

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/05/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/17/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

15 20 11 01-.10

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Tonia C Martin

Telephone Number

410-841-5829

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50 Harry S. Truman Parkway

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Annapolis MD 21401

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5. Name of Person to Call About this Document

Tonia Martin

Telephone No.

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tonia.martin@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Craig A. Nielsen, Assistant Attorney General, (telephone #410-841-5883) on September 3, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Earl F. Hance

Title

Secretary

Telephone No.

410-841-5881

Date

September 3, 2014

Title 15
DEPARTMENT OF AGRICULTURE
Subtitle 20 SOIL AND WATER CONSERVATION

15.20.11 Maryland Agricultural Certainty Program

Authority: Agriculture Article, §§8-1001—8-1013 Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Agriculture proposes to adopt new Regulations .01 — .10 under a new Chapter COMAR 15.20.11 Maryland Agricultural Certainty Program.

Statement of Purpose

The purpose of this action is to implement the voluntary Agricultural Certainty Program that will improve water quality compliance by agricultural operations. Under this program, operators who meet and maintain compliance with state water quality requirements may be certified for a 10 year period, during which time their farms are not subject to new state and local nutrient and sediment reduction requirements. This action explains the requirements, responsibilities and benefits for agricultural operators who participate in the Agricultural Certainty Program; it also explains the requirements for individuals who verify certainty compliance and the responsibilities of the Maryland Department of Agriculture when administering this program.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The Department of Agriculture will incur nominal costs when implementing this program because it will be covered by a grant. Participation in this program by agriculture operators is totally voluntary with moderate costs and contractors will benefit moderately from requests to install additional BMPs.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	Nominal
B. On other State agencies:	(E-)	Nominal
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Moderate
(1)	(+)	Moderate
E. On other industries or trade groups:	(+)	Moderate
F. Direct and indirect effects on public:	(+)	Moderate

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Impacts to agency nominal-costs for initial set up and administration of program covered by a grant.

B. MDE has a role reviewing applicants who have an MDE permit, projected to be nominal & handled by existing staff.

D(). Participation voluntary; participants could use Certainty as marketing tool; some costs possible for verification and to implement additional BMPs but cost share available for implementation of BMPs.

D(1). Participation voluntary; participants could use Certainty as marketing tool; some costs possible for verification and to implement additional BMPs but cost share available for implementation of BMPs.

E. Contractors benefit from business of installing additional BMPs; consultant community could diversify business to become verifiers and increased income.

F. Public benefit from accelerating water quality improvements.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Louise Lawrence, Chief, Maryland Department of Agriculture, Office of Resource Conservation, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, or call 410-841-5873, or email to Louise.Lawrence@maryland.gov, or fax to 410-841-5734. Comments will be accepted through November 17, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Federal grant

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Minimal impact to small business. Program is voluntary. Participants who install additional BMPs may incur costs but there are public sources of cost share funding available and a marketing advantage may occur from participation and reduction of risk. Contractors who install BMPs may have an increase in business and income. Private sector consultants who become verifiers may also increase revenue from added income stream

G. Small Business Worksheet:

1a. Intended Beneficiaries.

Farm operators, verifiers, BMP contractors

1b. Intended Beneficiaries: Households.

General public-improvements to water quality

1c. Intended Beneficiaries: Businesses.

Farm operators, verifiers, BMP contractors

Program is voluntary. Participants who install additional BMPs may incur costs but there are public sources of cost share funding available and a marketing advantage may occur from participation and reduction of risk. Contractors who install BMPs may have an increase in business and income. Private sector consultants who become verifiers may also increase revenue from added income stream

2a. Other Direct or Indirect Impacts: Adverse.

none

2b. Other Direct or Indirect Impacts: Positive.

none

3. Long-Term Impacts.

Accelerate improvements to water quality

- 4. Estimates of Economic Impact.
 - A. Cost of providing goods and services. +benefit
 - B. Effect on the workforce. N/A
 - C. Effect on the cost of housing. N/A
 - D. Efficiency in production and marketing. + benefit
 - E. Capital investment, taxation, competition and economic development. +benefit
 - F. Consumer choice. N/A

Attached Document:

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

Chapter 11 Maryland Agricultural Certainty Program

Authority: Agriculture Article, §§8-1001—8-1013 Annotated Code of Maryland

01. Scope.

A. This chapter establishes the requirements and standards to be met for agricultural operations to achieve voluntary certification under the Maryland Agricultural Certainty Program and the privileges and responsibilities that arise through certification.

B. The purpose of the Program is to accelerate the implementation of best management practices to meet state agricultural nitrogen, phosphorus, and sediment reduction goals.

C. This chapter also establishes a program for certifying professionals qualified to review and evaluate agricultural operations that apply or are enrolled in the Program.

02. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Agricultural Certainty”, “Certainty”, or “Program” mean the Maryland Agricultural Certainty Program.

(2) “Agricultural operation” or “operation” means a business or activity where a person tills, crops, keeps, pastures, or produces an agricultural product, including livestock, poultry, plants, trees, sod, food, feed or fiber by in ground, out-of-ground or other culture.

(3) “Agricultural sources of nitrogen, phosphorus or sediment” means sources of nitrogen, phosphorus or sediment that originate from an agricultural operation’s land and animals. This does not include sources of nitrogen, phosphorus, or sediment that originate from residential, municipal, industrial, or a commercial activity.

(4) “Best management practice” or “BMP” means a conservation or pollution control practice that manages soil loss due to farming practices or manages animal wastes or agricultural chemicals so as to minimize movement of nitrogen, phosphorus and sediment into waters of the State.

(5) “Certainty agreement” means a written agreement between the owner or operator of an agricultural operation and the Department, as provided under this chapter.

(6) “Certified verifier” means an individual certified by the Department under this chapter to review, inspect and evaluate conditions, records and management of an operation for purposes of qualifying for and maintaining compliance with the Maryland Agricultural Certainty Program.

(7) “Department” or “MDA” means Maryland Department of Agriculture.

(8) “Department of the Environment” or “MDE” means the Maryland Department of the Environment.

(9) “Farm parcel” means agricultural land that is separately described by deed or tax parcel.

(10) “Holds an interest,” means a person who:

(a) Has any ownership interest or any other legal or equitable interest in an operation;

(b) Has any outside employment relationship with the owner or operator of the operation; or

(c) Has a relationship to the owner or operator of the agricultural operation as spouse, parent, child, sibling, grandchild, grandparent, step-parent, step-child, step-sibling, step-grandchild, or step-grandparent.

(11) “Interfamily transfer” means a transfer of ownership or management of an operation between or among individuals who have a familial relationship including parent, spouse, child, sibling, grandchild, grandparent, step-parent, step-child, step-sibling, step-grandchild, or step-grandparent.

(12) “Maryland Nutrient Tracking Tool” or “MNTT” means a Department approved online platform with a performance-based calculation component that enables users to analyze agricultural parcels and their management to determine baseline compliance with the more stringent of the nutrient loading baselines outlined in either the Chesapeake Bay Total Maximum Daily Load (TMDL) for each watershed or the local TMDL that has been adopted for an impaired water body including Watershed Implementation Plan goals and any other nitrogen, phosphorus and sediment control requirements. Through site and operation-specific data inputs, the calculation component can generate multiple management scenarios and compute the nutrient reductions achieved by the application of agricultural best management practices.

(13) “Nutrient management plan” or “NMP” means a plan that complies with the requirements of COMAR 15.20.07 and 15.20.08 that is prepared by a certified nutrient management consultant to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other plant nutrients in order to:

(a) Minimize nutrient loss or runoff; and

(b) Maintain the productivity of soil when growing agricultural products.

(14) “Person” means the State, any county, municipal corporation, or other political

subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.

(15) "Soil conservation and water quality plan" or "SCWQP" means a farm plan approved by a local soil conservation district to minimize soil erosion and to minimize the movement of sediment, animal waste, nutrients, or agricultural chemicals into waters of the State.

(16) "Total maximum daily load" or "TMDL" means an estimate set in accordance with Clean Water Act requirements which establishes the amount of a particular pollutant, in this case nitrogen, phosphorus or sediment inputs, that a water body can assimilate and still meet water quality standards.

(17) "Watershed Implementation Plan" or "WIP" means the plan required by the U.S. Environmental Protection Agency for achieving the pollution reduction goals and allocations necessary in implementing the Chesapeake Bay TMDL.

03. Eligibility.

A. Except as provided by this regulation, a person who operates an operation is eligible to apply for the Program.

B. An application for agricultural certainty shall include a farm parcel in its entirety but need not include all farms or farm parcels under the management of a person.

C. An operation or a part of an operation defined as a Concentrated Animal Feeding Operation ("CAFO") in COMAR 26.08.01.01 B. or any operation in the process of applying for a CAFO permit is not eligible for certification under the Program.

04. Certification Process-Agricultural Certainty.

A. A person who applies for certification for an operation shall submit to the Department the following:

(1) An application on a Department form that includes a farm parcel in its entirety but need not include all farm parcels under the applicant's management;

(2) Documentation from the local soil conservation district that the current SCWQP for the operation is fully implemented to address all soil conservation and water quality issues;

(3) A map identifying the location and boundaries of the operation showing field identification numbers and location of BMPs;

(4) A current NMP that is fully implemented and is developed for the operation in accordance with regulations adopted by the Department; and

(5) A report from a certified verifier engaged by the applicant that contains the information specified in §B of this regulation.

B. A certified verifier who complies with §C of this regulation and is engaged by the owner or operator of an operation to prepare a certified report in support of an application under §A of this regulation shall:

(1) Inspect the operation before making the report;

(2) Review all relevant records, including but not limited to those provided in §A of this regulation; and

(3) Prepare a report on a Department form, supplemented by the verifier, that confirms the following:

(a) The SCWQP provided by the applicant for the operation is being fully implemented and addresses all nitrogen, phosphorus and sediment runoff issues on the operation;

(b) The NMP provided by the applicant for the operation is being implemented in accordance with applicable Department regulations COMAR 15.20.07 and 15.20.08;

(c) The agricultural management and BMPs implemented on the operation which enable that operation to meet the approved local or Chesapeake Bay TMDL baseline requirements as determined by an analysis using the MNNT; and

(d) No deficiencies exist and no corrective measures are needed on the operation.

C. A person who holds an interest in an operation may not act as a certified verifier for that operation.

D. Prior to approving an application for certification under the Program, the Department:

(1) Shall review the application and information submitted to assure that it is complete, true, and accurate and notify the applicant of any deficiencies;

(2) Shall notify MDE by providing a copy of the application or any portion of the application as requested by MDE. After receipt of this information, MDE shall advise the Department if:

(a) The operation holds or has applied for a permit from MDE;

(b) MDE will participate in an inspection of the operation, with the verifier if requested by MDE; and

(c) MDE approves the operation, if the operation holds or has applied for a permit from MDE, for participation in the Program; or

(d) Any conditions are required to be satisfied by the operation, if the operation holds or has applied for a permit from MDE, before MDE would approve the operation for participation in the Program;

(3) Shall determine the compliance status of the operation and applicant with all the Department's laws, regulations and permit conditions applicable to nitrogen, phosphorus and sediment;

(4) Shall review information submitted by the certified verifier to assure that it meets the requirements set forth in this chapter;

(5) May inspect the operation, with the verifier if requested by the Department, and request records pertaining to the SCWQP, NMP or management otherwise related to addressing nitrogen, phosphorus and sediment issues on the operation in order to verify the application; and

(6) Shall retain as required by law the application, information and records in a manner that protects its confidentiality prior to certification and retain all records and information in a manner that protects the identity of the person applying in perpetuity.

E. A certification may be approved if the Department determines that an operation:

(1) Meets the laws, regulations, rules and permit conditions applicable to the operation at the time of certification;

(2) Has no outstanding conditions resulting in movement of nitrogen, phosphorus or sediment that impacts water quality;

(3) Receives approval from MDE if the operation is permitted or has an application submitted to be permitted by MDE;

(4) Is managed under a current SCWQP that fully implements BMPs to address all

nitrogen, phosphorus and sediment runoff on the operation;

(5) Manages fertility using a current NMP fully implemented in accordance with COMAR 15.20.07 and 15.20.08;

(6) Is in compliance with all State and Federal laws, regulations and permit conditions related to agricultural sources of nitrogen, phosphorus and sediment on the operation;

(7) Meets the agricultural nitrogen, phosphorus, and sediment reduction thresholds required for achieving the local and Chesapeake Bay TMDLs approved by the U.S. Environmental Protection Agency at the time of certification as determined by MNTT; and

(8) Enters into the Certainty agreement required under §F of this regulation.

F. The person responsible for the management of an operation approved for the Program shall enter into a Certainty agreement with the Department identifying requirements for maintaining the certification including:

(1) Continued compliance with applicable local, State and Federal laws, regulations and permit requirements pertaining to nitrogen, phosphorus and sediment control;

(2) Maintenance and full implementation of a current NMP;

(3) Maintenance of BMPs that address nitrogen, phosphorus and sediment control, and are part of the SCWQP and any other BMPs necessary to achieve certification;

(4) Meeting record keeping and annual reporting requirements;

(5) Agreeing to site reviews and inspection of records at least once every 3 years to verify current conditions on the operation, compliance with certification requirements and recognizing that the Department reserves the right to inspect more frequently if it determines a need;

(6) Agreeing to notify the Department no later than 60 days prior to any change in the owner or operator;

(7) Agreeing to notify the Department as soon as practicable, but in any case no later than 60 days after the occurrence of any condition or event which would impact the certification under the Program including but not limited to, property title transfers or changes in the operation, pursuant to Regulation .05 (A)2, that result in or increase nitrogen, phosphorus or sediment runoff or change adherence to TMDL baseload; and

(8) Agreeing to address within a timeframe established by the Department, after concurrence by MDE, any nitrogen, phosphorus or sediment runoff problem arising on a certified operation during certification period through no fault of the operator.

05. Agricultural Certainty Certification – General Requirements.

A. Unless suspended or revoked, a certification remains in effect for a 10 year period following approval by the Department if:

(1) The operation remains in compliance with the Certainty agreement set forth in Regulation .04F of this chapter and all other requirements of the Program under this chapter; and

(2) There are no changes to the operation. A change to the operation means:

(a) A change in the operator with the exception of an interfamily transfer;

(b) A change in the owner when it results in a change in the operator;

(c) A change in average annual number of animal units of 10 percent or greater;

or

(d) A change in the operation resulting in the operation being ineligible for the

Program.

B. An operator who has any of the changes identified in Regulation .04F(7) or Regulation .05(A)2 of this chapter shall notify the Department within 60 days;

(1) And execute an agreement with the Department to bring the operation into compliance to meet certification requirements;

(2) Reapply for certification; or

(3) Terminate the Certainty agreement.

C. For changes in the operation that would not result in suspension of certification under this chapter including rotation of crops, implementation of additional BMPs, or other changes that receive prior approval by MDA provided they do not exceed the allowable TMDL threshold for the operation, MDA may:

(1) Approve changes not deemed significant; and

(2) Require documentation be provided by a new MNTT analysis verifying TMDL thresholds continue to be met.

D. When nitrogen, phosphorus or sediment runoff conditions arise as a result of natural causes, such as severe weather events, which are not within the control of the operator of the operation:

(1) The certification holder shall provide notice within 60 days to the Department describing the condition;

(2) The Department will coordinate a site inspection with MDE and may assign a certified verifier to conduct a site inspection; and

(3) Following a Department review, the Department, with concurrence from MDE, shall:

(a) Allow continuation under the Program if a repair, correction or installation of additional BMPs to address the nitrogen, phosphorus or sediment runoff is accomplished within reasonably expeditious timeframe identified by an agreement executed with the Department; or

(b) Suspend certification if the Department finds the condition arose due to mismanagement, lack of maintenance or the operator of the operation failed to provide notice to the Department within 60 days.

E. Following the site inspection that takes place nearest to year 9 during the 10 year certification period, the operator shall take steps to address compliance issues with any new local, State or Federal law, regulations or requirements that took effect during the Certainty agreement period.

F. After each review conducted at the direction of MDA under Regulation .06D of this chapter, the certified verifier shall list on a Department form and orally explain to the certification holder any current or proposed laws that will require changes to the operation before the 10 year completion of the Program.

G. At the expiration of the certification, an operation shall be in compliance with all laws, regulations or permit requirements relating to nitrogen, phosphorus and sediment runoff control and that are in effect at that time.

H. An operation certified under Regulation .04 of this chapter may apply and qualify for recertification if:

(1) The application and information required under Regulation .04A of this chapter reflect current conditions as submitted to the Department;

(2) All the requirements in Regulation .04 of this chapter are met; and

(3) MDE approves the recertification if an operation is permitted or has a permit pending with MDE.

I. An operation that is certified:

(1) Except as provided in subsections (2) and (3) of this section, is not subject during its ten year certification period to local and state laws, regulations or requirements enacted or adopted after the date of certification that require the reduction of agricultural sources of nitrogen, phosphorus, or sediment runoff to meet the Chesapeake Bay TMDL including requirements of the WIP, local TMDLs or other water quality requirements for managing agricultural sources of nitrogen, phosphorus, or sediment;

(2) Is not protected from enforcement or corrective actions related to a water quality impacts or violations; and

(3) Is not protected from the application or enforcement of any other laws, regulations or permits, including the following:

(a) Corrective actions issued under Environment Article Title 4, Subtitle 4 that addresses, for example, water pollution abatement;

(b) Environment Article Title 5 that addresses, for example, water resource management including flood control and water appropriations;

(c) Environment Article Title 9, Subtitle 2 that addresses, for example, water supply systems, sewage systems, refuse disposal and sewage sludge;

(d) Environment Article Title 9, Subtitle 3 that addresses, for example, discharge permits;

(e) Environment Article Title 16 that addresses, for example, wetland protection programs;

(f) Natural Resources Article Title 8, Subtitle 18 which addresses, for example, land use and protections in the Atlantic Coastal and Chesapeake Bays Critical Area;

(g) Growth tier maps adopted by a local jurisdiction under the Land Use Article Title 1, Subtitle 5;

(h) Any State or local law or regulation that regulates the development of land;

(i) The Federal Clean Water Act;

(j) Regulations governing the management of agricultural sources of nitrogen, phosphorus or sediment initiated by the Department before the enactment of authorizing legislation for this program including regulations to revise the phosphorus site index or to implement a phosphorus management tool, regardless of when they are adopted; or

(k) Any applicable laws enacted or regulations adopted prior to certification, that are subject to a delayed implementation period.

06. Verification.

A. The applicant shall employ a certified verifier who does not hold an interest in the agricultural operation, as defined by this chapter, in order to apply to the Program.

B. A certified verifier shall provide the following to the Department:

(1) Information as required on a Department form;

(2) A map delineating the boundaries of the operation and showing field identification numbers and locations of BMPs on site; and

(3) Information following an inspection and review of records for an operation applying for a Certainty agreement including:

(a) Review of the NMP and documentation of any outstanding issues; and

(b) Review of the SCWQP and documentation that it:

(i) Is fully implemented to address nitrogen, phosphorus and sediment runoff; or
(ii) Fails to address any conditions causing movement of nitrogen, phosphorus and sediment that are impacting water quality;

(c) A farm summary showing outcomes of the MNTT assessment and an operation's status in meeting the Chesapeake Bay or local TMDL; and

(d) Any additional BMPs implemented to meet the nitrogen, phosphorus or sediment thresholds required by the local or Chesapeake Bay TMDL for the watershed in which the operation exists.

C. As required by law, the verifier shall handle information that is collected and submitted to the Department as a result of the verification for the Certainty certification as confidential.

D. Reviews.

(1) The Department shall schedule site reviews and inspection of records at least once every 3 years for each certified operation under the Program to verify current conditions on the operation and compliance with Certainty agreement requirements.

(2) The Department shall notify MDE of operations that are to have site reviews conducted and provide copies of the verifier's report of interim site reviews.

(3) The Department shall assign a certified verifier who:

(a) Meets qualifications set forth in Regulation .07 of this chapter;

(b) Does not hold an interest in the certified operation; and

(c) Is not the same individual who conducted the verification of the operation at the time of application.

(4) Certified verifiers assigned by the Department to conduct interim inspections and reviews shall:

(a) Contact the operator in advance of the inspection to make an appointment so the operator or his representative can be present and have records available for the review;

(b) Present a photo identification at the time of the inspection as proof of credentials; and

(c) Adhere to all biosecurity and other measures necessary to protect health and safety at the operation.

(5) Information collected and submitted as a result of the inspection shall be maintained by the verifier and the Department, as required by law, in a manner that protects the identity of the person who holds the certification for the operation.

(6) An operator shall receive a copy of the report prepared by the verifier conducting a review and inspection of records within 30 days;

(a) An operator may dispute information in the report that the operator believes is in error or does not accurately represent the condition or management of the operation.

(b) An operator who has any concerns about any verification report may address these concerns in writing with the Department and copy the verifier within 30 days of receiving a copy of the report.

(7) The Department may conduct an investigation that may include additional inspections to determine the actual condition and management of the operation.

E. Documentation Required by Verifiers.

(1) The certified verifier shall provide a certified report within 30 days to the Department as required on a Department form that includes:

(a) A map providing the boundaries of the agricultural operation that shows field numbers and the locations of any BMPs on site;

(b) A review of the NMP and implementation records to assure the plan is in accordance with COMAR 15.20.07 and 15.20.08 and is being fully implemented and documentation of any outstanding issues and necessary corrections; and

(c) A review of the SCWQP and documentation that it is implemented and that it addresses all nitrogen, phosphorus and sediment runoff issues; or

(d) A documentation of site evaluation and any nitrogen, phosphorus and sediment runoff issues that are outstanding or require correction, including necessary BMP maintenance.

(2) At each review the certified verifier shall provide the operator of the operation with information concerning any applicable new laws, regulations or requirements that have become effective since the operation's Certainty agreement and that will need to be addressed at the end of the 10 year Certainty agreement period.

F. Department Certainty Agreement Compliance requirements:

(1) The Department shall determine whether an operation is in compliance with all State water quality programs in effect when the Certainty agreement was signed pertaining to nitrogen, phosphorus and sediment, and review information submitted from the verifier to ascertain compliance with the Certainty agreement;

(2) The Department shall notify and provide information received from the verifier to MDE. MDE may seek additional information to assure compliance with law, regulations, permits, or other requirements administered by MDE, including a site visit if needed and in coordination with the Department; and

(3) The Department may take the following actions based on the outcome of any inspections or the report of the verifier:

(a) Determine if an operation is in compliance with the Certainty agreement;

(b) Corroborate any conditions identified as a violation of the Certainty agreement; or

(c) Corroborate any conditions creating nitrogen, phosphorus or sediment runoff and determine, in concurrence with MDE, whether they:

(i) Occurred through any fault of the operator; and

(ii) Can be corrected in a timely manner under a written agreement with the operator;

(d) Address any failure to comply with any of the conditions described in Regulation .04E of this chapter or in the Certainty agreement as follows:

(i) Provide a timeframe for the operator to come into compliance as a condition of retaining any existing Certainty agreement;

(ii) Require the operator to apply for a new Certainty agreement without penalty when changes to the operation have occurred; or

(iii) After an opportunity for a hearing, revoke or suspend the certification.

07. Verifier Certification Program.

A. An individual may not be certified or act as a certified verifier as provided by this chapter unless the individual meets the following requirements to be established by the Department:

(1) Education and experience;

(2) Training; and

(3) Continuing education.

B. The Department may certify a verifier who meets the following eligibility requirements:

(1) Has 3 or more years experience developing SCWQPs or qualifies as a U.S. Department of Agriculture, Natural Resource Conservation Service Conservation Planner level II;

(2) Is certified in Maryland to prepare NMPs; and

(3) Is certified in the use of the MNTT.

C. A verifier may only remain certified by completing at least 6 hours of Department approved training within the first year, and 12 hours thereafter for each three-year certification period, as well as completing a training session on the use of any modified version of the MNTT within six months of the modification.

.08 Recordkeeping and Reporting Requirements.

A. A person who manages an operation certified under the Program shall submit annually to the Department on or before March 1, information for the previous calendar year, as follows:

(1) A Department reporting form that includes the person's signed certification that the operation has been managed in accordance with the Certainty agreement and will continue to be so managed during the upcoming calendar year;

(2) Current NMP records including soil analysis within the last three years for land receiving nutrients, fertility recommendations for crops produced and nutrients applied by source and crop type and a map identifying the location and boundaries of the operation showing field identification numbers and location of BMPs; and

(3) SCWQP records related to implementation of any additional BMPs during the reporting period.

B. A person who operates an operation certified under the Program shall keep the following records:

(1) All NMPs and records used to manage soil fertility during the certification period and for 3 years following the termination of any certification; and

(2) The SCWQP for the operation and any updates, information or documentation that addresses plan implementation or installation of additional BMPs during the certification period and for 3 years following the termination of any certification.

C. Public Access to Program Information.

(1) As required by law all records concerning any agricultural operation shall be maintained by the Department and shall be made available for public review, in a manner that provides the greatest public disclosure or records and information, after the Department redacts records to protect the identity of the person for whom the record or information relates.

(2) The Maryland Public Information Act applies to any request for records.

D. Annual Reporting.

(1) The Department shall submit an annual report to the Governor, the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee on or before December 31 beginning in 2014.

(2) The annual report shall include:

(a) Acres of agricultural land certified under the program and presented by county and watershed at a scale consistent with that applied by the MNTT.

- (b) Presentation of information to protect the identity of the certified agricultural operator in accordance with the requirements of the law; and*
- (c) Recommendations of the Oversight Committee.*

09. Denial, Suspension, or Revocation of Certificate.

A. Certification of operations.

(1) After the opportunity for a hearing, the Department may deny, suspend, or revoke the certification of any person who:

- (a) No longer meets the eligibility requirements of the Program;*
- (b) Violates any of the regulatory requirements of this chapter;*
- (c) Provides misleading, false, or fraudulent information in applying for a certification;*
- (d) Provides the Department with any misleading, false, or fraudulent report;*
- (e) Fails to promptly provide any report or to allow the Department access to inspect any operation certified under the Program or any record required to be kept by this chapter;*
- (f) Fails to comply with Certainty agreement for the operation; or*
- (g) Performs any action or fails to act in such a manner that the Department determines provides other good cause to deny, suspend or revoke the certification.*

(2) The Department shall give notice and hold hearings in accordance with the Administrative Procedure Act;

(3) The Department may consider the following when assessing whether suspension or revocation is warranted:

- (a) The willfulness of the violation;*
- (b) The extent to which the existence of the violation was known to the violator, but uncorrected by the person;*
- (c) The extent to which the person exercised reasonable care;*
- (d) Any actual harm to human health or to the environment or the natural resources of this State;*
- (e) The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and*
- (f) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the person.*

B. Certification of Verifiers.

(1) After the opportunity for a hearing, the Department may deny, suspend, or revoke the certification of any verifier who:

- (a) No longer meets the eligibility requirements of the Program;*
- (b) Violates any of the regulatory requirements of this chapter;*
- (c) Provides the Department with any misleading, false, or fraudulent report;*
- (d) Fails to promptly provide any report or any record required to be kept by this chapter;*
- (e) Fails to adhere to confidentiality requirements required by this chapter;*
- (f) Fails to meet continuing education requirements for verifiers;*
- (g) If the person is determined to be negligent or incompetent; or*
- (h) Performs any action or fails to act in such a manner that the Department determines provides other good cause to deny, suspend or revoke the certification.*

(2) The Department shall give notice and an opportunity to be heard in accordance

with the Administrative Procedure Act.

(3) The Department may consider the following when assessing whether suspension or revocation is warranted:

(a) The willfulness of the violation;

(b) The extent to which the existence of the violation was known to the violator, but uncorrected by the person;

(c) The extent to which the person exercised reasonable care; and

(d) Any actual harm to human health or to the environment or the natural resources of this State.

10. Agricultural Certainty Oversight Committee.

A. There is an Agricultural Certainty Oversight Committee. The responsibility of the Oversight Committee includes:

(1) Assisting in the development of regulations that govern the Program;

(2) Monitoring and providing oversight on the development and implementation of policies and standards relating to the Program;

(3) Evaluating performance of the Program and making recommendations for improvements to the Program based on information provided by the Department; and

(4) Reviewing the draft annual report and other information to make recommendations.

B. The Oversight Committee meets when necessary to provide recommendations for developing regulations for the Program and thereafter a minimum of once a year to carry out its responsibilities.