

**Massachusetts Department of Environmental Protection
Division of Watershed Management
Title 5 Program**

**Frequently Asked Questions (FAQ)
Related to Guidance on Title 5 (310 CMR 15.000)
Compliance for Accessory Dwelling Units**

Please note that this FAQ only addresses requirements in Title 5, 310 CMR 15.000. Any questions that local Boards of Health or Health Departments (BOHs) may have related to impacts that the AHA may have on its local by-laws or regulations should be directed to the municipality's legal counsel.

MassDEP recognizes that local approving authorities (BOHs) may have some additional questions regarding AHA and Title 5. MassDEP has included a number of questions and answers in this document and will continue to update the document as additional questions are received.

1. Q. Are septic systems that were constructed in accordance with the 1978 Title 5 Code considered nonconforming?

A. Yes. Any septic system not constructed in accordance with 310 CMR 15.000 (the "1995 Code"), including those constructed in accordance with 310 CMR 15.00, the 1978 Code, are nonconforming.

2. Q. If the total number of rooms between the principal dwelling and the ADU exceeds eight, is the number of bedrooms determined in accordance with the definition of bedroom in 310 CMR 15.002 by dividing the total number rooms by two and rounding down?

A. No. Both the principal dwelling and the ADU are separate and distinct dwelling units that occupy the same facility and the number of bedrooms in each of these units must be counted separately. This is consistent with how the number of bedrooms in an apartment building are counted: the number of rooms in the building are not totaled and then divided by two.

3. Q: If a Title 5 Inspection is performed and an ADU is discovered, would it be a "Conditional Pass" if there is a one compartment tank and adequate SAS?

A: No. The septic system would be inspected using the criteria in 310 CMR 15.303. If no failure criteria are triggered, the system can pass without condition. However, the system inspection report should reflect the circumstances encountered at the facility so that the BOH is made aware and can follow up. Often this is noted in the comments section of the system inspection report. The Department's *Guidance on Title 5 (310 CMR 15.000)*

Compliance for Accessory Dwelling Units (Guidance) and Question 15 below provide additional information on the requirements for two compartment tanks/two tanks in series. ([Title 5 Official Inspection Form](#) | [Mass.gov](#))

4. Q: If a septic system [for a 3-bedroom single family house] was previously repaired or upgraded and variances or local upgrade approvals (LUAs) were granted, [the system] is not in full compliance with Title 5, and an ADU is proposed that will increase the design flow of the facility, are the only options for a local approving authority to work with the 3-bedroom design by decreasing the bedrooms [in the principal dwelling] to 2 and adding the 1 bedroom to the ADU? Can alternative treatment be used in “increase design flow?” Are there any other alternatives?

A: The addition of an ADU is new construction if there is an increase in the total number of bedrooms on the facility (i.e. an increase in design flow). If the existing system was upgraded with LUA and/or variances and additional options are not available, it may be possible that full compliance can be achieved elsewhere on the facility.

5. Q: Are there any circumstances where a fully compliant septic system can use Alternative Treatment to increase the design flow to serve an ADU without increasing the SAS?

A: In certain limited situations the sizing of the SAS may be reevaluated depending upon the specific Alternative System being proposed and its approval status. More information on approved Alternative systems can be found here: [Approved Title 5 innovative/alternative technologies](#) | [Mass.gov](#) . Please note any restrictions that may be posed by the requirements of 310 CMR 15.242(1)(b).

6. Q: In a nitrogen sensitive area, such as a Zone II, if a 3 bedroom (30,000 sq. ft. of facility land required) becomes a 4 or 5 bedroom due to the addition of an ADU, can an Alternative Treatment be added to allow for the increase in flow if the SAS has adequate leaching?

A: In public and private water supply protection areas subject to the nitrogen loading restrictions in 310 CMR 15.215(1), 310 CMR 15.288(5) provides that the nutrient removal credit for use of the system pursuant to 310 CMR 15.217 (Systems with Enhanced Nitrogen Removal) will be established in General Use Certifications issued for alternative systems that remove nitrogen. More information regarding systems with enhanced nitrogen removal that have been certified for General Use can be found here: [Approved Title 5 innovative/alternative technologies](#) | [Mass.gov](#).

The 440 gallons per day per acre nitrogen loading limitation imposed by 310 CMR 15.215(1) may be calculated in the aggregate by using nitrogen credit land in accordance with an approved Facility Aggregation Plan or Community Aggregation Plan in accordance with the provisions of 314 CMR 15.216.

7. Q: Are ADUs subject to the requirements for Shared Systems in 310 CMR 15.290 through 15.292?

A: No. Shared Systems serve more than one Title 5 Facility. ADUs and the principal dwellings they are accessory to are located on the same Facility; therefore, Shared System criteria do not apply. However, if at some point in time in the future the Facility is divided into separate facilities with the ADU and the principal dwelling on separate facilities, Shared System approval would be required in accordance with 310 CMR 15.292.

8. Q: Are any of the requirements of Title 5 [that apply to] ADUs subject to the Variance provisions of 310 CMR 15.410?

A: Yes. The regulation at 310 CMR 15.410(1) allows Local Approving Authorities to vary the application of any provision of Title 5 in accordance with the limitations and requirements of 310 CMR 15.410, 15.411, 15.413, 15.414, 15.415, and 15.416. The Local Approving Authority is reminded that it may grant variance only after:

- The person requesting a variance has established that enforcement of the provision of Title 5 from which variance is sought would be manifestly unjust. In the case of new construction, the project proponent must demonstrate that this would deprive them of substantially all beneficial use of the property; and
- The person requesting a variance has demonstrated that an equal level of environmental protection can be achieved without strict application of the provision from which variance is sought.

9. Q: If an ADU is proposed to be constructed on a Facility containing a single-family house with a recorded deed restriction limiting the dwelling to two bedrooms and the ADU will add one or more additional bedrooms to the Facility, may the Facility owner request approval from the Local Approving Authority and MassDEP to release the deed restriction?

A: The MassDEP-approved Grant of Title 5 Bedroom Count Deed Restriction contains a provision on Amendment and Release. This provision provides the Local Approving Authority with discretion to amend the Restriction. It further provides that the Local Approving Authority must release the Restriction if the property will be connected to sewer and the system will be abandoned. MassDEP's approval is not required for amendment or release of the Restriction, but the Grantor must send a certified Registry copy of an amendment or release to MassDEP within 30 days of its date of recordation and/or registration.

10. Q: For facilities proposed to have an ADU, is there a requirement for a minimum lot size?

A. Title 5 only regulates Facility acreage if it is located in an area designated as nitrogen sensitive under 310 CMR 15.214(1)(a) (public or private water supply protection area) and subject to the nitrogen loading restrictions of 310 CMR 15.215(1).

11. Q. Does anything prohibit locating two septic systems on a facility on which an ADU is proposed?

A. No. Many Facilities are served by more than one septic system. Please refer to the Guidance for additional information on Facilities with ADUs served by multiple septic systems.

12. Q. Does the presence of an on-site well impact design issues related to the septic system to serve a facility that includes an ADU?

A. Yes. The presence of an on-site well on a Facility will affect septic system design. Applicable setback distances required by 310 CMR 15.211 and nitrogen loading limitations in 310 CMR 15.215(1) must be met.

13. Q. Does MassDEP anticipate modifying Title 5, specifically the setback requirements of 310 CMR 15.211?

A. No. MassDEP has no plans to propose revisions to Title 5 at this time.

14. Q. Will seasonal occupancy of ADUs as rental units be permitted under Title 5?

A. Yes. Title 5 does not regulate rental of residential dwellings. The only Title 5 provision that addresses seasonal use of structures is 310 CMR 15.260 (Tight Tanks).

15. Q. It is our understanding that ADUs will be regulated as multi-family dwellings subject to the provisions of 15.223(1)(b) requiring a two-compartment tank or two tanks in series with a combined minimum liquid capacity of 1,500 gallons. a. Assuming the existing dwelling's tank is 1,500 gallons, what volume is recommended for the second tank serving the ADU? b. How do the provisions of 15.229 regarding pumping to septic tanks apply where, for example, a detached ADU's tank needs to be pumped to the existing tank?

A. As stated within the Guidance, a multi-compartment tank or two tanks in series is required because 310 CMR 15.223(1)(b) requires a multi-compartment tank or two tank in series for systems serving Facilities other than a single-family dwelling unit (the septic system will serve both the principal dwelling and the ADU). In the event that the existing single compartment septic tank of 1,500 gallons is required to become a multi-compartment septic tank or two tanks in series, then the requirements of 310 CMR 15.224 or 15.225 respectively apply. In summary the second compartment shall be sized for a minimum hydraulic detention time of 24 hours based on the design flow.

If a proposed detached ADU is designed to connect to the existing septic system via a pump chamber, then the requirements of 310 CMR 15.229 apply. Please refer to this section which has specifics depending upon the percentage of design flow being pumped and whether the pump is a grinder versus non-grinder pump.

16. Q. It is likely that some ADUs will not be able to achieve full compliance with all new construction compliance standards, e.g. setback distances. Would the installation of a nitrogen reducing technology required under a local regulation be a basis upon which a variance could be granted consistent with 15.414(4)?

A. Depending on the facts and circumstances of each individual case, Title 5 authorizes local boards of health to vary the requirements of 310 CMR 15.00 in accordance with the standards and limitations established by 310 CMR 15.410 through 15.415. Comparison of the public health, safety, and environmental benefits of a system that fully complies with Title 5 requirements to a system that is not fully compliant but includes enhanced nitrogen removal is dependent on factors such as, but not limited to: whether the system is located in a public or private water supply protection area, a natural resource nitrogen sensitive area, or both; and the specific Title 5 requirements proposed to be varied. As stated in 15.414(4), increased flows not in compliance with 310 CMR 15.000 will rarely provide better protection than existing flows to a system designed and constructed in compliance with the 1978 Code or 310 CMR 15.000.

17. Q. Can a local regulation that is more restrictive than Title 5 be enforced as it relates to the septic system to serve an ADU?

A. Local Approving Authorities should consult with their legal counsel regarding the application of local requirements to ADUs subject to the AHA. Regulations that provide definitions and details regarding the administration of the ADU provisions of the AHA, 760 CMR 71.00: *Protected Use Accessory Dwelling Units*, became effective on January 31, 2025.

18. Q. Will mobile homes, manufactured homes and tiny homes, if proposed for use as an ADU, and if able to meet the requirements of the Affordable Homes Act, be treated the same as stick-built construction for the purpose of determining System Sewage Flow Design flows?

A. Yes. The number of bedrooms in these ADUs will be counted consistent with stick-built construction units and will be added to the number of bedrooms in the principal dwelling for purposes of determining if new construction requirements apply. Please note that neither the design flows assigned to Family Mobile Home Parks nor to Retirement Mobile Home Parks in 310 CMR 15.203(2) are applicable since they refer to mobile home parks in the aggregate and not an individual mobile home which is being used as an ADU.

19. Q. Can an existing garbage grinder be removed to allow a proposed ADU to take advantage of the available capacity?

A. No. Although the presence of a garbage grinder increases the leaching area by 50 percent to account for the organic loading, it does not increase the design flow if removed. In addition, the existing Disposal System Construction Permit (DSCP) and Certificate of Compliance (CoC) reflect the design flow without the additional SAS increase.

20. Q. Can tight tanks be allowed to serve an ADU?

A. No. Tight tanks are prohibited for new construction, additionally, tight tanks may only be used to eliminate a failed on-site system when no other feasible alternative to upgrade the system in accordance with 310 CMR 15.201 through 15.293 exists.