

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	08/22/2017	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 9/1/2017

2. COMAR Codification

**Title Subtitle Chapter Regulation**

15 01 12 01-.07

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Iva Benson

Telephone Number

410-841-5829

Mailing Address

50 Harry S. Truman Parkway, Suite 303

**City State Zip Code**  
Annapolis MD 21401

Email

iva.benson@maryland.gov

5. Name of Person to Call About this Document

Mark Powell

Telephone No.

(410) 841-5775

Email Address

mark.powell@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

If yes, corresponding proposed text published in:

same issue

- future issue
- previous issue; it appeared in

: Md. R  
(vol.) (issue) (page no's) (date)

Under Maryland Register docket no.: --E.

**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 General Provisions Article, §3-302(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 August 22, 2017. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Joseph Bartenfelder

**Title**

Secretary

**Telephone No.**

(410) 841-5884

**Date**

August 22, 2017

**Title 15**  
**DEPARTMENT OF AGRICULTURE**  
**Subtitle 01 OFFICE OF THE SECRETARY**

**15.01.12 Food Donation Pilot Program**

Authority: Tax-General Article §10-741, Annotated Code of Maryland

**Notice of Proposed Action**

□

The Secretary of Agriculture proposes to add new Regulations .01 through .07 under COMAR 15.01.12 Food Donation Pilot Program.

**Statement of Purpose**

The purpose of this action is to explain the Secretary of Agriculture's pilot program adopted in cooperation with the Comptroller, for tax years 2017, 2018 and 2019 only that provides a tax credit against the State income tax for eligible food donations made by an eligible farm located in Anne Arundel, Calvert, Charles, Montgomery, Prince George's, or St. Mary's counties.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Mark Powell, Chief of Marketing, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, or call (410) 841-5775, or email to mark.powell@maryland.gov, or fax to (410) 841-5987. Comments will be accepted through October 2, 2017. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2018

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:  
General funds.

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.

This pilot program, limited to Tax years 2017, 2018 and 2019, implements Tax-General Article §10-741, Maryland Annotated Code. Only a limited number of farms that are small businesses will benefit from the tax credit program.

G. Small Business Worksheet:

SMALL BUSINESS ANALYSIS WORKSHEET

1a. Intended Beneficiaries.

Farms located in Anne Arundel, Calvert, Charles, Montgomery, Prince George's or St. Mary's counties

1b. Intended Beneficiaries: Households.

Unknown

1c. Intended Beneficiaries: Businesses.

Unknown

2a. Other Direct or Indirect Impacts: Adverse.

Unknown

2b. Other Direct or Indirect Impacts: Positive.

Unknown

3. Long-Term Impacts.

Unknown

4. Estimates of Economic Impact.

A. Cost of providing goods and services.

Unknown at this time

B. Effect on the workforce.

Unknown at this time

C. Effect on the cost of housing.

None

D. Efficiency in production and marketing.

Unknown at this time

E. Capital investment, taxation, competition and economic development.

Unknown at this time

F. Consumer choice.

N/A

Attached Document:

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## TITLE 15 DEPARTMENT OF AGRICULTURE

### Subtitle 01 OFFICE OF THE SECRETARY

#### Chapter 12 Food Donation Pilot Program

Authority: Tax-General Article §10-741, Annotated Code of Maryland

**.01 Purpose.**

*In cooperation with the Comptroller, this chapter explains the Secretary of Agriculture's pilot program for tax years 2017, 2018 and 2019 only that provides a tax credit against the State income tax for eligible food donations made by a farm located in Anne Arundel, Calvert, Charles, Montgomery, Prince George's, or St. Mary's counties.*

**.02 Definitions.**

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

B. *Terms Defined.*

(1) *"Certified Organic Produce" means an eligible food donation that is certified under Title 10, Subtitle 14 of the Agriculture Article as an organically produced commodity.*

(2) *"Eligible Food Donation" means fresh farm products for human consumption.*

(3) "Qualified Farm" means a farm business that is located in Anne Arundel County, Calvert County, Charles County, Montgomery County, Prince George's County, or St. Mary's County.

(4) "Secretary" means the Secretary of Agriculture or the Secretary's designee.

(5) "Tax Credit Certificate Administrator" or "TCCA" means a person or an organization that is authorized under this chapter to receive eligible food donations.

**.03 Income Tax Credit Limitations.**

A. Subject to the limitations of this chapter, a qualified farm may claim a credit against state income tax for an eligible food donation in the amount stated on any tax credit certificate issued to a qualified farm by a qualified tax credit certificate administrator.

B. The amount of tax credit claimed by a qualified farm is controlled by Tax-General Article § 10-741 of the Annotated Code of Maryland.

C. The amount of the tax credit may only be claimed by a qualified farm beginning after December 31, 2016, but before January 1, 2020.

D. Unless increased by the Secretary, the aggregate amount of credits for any taxable year for a qualified farm may not exceed \$5,000.

E. A TCCA may not issue a tax credit certificate after December 31, 2019.

**.04 Tax Credit Certificate Administrator**

**A. General Requirements**

(1) Unless certified by the Secretary, a person or organization may not act as a TCCA. A certified TCCA shall agree in writing with the Secretary to comply with requirements of this chapter.

(2) A TCCA certified by the Secretary, that receives a donation of an eligible food donation from a qualified farm shall issue the qualified farm a tax credit certificate [the Secretary in consultation with the comptroller are required to prepare tax certificate forms] that provides the following information:

(a) The date of donation;

(b) The identity of the qualified farm;

(c) The type of donation;

(d) The weight of the donation;

(e) The value of the donation;

(f) The maximum amount of the tax credit for which the qualified farm is eligible; and

(g) Any other information the State Department of Agriculture or Comptroller requires.

(3) Within 30 calendar days after issuing a tax credit certificate, the certified TCCA shall provide a copy of the tax credit certificate to the Secretary and the Comptroller.

(4) When notified by the Secretary, the TCCA shall stop issuing tax credit certificates as required by Tax-General Article § 10-741(e)(6).

(5) After the Secretary notifies each TCCA to stop issuing tax credit certificates when the total amount of the tax credit certificates issued during the fiscal year equals or exceeds \$200,000, the Secretary may authorize the issuance of any remaining credits as provided in Tax-General Article § 10-741(E) (6) and (F), in any subsequent fiscal year when the amount of tax credit certificates issued will not equal or exceed \$200,000.

**B. Tax Credit Value**

(1) The TCCA shall determine the value of the tax credit as follows:

(a) A qualified farm that makes and eligible food donation is eligible for a tax credit certificate with a stated tax credit amount equal to 50% of the value of the donated certified organic produce.

(b) A qualified farm that makes a donation of certified organic produce is eligible for a tax credit certificate with a stated tax credit amount equal to 75% of the value of the donated certified organic produce.

(c) The TCCA shall determine the value of any eligible food donations based on the Secretary's weekly published categories and values of certified organic produce and food donations as required by Tax-General Article § 10-741 (D).

**C. Record Requirement**

(1) The TCCA shall maintain any records relating to the issuance of any tax credit certificate to any qualified farm.

(2) Any record shall be maintained for three years and shall be available to the Secretary or the Comptroller upon request.

**D. Conflicts of Interest**

A TCCA may not issue a tax credit certificate to any person who owns or operates a qualified farm if the TCCA has a business interest or is family of the owner or operator in the farm.

**.05 Certification of Tax Credit Certificate Administrator.**

An applicant who applies to serve as a Tax Credit Administrator shall apply to the Secretary on a departmental form and shall have the following qualifications:

- A. *Be a 501 c 3 non-profit*
- B. *Have record keeping capabilities (information systems) that includes the: date of the donation, farm name/farmer, type of fresh farm product, and volume in pounds of produce received*
- C. *Be certified in and comply with safe food handling practices and have been reviewed by an outside organization (i.e. health inspector, AIB certified)*
- D. *Possess a scale certified by the Maryland Department of Agriculture that is calibrated on a quarterly basis*
- E. *Follow food safety regulations regarding storage and inventory; and*
- F. *Have an established partner network for quick food distribution or distribute directly to clients*

**.06 Application Review and Approval.**

A. *The Secretary shall review each application and certify the most qualified applicants who will best promote the objectives of the Food Donation Pilot Program as described in this Chapter.*

B. *Upon approval of an application for certification, the certified applicant shall execute an agreement with the Secretary that describes the duties and responsibilities of a person or organization acting as a Tax Credit Certificate Administrator.*

**.07 Penalty.**

*Upon notice and an opportunity to be heard, for any violation of this chapter, the Secretary may revoke or suspend the authority of any TCCA to issue a tax credit certificate for any qualified farm.*

JOSEPH BARTENFELDER  
SECRETARY