

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Department of Agriculture
(DLS Control No. 16-209)**

Overview and Legal and Fiscal Impact

The regulation updates the reference to Supplement No. 8 of the Maryland Nutrient Management Manual to incorporate by reference the latest version of Supplement No. 8 (August 2016). The August 2016 version of Supplement No. 8 contains updated nutrient application requirements.

The regulation presents 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: Agricultural Operation Nutrient Management Plan
Requirements: COMAR 15.20.07.02

Legal Analysis

Background

Since the passage of the Water Quality Improvement Act of 1998 (Chapters 324 and 325), agricultural operations with \$2,500 or more in gross annual income and livestock operations with 8,000 pounds or more of live animal weight must have and comply with a nutrient management plan for nitrogen and phosphorus. A nutrient management plan is a plan developed by a certified nutrient management consultant to manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of nutrients and to maintain productivity on agricultural land. Different implementation dates apply to operations using chemical fertilizers and operations using sewage sludge or animal manure. Operations using sewage sludge or animal manure have been required to comply with a nutrient management plan for nitrogen and phosphorus since July 1, 2005.

The Maryland Department of Agriculture certifies and licenses nutrient management consultants and businesses to prepare nutrient management plans for farm operations and also issues certificates to farm operators to develop their own plans. Current law requires the department, in consultation with the Nutrient Management Advisory Committee (NMAC), to adopt regulations to prescribe the criteria, form, and content for certified nutrient management

plans applicable to licensees and certificate holders and also establish specified continuing education, recordkeeping, and reporting requirements.

The Maryland Nutrient Management Manual contains the nutrient management requirements developed by the department. The manual and its eight separate supplements are incorporated by reference in COMAR 15.20.07.02.

Summary of Regulation

The regulation updates the reference to Supplement No. 8 to incorporate by reference the latest version of Supplement No. 8 (August 2016). A brief summary of the major changes included in the latest version of Supplement No. 8 is provided below.

Prohibition on Nutrient Application

Nutrient application is prohibited when the soil is saturated, when the ground is covered with snow greater than one inch, or when the ground is hard-frozen greater than two inches during the spring and summer time period (March 1 through September 9) and during the fall time period (September 10 through December 15). Similar requirements previously applied only to the winter time period (November 2 through February 28). The existing prohibition during the winter time period is clarified accordingly.

Injection or Incorporation of Nutrient Sources

Specific exceptions to the requirement to inject or incorporate organic nutrient sources during the spring and summer time period and fall time period are removed. However, no-till farms are not required to incorporate organic nutrients. Additionally, the department reserves the right to require incorporation of organic nutrient sources on a case-by-case basis. The requirement to inject winter organic nutrient applications is removed.

Fall Application Requirements

Currently, fall nutrient application for counties east of the Chesapeake Bay and Susquehanna River occurs between September 10 through November 1. For counties west of the Chesapeake Bay and Susquehanna River, fall application occurs from September 10 through November 15. The latest version of Supplement No. 8 removes the geographic distinction for fall application, and instead includes a new fall nutrient application timeframe from September 10 through December 15 that applies statewide.

In addition, the prohibition against a fall nitrogen-based nutrient application in excess of 50% of the plant available nitrogen recommended for a crop that is to be planted the following spring (before June 1) is removed. However, the current prohibition against a fall nitrogen-based nutrient application in excess of 50 lbs. of plant available nitrogen per acre remains in effect.

Winter Application Requirements

Several changes were made regarding winter nutrient application. They are listed below.

- Due to the extension of the fall nutrient application time period discussed above, the winter time period is changed accordingly to December 16 through February 28 (of the following year) statewide, rather than November 2 through February 28 for counties east of the Chesapeake Bay and Susquehanna River and November 16 through February 28 for counties west of the Chesapeake Bay and Susquehanna River.
- If a winter nutrient application is nitrogen-based, it may not exceed 50 lbs. of plant available nitrogen per acre for the next harvested crop. In addition, any winter applied nutrients will be deducted from the recommendations of the next harvested crop.
- During a winter nutrient application, a setback of at least 100 feet from all surface waters must be maintained, unless best management practices that provide water quality protection equivalent to the setback are in place.
- Existing requirements related to emergency applications are clarified. Emergency applications may occur only if they are the result of an imminent overflow of a storage facility from on-farm generated organic fertilizer. In these instances, operators will be required to enter into an agreement of intent with the Soil Conservation District or a private entity that is a certified Technical Service Provider approved by the Natural Resources Conservation Service.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 8-801 through 8-806 of the Agriculture Article as statutory authority for the regulation. Specifically, under § 8-804(b), the department is required to adopt regulations, in consultation with NMAC, to prescribe the criteria, form, and content for certified nutrient management plans.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Emergency Status

The department requests emergency status beginning October 7, 2016 and expiring January 30, 2017. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The department indicates the emergency status is necessary so that this fall, agricultural operations subject to the relevant nutrient management requirements will have greater flexibility in applying nutrients to farm fields to avoid the potential for emergency applications during the winter.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the department agrees to edit the text of Regulation .02 to include references to the other supplements to the manual (Supplement No. 1 through Supplement No. 7) that are also incorporated by reference.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

In its economic impact statement, the department advises that implementing the regulation may result in added unknown staff costs. In further communication with the department, however, it has indicated that the costs referred to in the economic impact statement relate to an increase in workload for existing staff (associated with working with farm operators that need to carry out emergency winter applications), not an increase in expenditures resulting from hiring additional staff. The Department of Legislative Services concurs.

Impact on Budget

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

Agency Estimate of Projected Small Business Impact

In its economic impact statement, the department advises that the regulation has minimal or no economic impact on small businesses in the State. However, elsewhere in the economic impact statement and in further communication with the department, it has indicated that the regulation may have a meaningful beneficial impact on small business farms. The department has indicated, for example, that the regulation may provide meaningful relief for small business dairy farms that cannot afford costs of additional nutrient storage needed to comply with the current regulation. The Department of Legislative Services concurs that small businesses may benefit meaningfully from the regulation.

Contact Information

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