



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

Maine

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Nutrient Management Plans

STATE OF MAINE

- 1) 7 M.R.S. §§ 4202, 4204; C.M.R. 01-001-565 §§ 4, 6, 7
- 2) 7 M.R.S. §§ 4202, 4205; C.M.R. 01-001 § 9
- 3) 7 M.R.C. § 4214

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Maine Revisor of Statutes.

1) 7 M.R.S. §§ 4202, 4204; C.M.R. 01-001-565 §§ 4, 6, 7

§ 4202. Duties of the commissioner

The commissioner shall implement a program to promote responsible use of farm nutrients in accordance with this chapter. The commissioner has the powers and duties as set forth in this section.

1. Nutrient management plans. In accordance with Title 5, chapter 375, the commissioner shall adopt rules to establish minimum requirements for nutrient management plans required under section 4204, a process for review of the nutrient management plans, periodic revisions to plans and determination of compliance with the plans. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The commissioner shall maintain a list of farms that have a nutrient management plan based on notification received pursuant to section 4204, subsection 3.

2. Certification of persons to prepare nutrient management plans. The commissioner shall develop a program to train and certify persons in the preparation of nutrient management plans. The commissioner may establish minimum educational requirements for persons eligible for certification. The commissioner may revoke a certification in accordance with section 4210.

3. Livestock operations permits. The commissioner shall issue livestock operations permits in accordance with section 4205. The commissioner may revoke a livestock operations permit in accordance with section 4211.

4. Educational outreach. The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the need for nutrient management planning. The commissioner shall inform the public about manure-related issues and the department's efforts to address manure-related issues.

5. Enforcement. Whenever it appears to the commissioner that there is or has been a violation of this chapter, rules adopted under this chapter or the conditions of a permit or variance issued under this chapter, the commissioner may initiate an enforcement action.

§ 4204. Nutrient management plan

1. Nutrient Management Plan Required. A person who owns or operates a farm that meets the criteria established in subsection 2 shall have a nutrient management plan for that farm and shall implement the provisions in that plan by the dates specified for that category of farm in subsection 4, 5, 6 or 7. The nutrient management plan must be prepared by a person certified in accordance with section 4202, subsection 2 and must address the storage and utilization of all farm nutrients generated on or transported to the farm. A nutrient management plan developed by a farm owner or operator is deemed to have been prepared by a certified nutrient management specialist if a certified nutrient management specialist reviews the plan for compliance with this chapter, signs the plan and notifies the department in accordance with subsection 3.

1-A. Plan Requirements. For livestock farms, the nutrient management plan must address storage and utilization of farm nutrients for the entire farm operation including leased or rented land. For crop farms, the plan must address storage and utilization of farm nutrients on land on which manure is utilized or stored. A nutrient management plan must include or provide for:

- A. Minimum distances between manure storage, stacking and spreading areas and property lines and surface water based on site-specific factors;
- B. Manure storage for a minimum of 180 days;
- C. Provisions for soil erosion control;
- D. Repealed. Laws 2005, c. 382, § B-2.
- E. Results of soil tests for land designated in the plan for manure spreading or manure irrigation;
- F. Results of manure tests;
- G. A statement of yield goals for land receiving farm nutrients;
- H. Additional information established through rulemaking;
- I. Site-specific dates recommended for the spreading of manure and spraying or irrigation of liquid manure. In compliance with section 4207, the plan may not

recommend spreading between December 1st of a calendar year and March 15th of the following calendar year; and

J. A recommended timetable for implementing the plan.

2. Farms Requiring a Nutrient Management Plan. A farm that meets one or more of the following criteria is required to have a nutrient management plan:

A. A farm that confines and feeds 50 or more animal units at any one time;

B. A farm that stores or utilizes more than 100 tons of manure per year not generated on that farm;

C. A farm that is the subject of a verified complaint of improper manure handling; or

D. A farm that stores or utilizes regulated residuals.

3. Responsibility of Person Preparing Nutrient Management Plans. Upon completion of a nutrient management plan, a person certified to prepare nutrient management plans in accordance with this chapter shall notify the department. The notification must include the name and address of the owner or operator of the farm and the location of the farm for which the plan was prepared. A person preparing a nutrient management plan required by this chapter shall adhere to rules adopted in accordance with this chapter pertaining to the preparation and requirements of the plan.

4. Compliance Date for Farms Operational on March 31, 1998. Except for a farm requiring a livestock operations permit under section 4205 or as provided in subsection 8, an owner or operator of a farm that was operational on March 31, 1998 and meets the criteria established in subsection 2, paragraph A or B shall have a nutrient management plan prepared for that farm no later than January 1, 2001. Except as provided in subsection 8, the plan must be implemented no later than October 1, 2007.

5. Compliance Date for Farms that Were Operational on March 31, 1998 that Store or Use Regulated Residuals. An owner or operator of a farm that is required to have a nutrient management plan under subsection 2, paragraph D and that was operational on March 31, 1998 shall have that plan prepared by January 1, 2000. Except as provided in subsection 8, the plan must be implemented no later than January 1, 2000.

6. Compliance Date for Farms Becoming Operational After March 31, 1998. An owner or operator of a farm that is required to have a nutrient management plan under subsection 2 and that was not operational on March 31, 1998 shall have a nutrient management plan prepared before the farm becomes operational. Except as provided in subsection 8, the plan must be implemented at the time the farm becomes operational.

7. Compliance Date for Farms Subject of Verified Complaint. When a farm is required to have a nutrient management plan under subsection 2, paragraph C, the commissioner shall establish a date by which the plan must be developed and a date for implementation of the plan.

8. Variances. For farms with compliance dates established in subsection 4, the commissioner may grant a variance from the date by which a nutrient management plan must be prepared and certified when the commissioner finds that technical assistance or resources are not available to complete and certify the plan by January 1, 2001. The commissioner may grant a variance from the implementation date in subsection 4, 5 or 6 when the commissioner finds that implementation of the plan would cause undue hardship. A person requesting a variance shall submit a request in writing to the commissioner at least 90 days prior to the applicable implementation date. The commissioner shall establish by rule criteria and a process for granting a variance. Factors considered must include protection of groundwater and surface water, cost of implementing the plan, availability of financial assistance to implement the plan and availability of technical assistance or resources to complete and certify the plan. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. Notwithstanding the provisions of this subsection, a variance may not extend an implementation date beyond December 31, 2008. A person denied a variance by the commissioner may appeal that decision to the board.

9. Violation. The following are civil violations for which a fine of up to \$ 1,000 plus up to an additional \$ 250 per day for each day that the violation continues may be adjudged:

A. Failure to develop a nutrient management plan in accordance with this section; and

B. Failure to implement a nutrient management plan in accordance with this section or rules adopted pursuant to this section. Prior to the development of a plan, a person is not subject to a penalty for failure to implement a nutrient management plan.

10. Nutrient Management Plan Confidential. A nutrient management plan prepared in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3. A copy of a nutrient management plan required under this section must be available to the commissioner or the commissioner's designee upon request.

Section 4. Farms Required to Have an NMP.

1. An NMP is required for farms that meet one or more of the following criteria:

A. The farm confines and feeds 50 or more animal units at any one time;[n1]

- B. The farm stores or utilizes more than 100 tons of solid manure or 25,000 gallons of liquid cow manure, per year, not generated on that farm;
 - C. The farm is the subject of a verified complaint of improper manure handling^[n2];
 - D. The farm stores or utilizes regulated residuals.
2. A person who owns or operates a farm shall implement an approved NMP for that farm, unless exempted by statute or §4.4 of these Rules.
3. The NMP must be prepared and signed by a certified NMP specialist or approved and signed by a certified NMP specialist, pursuant to the provisions of §7 of these Rules.
4. Farms/operations that are not required to develop an NMP:
- A. Crop farms storing and/or utilizing commercially manufactured chemical fertilizers are not required to develop and implement an NMP unless the farm is storing and/or utilizing manure or regulated residuals.
 - B. For crop farms, only the land on which manure, or regulated residual are applied must be covered by the NMP.
 - C. Small on-farm poultry or livestock/dairy product processing or vegetable processing operations generating and disposing of small volumes of process waste water annually from these activities, and which are not required to develop and implement a nutrient management plan under §4 of these Rules, may implement BMPs, approved by the Department, in lieu of developing and implementing an NMP.
 - D. An entity to which manure is transferred, which is not a farm or farming operation as defined by these Rules, e.g., a commercial composting operation that is regulated by the DEP, is not required to develop and implement an NMP.

[n1=Note: This means that the farm confines and feeds any combination of animals totaling 50,000 lb. live animal weight. Without limitation, some examples are:
24 dairy cows (plus an equivalent number of young cattle) (1400 lb/mature animal)
35 dairy cows with no young cattle (1400 lb/animal)
50 beef cows (1000 lb/animal)
125 sows or finishing pigs (400 lb/animal)
1000 feeder pigs (50 lb/animal)
50 horses (1000 lb/animal)
500 sheep (100 lb/animal)
2800 turkeys (18 lb/animal)
10,000 laying hens/broilers (5 lb/animal).]

[n2=Note: Complaints are usually handled under the "Maine Agriculture Protection Act", 7 M.R.S. Chapter 6.]

Section 6. Nutrient Management Plans.

1. Standards

A. Contents and Requirements

(1) The NMP must include and address all nutrients produced on or brought onto the farm and contain the following at a minimum:

(a) Livestock Farms. storage and utilization of manure and off-farm nutrients on all land including leased and/or rented land;

(b) Crop Farms. storage and utilization of manure and off-farm nutrients on land to which regulated residuals or more than 100 tons of manure or compost in any one calendar year are applied;

(c) Calculation of crop nutrient needs. The calculation of nutrients to be applied must be based on soil tests, manure tests, crop to be grown, and realistic yield goals. A realistic yield goal must be no more than 130% of the state average for the crop in question as determined by the Commissioner, unless the producer can demonstrate that in at least 2 out of 5 years yields have been greater than 130% of the state average, in which case nutrients may be recalculated to meet the higher yields actually experienced. Each field must have its own calculation. The calculation of nutrient needs must take into account the mineralization of organic nitrogen in the soil and in the nutrient material to be applied as well as inorganic nitrogen, following procedures approved by the Commissioner.[n4] New farms and farming operations that are developing an initial NMP, which do not have a crop or livestock production history, may estimate crop nutrient requirements and the nutrient values to be derived from manure by utilizing data from current editions of the "New England Vegetable Management Guide" or the publication "Nutrient Recommendations for Field Crops in Vermont";

(d) Each field must show the calculation of nutrients required to grow a crop in accordance with procedures approved by the Commissioner. The NMP must include a Field Spreading Summary Sheet indicating the rate of material to be applied on each field;

(e) The number of each type of animal and an estimate of the number of corresponding animal units on the farm at the time the NMP is prepared;

(f) A soil erosion control plan for land used for growing annual crops. This plan must have been designed or approved by a certified professional in erosion and sediment control, a qualified certified crop advisor, qualified personnel of an SWCD, a qualified NRCS employee, or be a privately developed plan utilizing one or more erosion control BMPs, that are in conformance with Department standards, to minimize erosion and phosphorus transport to the maximum extent feasible;

(g) Soil tests for each field where manure or other crop nutrients will be applied. Soil testing must be repeated for each field at least every 5 years. More frequent testing is recommended for fields with soil phosphorus levels above 40 lb./ac. Soil tests must be conducted by an appropriately accredited laboratory;

(h) Identification of the limiting nutrient for determining nutrient application rates that are environmentally sound, using the decision matrix included in Attachment A, "N and P Manure Priority Matrix", or a current phosphorus index approved for Maine;

(i) Where constructed Vegetated Treatment Areas and/or Filter Strips are included as part of the plan, the specifications outlined in the corresponding NRCS practice standards (635 and 393 - see Attachment B) must be followed unless otherwise approved by the Commissioner. Vegetated treatment areas and filter strips must be inspected and repaired each year. Phosphorus must not be added within these areas except as necessary to maintain adequate plant growth.

(j) Site-specific dates recommended for the spreading of manure and other farm nutrients, and spraying or irrigation of liquid manure. Recommended spreading must comply with §5 of these Rules;

(k) A site-specific animal carcass disposal plan, which is consistent with the requirements specified in the Department's Chapter 211 "Rules for the Disposal of Animal Carcasses," or as determined by the Commissioner.

(l) A plan detailing how livestock will be excluded from "Waters of the State", as defined in the DEP Chapter 520 "Definitions for the Waste Discharge Permitting Program" Rule.

(m) A timetable for implementing the plan. New farms and farms coming under new ownership must develop the NMP before the farm becomes operational;[n5] and

(n) Any proposed increase in an operation's animal units that conforms with the requirements in §6.1(E) of these Rules must be evaluated by a certified nutrient management planning specialist to determine if an update to the NMP is required. The evaluation also must determine if the operation requires expansion of its manure storage facilities, and/or expansion of its land base for spreading, and if the operation requires the development of a Livestock Operations Permit (LOP).

B. Additional NMP Provisions That Apply to Nutrients Other than Regulated Residuals. The NMP must contain the following provisions that apply to manure storage, management and use:

(1) Manure testing at least every 5 years or when a significant management change will affect manure nutrient values (for example, changing from a solid manure handling system to a liquid manure handling system, or changing the type of bedding used from sawdust to shredded paper, or changing the source of manure that is used).

(a) The Department may, when appropriate, require more frequent manure testing than every 5 years in certain cases. Manure must, at a minimum, be analyzed for total nitrogen, ammonium nitrogen, total phosphorus, total potassium, and moisture content according to the national methods manual "Recommended Methods of Manure Analysis, 2003", University of Wisconsin Publication A3769, <http://learningstore.uwex.edu/assets/pdfs/A3769.pdf>.

(b) The Commissioner may waive the manure testing requirement in site-specific situations involving operations that have small numbers of livestock, and the operation is not subject to developing and implementing an NMP under §4 of these Rules, or if the manure is exported to another entity having small numbers of livestock.

(2) Site-specific setbacks and siting standards for spreading manure, and for long-term and temporary storage of manure in the farm production area and on field stacking facilities, that will minimize nuisance complaints and threats to surface and ground water;

(a) Site-specific setbacks must be prescribed by a qualified professional. Qualified professionals include qualified NRCS, SWCD, or Department employees, Maine certified nutrient management planning specialists, or Maine certified professional soil scientists, who have expertise for making these determinations.

(b) Justification for the site specific setbacks utilized must be provided if the setback recommendations are less stringent than those recommended in the Department's "Manure Utilization Guidelines".[n9]

(c) Temporary manure storage sites where manure is stacked on the natural soil surface for less than two weeks must meet setbacks in the Department's "Manure Utilization Guidelines" and separation distances in the table "Minimum Separation Distances from Ground Features for Manure Stacking Sites".[n6]

(d) Setbacks for manure application sites, storages and stacking sites to drinking water wells must be a minimum of 100 feet;

(3) 180 day minimum manure storage, beginning December 1st of each year, using containment structure(s) and/or stacking site(s) approved by a qualified NRCS, SWCD or Department employee. Manure storage/containment structures must be in conformance with NRCS conservation practice standard 313, Waste Storage Facilities (refer to Attachment C or to the NRCS website for the current version of the standard);

(4) Effective odor and insect control associated with manure storage, management and utilization at the facility and at landspreading sites.[n7]

(5) Manure Transfer and Ownership.

(a) Manure that is produced by a farm or farming operation that is transferred to another farm or farming operation by the entity that produced the manure is the responsibility and ownership of the recipient upon unloading of the manure.

(b) Manure that is produced by a farm or farming operation that is transferred to another farm or farming operation by a third party, e. g., a contractor hired by the entity that produced the manure, is the responsibility of the contractor until delivered and unloaded to the recipient, unless an alternative, written agreement has been established between the contractor and the recipient. Any recipient self-hauling manure from the farm of origin assumes responsibility and ownership for that manure after the manure has been loaded on the recipient's vehicle or trailer.

(c) Manure that is produced by a farm or farming operation that is transferred to a temporary storage site that is not owned by the entity that produced the manure, and the ultimate utilization of the manure will accrue to the producer of the manure, is the responsibility of the entity that produced the manure while the manure is in temporary storage.

(6) Carcass Management and Disposal

(a) All NMPs must include a plan for routine carcass disposal.[n8]

(b) Carcass management and disposal must be consistent with the Department's Chapter 211 "Rules for the Disposal of Animal Carcasses".

(c) NMPs covering 300 or more animal units must include a written catastrophic carcass disposal plan that is consistent with the Department's Chapter 211 "Rules for the Disposal of Animal Carcasses", and which has been approved by a Maine certified nutrient management planning specialist. Soil evaluations related to catastrophic carcass disposal sites must have been conducted by a Maine licensed professional soil scientist or an NRCS soil scientist.

(d) A person who develops a catastrophic carcass disposal/management plan must provide the Department with a copy of the plan, and send a signed notification to the Department certifying that the plan meets the requirements of these Rules. The notification must be on a form provided by the Department for that purpose and must include the name and address of the owner or operator of the farm or farming operation, the location and address of the composting site for which the plan was prepared or approved, the species and number of animal units associated with the operation, the types and sources of feedstocks to be used for composting, and any other information required by the Commissioner.

C. Nutrient Management Plan Provisions That Apply to Regulated Residuals. In addition to compliance with §6.1(A) of these Rules, if the NMP contemplates the use of regulated residuals, the plans for setbacks, stacking sites, storage facilities, limitations on use based on constituents in the regulated residual and other provisions in the plan that apply to regulated residuals, must comply with rules adopted by the DEP concerning the agronomic utilization of residuals and other legal requirements.

D. Record Keeping. Record keeping, as provided in the NMP must, at a minimum, address the amount of manure applied to each field, dates of application, amount of other nutrient sources applied to each field, results of soil and manure tests and yields at end of each harvest season. The farm or farming operation must maintain records that account for all manure transferred to other farms or to non-farm entities, which include the date, amount of manure transferred, the name of the recipient and the address to which the manure was transferred. These records must be maintained for at least three years from the date of application or transfer, and must be provided to the Department on request.

E. Update Frequency Requirement. The NMP must be:

- (1) Updated at least once each year;
- (2) Approved by a certified NMP specialist at least every 5 years; and
- (3) Updated and approved sooner if:
 - (a) There is an increase of 15 % or more in the number of animal units shown in the current plan;
 - (b) There is a change greater than 15% in the acreage upon which nutrients are to be spread; or
 - (c) There is any other significant change in the operation that renders the existing NMP no longer relevant.
- (4) The farm owner or operator may request that a certified nutrient management planning specialist update or revise the plan anytime conditions on the farm warrant a change.

F. The Department must be notified by means of a standard form developed by the Department anytime an update is done for the above reasons, which includes the effective date of the plan. The notification must be provided to the Department within 30 days of the effective date of the plan.

2. Variances. The Commissioner may grant a variance from the dates for the preparation and/or the implementation of NMPs under the Nutrient Management Law, (7 M.R.S. §4204 subsection 4 to 7) when the Commissioner finds undue hardship.

A. Variance Request. A variance request must be submitted, in writing, to the Commissioner, and must include:

- (1) The operation for which the variance is sought;

(2) The reason(s) for the variance request; and

(3) Any relevant information supporting the request.

The Commissioner may, as part of the decision-making process, ask for additional information or request a site visit from Department staff.

B. Decision. The Commissioner shall make a decision whether undue hardship exists such as to justify a variance, and shall notify the person making the request in writing within 30 days of the decision. The Commissioner's decision shall include, but not be limited to, consideration of such factors as protection of groundwater and surface water, cost of implementing the plan, availability of financial assistance, financial hardship or the variance applicant's proposal when provided, and any public comments received. In determining the length of time for which a variance should be granted, the Commissioner may consult with the farm owner and/or the farm's certified nutrient management planning specialist. The written notice must include:

(1) The name and address of the person whose variance has been granted or denied;

(2) A statement of why the variance is granted or denied;

(3) The effective date of implementation; and

(4) The right to appeal the Commissioner's decision to the Nutrient Management Review Board in accordance with §11 of these Rules.

[n4=Notes: The method outlined in USDA/NRCS Code 590 'Nutrient Management', current edition, is an approved method. Other approved methods will be presented as part of the training and certification process for nutrient management planning specialists. A pre-side dress nitrate test for field corn and other crops for which the test is calibrated is recommended to determine adequate levels of available nitrogen.]

[n5= The recommended timetable for the plan implementation must be in accordance with the time frame included in the Nutrient Management Law, 7 M.R.S. §4204 subsection 4 to 7.]

[n6= Minimum Separation Distances from Ground Features for Manure Stacking Sites:Display Table

These separation distances may be achieved by the use of engineering techniques such as placing fill, installing curtain drains or diversion ditches.]

[n7= Examples of provisions that might appear in a NMP would be:

Immediate incorporation of manure spread on tilled land.

Timing applications to avoid creating nuisances.

Maintenance program for waterers to keep manure dry in poultry houses.

A spray program for insect control during warm months.]

[n8 = Routine carcass disposal refers to mortalities that are expected on a daily or weekly basis in a population of animals.]

[n9 = Note: An operation is considered to have 300 animal units if it confines and feeds any combination of animals totaling 300,000 lb. live animal weight. Without limitation, some examples are:

145 dairy cows (plus an equivalent number of young cattle) (1400 lb/ mature animal)

215 dairy cows with no young cattle (1400 lb/animal)

300 beef cows (1000 lb/animal)

750 sows or finishing pigs (400 lb/animal)

6000 feeder pigs (50 lb/animal)

300 horses (1000 lb/ animal)

3,000 sheep (100 lb/animal)

16,500 turkeys (18 lb/animal)

60,000 laying hens/broilers (5 lb/animal)]

Section 7. Certified Nutrient Management Planning Specialist Requirement.

All NMPs must be prepared and approved or reviewed and approved by a person who has been certified by the Commissioner (7 M.R.S. §4204). Certification of persons is for a five year period starting from the date when the certification is awarded.

1. Categories for Certification. Persons may become certified in one of two certification categories. These are:

A. Commercial/Public NMP specialist - A person who may develop and approve NMPs for another and may approve NMPs prepared by another.

B. Private NMP specialist - A person who may develop and approve an NMP only for his or her own operation.

2. Education and Training Requirements. Persons seeking to become Certified Nutrient Management Planning Specialists must meet the education and training requirements outlined in either A or B below:

A. Persons seeking certification as Nutrient Management Planning Specialists shall provide proof of certification by a national certifying program for nutrient management planning approved by the Commissioner, such as:

(1) The National Alliance of Independent Crop Consultants; or

(2) The American Society of Agronomy.

B. Persons seeking certification may become certified through a Maine state training and certification program approved by the Commissioner. All persons seeking certification through a Maine state program must pass the appropriate Nutrient Management Planning Certification Test, and have either:

(1) Successfully completed a pre-certification training workshop offered by the Department, UMCE or other agency approved by the Commissioner and passed the test approved by the Commissioner for this purpose; or

(2) Demonstrated a good understanding of agricultural subjects including soil health and fertility, crop management and manure management from past education, training and/or experience, and pertinent Maine nutrient management-related statutes and rules, by passing a test approved by the Commissioner for this purpose.

3. Submission Requirements. Applicants meeting the above requirements shall submit an application for certification on a form approved by the Commissioner, proof that the above requirements have been met and a \$ 35 certification fee, if applicable, to the Department.

4. Certified Persons Requirements

A. A certified person must comply with the standards and requirements provided in these Rules and in the enabling statute when preparing NMPs required under these Rules.

B. A certified person must send a signed notification to the Department of all NMPs prepared or reviewed and approved by that person as meeting the requirements of these Rules. The notification must include the name and address of the owner and, if different, the operator of the farm, the location and address of the farm for which the plan was prepared or approved, the number of animal units on the farm and the acreage of the farm for which the NMP has been developed, the name and address of the certified NMP specialist, a signed statement that the plan is in conformity with these Rules, and any other information requested on the notification form.

C. Persons certified under §7.2(A) of these Rules must maintain certification through the appropriate national certifying programs.

(1) If a person's certification by a national certifying program lapses, that person's Maine certification will remain in effect until the expiration date of the current five-year Maine certification, unless the certification by the national certifying program was revoked, or unless the requirements of §7.4(A) of these Rules have not been met.

(2) In order to maintain the Maine certification, a person must have met conditions under §7.6 of these Rules prior to the expiration date of the Maine certification.

5. Certification Revocation

A. Basis for revoking certification. The Commissioner may revoke certification to prepare and approve NMPs if the certificate holder:

- (1) Is no longer qualified;
- (2) Fails to comply with these Rules;
- (3) Fails to notify the Department after a plan is developed or approved;
or
- (4) Fails to use appropriate BMPs to minimize contamination of ground and surface water.

B. Notice. When the Commissioner decides to revoke a certification, the certificate holder must receive a written notice of the certification revocation immediately following the decision. The notice must be sent by certified mail, return receipt requested, and must include:

- (1) The name and address of the person whose certification is revoked;
- (2) The certification number being revoked;
- (3) The effective date of certification revocation;
- (4) A statement or list of reason(s) why certification is being revoked; and
- (5) Notice of the right to request a hearing in accordance with Section 7.5(C) of these Rules.

C. Certification Revocation Hearing

- (1) The Commissioner shall hold a hearing on a certification revocation when:
 - (a) A person receiving a notice of revocation requests a hearing in writing to the Commissioner; and
 - (b) The request for a hearing is made no later than 30 days after receipt of the revocation notice required under §7.5 (B) of these Rules.

(2) The Commissioner shall notify the person requesting a hearing in writing of the date, time and location of the hearing.

(3) The hearing shall be held in accordance with the requirements of 5 M.R.S. Chapter 375, subchapter IV (Administrative Procedure Act). Evidence may be presented at the hearing that might justify reinstatement of the certification.

D. Decision. If the Commissioner finds the certificate holder has complied with §7.4 of these Rules, the certification shall be reinstated. The Commissioner shall notify the certificate holder of the decision, in writing, within 30 days of the decision. The written notice must be sent by certified mail, return receipt requested, and must contain notice of the right to appeal the Commissioner's decision to the Nutrient Management Review Board in accordance with §11 of these Rules.

E. Waiver of Hearing. A certificate holder aggrieved by the decision of the Commissioner to revoke a certification may waive the hearing before the Commissioner and may appeal the decision directly to the Nutrient Management Review Board in accordance with §11 of these Rules. A waiver of the hearing before the Commissioner must be in writing and must be signed by the certificate holder.

6. Recertification

A. Unless certification has been revoked in accordance with these Rules, recertification will be granted upon appropriate application every five years based on the applicant's obtaining the necessary requisites for recertification and submittal of the \$ 35 recertification fee, if applicable. In order to obtain the necessary requisites for recertification, the applicant must either:

(1) Retake the certification exam;

(2) Earn credits at workshops, courses or seminars designated for this purpose by the Commissioner. The number of credits needed are:

(a) Commercial/ Public NMP Specialist - 10 credits per 5 year recertification interval;

(b) Private NMP Specialist - 6 credits per 5 year recertification interval; or

(3) Maintain their certification through the appropriate national certifying program in the case of persons certified in accordance with §7.2(A) of these Rules.

B. Recertification Credits

(1) Recertification credits will be available only through the documentation of attendance at Nutrient Management workshops, webcasts, courses or seminars pre-approved by the Commissioner. The workshop, course or seminar must include the presentation of Nutrient Management topics.

(2) Nutrient Management topics include, but are not limited to:

- (a) Nutrient Management
- (b) Applicable laws and regulations
- (c) Water quality
- (d) Soil health and management
- (e) Erosion control
- (f) Agricultural best management practices
- (g) Composting of farm material or regulated residuals

(3) Approval. To qualify for Commissioner approval of recertification credits, the following minimum requirements must be met:

- (a) A syllabus or outline of the seminar, course, webcast or workshop must be provided to the Department in advance and must, at a minimum, identify the length of the program, the nutrient management topics to be discussed and the presenter(s);
- (b) "Recertification Attendance and Credit Form(s)", available from the Department's Nutrient Management Program Office, must be obtained for distribution at the seminar, course, webcast or workshop. The attendees should be told before the seminar, course, webcast or workshop that credits are being offered toward recertification. The forms should be distributed at the end of the seminar, course, webcast or workshop; and
- (c) The organizer of a qualified seminar, course, webcast or workshop must provide an attendance report to the Department.
- (d) The Department will review the seminar, course, webcast or workshop agenda/curriculum and, if it qualifies, will assign a

credit value. The Department may send a copy of the submitted form to the person requesting the credits, with information such as qualification of the event and the number of credits awarded.

(4) **Attendee Qualifications.** To qualify for Departmental approval of recertification credits awarded at a qualifying seminar, course, webcast, or workshop, attendees must:

(a) Complete a "Recertification Attendance and Credit Form(s)" provided at the seminar, course, webcast or workshop. If the seminar, course, webcast or workshop is given over several days, the attendee must fill out one form for each day he/she has attended, unless daily submissions are waived by the Commissioner or designee;

(b) Attach a certificate of successful completion or any other valid proof of successful completion to the form, if none was submitted under §7.6(B) 3(c); and

(c) Submit the completed form and proof of successful completion to the Department's Nutrient Management Program Office.

(5) An individual who conducts or presents at a seminar, course, webcast or workshop for which the Department assigns credits may be eligible for extra credits for each hour-long presentation on appropriate topics.

(6) A person who fails to accumulate the necessary credits shall re-apply to take the exam required for the initial or previous certification.

2) 7 M.R.S. §§ 4202, 4205; C.M.R. 01-001 § 9

§ 4202. Duties of the commissioner

The commissioner shall implement a program to promote responsible use of farm nutrients in accordance with this chapter. The commissioner has the powers and duties as set forth in this section.

1. Nutrient management plans. In accordance with Title 5, chapter 375, the commissioner shall adopt rules to establish minimum requirements for nutrient management plans required under section 4204, a process for review of the nutrient management plans, periodic revisions to plans and determination of compliance with the plans. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The

commissioner shall maintain a list of farms that have a nutrient management plan based on notification received pursuant to section 4204, subsection 3.

2. Certification of persons to prepare nutrient management plans. The commissioner shall develop a program to train and certify persons in the preparation of nutrient management plans. The commissioner may establish minimum educational requirements for persons eligible for certification. The commissioner may revoke a certification in accordance with section 4210.

3. Livestock operations permits. The commissioner shall issue livestock operations permits in accordance with section 4205. The commissioner may revoke a livestock operations permit in accordance with section 4211.

4. Educational outreach. The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the need for nutrient management planning. The commissioner shall inform the public about manure-related issues and the department's efforts to address manure-related issues.

5. Enforcement. Whenever it appears to the commissioner that there is or has been a violation of this chapter, rules adopted under this chapter or the conditions of a permit or variance issued under this chapter, the commissioner may initiate an enforcement action.

§ 4205. Livestock operations permit

1. Operations requiring a livestock operations permit. Beginning on January 1, 2000, a permit issued by the commissioner pursuant to subsection 2 is required for an animal feeding operation that meets one or more of the following criteria:

A. The operation is a concentrated animal feeding operation as defined by rules adopted pursuant to this section;

B. The operation confines and feeds 300 or more animal units and prior to April 15, 1998 the operation did not confine and feed 300 or more animal units; or

C. Proposes an expansion beyond the operation's manure storage capacity or land base used for spreading.

2. Criteria for issuing permits; rulemaking. An applicant for a permit required under this section must submit to the commissioner a nutrient management plan that meets the requirements established pursuant to section 4204. A nutrient management plan submitted in accordance with this subsection is confidential and is not a public record as defined in Title 1, section 402, subsection 3. Prior to issuing a permit, the commissioner or a designee of the commissioner shall inspect the operation and determine that the operation is in compliance with the nutrient management plan. The commissioner may

issue a provisional permit in accordance with subsection 3. The commissioner shall adopt rules in accordance with Title 5, chapter 375 to establish a process for application review and issuing permits required under this section. The rules may establish permit application fees, inspection requirements and procedures for review by the board of permitting decisions. Rules initially adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. After July 1, 1999, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. Provisional permit. The commissioner may issue a provisional permit to an operation that is not in compliance with the farm's nutrient management plan at the time of inspection. In issuing a provisional permit, the commissioner shall consider existing nutrient management practices on the farm, the protection of groundwater and surface water, the cost of implementing the plan and the availability of financial assistance to implement the plan. A provisional permit must state the date by which the farm must be in compliance with the plan and may not be issued for a period of more than one year. Upon inspection and determination of compliance, the commissioner shall issue a permit in accordance with subsection 2 and the provisional permit expires. The commissioner shall adopt rules in accordance with Title 5, chapter 375 to establish a process for application review and issuing of provisional permits. Rules adopted in accordance with this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Violation. The following are civil violations for which a fine of up to \$1,000 plus up to an additional \$250 per day for each day that the violation continues may be adjudged:

- A. Failure to obtain a livestock operations permit in accordance with this section; and
- B. Failure to comply with the conditions set forth in a livestock operations permit or a variance.

Section 9. Livestock Operations Permits.

1. Operations Requiring a Permit

A. The owner or operator of a Concentrated Animal Feeding Operation (CAFO) shall obtain a Livestock Operations Permit (LOP) or a provisional LOP from the Commissioner.

B. The owner or operator of any animal feeding operation, who confines and feeds 300 or more animal units at any time during a year, shall obtain an LOP or a provisional LOP from the Commissioner, within 90 days of having reached the 300 or more animal unit threshold, unless that operation confined and fed that same number of animal units prior to April 15, 1998.[n9]

C. The owner or operator of any animal feeding operation shall obtain an LOP or a Provisional LOP if, based on an inspection of the operation by the Commissioner (or designee) and/or other relevant information, it is determined that there are water quality or nutrient management deficiencies. The Permit must be obtained within 90 days of the date on which the Commissioner determines that a water quality or nutrient management issue exists. The owner or operator shall maintain an LOP or a provisional LOP until the Commissioner determines that the matter(s) have been resolved. The Commissioner may require that the operation maintain an LOP indefinitely according to the requirements established in §9.5 of these Rules.

2. Submission Requirements - The owner or operator of an animal feeding operation seeking an LOP shall submit the following to the Commissioner:

A. A copy of an approved NMP or CNMP for the operation for which a permit is being sought. The NMP or CNMP must meet the requirements established in §6.1 of these Rules;

B. Application Form. A completed and signed copy of the LOP Application Form as prescribed by the Commissioner. The Commissioner may request that additional information be submitted with the application form; and

C. Other Information. After the NMP, application form, and any other required information have been reviewed, the Commissioner may notify the applicant if additional information is necessary to make a determination on issuing the permit.

3. Inspection Requirements

A. Inspection of Existing Farms. Prior to issuing an LOP or a provisional LOP to an existing operation, the Commissioner (or designee) shall inspect the livestock operation to determine that it has an adequate NMP or CNMP and is following that plan, and to insure that adequate provisions have otherwise been made for the storage, handling and spreading of all nutrients generated or used on the farm. The inspection may also determine if there are or may be impacts on the environment or other uses in the area associated with manure and other nutrient management on the farm.

B. Inspection of New Operations. Prior to issuing an LOP or a provisional LOP to a proposed new livestock operation, the Commissioner (or designee) shall make a site visit to the proposed location for the livestock operation to determine that the plans for the proposed operation will adequately deal with impacts on the environment and other uses in the area. After the facility has been constructed and has been in operation for at least six months, the Commissioner (or designee) shall inspect the operation to determine that it is being managed in accordance with the NMP or CNMP submitted to the Department and to determine that

adequate provisions have been made for the storage, handling and spreading of all nutrients generated or used on the farm. The inspection may also determine if there are or may be impacts on the environment or other uses in the area associated with manure and other nutrient management on the farm.

C. Inspection Items. The inspector shall, at a minimum, examine:

- (1) The NMP or CNMP to determine if it is consistent with existing conditions on the farm at the time of inspection;
- (2) Records (or projections for new operations) of the amount of manure produced or brought on to the farm;
- (3) Records (or projections for new operations) of the amount of other nutrients produced or brought on to the farm;
- (4) Storage facilities;
- (5) Manure handling procedures and equipment;
- (6) Spreading sites, including buffers and setbacks;
- (7) Field stacking sites, if applicable;
- (8) Routine and catastrophic carcass disposal plans and sites; and
- (9) Location of neighbors, water bodies, wetlands, wells and any other sensitive resources or activities.

4. Application Review and Approval Process

A. Requirements for Review and Approval Process. Upon receipt of an application, NMP or CNMP, and other required information, the Department shall:

- (1) Review the application, NMP or CNMP and other pertinent information as soon as practicable;
- (2) Notify the applicant in writing if the application is incomplete and additional information is required;
- (3) Upon completion of the review, schedule a site review or facility inspection to be conducted within 30 days of the determination of completeness, weather and site conditions permitting. Note: Inspections may not be possible during the winter, thus delaying the scheduling of the site review or inspection;

(4) Conduct the site review or facility inspection based on the inspection requirements in these Rules; and

(5) Make a determination within 30 days of site review or facility inspection, on whether to issue an LOP and what conditions will be included in the permit. The Commissioner shall issue a permit if he finds that:

(a) The NMP or CNMP is complete, correctly prepared and approved by a certified nutrient management planning specialist;

(b) The operation has adequate storage capacity for the manure that will be generated or used on the farm during the permit period;

(c) The manure storage structure(s) and stacking sites conform to the requirements of these Rules;

(d) The operation has adequate land base for the manure that will be generated or used on the farm during the permit period or that alternate uses have been identified for any surplus manure;

(e) The handling, storage and utilization of manure, feed, other nutrients, and milk room wastes will not cause an undue impact on the environment or existing uses in the area;

(f) The operation has an adequate carcass disposal plan for handling routine and catastrophic mortalities; and

(g) The new site proposed is suitable for an animal feeding operation based on soils, slopes, location and other factors affecting sensitive resources and existing uses.

(6) Notify the applicant within 10 working days of the Commissioner's decision to issue or deny the permit.

(7) In the event that one or more of the requirements stated in §9.4 (A)(5) are not met or are incomplete, the Commissioner (or designee) may issue a provisional LOP, as specified in §9.7 of these Rules.

B. CAFO Designation. The Department may consult with the DEP for designating an operation as a CAFO in situations where there are unresolved matters of water quality or nutrient management. This designation will be based on an inspection of the operation by the Commissioner (or designee) and DEP staff, and on other relevant information available to the Department. An operation

designated as a CAFO under this section must apply for an LOP following the procedure outlined in §9.2 of these Rules.

C. MEPDES Requirements for CAFOs. When an operation has been defined or designated as a CAFO, the Department and DEP will jointly determine its eligibility for a MEPDES permit.

5. Issuance of an LOP

A. Permit Content. The LOP authorizes the named livestock operation to operate at the location designated in the permit for a period of 5 years from the issue date and under the conditions set forth in the permit, with which the permittee must comply. Without limitation, the permit will contain the following conditions unless the Commissioner otherwise determines:

(1) A condition that the operation must operate in accordance with the approved NMP or CNMP as submitted to the Department, unless the Commissioner otherwise prescribes, and otherwise must comply with all applicable legal requirements;

(2) A condition that the operation must prepare and submit to the Department periodic updates of the NMP or CNMP as required by these Rules;

(3) A condition that the operation must not degrade the quality of ground or surface waters through failure to properly use and maintain best management practices; and

(4) Specific conditions established by the Commissioner in order to protect the environment and other uses in the area.

B. Term of Permit. LOPs are valid for 5 years from the issue date so long as their conditions are met. Any livestock operation that is required to have a permit under these rRules must obtain a new LOP before the expiration date of the previous permit.

C. Permit Application Fee. The owner or operator of a livestock operation having fewer than 1000 animal units shall pay a permit fee of \$ 50 at the time of submission of the application. The owner or operator of a livestock operation with 1000 or more animal units shall pay a permit fee of \$ 200 at the time of submission of the application. Payment of these fees is applicable to any initial or renewal permit applications.

D. Effective Date. Any livestock operation requiring a permit under these Rules must have a permit and an approved NMPn or CNMP in compliance with these Rules prior to commencement of the operation whether it is a new farm or

farming operation, or a new owner or operator is acquiring an existing farming operation.

6. Revocation of a Permit

A. Basis of Permit Revocation. An LOP may be revoked if:

(1) The livestock operation fails to comply with any of the conditions of the permit or with any of the relevant requirements of the Nutrient Management Act, 7 MRS §4201 et seq., or the Chapter 565 Nutrient Management Rules.

(2) Any of the information upon which the permit is based is false, misleading or inaccurate.

B. Permit Revocation Notice. The Commissioner shall give the Permittee a written notice of the permit revocation immediately following a decision to revoke. The notice shall be sent by certified mail, return receipt requested, and must include:

(1) The name and address of operation whose permit is revoked;

(2) The permit number being revoked;

(3) The effective date of permit revocation;

(4) A statement or list of the reason(s) why the permit is being revoked; and

(5) A notice of the right to request a hearing in accordance with Section 9.6(C) of these Rules.

C. Hearing on Permit Revocation

(1) The Commissioner shall hold a hearing on a permit revocation when:

(a) An operation receiving a notice of revocation requests a hearing, in writing, to the Commissioner and;

(b) The request for a hearing is made no later than 30 days after receipt of the revocation notice required under §9.6(B) of these Rules.

(2) The Commissioner shall notify the operation requesting a hearing, in writing, of the date, time and location of the hearing.

(3) The hearing shall be held in accordance with the requirements of 5 M.R.S. Chapter 375 subchapter IV (Administrative Procedure Act). Evidence may be presented at the hearing that might justify reinstatement of the permit.

D. Decision. If the Commissioner finds the permit holder has complied with the requirements in §9.4. the permit shall be reinstated. The Commissioner shall notify the operation of the decision, in writing, within 30 days of the decision. The written notice shall be sent by certified mail, return receipt requested, and shall contain notice of the right to appeal the Commissioner's decision to the Nutrient Management Review Board in accordance with Section 11 of these Rules.

E. Waiver of Hearing. A permit holder aggrieved by the decision of the Commissioner to revoke an LOP may waive the hearing before the Commissioner and may appeal the decision directly to the Nutrient Management Review Board in accordance with §11 of these Rules. A waiver of the hearing before the Commissioner must be in writing and must be signed by the permit holder.

7. Provisional Livestock Operations Permit. The Commissioner may issue a provisional LOP if one or more of the submission requirements stated in §6 of these Rules is incomplete, not submitted or does not conform to the approved NMP or CNMP for the named operation. In issuing a provisional LOP, the Commissioner shall consider existing nutrient management practices on the farm, the protection of groundwater and surface water, the cost of implementing the plan and the availability of financial assistance to implement the plan.

A. Limitations of the Provisional Livestock Operations Permit. A provisional LOP does not replace an LOP nor does it guarantee that an LOP will be obtained if the submission requirements for the latter are not met when the provisional LOP expires.

B. Provisional Livestock Operations Permit Content. The provisional LOP authorizes the named livestock operation to operate at the location designated in the permit for a maximum period of one year or until all the requirements to obtain an LOP are met, whichever comes first.

C. Term of Provisional Permit. Provisional LOPs are valid for a maximum of one year from the issuance date as long as their conditions are met and actions are taken to fulfill the LOP requirements. Provisional LOPs can be renewed one time provided the extension is solely to complete and conform to submission requirements stated in §9 of these Rules. Criteria for issuance of a second provisional LOP must be consistent with §9.7 of these Rules. Any livestock operation that is required to have a permit under these Rules must obtain a provisional LOP or a new LOP before the expiration date of the previous permit.

D. Revocation of a Provisional Livestock Operation Permit.

(1) Basis for revoking provisional LOP. A provisional LOP may be revoked if:

(a) The livestock operation fails to comply with any of the conditions stated in the provisional LOP.

(b) Any of the information upon which the permit is based is false, misleading or inaccurate.

(2) The Commissioner shall follow the same procedures in revoking a provisional LOP as outlined in Section 9.6 above.

(3) The notice of revocation, hearing provisions and appeal process for a provisional LOP revocation shall follow the same procedure for an LOPt, as described in §9.6 (B) to (E) of these Rules.

[n9= Note: An operation is considered to have 300 animal units if it confines and feeds any combination of animals totaling 300,000 lb. live animal weight. Without limitation, some examples are:

145 dairy cows (plus an equivalent number of young cattle) (1400 lb/ mature animal)

215 dairy cows with no young cattle (1400 lb/animal)

300 beef cows (1000 lb/animal)

750 sows or finishing pigs (400 lb/animal)

6000 feeder pigs (50 lb/animal)

300 horses (1000 lb/ animal)

3,000 sheep (100 lb/animal)

16,500 turkeys (18 lb/animal)

60,000 laying hens/broilers (5 lb/animal)]

3) 7 M.R.C. § 4214

§ 4214. Nutrient management plans for fish hatcheries

1. Nutrient management plan required for fish hatcheries. A person who owns or operates a fish hatchery, not including an off-shore marine aquaculture operation in estuarine or marine waters, must have and implement a nutrient management plan for the fish waste from the hatchery by the date specified in rules adopted pursuant to subsection 2. The commissioner shall maintain a list of fish hatcheries that have a nutrient management plan.

2. Rules for fish hatcheries. In accordance with Title 5, chapter 375, the commissioner shall adopt rules to establish requirements for nutrient management plans for fish

hatcheries, compliance schedules for fish hatcheries, a process for review of the nutrient management plans, periodic revisions of plans and determination of compliance with the plans. A nutrient management plan for a fish hatchery must address storage, management and use of fish waste from the hatchery with the goal of improving water quality.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.