



Accessory On-Farm Businesses: FAQs

Act 143, passed July 1, 2018, creates an opportunity for farm operators to diversify operations and increase their ability to market their agricultural products and the agricultural experience through the creation of an onsite Accessory Business to their farm operation – titled, Accessory On-Farm Businesses (AOFBs).

AOFBs generate an additional revenue stream for farms in situations where local land use regulations would otherwise prohibit such businesses. Although AOFBs cannot be prohibited by a municipality, Act 143 gives municipalities the authority to review AOFBs under municipal site plan review and adopted performance standards.

Below are the answers to some Frequently Asked Questions about Act 143, AOFBs and the rules and processes that govern their operations.

To access additional resources, visit <https://agriculture.vermont.gov/land-use-renewable-energy-0/accessory-farm-business>, speak to your local town officials, or contact Kaitlin Hayes at (802) 622-4112.

Definitions:

What is an Accessory On-Farm Business?

AOFBs must be located on a “farm” regulated under the Required Agricultural Practices (RAPs) of the Vermont Agency of Agriculture Food and Markets, and must focus on one or both of the following:

- I. The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.
- II. Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), "farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

What is a “qualifying product”?

Qualifying products are products that are wholly:

- I. An agricultural, horticultural, viticultural, or dairy commodity, or maple syrup;
- II. Livestock, or cultured fish or a product thereof;
- III. A product of poultry, bees, an orchard, or fiber crops;
- IV. A commodity otherwise grown or raised on a farm; or
- V. A product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.

What makes a qualifying product “principally produced”?

A qualifying product is “principally produced” on a farm if it qualifies based on descriptions (I – IV) in the definition above of “**qualifying product**” and is produced onsite at the farm operation OR if it qualifies based on description (V) of “**qualifying product**” and is composed from at least 50% commodities grown or raised onsite at the farm operation. This can be calculated by weight or volume.

What does the 50% threshold for total annual sales in the definition of AOFBs mean?

This threshold means that to qualify as an AOFB based on sales of qualifying products, at least 50% of the total annual gross sales, in dollars, from the farm business must be generated through the sale of principally produced products. The municipality is responsible for making this threshold determination.

An example of this could be a farmer that operates a farm stand selling vegetable grown by the farmer (a principally produced product), and also sells cheese made by a neighbor (not principally produced). The income generated by the sale of the cheese must be less than 50% of the income generated in total by the farm stand to meet the criteria of an AOFB. (See below for additional examples!)

Note: this threshold is separate from the 50% threshold of on-farm ingredients necessary to constitute a principally produced product.

What is the difference between a “tasting,” used in the definition of an acceptable AOFB, and a “sample”?

Tastings are events **dedicated** to the consumption and comparison of food or beverages. Such events are characteristic of Accessory On-Farm Businesses. Events that include the tasting of alcoholic products which meet the definition of principally produced, are likely to be determined as an AOFB. (Note: if the tasting includes the consumption of alcohol, additional permits may be required through the Vermont Division of Liquor Control)

Samples are portions of food or beverage that are available to potential customers to taste during normal operation of the farm. Offering samples may not make a business an AOFB unless it meets the definition in other ways, such as including alcoholic products, or includes non -principally produced products.

If a farm is selling exclusively their own product at on on-farm location, does that make them an AOFB? Do they need to undergo site review?

No - a farm store selling exclusively principally produced products is a farm business, but not an AOFB. Any farm operator engaged in farming activities utilizing only their own principally produced products does not need to undergo municipal site review to engage in this business. The farm structures that may be used for these farming activities, such as a farm stand to sell principally produced products, will still need to meet state and local requirements for municipal setbacks and noticing prior to construction (RAPs Section 9). For more information and/or to get a farm and farm structure determination or variance, contact Kaitlin Hayes at (802) 622-4112.

What is a farm structure? Can an AOFB be located in a farm structure?

Farm structures are structures used by a person for farming, as defined in the RAPs under Section 2.15 and 2.16. A structure housing an AOFB likely will not qualify as a farm structure because an AOFB inherently does not meet the definition of farming, and for a structure to meet the definition of a farm structure, only activities meeting RAP definition 2.16 of farming are eligible to occur in the structure.

For example, a structure that involves the sale of qualifying products that aren't all principally produced, as in the first provision of the AOFB definition, would not meet the definition of a farm structure. Although the sale of agricultural products is included in the farming definition, this includes *only* the storage, preparation, and sale of *principally produced* agricultural products. Therefore, the sale of another's agricultural products would not be covered by the farming definition and would not be an activity that could occur in a farm structure.

Many events that fall under second provision of the AOFB definition, whether a farm dinner, or a wedding, or a tasting room, also do NOT meet the definition of farming and therefore the structures where the events are based would NOT be agricultural structures, even if there are some *farming* activities occurring in the structure as well.

Farm structures cannot be multi-use, they must be used ONLY for farming. Structures used for AOFBs that do not meet the farm structure definition may be required to engage in an Act 250 permitting process. For more information, including farm and farm structure determinations, call Kaitlin Hayes at (802) 622-4112 or visit <https://agriculture.vermont.gov/water-quality/regulations/farm-definitions-and-determinations>.

Can you give some examples of businesses that are and are not Accessory On-Farm Businesses?

Sure! These examples are hypothetical but illustrate some key elements of the AOFB definition.

Example:	Is this an AOFB? Why or why not?
Farmer A has a farm stand on their farm. They mostly sell their own vegetables but also offer a small volume of meat and milk from a neighboring farm.	Yes. This is a classic AOFB under the first half of the AOFB definition.
Farmer B makes ice cream from his milk and wants to start a store in town selling sundaes with fruit toppings from neighboring berry producers.	No. The sundae stand would be located off-site of the farm operation, so this is not an AOFB. If it were on the site of his farm, it could qualify as an AOFB as long as the sundaes were at least 50% comprised of Farmer B's milk.
Farmer C makes cheese. She has a stand on her farm, where she sells exclusively her own cheese. She has platters out for cheese samples.	No. This farm stand is devoted exclusively to selling the farmer's own agricultural product (which is principally produced), so is not "accessory," it is part of the farm business. It is therefore regulated by VAAFM and is exempt from municipal regulation.
Farmer D has an on-farm store and sells their own raw wool and yarn as well as commercially made knitting supplies.	No. No matter what percentage of their sales come from their own wool products, this store is not an AOFB because a component of its business model comes from selling products that are not "qualified products".
Farmer E has apple trees, but also buys apples from the neighbors. She produces juice that is made from 60% her own apples, by weight. She then sells it at her orchard alongside some barrels of her neighbors' apples. 70% of her annual sales come from the apple juice.	Yes. At least 50% of her annual sales come from the apple juice, which is a qualified product and is principally produced. It doesn't matter if that juice is made of 51% or 99% her own apples, as long as the percentage of ingredients produced on-farm is over 50%.
Farmer F has a vineyard and sells principally produced wine wholesale. He also has a small venue where he sells wine direct to the consumer and hosts weekly wine tastings.	Yes. Offering tasting events makes his on-farm business a classic AOFB under the second half of the AOFB definition.
Farmer G has a dairy farm. She also has an AirBnB above her garage.	No. This does not qualify as a "farm stay" unless a major component of the AirBnB stay is focused on farm activities and that is a main reason guests stay at this location. If so, and it is advertised as such, it could potentially qualify as an AOFB.

Rules and Regulations:

Where does Act 143 apply?

In all Vermont municipalities. Act 143 created a statewide land use review category, the “accessory on-farm business”, which is defined in statute. However, in each municipality with zoning bylaws that conducts site plan review, it may be applied and interpreted differently. This law does not affect on-farm businesses in municipalities without zoning bylaws or site plan review, where no process is required.

Are AOFBs subject to Act 250?

Unlike farming, which is exempt from Act 250, AOFBs are still required to comply with Act 250 where applicable. The applicability of Act 250 will vary based on the unique situation of each AOFB. Constructing or renovating a structure to house an AOFB, where that structure does not meet the definition of a farm structure pursuant to RAP Definition 2.15, is the most common situation in which Act 250 applies to AOFBs. Contact your Act 250 District Coordinator for more information on this topic at <https://nrb.vermont.gov/act250-program/district-staff-and-commissions>

Who determines whether a business is a “farm”?

If a farm or a municipality requests, the Vermont Agency of Agriculture, Food and Markets (VAAFAM) can offer an official farm determination based on thresholds established in the Required Agricultural Practices (RAPs). An important note, farms do not need a Farm Determination to engage in normal farming activities. If a municipality wants to make sure a farm meets the threshold to be eligible for an AOFB, that is the ideal circumstance when a formal Farm Determination would be requested from VAAFAM. Contact Kaitlin Hayes at (802) 622-4112 to begin this process.

Who determines whether a business is an “accessory on-farm business”?

The municipality is responsible for applying the official state definition of AOFB in order to determine whether businesses meet this definition. This generally occurs following a Farm Determination from VAAFAM and prior to engaging in the site plan review process. VAAFAM does not contribute to the decision making process regarding whether a business meet the definition of an AOFB or not.

Who determines whether a product counts as a “principally produced product”?

VAAFAM, similarly, to making farm operation and farm structure determinations, makes determinations on whether agricultural products are principally produced.

What is site plan review?

Site plan review is part of local land use review permitting process. It provides an opportunity for the municipality to evaluate the suitability of the site, focusing on access, internal circulation and parking for vehicles; landscaping and screening; exterior lighting and sign design. The review may also include other matters as specified in the local land use bylaws, including performance standards.

What is the process to get site plan review approval?

- I. The farm sends in an application to the municipality where the farm/AOFB is located. This may involve submission of maps, fees, and other materials for review by the local regulatory body.
- II. A hearing is scheduled to consider the application. This hearing is publicly noticed; in particular, surrounding property owners and/or occupants are given notice of the hearing.
- III. At the hearing, applicants may be required to present their case and answer questions posed by the regulatory body. Others in attendance may make statements or provide their own evidence.
- IV. After the close of the hearing, the regulatory body has 45 days to issue a decision. The decision may include conditions to ensure the welfare of the public and neighboring properties.

Do existing accessory on-farm businesses need to go through site plan review?

A decision to require or not to require site plan review for pre-existing AOFBs is made by the municipality. Factors that the town will consider might include:

- Is the business already permitted, or was a determination made that no permits were required (the business was “grandfathered in”)?
- Will or has the operation or land use changed since initial review/decision by the municipality?
- Does the municipality have less restrictive land use bylaws addressing accessory on-farm businesses than what is outlined in Act 143? If so, the town’s less restrictive bylaws would take precedence and Act 143 is essentially not applicable.