

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
FARMLAND ACCESS PROGRAM RULES AND REGULATIONS
NOTICE OF PUBLIC HEARING**

Pursuant to the provisions of Chapter 42-17.1 of the General Laws of Rhode Island, as amended, Public Laws 145, 2014, Article 5, including but not limited to the 2014 “Clean Water, Open Space and Healthy Communities” which authorizes the Department of Environmental Management to administer “Farmland Acquisition for Active Use” and in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws, the Department of Environmental Management (the “Department”) hereby gives notice of its intention to conduct a Public Hearing to be held in **Room 300 which is located at 235 Promenade Street, Providence, Rhode Island 02908 at 5:30 p.m. on August 30, 2017** to afford interested parties the opportunity to offer oral and written comments concerning the Department’s proposed adoption of the Farmland Access Program Rules and Regulations. The room is accessible to the disabled. Interpreter services for the hearing impaired will be provided if such services are requested at least (3) business days prior to the hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300.

The Department has determined that small businesses will not be adversely impacted by the proposed regulations referenced above. However, the public is invited to comment on the proposal to allow public input from small businesses or any cities or towns, which may believe that that may be adversely affected.

Written comments concerning the proposed amended regulation may be submitted to Michelle Sheehan, Division of Planning & Development, 235 Promenade Street, Providence, RI 02908 or via e-mail at michelle.sheehan@dem.ri.gov no later than September 5, 2017. A copy of the proposed regulations will be available for examination from July 21, 2017, through September 5, 2017, by mail or at the offices of the Office of Planning and Development located at 235 Promenade Street, Providence, RI 02908.

A copy of the proposed regulation(s) has been filed with the Office of the Secretary of State's website at <http://sos.ri.gov/ProposedRules/>. Proposed annotated regulations are also available in the body of this webpage.

Janet L. Coit,
Director

250-RICR-110-00-8

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 110 – PLANNING AND DEVELOPMENT

SUBCHAPTER 00 - N/A

PART 8 – Farmland Access Program Rules and Regulations

8.1 Purpose

The purpose of these State Farmland Access Program Rules and Regulations is to establish the procedure by which the Department of Environmental Management will purchase available farm properties from willing sellers and permanently protect said properties to facilitate their affordable transfer to eligible farmers with the funds from these transfers being returned to the program account for re-use to acquire additional farm properties. No eminent domain will be employed by the Department in the execution of this program.

8.2 Authority

These rules and regulations are promulgated pursuant to Chapter 42-35 of the R.I. Gen. Laws, in order to expend funds allocated pursuant to 2014 R.I. Pub. Laws 145, Article 5, including but not limited to the 2014 “Clean Water, Open Space and Healthy Communities,” which authorizes the Department of Environmental Management to administer “Farmland Acquisition for Active Use.”

8.3 Applicability

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law and policies, including the purpose set forth in § 8.1 of this Part.

8.4 Severability

If any provision of these rules and regulations, or application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

8.5 Definitions

For the purposes of these regulations, the following terms shall have the following meanings:

- A. “Affordable transfer” means a sale or lease of a farm property that would be possible by a reasonable number of small and beginning farmers operating a

profitable agricultural business in Rhode Island and seeking to purchase or lease said farm property.

- B. “Agricultural value” means the fair market value of a farm property permanently protected with an agricultural deed restriction plus the fair market value of any residential dwellings or any permitted dwelling unit area on the property as determined by an appraisal conducted by a certified appraiser.
- C. “Beginning farmer” means a farmer who has operated or managed any farm property for 10 years or less.
- D. “Committee” means the State Farmland Access Advisory Committee, as outlined in § 8.9(C) of this Part.
- E. “Department” or “DEM” means the Rhode Island Department of Environmental Management.
- F. “Director” means the Director of the Rhode Island Department of Environmental Management.
- G. “Farm property” means a property, together with any associated improvements, that is suitable for the production of agricultural products.
- H. “Land acquisition committee” means an internal committee of the Rhode Island Department of Environmental Management comprised of the Associate Director of Natural Resources and division chiefs with natural resource responsibilities.
- I. “Profitable agricultural business” means a self-sustaining business that is based on the production and sale of one or more agricultural products.
- J. “Small farmer” means a farmer with annual gross farm revenues (gross cash farm incomes) not exceeding \$350,000 in either of the two previous years.

8.6 Eligible Projects

Farm properties for purchase will be reviewed and approved by the Land Acquisition Committee, and shall meet all of the following criteria:

- A. A farm property being sold voluntarily by the owner;
- B. A farm property capable of supporting a profitable agricultural business based on its size, soil quality, agricultural infrastructure, and farm history; and,
- C. A farm property that due to its location, site characteristics, or other market factors, would lend itself to an affordable transfer when permanently protected with an agricultural deed restriction.

8.7 Subdividing Farm Properties into Smaller Farm Parcels

The Department may, at its discretion, subdivide purchased farm properties prior to resale provided each subdivided parcel remains capable of supporting a profitable agricultural business on its own. No single farm property shall be subdivided into more than three individual farm parcels, and any subdivision under this rule shall comply with all applicable local zoning and subdivision regulations.

8.8 Soliciting Farmer-Buyers

- A. Subsequent to the Department entering into a Purchase & Sale Contract for the purchase of a farm property, the Department may solicit applications from prospective farmer-buyers for the purchase of the protected farm property. Solicitations shall include detailed information about the available farm property, including maps, soil data, and, if there are no existing dwellings, whether a dwelling unit area is permitted, and any limits on its size. Solicitations shall be published widely to farmer advocacy groups and farmer-based organizations, and shall be posted on the DEM website. Farmers shall have no less than 90 days from the solicitation date to submit applications.
- B. To be eligible to apply, an applicant must demonstrate that, for at least two years, they have operated or managed a farm business that has generated at least \$5,000 annual gross farm revenues.
- C. The Department may maintain a list of interested persons who by affidavit demonstrate their eligibility to apply to purchase farm properties through this program.
- D. Applicants must submit as part of their application the following, all of which will be kept confidential:
 - 1. Evidence of a minimum of two (2) years' experience operating or managing a farm, including production records and two references;
 - 2. A Farm Plan which shall include production plans, equipment and infrastructure needs and upkeep plan, details about anticipated market outlets, location of any proposed dwelling unit area, if permitted, and estimated cost for first year's operation along with a 3-year projected earnings;
 - 3. Two (2) previous years' income tax returns;
 - 4. A current credit report;
 - 5. A current cash flow statement, current balance sheet, and list of assets.
 - 6. Other follow-up information as may be requested by the Department.

8.9 State Farmland Access Advisory Committee: Evaluation Procedure and Scoring Criteria

- A. The Director shall establish a State Farmland Access Advisory Committee, a public body of not less than five (5) nor more than nine (9) members to recommend farmer-buyers from the solicited pool of applicants for each purchased farm property. The Committee shall have a period of sixty (60) days following the solicitation deadline to meet and score the applications.
- B. Committee members shall be appointed by the Director to achieve a reasonable representation of entities concerned with diverse types of Agriculture in Rhode Island. The Committee shall include no less than two farmers-at-large who are residents of the State of Rhode Island, the chief of the Division of Planning and Development or his or her designee (non-voting member), and the chief of the Division of Agriculture or his or her designee (non-voting member). In addition, the Director shall give consideration to appointments from the RI Agricultural Council, the RI Farm Bureau, the RI Conservation Districts, an organization that advocates for the interests of beginning farmers, a member at-large from the food and agricultural advocacy community. Organizations or individuals may at any time register their interest in membership, in writing, with the Director; organizations may nominate individuals for appointment. The Director may appoint those nominated provided there are vacancies on the Committee. No member shall at any time during his/her membership be an applicant.
- C. Appointment terms shall not exceed five (5) years although members may succeed themselves and serve consecutive terms, not to exceed two (2) terms. The Director, at his/her discretion, may replace Committee members due to unexcused absences or for cause, provided the organization that the member represents is notified in writing.
- D. The Chairperson shall be a representative of the DEM designated by the Director of DEM. The Chairperson may select a designee to appear at Committee meetings on his or her behalf. There shall be a Vice-Chairperson appointed by the Chair at the first regular meeting of each calendar year.
- E. At its first meeting the Committee shall develop a scoring system, using the criteria below, to evaluate and recommend prospective farmer-buyers. Price will be set as outlined in § 8.11(A) of this Part and will not be a factor in scoring.
- F. The Committee shall score each farmer-buyer applicant using the scoring system developed. Based on the resulting scores, the Committee will select and recommend to the Director a farmer-buyer applicant (subject to confirmation of necessary financing) or, if the Committee determines that there is not a suitable applicant, may recommend that DEM lease the farmland in accordance with § 8.14 of this Part. The Director shall accept the Committee's recommendation unless there is a reasonable justification. If the Director does not accept the

Committee's recommendation, then notice will be provided in writing to the Committee stating the Director's reason(s) for rejecting the recommendation.

G. Scoring Criteria to be established by the Committee shall include:

1. **Agricultural Experience.** The Committee shall consider the duration and quality of the agricultural experience with a type of agriculture similar to the type proposed in the applicant's Farm Plan. Priority shall be given to small and/or beginning farmers who are farming full-time or working towards becoming a full-time farmer in Rhode Island and to such farmers who have direct experience with the subject farm property.
2. **Farm Business Experience.** The Committee shall consider the duration and quality of the experience managing a farm business, including the ability to bring products to market and sustain positive cash flow. Priority shall be given to small and/or beginning farmers that have demonstrated their ability to run a successful farm business.
3. **Farm Plan.** The Committee shall consider the suitability of the applicant's plan for the purchased farm property, including land use and business operations. In determining plan suitability, the Committee shall consider the soil type, topography, infrastructure, and size of the farm property in relation to the proposed agricultural operation. The Committee shall also consider the viability of the proposed farm business on the subject farm property using the following criteria: market potential for the proposed product to be raised on the farm property, identified/secured market outlets, and projected earnings.
4. **Ability to Finance Farm Purchase and Farm Business.** The Committee shall consider the applicant's financial readiness to purchase the property and start and sustain a farm business, including evidence of loan pre-qualification and/or availability of start-up capital. DEM will not provide financing.
5. **Demonstrated need for farmland.** Priority shall be given to in-state farmers who do not currently own sufficient land to sustain a profitable farming operation.

8.10 Transfer of Purchased Farm Property to ALPC

- A. All farm properties purchased by the Department that are selected for resale to a farmer under this program shall be conveyed or donated to the Rhode Island Agricultural Lands Preservation Commission (ALPC).
- B. ALPC shall sell any farm property conveyed to it by the Department under this program to the selected farmer-buyer.

8.11 Resale of Purchased Farm Property to the Farmer-Buyer

- A. The resale value of farm properties purchased under these rules will be set at no less than 10% below and no more than 10% above the current Agricultural Value of the farmland, as determined by an independent appraisal to be contracted by DEM.
- B. Proceeds of the sale of any farm property sold under these rules shall be deposited into the original bond account that was used to purchase the farm property, consistent with R.I. Gen. Laws § 42-82-5.

8.12 Restrictions on Purchased Farm Properties

- A. All farm properties purchased by the Department that are selected for resale to a farmer under this program shall be conveyed or donated to the Rhode Island Agricultural Lands Preservation Commission (ALPC).
- B. Any farm property that the ALPC sells to a selected farmer-buyer shall be sold subject to Agricultural Deed Restrictions that includes, at a minimum:
 - 1. The prohibition against building houses and associated non-agricultural improvements outside the identified dwelling unit area;
 - 2. The prohibition against removing soil or other mineral resources;
 - 3. The prohibition against using the Farm Property other than for agricultural purposes outside the identified dwelling unit area.
 - 4. An “affirmative covenant” requiring the protected Farm Property to be kept in active agricultural use; and,
 - 5. An Option to Purchase at Agricultural Value running to the Department, where agricultural value has the meaning set forth in § 8.5(B) of this Part above, which shall provide the Department with the opportunity to purchase a Farm Property at Agricultural Value at the time a bona fide offer is made on a Farm Property originally sold through this program.

8.13 Dwellings

- A. Any improvements to existing dwelling units shall not result in a heated living space exceeding 2,000 square feet.
- B. If there are no existing dwellings on a Farm Property, DEM may designate the farm property as eligible for a maximum of one dwelling unit. The initial farmer-buyer or any subsequent owner may identify the location of a dwelling unit area for the purpose of building a single family house that is limited in size to no greater than 2,000 square feet of heated living space. The proposed dwelling unit area shall be subject to the review and approval of either the DEM if the

dwelling unit area is identified by the initial farmer-buyer before the closing or by the ALPC if the dwelling unit area is identified after the initial closing.

- C. Any dwelling unit shall remain within the restricted area and shall not be subdivided. The parcel as a whole, including the dwelling unit, shall be subject to an Option to Purchase at the Agricultural Value as set forth in § 8.12(B)(5) of this Part.

8.14 Option to Lease

If no farmer-buyer is selected by the Committee, DEM shall retain ownership of the farm property, and then may, at its discretion, offer said farm property for lease to eligible entities via a solicitation process as outlined in R.I. Gen. Laws § 37-7-5. The Department may solicit applications from prospective farmer-buyers for the purchase of the leased farm property at a later time.