

Formal Grandfathering Determinations

Frequently Asked Questions

1. What does it mean to be grandfathered?

If a confined feeding operation existed before January 1, 2002, when the *Agricultural Operation Practices Act* (AOPA) came into effect, the owner or operator of the operation is deemed to have been issued a permit—in other words the operation is considered to be grandfathered—under section 18.1 of AOPA.

2. What is a formal grandfathering determination?

A formal grandfathering determination is the process through which NRCB staff investigate what your operation's deemed capacity and footprint were on January 1, 2002 when AOPA came into effect. The process can take up to eight months when the NRCB does not have dedicated resources in place to assist with grandfathering determinations.

3. When I read the legislation, it looks like my operation is already considered grandfathered. So why do I need a formal grandfathering determination from the NRCB?

Even if your operation is considered grandfathered under section 18.1 of AOPA, your status and permitted livestock numbers and facilities might not be on your municipal permit, your operation might not have a previously issued permit, or there may have been changes to your operation since 2002. If this is the case, you have nothing official to provide a bank or a prospective buyer if you are seeking to refinance, expand, or sell your operation. Having the NRCB make a formal grandfathering determination to confirm your permitted livestock numbers ensures that your grandfathered status is verified and documented. This includes confirming the permitted livestock type, number of livestock, and CFO facilities at your operation.

4. What are the benefits of being formally grandfathered?

Official confirmation of your grandfathered status helps to protect your confined feeding operation should zoning or planning changes occur in your municipality. It also confirms the status of your confined feeding operation in case a financial institution requests confirmation of your permit status, or you want to sell your operation.

5. How do I go about seeking a formal grandfathering determination?

Fill out and submit a Grandfathering Determination Request form, obtained from an NRCB staff member or on the NRCB website, including your name, land location, existing permits, and the livestock type and capacity of your CFO facilities on January 1, 2002 that you are claiming. You should also include any records you have to support your claim. These can include aerial imagery, personal photos, livestock purchase records, livestock sales records, tax records, feed purchase records, etc. Once the NRCB receives this form and supporting information, a staff member will be assigned to work with you throughout the process to confirm your claims. Public notice may also be required as part of the process.

6. If I request a formal grandfathering, won't that open me up to excessive regulation from the NRCB?

No. This program is NOT intended as a means to identify and punish older operations. The program is intended to help operators obtain important documentation in case they need to sell, refinance, or expand their operations, and to confirm their status before more time passes and records from pre-2002 become even more difficult to find.

7. I'm already grandfathered. Could anything invalidate my operation's status?

If your operation was abandoned, if you constructed or modified it without a permit, or if you are creating a risk to the environment it could invalidate all or part of your grandfathered status.

8. What are my rights and obligations under AOPA as a grandfathered operation?

All livestock operations, including grandfathered confined feeding operations must manage their manure, any manure runoff, and keep records in compliance with the legislation. Grandfathered operations must also ensure that the operation's footprint, livestock capacity, manure storage capacity, and livestock category are the same as they were on January 1, 2002, and don't create a risk to the environment.

9. My operation is grandfathered. What limitations are there for expanding?

Your operation can continue to operate as it did in 2002, as long as you don't make any changes that would require a permit (extra pens, barn additions, increased manure storage, or increases in animal numbers) or create a risk to the environment (contamination of groundwater or surface water). If you do any of these things, you will need to speak to the NRCB about a new permit. If you want to expand your operation you will need to meet the requirements set out in AOPA for any new or expanding facilities.

10. How do I know whether I'm already grandfathered?

The best way to check whether your operation is already grandfathered is to contact the NRCB regional office closest to you and talk to an NRCB inspector or approval officer.

11. What happens if I expanded my operation since 2002?

The NRCB's goal is to bring operations into compliance with the AOPA requirements. NRCB staff will work with you to get through the permit application process if it is determined that you need a permit for any changes made to your operation since 2002.