

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Agriculture  
(DLS Control No. 14-248)**

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**Overview and Legal and Fiscal Impact**

These regulations establish the Maryland Agricultural Certainty Program (Program) within the Maryland Department of Agriculture. The Program is a voluntary initiative exempting certified agricultural operations from specified nutrient and sediment reduction requirements for a 10-year period.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**Department of Agriculture:**

Soil and Water Conservation: Maryland Agricultural Certainty Program:  
COMAR 15.20.11.01-.10

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**Legal Analysis**

**Background**

Chapter 339 of 2013 established the Maryland Agriculture Certainty Program within the Maryland Department of Agriculture in order to recognize the environmental stewardship and contribution of Maryland farmers who implement and maintain best management practices consistent with the State's goals of reducing the amount of nutrients and sediment entering the Chesapeake Bay, its tributaries, and other waters of the State. The Program is a voluntary initiative exempting certified agricultural operations from specified nutrient and sediment reduction requirements for a 10-year period. Chapter 339 also required the department to establish a program to certify a person to verify whether an agricultural operation should receive certification and exemption for the 10-year period and whether a certified agricultural operation remains in compliance with Program requirements.

**Summary of Regulations**

The regulations establish the Maryland Agriculture Certainty Program within the department. Specifically, the regulations:

- establish the purpose of the Program and criteria for certifying professionals to review and evaluate applicants and enrollees;
- specify who and what land is eligible for participation in the Program;
- prohibit a Concentrated Animal Feeding Operation, as defined in COMAR 26.08.01.01B, from participating in the program;
- specify the application process for the applicant and certified verifier;
- specify criteria under which an application may be approved by the department;
- specify the details of the certainty agreement that the person responsible for the management of a certified agricultural operation must enter into with the department;
- specify requirements for maintaining certification for a 10-year period;
- specify protocol for an operator and the department to follow when certain changes occur with the agricultural operation;
- specify requirements for an agricultural operation to come into compliance with certain laws, regulations, and permit requirements at the expiration of the 10-year certification period;
- specify requirements for an operation to qualify for recertification;
- specify the laws and regulations that a certified operation is exempt from and subject to during the 10-year certification period (an operation is subject to regulations to revise the phosphorus site index or implement a phosphorous management tool);
- specify responsibilities of a certified verifier for the application process and interim site reviews and inspections;
- require that the verifier, department, and Maryland Department of the Environment handle information that is collected as confidential, and that that the department make all public records concerning any operation available for public review in a manner that provides the greatest public disclosure while protecting the identity of the person for whom the record relates;
- specify the frequency and requirements for interim site reviews and inspections;
- specify the actions the department may take following a verifier's report or inspection;
- specify qualifications and eligibility requirements for an individual to become a certified verifier;

- require the manager of an operation to submit an annual report to the department containing specified information and the operator of the operation to keep certain records;
- require the department to submit an annual report containing specified information to certain committees and the Governor on or before a certain date;
- specify when the department may deny, suspend, or revoke the certification of an operation or a verifier; and
- establish an Agricultural Certainty Oversight Committee and specify the responsibilities of the Committee and the frequency with which the Committee meets.

## **Legal Issue**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 8-1001 through 8-1013 of the Agriculture Article as authority for the regulations. Title 8, Subtitle 10 of the Agriculture Article pertains to the Maryland Agricultural Certainty Program. Section 8-1003 establishes the Program and requires the department to develop the Program in coordination with the Maryland Department of the Environment. Sections 8-1004 through 8-1011 specify details of the program, including certification of an agricultural operation, recertification, exemptions for compliant certified agricultural operations, duties of managers of certified agricultural operations, inspections, certifying verifiers, records available for public review, confidentiality, and revocation or suspension of certification. Section 8-1012 requires the department, with approval from the Maryland Department of the Environment, to adopt regulations necessary to implement the Program. Section 8-1013 establishes an oversight committee to assist with development of regulations and implementation of the Program.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Technical Corrections and Special Notes**

The Department of Legislative Services has notified the department regarding several technical corrections and areas where greater clarity could be provided. First, the department advises that, in subsection .04E(1), a certification may be granted to an operation that “meets the laws, regulations, rules and permit conditions applicable to the operation” and not just requirements related to nitrogen, phosphorus, and sediment; the department confirms that broader compliance is intended. Second, the department advises that the word “problem” in subsection .04F(8) is deliberately broad in order to preserve department discretion regarding the resolution of a nitrogen, phosphorus, or sediment problem on the property of an operation in the 10-year period following certification; the department did not believe a more precise term is appropriate to prescribe what constitutes a problem. Third, the department affirms that, despite potentially unclear language in paragraph .05I(3)(j), the regulation is clearly intended to require an operation to comply with the latest phosphorus management tool adopted by regulation, even

if the date that a future version of the tool is submitted as part of a regulation in accordance with the Administrative Procedure Act is after the enactment of Chapter 339 of 2013. The department indicates that its intent has been made clear prior to and within this rulemaking.

Additionally, the department has submitted the following technical corrections:

- fixing typographical errors in regulations .02B(3), .05B, .05D(3)(a), .06B(3);
- fixing tabulation errors in regulations .04D(2), .06E(1), .06F(3);
- fixing punctuation errors in regulations .05A(2), .06F, .08A(2), .09A(2);
- clarifying a reference to watershed implementation plans in .02B(17);
- adding clarifying language to regulations .06B and E; and
- removing language from regulation .09B(1)(g) for clarity.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations have a nominal impact on the department and the Maryland Department of the Environment and no impact on local governments. The Department of Legislative Services generally concurs, noting that the regulations should have no impact at all on State government because the regulations merely implement Chapter 339 of 2013, the impact of which has already been accounted for in the fiscal and policy note for SB 1029 of 2013 (enacted as Chapter 339). The fiscal and policy note for SB 1029 indicated that the bill was not expected to materially affect State finances and could be implemented with federal grant funds and other existing resources. These regulations should not have any independent impact.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The department's assessment may be referring only to whether or not the regulations have any negative economic impact on small businesses because the department separately indicates that participants in the program, contractors that install agricultural best management practices, and consultants that become certified verifiers could benefit from the regulations.

The Department of Legislative Services concurs that the regulations have no impact; the regulations merely implement Chapter 339 and should not have any independent impact. The potential benefit to contractors that install best management practices and consultants that become certified verifiers was not mentioned in the fiscal and policy note for SB 1029; however, the Department of Legislative Services concurs that small business contractors and consultants could benefit from the program.

### **Contact Information**

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