

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Rhode Island Department of Environmental Management

DIVISION: Division of Agriculture and Resource Marketing

RULE IDENTIFIER: 250-RICR-40-20-1, ERLID #: 2135

REGULATION TITLE: RULES AND REGULATIONS FOR ENFORCEMENT OF THE FARM, FOREST AND OPEN SPACE ACT

RULEMAKING ACTION: Proposed

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE: Friday, November 10, 2017

SUMMARY OF PROPOSED RULE:

These rules establish requirements for implementation of the Farm, Forest, and Open Space Act. The Department of Environmental Management, Divisions of Forest Environment and Agriculture in cooperation with cities and towns are responsible for administering the program. Public comment will be solicited on the proposed rule-making that is intended to recodify the subject regulations in accordance with the 2016 Amendments to the *Administrative Procedures Act* Chapter 42-35 of the General Laws and to amend the subject regulations in order to permit eligible farmers to engage in solar power generation in a manner consistent with their primary focus of food production.

COMMENTS INVITED:

The public meeting to receive comments concerning the proposed rulemaking will commence at **5:00 PM on Monday, November 27, 2017,** at the Room 300, at the Department of Environmental Management Offices, 235 Promenade Street, Providence, RI 02908. 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. A recording of the hearing will be made by DEM staff. Written

comments concerning the regulations proposed for promulgation by the DEM may be submitted either to the Division of Agriculture, 235 Promenade Street, Providence, RI 02908 or via e-mail to ken.ayars@dem.ri.gov, **no later than 12:00 PM on December 11, 2017.**

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: Division of Agriculture, 235 Promenade Street, Providence, RI 02908

Email Address: ken.ayars@dem.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

A copy of the proposed regulations will be available for examination from November 10, 2017, through December 11, 2017, by mail or at the offices of the Division of Agriculture located at 235 Promenade Street, Providence, RI 02908. Electronic copies of the proposed regulations will also be available on the DEM website at the following web addresses: <http://sos.ri.gov/ProposedRules/> and <http://www.dem.ri.gov/documents/regulations/> under proposed.

PUBLIC HEARING INFORMATION:

Hearing Location Date and Time: RI DEM Offices, Room 300; Monday, November 27, 2017; 5:00 PM

Hearing Location Address: Room 300; RI DEM Offices, 235 Promenade Street, Providence, RI 02908

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call (401) 222-5300 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

ALTERNATIVE PUBLIC HEARING TEXT:

In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at

least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

FOR FUTURE INFORMATION CONTACT:

Division of Agriculture, 235 Promenade Street, Providence, RI 02908 or via e-mail to ken.ayars@dem.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

The Department has determined that small businesses will not be adversely impacted by the proposed regulations referenced above. However, the public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may believe that that may be adversely affected. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: Chapter 44-27 and §§ 44-5-39 through 41.1 of the General Laws of Rhode Island as amended, and in accordance with the *Administrative Procedures Act* Chapter 42-35 of the General Laws as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

Rhode Island Department of Environmental Management proposes to amend RULES AND REGULATIONS FOR ENFORCEMENT OF THE FARM, FOREST AND OPEN SPACE ACT (250-RICR-40-20-1) as follows:

250-RICR-40-20-1

TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 40 - AGRICULTURE AND RESOURCE MARKETING

SUBCHAPTER 20 - MARKETING

PART 1 - Rules and Regulations for Enforcement of the Farm, Forest and Open Space Act

1.1 Purpose

These rules establish requirements for implementation of the Farm, Forest, and Open Space Act. The Department of Environmental Management, Divisions of Forest Environment and Agriculture in cooperation with cities and towns are responsible for administering the program. These regulations will: define properties eligible for inclusion; set eligibility requirements; specify standards for continued eligibility;

1.2 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws Chapter 44-27 and §§ 44-5-39 through 41.

1.3 Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, findings and policies in accordance with the following rules and regulations which establish eligibility.

1.4 Definitions

For the purposes of these regulations, except as provided below, the following terms shall have the following meanings:

- A. "Agricultural operations" means as used in this Chapter, "agricultural operations" means any commercial enterprise which has as its primary purpose horticulture, viticulture, viniculture, floriculture, forestry, stabling of horses, dairy farming, or aquaculture, or the raising of livestock, furbearing animals, poultry, or bees.
- B. "Actively devoted to agricultural or horticultural use" means land used, under normally acceptable practices, in the production of plants and animals useful to man including but not limited to: forages and sod; fruits of all kinds including nuts, berries grapes and vegetables; floral, ornamental and greenhouse products, the growing of Christmas trees; dairy animals and dairy products; poultry and poultry products; sheep and sheep products; livestock including beef cattle, swine, horses and mules, the stabling of horses; the commercial breeding or grazing of

any or all such animals for the production of meat, milk, fiber in saleable livestock; and the production of fish, shellfish, plant material and fish products through aquacultural practices.

- C. “Actively managed” means forestland managed in accordance with the provisions of a written forest stewardship plan for the enhancement of forest resources.
- D. “Assessor” means the appointed individual or elected board, or other person or agency charged with the duty of assessing real property in a municipality.
- E. “Conservation plan” means a written plan outlining Best Management Practices recommended by U.S. Department of Agriculture and approved by the District and Director.
- F. “Director” means the Director of the Rhode Island Department of Environmental Management or his/her authorized designee.
- G. “District” means the Conservation District organized under Chapter 2-4 of the R.I. Gen. Laws.
- H. “Department” means the Rhode Island Department of Environmental Management.
- I. “Dual Generation Unit” means a raised generation unit that allows for agricultural production to continue on the land beneath the solar photovoltaic modules.
- J. “Farm, forest and open space land value subcommittee” means the Subcommittee of the State Conservation Committee established under R.I. Gen. Laws, Chapter 2-4.3 to recommend to the R.I. Department of Administration to be transmitted to each city or town tax assessor the methodology and values for the assessment of land for property taxation on the basis of current use for farm, forest and open space lands as established by R.I. Gen. Laws Chapter 44-27 and § 44-5-12.
- K. “Farmer” means the principal person engaged in agricultural operations as indicated for income tax purposes.
- L. “Farmland” means any tract(s) of land, exclusive of house site, that meets any one of the following conditions and which has a current U.S. Department of Agriculture conservation plan, either applied for or in force within the past 10 years;
 - 1. Land which is actively devoted to “agricultural or horticultural use” as set forth in “agricultural operations.”
 - 2. Land which constitutes a “farm unit” which means land owned by the farmer, including woodland and wetlands, at least (5) acres of which are actively devoted to agricultural and horticultural use and which have

produced an annual gross income from the sale of its farm products of a least \$2500.00 in one of the two preceding years.

3. Land that is actively devoted to agricultural and horticultural use by a “subsistence farmer” who derives his or her primary means of sustenance from the consumption of agricultural products grown on their land. Non-farm related income must be low enough to make them eligible for assistance under Title 20 Programs.
 4. Land which meets the qualifications for payments with the Federal Government for a conservation set aside, or it has a combination of income, crop and acreage which in the Director’s opinion qualifies this land for inclusion as a farm.
- M. “Forestland” means any tract or contiguous tracts of land, ten (10) acres or larger, exclusive of house site, bearing a dense growth of trees, including underbrush and young regenerating forest and ancillary habitat areas having either the quality of self-perpetuation, or being dependent upon its development by the planting and replanting of trees in stands of closely growing timber, actively managed under a stewardship plan approved by the Director.
- N. “Forest stewardship plan” or “management plan” means a plan prepared by a professionally qualified forester, that incorporates landowner objectives into an action based plan for the purpose of enhancing forest resources, which may include cultural operations to improve, where feasible and practical, wildlife habitat, forest health, forest quality, watershed protection, soil stability, water quality protection, aesthetics, the atmosphere, and passive non-commercial recreation. To qualify, the plan must meet minimum criteria established in § 1.14 of this Part, Appendix A.
- O. “Generation Unit” means a facility that converts a fuel or energy resource into electrical energy.
- P. “House site” means the zoned lot size or one acre, whichever is smaller containing a house, and land under and surrounding dwellings or devoted to developed facilities, such as tennis courts, pools, etc., related to the use of the residence.
- Q. “Open space” or “Open space land” means any tract or contiguous tracts of undeveloped land, where the undeveloped land serves to enhance agricultural values, or land in its natural state that conserves forests, enhances wildlife habitat or protects ecosystem health, and that are:
1. Ten (10) total acres or larger, exclusive of house site; or,
 2. Tracts of land of any size that are designated as open space land in the town’s comprehensive community plan; or,

3. Tracts of land of any size that have conservation restrictions or easements in full force.
- R. "Owner" means the person recorded as the owner on the deed.
 - S. "Person" means any individual, firm, corporation, co-operative, limited liability company (LLC), natural person, trust, estate, non-business entity, partnership, or other association or form of organization which can hold title to personal or real property interests under Rhode Island law.
 - T. "Professionally qualified forester" means a person who has graduated, with at least a bachelor's degree in forestry, from a school recognized by the Society of American Foresters, or who possesses equivalent qualifications approved by the Director.
 - U. "Under normally acceptable practices" means management of the farm using cultivation and husbandry techniques including but not limited to techniques for the proper animal and plant densities and spacing, harvesting techniques, soil conditioning techniques, erosion control practices, waste disposal techniques, cover crops, and rotation cycles recommended by the College of Resource Development, University of Rhode Island, U.S. Department of Agriculture, recognized producers organizations and seed and implement manufacturers for Rhode Island soils and practices approved by the DEM Agricultural Advisory Committee.

1.5 Application for Designation of Farmland

- A. An owner of land may file a written application with the Director for its designation by the Director as farmland. When the application is made and after a filing fee of ten dollars (\$10.00) is paid, the Director shall examine the land. If the Director determines that the land is farmland, then the Director shall issue a certificate designating the land as farmland. The Director shall furnish a copy of the certificate to the owner of the land, and shall file one copy of the certificate in the office of the assessor of the city or town in which the land is located.
- B. An owner of land designated as farmland by the Director may also apply to the assessor of the city or town where the land is located for its classification as farmland on any assessment list maintained by the city or town. Pursuant to R.I. Gen. Laws § 44-27-3(c)(1), such an application must be filed with the assessor of the city or town not earlier than thirty (30) days before nor later than thirty (30) days after the date of assessment, except that in years of revaluation the application must be filed not later than thirty (30) days after written notice of revaluation or in its absence after receipt of the tax bill. The Director's designation of that land as farmland must be valid as of a date at or prior to the date of the assessment. Pursuant to R.I. Gen. Laws § 44-27-3(d), the application must be made on a form prescribed by the assessor and include a description of the land and the date of issuance of the Director's certificate of designation.

C. Application to the Director for designation as farmland shall be made upon forms prescribed by the Director and shall include a description of the land and any other information that may be required to aid the Director in determining whether the land qualifies for that designation. For continuing eligibility, the property is subject to re-inspection by the Director every 5 years or at the request of the tax assessor subject to the management recommendations prescribed by the plan and approved by the Director.

D. Pursuant to R.I. Gen. Laws § 44-27-2(1)(iii), farmland shall be taxed according to agricultural use based upon the following four (4) categories:

1. Ornamental Crops: Including land devoted to floriculture, nursery and turf production, as well as land under greenhouses,
2. Vegetable and Orchards: Including small fruits, potatoes, cranberries, and Christmas trees,
3. Dairy and Livestock: Including forage crops, hay, silage corn and grain, and aquaculture,
4. Forest and Wasteland: Which is part of the farm property.

5. Renewable on Farmland/Dual Use Generation Units, in accordance with the following conditions:

a. the Generation Unit will not interfere with the continued use of the land beneath the canopy for agricultural purposes;

b. the Generation Unit is designed to optimize a balance between the generation of electricity and the agricultural productive capacity of the soils beneath;

c. the Generation Unit is a raised structure allowing for continuous growth of crops underneath the solar photovoltaic modules, with height enough for labor and/or machinery as it relates to tilling, cultivating, soil amendments, harvesting, etc. and grazing animals;

d. annual reporting to the Division of Agriculture of the productivity of the crop(s) and herd, including pounds harvested and/or grazed, herd size growth, success of the crop, potential changes, etc., shall be provided after project implementation and throughout life of the Generation Units; and

e. other system design information, which shall include, but not be limited to:

(1) dual-use type, e.g., ground mount racking, pole towers, tracking, etc.;

- (2) total gross acres of open farmland to be integrated with the project;
- (3) type of crop(s) to be grown, including grazing crops;
- (4) pounds of crop(s) projected to be grown and harvested, or grazed;
- (5) animals to be grazed with herd size(s); and
- (6) design drawing including mounting system type (fixed, tracking), panel tilt, panel row spacing, individual panel spacing, for pole towers tower spacing and mounting height, etc.
- (7) installation shall comply with Article 547 of the National Electrical Code. In particular, Wiring Methods in Article 547.5 and Equipotential Planes and Bonding of Equipotential Planes in Article 547.10.

- E. Recommended values for farmland will be periodically determined by the Farm, Forest and Open Space Land Value Subcommittee.

1.6 Application for Designation of Forestland

- A. An owner of not less than ten (10) acres of land may file a written application with the Director for its designation by the Director as forest land. When the application is made and a filing fee of ten dollars (\$10.00) is paid, the Director shall examine the land. If the Director determines that the land is forestland, then the Director issues a certificate designating the land as forestland. The Director shall furnish a copy of the certificate to the owner of the land, and shall file a copy of the certificate in the office of the assessor of the city or town in which the land is located.
- B. An owner of land designated as forestland by the Director may also apply to the assessor of the city or town where the land is located for its classification as forestland on any assessment list maintained by the city or town. Pursuant to R.I. Gen. Laws § 44-27-4(c)(1), such an application must be filed with the assessor of the city or town not earlier than thirty (30) days before nor later than thirty (30) days after the date of assessment, except that in years of revaluation not later than thirty (30) days after written notice of revaluation or in its absence after receipt of the tax bill. The Director's designation of the land as forest land must be valid as of a date at or prior to the date of the assessment. Pursuant to R.I. Gen. Laws § 44-27-4(d), the application must be made on a form prescribed by the assessor and include a description of the land and the date of issuance of the Director's certificate of designation.
- C. Pursuant to R.I. Gen. Laws §§ 44-27-2.2, 44-27-4(b) and 44-27-7, in order to maintain a certificate of designation for forestland issued by the Director, the landowner must update and submit a revised forest stewardship plan at the end of each ten year period prepared by a professionally qualified forester meeting the minimum criteria established in § 1.14 of this Part, Appendix A. For

continuing eligibility, the property is subject to re-inspection by the Director every 5 years or at the request of the tax assessor and subject to the management recommendations prescribed by the plan and approved by the Director.

- D. Application to the Director for designation of land as forestland shall be made upon a form prescribed by the Director and shall include a description of the land and any other information that may be required to aid the Director in determining whether the land qualifies for that designation. The application shall be accompanied by a forest stewardship plan prepared by a qualified professional forester in accordance with minimum criteria established in § 1.14 of this Part, Appendix A.
- E. Recommended values for forestland will be periodically determined by the Farm, Forest and Open Space Land Value Subcommittee.

1.7 Application for Designation of Open Space Land

- A. All applications for classification of land as open space must be made to the assessor of the city or town where the land is located. The Director is not authorized to designate open space land pursuant to this act. Pursuant to R.I. Gen. Laws § 44-27-5, an owner of land may apply for its classification as open space land on any assessment list of a city or town by filing a written application for that classification with the assessor of the city or town, not earlier than thirty (30) days before nor later than thirty (30) days after the date of assessment, except in years of revaluation when the landowner may file not later than thirty (30) days after receiving written notice of revaluation or in its absence after receipt of the tax bill. The assessor determines whether the land meets the definition of "open space" in these regulations and if the assessor determines that it is open space, the assessor classifies the land as open space land and includes it as open space on the assessment list.
- B. Recommended values for open space will be periodically determined by the Farm, Forest and Open Space Land Value Subcommittee.

1.8 Revocation of Farmland or Forestland Designation

- A. When requested to do so by the assessor or whenever the Director deems it necessary, the Director shall re-examine a farmland or forestland designation. If the Director finds that the property no longer qualifies as farmland or forestland, then the Director shall act to revoke the certificate of designation. Any action to revoke a certificate of designation shall be preceded by a notice to the owner of the land in accordance with R.I. Gen. Laws § 42-35-14(c) stating the facts or conduct that support revocation of the certificate and providing the owner with a time within which to demonstrate compliance with the requirements necessary to retain the farmland or forestland designation. If the owner fails to demonstrate sufficient compliance to retain the farmland or forestland designation, then the Director shall initiate administrative proceedings pursuant to R.I. Gen. Laws § 42-

17.1-2(21) to revoke certificate of designation. Pursuant to R.I. Gen. Laws §§ 42-17.7-9, 44-27-3(b) and 44-27-4(b), the notice of revocation shall inform the owner that he/she has thirty (30) days to bring the land into compliance or to request a formal administrative hearing.

- B. Whenever a compliance order that finds that the land is no longer farmland or forestland shall become effective, whether after the hearing or automatically after thirty (30) days where no hearing has been requested, the Director shall issue a certificate revoking the designation as per §§ 44-27-3(b) and 44-27-4(b) of the R.I. Gen. Laws. The certificate of revocation shall be issued in duplicate with one copy going to the landowner and one copy being filed in the office of the assessor of the city or town in which the land is located. Revocation of certificate of designation by action of the Director makes the land subject to the land use change tax pursuant to R.I. Gen. Laws § 44-5-39.

1.9 Criteria for Revocation of Designation of Farmland

The Director may revoke a certificate designating land as farmland whenever the land is used in a manner that is inconsistent with its management as farmland, including but not limited to situations where:

- A. The land remains unused for two (2) planting seasons for reasons other than federal (or state) set asides.
- B. Operations to strip topsoil or to mine sand or gravel or other minerals, other than for on-farm uses, are undertaken on designated land.
- C. Building permits for structures not directly related to the farm operation are obtained or construction for such structure commences.
- D. The procedures and schedule outlined in the Conservation Plan for the property are not followed.

1.10 Criteria for Revocation of Designation of Forestland

The Director may revoke a certificate designating land as forestland whenever the land is used in a manner that is inconsistent with its management as forestland (e.g. campground or golf course) including but not limited to situations where:

- A. The procedures and schedule outlined in the forest stewardship plan for the property are not followed.
- B. Operations to strip topsoil or to mine sand or gravel or other minerals, other than for improvements to subject forestlands, are undertaken on designated land.
- C. Building permits for structures not directly related to the forest operation are obtained or construction for such structure commences.

1.11 Appeals

Any person who has exhausted all administrative remedies available to him/her within the agency and who is aggrieved by a final order of the Director in a contested case may seek appellate review pursuant to R.I. Gen. Laws § 42-35-15 of the Administrative Procedures Act, by filing a complaint in the Superior Court within thirty (30) days after mailing of notice of the Director's final decision.

1.12 Severability

If any provision of these Rules and Regulations, or the 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.

1.13 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of the Farm, Forest, and Open Space Act promulgated by the Secretary of State on October 2, 1980 shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

1.14 Appendix A: Forest Stewardship Plan Requirements for Enrollment in the Farm, Forest and Open Space Program

As a condition of enrollment in the Farm, Forest and Open Space Program Forest Stewardship Plans must meet the following minimum specifications.

1. Title Page.

- Owner and Preparer Information including contact information
- Property Information including plat and lot number, deed book and page, and acreage enrolled in the program as well as excluded acreage.

2. Signature Page

- Signatures of the landowner, plan preparer, and State Forester's representative
- Date the plan was prepared.

3. Property Overview.

A brief discussion of adjacent land uses as well as significant resources and features on the property that may impact management decisions. The discussion may include:

- Biodiversity
- Threatened and rare plant and animal species
- Riparian and wetland areas
- Soil and water quality – Watershed Protection
- Forest health
- Wildlife management
- Forest products
- Cultural Resources
- Recreation and aesthetic considerations

4. Management Unit Information

For each management unit (or stand) reference to the property map and description of:

- Forest Type
- Acreage to nearest whole acre
- Stand Description, including
- Stocking level
- Basal area
- Average tree diameter
- Trees per acre
- Volume of forest products per acre (optional)
- Site index
- Soil Type
- Landowner's Management Objectives for the area
- Other characteristics important to the management of the area

5. Management Recommendations

Recommended forest management practices to meet the landowners objectives, including activity, acreage involved and year to be accomplished.

6. Maps.

- A. Locus map of the property showing the property boundaries and property location in relation to the nearest major roadway intersection.
- B. Forest Vegetation Map. 8 ½ x 11 (or folded to that size) showing the location of forest types as well as other significant features. The map must include:
 - Name and address of landowner and town(s) where the property is located.
 - Date map was prepared and person who prepared the map
 - Scale and north arrow
 - Property boundaries as well as major physical and political (town lines) depicted and labeled.
 - Eligible land, as well as ineligible and non-committed land, delineated with acreage calculated to the nearest whole acre.

7. Activity Schedule

Summary of Recommended actions for all management units, including measurable outcome and year to be accomplished.



Department of Environmental Management
 Office of Management Services
 235 Promenade Street
 Providence, RI 02908

Application For Designation of Farmland or Forestland

Date: _____ Telephone: _____ Email: _____

Name: _____

Mailing Address: _____

Location of Property: _____

Town(s): _____ Plat(s): _____ Lot(s): _____

_____ Plat(s): _____ Lot(s): _____

Farmland Designation

Forestland Designation

<i>Crops</i>	<i>Acres</i>	<i>Forest</i>	<i>Acres</i>
<i>Ornamental</i>			
<i>Vegetables & Orchard</i>			
<i>Dairy & Livestock</i>			
<i>Forest and wasteland</i>			
Total			

Submissions

Submissions

<i>Farm Income</i>	<i>Forest Management Plan</i>
<i>Map</i>	<i>Map</i>
<i>Evidence of Subsistence Farm</i>	
<i>Evidence that non-contiguous land is historically associated with the farm</i>	
<i>Check for \$10.00 payable to RIDEM</i>	<i>Check for \$10.00 payable to RIDEM</i>

Signatures

I hereby certify that the acreage listed above is in agreement with City or Town Tax Assessment Records.

Assessing Official: _____ ***Date:*** _____

Conservation District Official: _____ ***Date:*** _____
 (farmland only)

I hereby certify that all information in this application is to the best of my knowledge true and correct.

Landowner: _____ ***Date:*** _____