

Adopted 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:
2024 Technical Service Provider (TSP) Certification Rule

_____ , on _____
Anson Tebbetts /s/ 12/2/2024
(signature) (date)

Printed Name and Title:

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

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Clean text of the rule (Amended text without annotation)
- Letter regarding changes to the final proposed

1. TITLE OF RULE FILING:
2024 Technical Service Provider (TSP) Certification Rule
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
24P 027
3. ADOPTING AGENCY:
Vermont Agency of Agriculture, Food and Markets
4. 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:
5. 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. THE FILING HAS CHANGED SINCE THE FILING OF THE FINAL PROPOSED RULE.
7. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE, INCLUDING CHANGES IN ECONOMIC IMPACT.
8. THE LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES DID NOT OBJECT TO THE FINAL PROPOSAL.
9. PROCEDURAL HISTORY OF ADOPTION:
ICAR Filing: 6/20/2024
Proposal Filed with Office of the Secretary of State: 7/12/2024
Notices Posted Online: 7/12/2024
Notices Published in the Newspapers of Record: 7/26/2024

A Hearing WAS Held.

Hearings Held (*PLEASE USE ADDITIONAL SHEETS TO PROVIDE THE DATE, TIME, AND LOCATION OF ALL HEARINGS, IF THIS FORM IS INSUFFICIENT TO LIST ALL HEARINGS HELD*):

Date: 8/29/2024

Time: 01:00 PM

Street Address: 116 State Street, Montpelier, VT

Zip Code: 05620

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Deadline for Public Comment: 9/9/2024

Final Proposal —

Filed with Secretary of State: 09/24/2024

Filed with LCAR: 09/24/2024

Dates of LCAR Review: 10/31/2024, , , ,

Adopted Rule —

Filed with Secretary of State: 12/2/2024

Filed with LCAR: 12/2/2024

10. EFFECTIVE DATE: 12/20/2024

(A RULE MAY TAKE EFFECT 15 DAYS AFTER ADOPTION IS COMPLETE OR AT A LATER TIME PROVIDED IN THE TEXT OF THE RULE SEE 3 V.S.A. §845(d) FOR DETAILS).

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:

2024 Technical Service Provider (TSP) Certification 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 **A NEW RULE** .

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

Technical Service Provider Certification Rule

Effective Date: December 20th, 2024

Section 1. General

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

Section 2. Definitions

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

Section 3. Certification

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

Completing all five-year training requirements satisfies the requirements for recertification. Trainings shall provide information regarding:

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

Section 4. Regulatory Requirements

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

recommendations, calculations for erosion, fields with patterned tile drainage, calculations and methods for waste generation, inputs into nutrient index tools, and results from laboratory soil and waste analyses.

Section 5. Professional Responsibility

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

Section 6. Enforcement

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



State of Vermont
Water Quality Division
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Montpelier, VT 05620
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Agency of Agriculture, Food and Markets

[phone] 802-828-2431
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December 2, 2024

Secretary of State
Vermont State Archives & Records Administration
1078 U.S. Rte 2
Middlesex, VT 05633-7701

The proposed Technical Service Provider Rule has undergone various typographical changes since the final proposed filing that are included in the adopted filing. The changes do not alter the substance or effect of the rule.

Sincerely,

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