage agricultural wastes; and

(B) recommended practices for improving and maintaining soil quality and healthy soils in order to increase the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, reduce reliance on fertilizers and pesticides, and prevent agricultural stormwater runoff.

(5) Require cropland on the farm to be cultivated in a manner that results in an average soil loss of less than or equal to the soil loss tolerance for the prevalent soil, known as 1T, as calculated through application of the Revised Universal Soil Loss Equation or through the application of similarly accepted models.

(6)(A) Require a farm to comply with standards established by the Secretary for maintaining a vegetative buffer zone of perennial vegetation between annual croplands and the top of the bank of an adjoining water of the State. At a minimum the vegetative buffer standards established by the Secretary shall prohibit the application of manure on the farm within 25 feet of the top of the bank of an adjoining water of the State or within 10 feet of a ditch that is not a surface water under State law and that is not a water of the United States under federal law.

(B) Establish standards for site-specific vegetative buffers that adequately address water quality needs based on consideration of soil type, slope, crop type, proximity to water, and other relevant factors.

(7) [Repealed.]

(8) Regulate, in a manner consistent with the Agency of Natural Resources' flood hazard area and river corridor rules, the construction or siting of a farm structure or the storage of manure, fertilizer, or pesticides within a river corridor designated by the



Secretary of Natural Resources.

(9) Establish standards for the exclusion of livestock from the waters of the State to prevent erosion and adverse water quality impacts.

(10) Establish standards for soil conservation practices such as cover cropping.

(11) Allow for alternative techniques or practices, approved by the Secretary, for compliance by an owner or operator of a farm when the owner or operator cannot comply with the requirements of the Required Agricultural Practices due to site-specific conditions. Approved alternative techniques or practices shall meet State requirements to reduce adverse impacts to water quality.

(b) The Secretary of Agriculture, Food and Markets shall maintain the Required Agricultural Practices in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply with the requirements of the RAPs for subsurface tile drainage upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

(c) The Secretary shall amend the Required Agricultural Practices to include requirements for activities occurring in areas that are excluded from regulation by the Agency of Natural Resources under 10 V.S.A. § 902 because the area is used to grow food or crops in connection with farming activities. (Added 2015, No. 64, § 4; amended 2015, No. 105 (Adj. Sess.), § 1, eff. May 12, 2016; 2017, No. 113 (Adj. Sess.), § 36; 2019, No. 64, § 6.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 002 : Water Quality; Required Agricultural Practices and Best Management Practices**

(Cite as: 6 V.S.A. § 4811)

#### **§ 4811. Powers of Secretary**

The Secretary of Agriculture, Food and Markets in furtherance of the purposes of this chapter may:

(1) Make, adopt, revise, and amend reasonable rules that define practices described in section 4810 of this title as well as other rules deemed necessary to carry out the provisions of this chapter.

(2) Appoint assistants, subject to applicable laws, to perform or assist in the performance of any duties or functions of the Secretary under this chapter.

(3) Enter any lands, public or private, and review and copy any land management records as may be necessary to carry out the provisions of this chapter.

(4) Sign memorandums of understanding between agencies when the Secretary of Agriculture, Food and Markets agrees it is necessary for the success of the program.

(5) Solicit and receive federal or private funds.

(6) Cooperate fully with the federal government or other agencies in the operation of any joint federal-state programs concerning the regulation of agricultural nonpoint source pollution.

(7) Establish programs to improve agricultural water quality.

(8) Provide grants or contracts from agricultural water quality programs established under this chapter, or by the Secretary of Agriculture, Food and Markets, for the purpose of providing technical and financial assistance in preventing agricultural pollution from entering groundwater and waters of the State, provided that the Secretary shall only use capital funding available to the Agency for water quality programs or projects that are

eligible for capital assistance. (Added 1991, No. 261 (Adj. Sess.), § 4; amended 2003, No. 42, § 2, eff. May 27, 2003; 2019, No. 64, § 7.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 002 : Water Quality; Required Agricultural Practices and Best Management Practices**

(Cite as: 6 V.S.A. § 4815)

#### **§ 4815. Waste storage facility**

(a) No person shall construct a new waste storage facility or expand or modify a waste storage facility in existence on July 1, 2006 unless the facility meets the standard established for such facilities by the Natural Resources Conservation Service of the U.S. Department of Agriculture or an equivalent standard. If an equivalent design standard is used, the design and construction shall be certified by the Secretary of Agriculture, Food and Markets or a licensed professional engineer operating within the scope of the engineer's expertise.

(b) The Secretary may require the owner or operator of a waste storage facility in existence on July 1, 2006 to modify the facility to meet the standard set forth in subsection (a) of this section if the facility poses a threat to human health or the environment. If the Secretary determines that a facility that meets the standard set forth in subsection (a) of this section poses a threat to human health or the environment, the Secretary may require the owner or operator of the facility to implement additional management measures.

(c) If the Secretary suspects that a waste storage facility may be contaminating groundwater, the Secretary shall pay the costs of any initial groundwater monitoring to determine whether a facility poses a threat to human health or the environment. Within 21 days after a determination under this subsection that a facility poses a threat to human health or the environment because of apparent violation of the Groundwater Protection Standards, the Secretary of Agriculture, Food and Markets shall notify the Department of Health and the Secretary of Natural Resources of the location of the facility and the name of its owner or operator.

(d) As used in this section, "waste storage facility" means an impoundment made for

the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an inground and aboveground structure, or any combination thereof. (Added 2005, No. 78, § 4, eff. June 24, 2005; amended 2015, No. 39, § 1; 2021, No. 162 (Adj. Sess.), § 3, eff. June 1, 2022.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 003 : Water Quality; Financial and Technical Assistance**

(Cite as: 6 V.S.A. § 4820)

#### **§ 4820. Definitions**

As used in this subchapter:

(1) “RAPs” means “Required Agricultural Practices” as defined by the Secretary of Agriculture, Food and Markets pursuant to subchapter 1 of this chapter.

(2) “Secretary” means the Secretary of Agriculture, Food and Markets.

(3) “Agency” means the Agency of Agriculture, Food and Markets.

(4) “FSA” means the “Farm Service Agency,” formerly named the “Agricultural Stabilization and Conservation Service,” of the U.S. Department of Agriculture.

(5) “NRCS” means the “Natural Resources Conservation Service,” formerly named the “Soil Conservation Service,” of the U.S. Department of Agriculture.

(6) [Repealed.] (Added 1995, No. 62, § 37, eff. April 26, 1995; amended 2003, No. 42, § 2, eff. May 27, 2003; 2015, No. 39, § 2; 2019, No. 64, § 8.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 003 : Water Quality; Financial and Technical Assistance**

(Cite as: 6 V.S.A. § 4821)

#### **§ 4821. Assistance program created; administration**

(a) Program created. A program is created to provide State financial assistance to Vermont farmers in support of their voluntary construction of on-farm improvements and maintenance of acceptable operating standards designed to abate nonpoint source agricultural waste discharges into the waters of the State of Vermont, consistent with goals of the Federal Water Pollution Control Act and with State water quality standards. The program shall be conducted in a manner that makes maximum use of federal financial aid for the same purpose, as provided by this subchapter, and that seeks to use the least costly methods available to accomplish the abatement required. The construction of temporary fencing intended to exclude livestock from entering surface waters of the State shall be an on-farm improvement eligible for assistance under this subchapter when subject to a maintenance agreement entered into with the Agency of Agriculture, Food and Markets.

(b) Program administration. The Secretary:

(1) Shall administer the State assistance program, for which purpose the Secretary shall coordinate with officials of the U.S. Department of Agriculture or other federal agencies, and shall adopt rules pursuant to 3 V.S.A. chapter 25 concerning farmer application and eligibility requirements, financial assistance award priorities, and other administrative and enforcement conditions.

(2) May provide technical assistance to individual farmers with the preparation of on-farm agricultural waste management plans, applications for State and federal financial assistance awards, installation of on-farm improvements, and maintenance of acceptable operating standards during the term of the program grant agreement. For this purpose, State employees of the Agency shall cooperate with federal employees of the U.S.

Department of Agriculture or other federal agencies. (Added 1995, No. 62, § 37, eff. April 26, 1995; amended 1999, No. 100 (Adj. Sess.), § 3, eff. May 5, 2000; 2003, No. 42, § 2, eff. May 27, 2003; 2009, No. 110 (Adj. Sess.), § 9, eff. May 18, 2010; 2015, No. 39, § 3.)



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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 003 : Water Quality; Financial and Technical Assistance**

(Cite as: 6 V.S.A. § 4822)

#### **§ 4822. Eligibility for State assistance**

Vermont farmers shall be eligible to receive available State financial assistance with the installation of on-farm improvements designed to control agricultural nonpoint source waste discharges, provided that:

(1) for farmers who also seek federal financial assistance for this purpose, the improvements:

(A) are eligible for federal assistance through programs of the U.S. Department of Agriculture; and

(B) are consistent with a “nutrient management plan” prepared by the Vermont field office of the NRCS, or with an animal waste management plan based on standards equivalent to those of the NRCS; or

(2) for farmers who decline to seek or accept federal financial assistance for this purpose, the improvements:

(A) are determined by the Secretary to be equivalent to those eligible for federal assistance through programs of the U.S. Department of Agriculture; and

(B) are consistent with an animal waste management plan based on standards determined by the Secretary to be equivalent to those of the NRCS; and

(3) improvements will be constructed on a farm that is in good standing with the Secretary at the time of the award on all grant agreements, contract awards, or enforcement proceedings. (Added 1995, No. 62, § 37, eff. April 26, 1995; amended 2003, No. 42, § 2, eff. May 27, 2003; 2015, No. 39, § 4.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 003 : Water Quality; Financial and Technical Assistance**

(Cite as: **6 V.S.A. § 4823**)

#### **§ 4823. Priorities; State financial assistance awards**

(a) Priorities. State financial assistance available under this subchapter shall in each fiscal year be allocated according to the following priorities, except as provided by subsection (b) of this section, and as further defined by rule by the Secretary:

(1) First priority shall be given to proposed improvements on individual farms that do not meet RAPs because of physical constraints of a farm site that are located, in descending order, within the boundaries of the Lake Champlain Basin, the Lake Memphremagog Basin, the Connecticut River Basin, or the Hudson River Basin as these boundaries are defined by the State Water Quality Plan prepared by the Agency of Natural Resources.

(2) Next priority shall be given to proposed improvements on all other individual farms that are located, in descending order, within the boundaries of the Lake Champlain Basin, the Lake Memphremagog Basin, the Connecticut River Basin, or the Hudson River Basin.

(b) Exceptions. The Secretary may award financial assistance under this subchapter for improvements on a farm that otherwise would not receive assistance under the priorities established by this section when the Secretary determines a severe condition of nonpoint source waste discharge exists that requires immediate abatement. (Added 1995, No. 62, § 37, eff. April 26, amended 1995; 1997, No. 148 (Adj. Sess.), § 67, eff. April 29, 1998; 2003, No. 42, § 2, eff. May 27, 2003.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 003 : Water Quality; Financial and Technical Assistance**

(Cite as: **6 V.S.A. § 4824**)

#### **§ 4824. State financial assistance awards**

(a) State grant. State financial assistance awarded under this subchapter shall be in the form of a grant. When a State grant is intended to match federal financial assistance for the same on-farm improvement project, the State grant shall be awarded only when the federal financial assistance has also been approved or awarded. An applicant for a State grant shall pay at least 10 percent of the total eligible project cost. The dollar amount of a State grant shall be equal to the total eligible project cost, less 10 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded, except that a State grant shall not exceed 90 percent of the total eligible project cost.

(b) Grant terms. A State grant awarded to an applicant under this subchapter shall be awarded in accordance with a State grant containing terms substantially the same as those required for receipt of a federal award for the same purpose from the U.S. Department of Agriculture, except as provided by the Secretary by rule. (Added 1995, No. 62, § 37, eff. April 26, 1995; amended 2003, No. 42, § 2, eff. May 27, 2003; 2007, No. 112 (Adj. Sess.), § 3, eff. May 3, 2008; 2011, No. 104 (Adj. Sess.), § 28b, eff. May 7, 2012; 2015, No. 39, § 5.)

# The Vermont Statutes Online

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 003 : Water Quality; Financial and Technical Assistance**

(Cite as: **6 V.S.A. § 4825**)

#### **§ 4825. Reports**

Annually by January 15 of each year, the Secretary shall report to the General Assembly regarding activities in support of the objectives of this subchapter, including use of State, federal, and private funds:

- (1) undertaken during the preceding fiscal year;
- (2) in progress during the current fiscal year;
- (3) projected for the following fiscal year; and

(4) remaining to be undertaken after the following fiscal year. (Added 1995, No. 62, § 37, eff. April 26, 1995; amended 2003, No. 42, § 2, eff. May 27, 2003.)

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## **Title 10 : Conservation and Development**

### **Chapter 113 : Game**

#### **Subchapter 004 : Wild Animals Doing Damage**

(Cite as: 10 V.S.A. § 4826)

#### **§ 4826. Taking deer damaging crops**

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a Vermont hunting license and who is designated by the person, may take, on land owned or occupied by the person, up to four deer per year that the person can prove were doing damage to the following:

(1) a tree that is being grown in a plantation or being cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or

(2) a crop-bearing plant; or

(3) a crop, except grass.

(b) A person by whom, or under whose direction, a deer is wounded or killed, shall report in writing signed by him or her within 12 hours all the facts relative to the act to a game warden. The report shall state the time and place of the wounding or killing.

(c) A person who kills a deer shall immediately properly dress the carcass and care for the meat.

(d) The game warden shall immediately investigate the case and if satisfied that the deer was taken as provided in this section, shall give the person a certificate of the finding in the matter. The certificate shall entitle the person to the ownership of the carcass, but the person shall not sell or give away the same. However, the head and the antlers, if any, shall be turned over to a warden. In addition, any carcass not needed for home consumption in the household of the certificate-holder shall be turned over to a game warden.

(e) When a game warden finds that a deer has been wounded or killed contrary to the provisions of this section, he or she shall dispose of the deer under the direction of the

Commissioner, and any monies received therefor shall be paid to the Commissioner.

(f)(1) "Person" includes all people who jointly own or lease the land.

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

(g) The Commissioner may issue a permit to a person to take more than four deer under this section if:

(1) the land owned by the person is not posted against hunting;

(2) the person can prove that the property is sustaining additional and ongoing damage; and

(3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop.

(h) The Commissioner is authorized to issue an order requiring any person to remove food or bait which has the effect of luring deer into the vicinity of the property sustaining damage. In this subsection, food does not include a crop or crop-bearing plant. (Added 1961, No. 119, § 1, eff. May 9, 1961; amended 1967, No. 57, § 2, eff. March 30, 1967; 1973, No. 242 (Adj. Sess.), eff. April 8, 1974; 2005, No. 24, § 1; 2011, No. 54, § 11, eff. May 31, 2011.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 010 : Enforcement**

(Cite as: 6 V.S.A. § 4991)

#### **§ 4991. Purpose**

The purpose of this subchapter is to provide the Secretary of Agriculture, Food and Markets with the necessary authority to enforce the agricultural water quality requirements of this chapter. When the Secretary of Agriculture, Food and Markets determines that a person subject to the requirements of the chapter is violating a requirement of this chapter, the Secretary shall respond to and require discontinuance of the violation. The Secretary may respond to a violation of the requirements of this chapter by:

- (1) issuing a corrective action order under section 4992 of this title;
- (2) issuing a cease and desist order under section 4993 of this title;
- (3) issuing an emergency order under section 4993 of this title;
- (4) revoking or conditioning coverage under a permit or certification under section 4994 of this title;
- (5) bringing a civil enforcement action under section 4995 of this title;
- (6) referring the violation to the Secretary of Natural Resources for enforcement under 10 V.S.A. chapter 201; or
- (7) pursuing other action, such as consulting with a farmer, within the authority of the Secretary to ensure discontinuance of the violation and remediation of any harm caused by the violation. (Added 2015, No. 64, § 17; amended 2021, No. 105 (Adj. Sess.), § 146, eff. July 1, 2022.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 010 : Enforcement**

(Cite as: 6 V.S.A. § 4992)

#### **§ 4992. Corrective actions; administrative enforcement**

(a) When the Secretary of Agriculture, Food and Markets receives a complaint and determines that a farmer is in violation of the requirements of this chapter, rules adopted under this chapter, or a permit or certification issued under this chapter, the Secretary shall notify the farmer of the complaint, including the alleged violation. The Secretary shall not be required to identify the source of the complaint.

(b) When the Secretary of Agriculture, Food and Markets determines that a person is violating the requirements of this chapter, rules adopted under this chapter, or a permit or certification issued under this chapter, the Secretary may issue a written warning that shall be served in person or by certified mail, return receipt requested. A warning issued under this subsection shall include:

- (1) a description of the alleged violation;
- (2) identification of this section;
- (3) identification of the applicable statute, rule, or permit condition violated;
- (4) the required corrective actions that the person shall take to correct the violation;

and

(5) a summary of federal and State assistance programs that may be utilized by the person to assist in correcting the violation.

(c) A person issued a warning under this section shall have 30 days to respond to the written warning and shall provide an abatement schedule for curing the violation and a description of the corrective action to be taken to cure the violation.

(d) If a person who receives a warning under this subsection fails to respond in a



timely manner to the written warning or to take corrective action, the Secretary may act pursuant to section 4993 or section 4995 of this section in order to protect water quality. (Added 2015, No. 64, § 17.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 010 : Enforcement**

(Cite as: **6 V.S.A. § 4993**)

#### **§ 4993. Administrative enforcement; cease and desist orders; emergency orders**

(a) Notwithstanding the requirements of section 4992 of this title, the Secretary at any time may pursue one or more of the following enforcement actions:

(1) Issue a cease and desist order in accordance with the requirements of subsection (b) of this section to a person the Secretary believes to be in violation of the requirements of this chapter.

(2) Issue emergency administrative orders to protect water quality when an alleged violation, activity, or farm practice:

(A) presents an immediate threat of substantial harm to the environment or immediate threat to the public health or welfare;

(B) is likely to result in an immediate threat of substantial harm to the environment or immediate threat to the public health or welfare; or

(C) requires a permit or amendment to a permit issued under this chapter and a farm owner or operator has commenced an activity or is continuing an activity without a permit or permit amendment.

(3) Institute appropriate proceedings on behalf of the Agency of Agriculture, Food and Markets to enforce the requirements of this chapter, rules adopted under this chapter, or a permit or certification issued under this chapter.

(4) Order mandatory corrective actions, including a requirement that the owner or operator of a farm sell or otherwise remove livestock from a farm or production area when the volume of waste produced by livestock on the farm exceeds the infrastructure capacity of the farm or the production area to manage the waste or waste leachate and prevent runoff or leaching of wastes to waters of the State or groundwater, as required

by this chapter.

(5) Seek administrative or civil penalties in accordance with the requirements of section 15, 16, 17, or 4995 of this title. Notwithstanding the requirements of section 15 of this title to the contrary, the maximum administrative penalty issued by the Secretary under this section shall not exceed \$5,000.00 for each violation, and the maximum amount of any administrative penalty assessed for separate and distinct violations of this chapter shall not exceed \$50,000.00.

(b) A person may request that the Secretary hold a hearing on a cease and desist order or an emergency order issued under this section within five days of receipt of the order. Upon receipt of a request for a hearing, the Secretary promptly shall set a date and time for a hearing. A request for a hearing on a cease and desist order or emergency order issued under this section shall not stay the order. (Added 2015, No. 64, § 17.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 010 : Enforcement**

(Cite as: 6 V.S.A. § 4994)

#### **§ 4994. Permit or certification; revocation; enforcement**

The Secretary may, after due notice and hearing, revoke or condition coverage under a general permit, an individual permit, a small farm certification, or other permit or certification issued under this chapter or rules adopted under this chapter when the person subject to the permit or certification fails to comply with a requirement of this chapter or any term, provision, or requirements of a permit or certification required by this chapter. The Secretary may also seek enforcement remedies and penalties under this subchapter against any person who fails to comply with any term, provision, or requirement of a permit or certification required by this chapter or who violates the terms or conditions of coverage under any general permit, any individual permit, or any certification issued under this chapter. (Added 2015, No. 64, § 17.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 010 : Enforcement**

(Cite as: **6 V.S.A. § 4995**)

#### **§ 4995. Civil enforcement**

(a) The Secretary may bring an action in the Civil Division of the Superior Court to enforce the requirements of this chapter, or rules adopted under this chapter, or any permit or certification issued under this chapter, to ensure compliance and to obtain penalties in the amounts described in subsection (b) of this section. The action shall be brought by the Attorney General in the name of the State.

(b) The court may grant temporary and permanent injunctive relief and may:

(1) Enjoin future activities.

(2) Order corrective actions to be taken to mitigate or curtail any violation and to protect human health or the environment, including a requirement that the owner or operator of a farm sell or otherwise remove livestock from the farm or production area when the volume of wastes produced by livestock exceeds the infrastructure capacity of the farm or its production area to manage the waste or waste leachate to prevent runoff or leaching of wastes to waters of the State or groundwater as required by the standards in this chapter.

(3) Order the design, construction, installation, operation, or maintenance of facilities designed to mitigate or prevent a violation of this chapter or to protect human health or the environment or designed to ensure compliance.

(4) Fix and order compensation for any public or private property destroyed or damaged.

(5) Revoke coverage under any permit or certification issued under this chapter.

(6) Order reimbursement from any person who caused governmental expenditures for the investigation, abatement, mitigation, or removal of a hazard to human health or

the environment.

(7) Levy a civil penalty as provided in this subdivision. A civil penalty of not more than \$85,000.00 may be imposed for each violation. In addition, in the case of a continuing violation, a penalty of not more than \$42,500.00 may be imposed for each day the violation continues. In fixing the amount of the penalty, the court shall apply the criteria set forth in subsections (e) and (f) of this section. The cost of collection of penalties or other monetary awards shall be assessed against and added to a penalty assessed against a respondent.

(c)(1) In any civil action brought under this section in which a temporary restraining order or preliminary injunction is sought, relief shall be obtained upon a showing that there is the probability of success on the merits and that:

(A) a violation exists; or

(B) a violation is imminent and substantial harm is likely to result.

(2) In a civil action brought under this section in which a temporary restraining order or preliminary injunction is sought, the Secretary need not demonstrate immediate and irreparable injury, loss, or damage.

(d) Any balancing of the equities in actions under this section may affect the time by which compliance shall be attained but not the necessity of compliance within a reasonable period of time.

(e)(1) In determining the amount of the penalty provided in subsection (b) of this section, the court shall consider the following:

(A) the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;

(B) the presence of mitigating circumstances, including unreasonable delay by the Secretary in seeking enforcement;

(C) whether the respondent knew or had reason to know the violation existed;

(D) the respondent's record of compliance;

(E) the deterrent effect of the penalty;

(F) the State's actual costs of enforcement; and

(G) the length of time the violation has existed.

(2) In determining the amount of the penalty provided in subsection (b) of this section, the court may consider additional relevant factors.

(f) In addition to any penalty assessed under subsection (b) of this section, the Secretary may also recapture economic benefit resulting from a violation. (Added 2015, No. 64, § 17; amended 2021, No. 105 (Adj. Sess.), § 147, eff. July 1, 2022.)

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## **Title 6 : Agriculture**

### **Chapter 215 : Agricultural Water Quality**

#### **Subchapter 010 : Enforcement**

(Cite as: 6 V.S.A. § 4996)

#### **§ 4996. Appeals; enforcement**

(a) Any person subject, under this subchapter, to an administrative enforcement order, an administrative penalty, or revocation of a permit or certification who is aggrieved by a final decision of the Secretary may appeal to the Civil Division of Superior Court within 30 days of the decision. The Chief Superior judge may specially assign an Environmental judge to the Civil Division of Superior Court for the purpose of hearing an appeal.

(b) If the Secretary issues an emergency order under this chapter, the person subject to the order may request a hearing before the Civil Division of Superior Court. Notice of the request for hearing under this subsection shall be filed with the Civil Division of Superior Court and the Secretary within five business days after receipt of the order. A hearing on the emergency order shall be held at the earliest possible time and shall take precedence over all other hearings. The hearing shall be held within five business days after receipt of the notice of the request for hearing. A request for hearing on an emergency order shall not stay the order. The Civil Division of the Superior Court shall issue a decision within five business days from the conclusion of the hearing and not later than 30 days from the date the notice of request for hearing was received by the person subject to the order.

(c) The Civil Division of the Superior Court shall review appeals under this section on the record pursuant to Rule 74 of the Vermont Rules of Civil Procedure. (Added 2015, No. 64, § 17; amended 2017, No. 11, § 2; 2021, No. 105 (Adj. Sess.), § 148, eff. July 1, 2022.)



# Proposed Rules Postings

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## Search Rules

### Deadline For Public Comment

Deadline: Sep 09, 2024

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

### Rule Details

Rule Number:	24P028
Title:	Best Management Practices Rule.
Type:	Standard
Status:	Proposed
Agency:	Agency of Agriculture, Food and Markets
Legal Authority:	6 V.S.A. § 4810, 4810a, 4811, 4815, 4820-4826, and 4991-4996.
Summary:	<p>The Best Management Practice Program provides technical assistance and financial assistance to Vermont farmers to support construction of on-farm improvements designed to abate water quality risks from agricultural pollution. This rulemaking corrects findings from a 2018 audit that found the rule misaligned with current statute and practice. Updates reflect current terminology, statutes, process and procedures for project prioritization, operation and maintenance requirements, as well as the petition process that have evolved since the last filing in 1996.</p>
Persons Affected:	<p>Farmers regulated under the Required Agricultural Practices (RAPs) as defined under Section 3.1 of the same rule.</p> <p>All farm operations in Vermont that are regulated under the Required Agricultural Practices (RAPs) are eligible to receive technical and financial assistance under the BMP Rules. Provision of this assistance program is expected to positively impact farms required to make substantial investments in order to comply with agricultural water quality requirements by providing direct financial support for projects that are implemented.</p>
Economic Impact:	



Posting date:

Jul 17,2024

## Hearing Information

### Information for Hearing # 1

Hearing 08-29-2024 1:00 PM [ADD TO YOUR CALENDAR](#)  
date:

Location: Vermont Agency of Agriculture Food and Markets

Address: 116 State Street

City: Montpelier

State: VT

Zip: 05620

Hearing

Notes:

### Information for Hearing # 2

Hearing 08-29-2024 1:00 PM [ADD TO YOUR CALENDAR](#)  
date:

Location: Virtually via MS Teams

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Address: [193ameeting\\_YjVkJkZDQxYWYtMDQwNC00MTJjLWE3YjctZjc4MmWY4MTFhN2Vm40thread.v2/0?context7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a220fc302e7-39f64f65-b5de-5837a7bf967d227d](https://teams.microsoft.com/l/meetupjoin/193ameeting_YjVkJkZDQxYWYtMDQwNC00MTJjLWE3YjctZjc4MmWY4MTFhN2Vm40thread.v2/0?context7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a220fc302e7-39f64f65-b5de-5837a7bf967d227d)

City: Montpelier

State: VT

Zip: n/a

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Hearing 193ameeting\_YjVkJkZDQxYWYtMDQwNC00MTJjLWE3YjctZjc4MmWY4MTFhN2Vm40thread.v2/0?context7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a220fc302e7-39f64f65-b5de-5837a7bf967d227d

Notes: context7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a220fc302e7-39f64f65-b5de-5837a7bf967d227d

## Contact Information

### Information for Primary Contact

**PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.**

Level: Primary  
Name: Laura DiPietro  
Agency: Agency of Agriculture, Food and Markets  
Address: 116 State Street  
City: Montpelier  
State: VT  
Zip: 05620  
Telephone: 802-959-1990  
Fax: 802-828-2361  
Email: [laura.dipietro@vermont.gov](mailto:laura.dipietro@vermont.gov)

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## Keyword Information

Keywords:

Best Management Practices  
Agriculture  
Required Agriculture Practices  
Water Quality  
BMP Grant Program

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	News & Citizen ( <a href="mailto:mike@stowereporter.com">mike@stowereporter.com</a> ) Irene Nuzzo ( <a href="mailto:irene@newsandcitizen.com">irene@newsandcitizen.com</a> and <a href="mailto:ads@stowereporter.com">ads@stowereporter.com</a> .com removed from distribution list per Lisa Stearns.	Tel: 888-2212 FAX: 888-2173
	St. Albans Messenger Legals ( <a href="mailto:legals@samessenger.com">legals@samessenger.com</a> ; <a href="mailto:cfoley@orourkemediagroup.com">cfoley@orourkemediagroup.com</a> )	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Legals
	The Islander ( <a href="mailto:islander@vermontislander.com">islander@vermontislander.com</a> )	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer ( <a href="mailto:hunter.press.vermont@gmail.com">hunter.press.vermont@gmail.com</a> )	Attn: Will Hunter

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**FROM:** APA Coordinator, VSARA

**Date of Fax:** September 24, 2024

**RE:** The "Proposed State Rules " ad copy to run on

**July 25, 2024**

**PAGES INCLUDING THIS COVER MEMO:**

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**\*NOTE\* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

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PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/> . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Technical Service Provider Certification Rule.

Vermont Proposed Rule: 24P027

AGENCY: Vermont Agency of Agriculture, Food and Markets

CONCISE SUMMARY: Technical Service Providers (TSPs) provide nutrient management and water quality permit consulting to Vermont farmers for water quality regulations. This rule is intended to ensure farmers receive professional technical services from TSPs that meet a minimum standard of quality assurance related to agricultural water quality nutrient management planning and permitting/certification regulations. The proposed rule will ensure TSPs are held accountable for understanding the rules, regulations, and requirements related to nutrient management planning and permitting/certification services they provide. The rule will also enable enforcement on TSPs if the services they provide are out of compliance with water quality regulations. Currently, farms and the state lack recourse outside of enforcement on farms for work products provided by TSP's that are non-compliant.

FOR FURTHER INFORMATION, CONTACT: Laura DiPietro, Vermont Agency of Agriculture, Food and Markets, 116 State St. Montpelier, VT 05620 Tel: 802-595-1990 E-mail: [laura.dipietro@vermont.gov](mailto:laura.dipietro@vermont.gov) URL: <https://agriculture.vermont.gov/TSPRule>.

FOR COPIES: Nate Sands, Vermont Agency of Agriculture, Food and Markets, 116 State St. Montpelier, VT 05620 Tel: 802-224-6850 E-Mail: [nathaniel.sands@vermont.gov](mailto:nathaniel.sands@vermont.gov).

Best Management Practices Rule.

Vermont Proposed Rule: 24P028

AGENCY: Vermont Agency of Agriculture, Food and Markets

CONCISE SUMMARY: The Best Management Practice Program provides technical assistance and financial assistance to Vermont farmers to support construction of on-farm improvements designed to abate water quality risks from agricultural pollution. This rulemaking corrects findings from a 2018 audit that found the rule misaligned with current statute and practice. Updates reflect current terminology, statutes, process and procedures for project prioritization, operation and maintenance requirements, as well as the petition process that have evolved since the last filing in 1996.

FOR FURTHER INFORMATION, CONTACT: Laura DiPietro, Vermont Agency of Agriculture, Food and Markets, 116 State St. Montpelier, VT 05620 Tel: 802-595-1990 Fax: 802-828-2361 E-mail:

[laura.dipietro@vermont.gov](mailto:laura.dipietro@vermont.gov) URL: <https://agriculture.vermont.gov/BMPRule>.

FOR COPIES: Nina Gage, Vermont Agency of Agriculture, Food and Markets, 116 State St. Montpelier, VT 05620 Tel: 802-622-4098 Fax: 802-828-2361 E-mail: [Nina.Gage@Vermont.gov](mailto:Nina.Gage@Vermont.gov).

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Vermont Saves Program Rule.

Vermont Proposed Rule: 24P029

AGENCY: Office of the Treasurer

CONCISE SUMMARY: The Vermont Saves Program Rule proposes to implement 3 V.S.A. Chapter 18, consistent with the legislative intent to establish a State auto-IRA program for “the purpose of increasing financial security for Vermonters by providing access to an IRA for Vermont employees of companies that do not currently offer a retirement savings program.” The rule is intended to ensure the Program is designed to meet the Legislature’s requirements that the Program facilitate portability of participant benefits through withdrawals, rollovers, and direct transfers and minimize costs by achieving economies of scale and other efficiencies. Among other things, the rule addresses program eligibility requirements and mandates, employer registration and exemption certification, the participant opt out process, portability (including rollovers and distributions), fund withdrawals, contributions, default contribution rates and investments options, payroll deductions, and the auto-escalation process. The rule also ensures the Program is compliant with all applicable State and federal laws and regulations.

FOR FURTHER INFORMATION, CONTACT: Becky Wasserman, Office of the State Treasurer, 109 State Street, Suite 4, Montpelier VT 05609 Tel: 802-498-3466 E-Mail: [becky.wasserman@vermont.gov](mailto:becky.wasserman@vermont.gov) URL: <https://www.vermonttreasurer.gov/vt-saves>.

FOR COPIES: Justin St. James, Office of the State Treasurer, 109 State Street, Suite 4, Montpelier VT 05609 Tel: 802-828-7190 E-Mail: [justin.stjames@vermont.gov](mailto:justin.stjames@vermont.gov).

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