

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Agriculture**
(DLS Control No. 15-374)

Overview and Legal and Fiscal Impact

These regulations establish an exemption from the general State weights and measures requirements to allow an organization that distributes biodiesel blend fuel only to its members to use a commercial measuring device that does not meet certain technical requirements.

The regulations present no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Agriculture:

Weights and Measures: Biodiesel Motor Blend Fuel Registration for a Weighing and Measuring Device: COMAR 15.03.12.01-.07

Legal Analysis

Background

The Weights and Measures Section of the Maryland Department of Agriculture inspects weighing and measuring devices and prepackaged commodities to ensure honest and accurate transactions between consumers and businesses. Generally, weights and measures used for commercial purposes must be registered and must comply with the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices adopted by the National Conference on Weights and Measures and published in the *National Institute of Standards and Technology Handbook 44*.

Biodiesel is an alternative fuel that can be used in a standard diesel engine. Although biodiesel can be used alone, it is blended with petroleum diesel for use in unmodified engines. Several studies have indicated environmental benefits associated with the use of biodiesel, including reductions in greenhouse gas emissions. Accordingly, the department advises that the purpose of the regulations is to provide a limited exemption in order to promote the use of biodiesel blend fuel.

Summary of Regulations

The regulations add new Chapter 12 to COMAR 15.03 to establish an exemption from the general requirements for commercial weighing and measuring devices to allow an organization that distributes biodiesel blend fuel only to its members to use a commercial measuring device that does not meet all of the technical requirements of the *National Institute of Standards and Technology Handbook 44*. Among other things, the regulations:

- establish the registration requirements for a device that is used for measuring the amount of distributed biodiesel blend fuel;
- require the applicant organization to submit a specified application form and fee;
- require the applicant organization to certify that the organization (1) is organized as a cooperative under Title 5, Subtitle 5A of the Corporations and Associations Article or as another entity approved by the department; (2) has no more than 60 members that purchase biodiesel blend fuel; (3) will dispense no more than 30,000 gallons of biodiesel blend fuel annually; (4) is in compliance with all other applicable State and federal requirements relating to the biodiesel blend fueling facility; and (5) purchases biodiesel blend fuel only from persons legally licensed to distribute fuel in the State;
- require the applicant organization to certify that the biodiesel blend fuel is not commercially available in the market area where the device is located;
- require the applicant organization to certify that the device (1) is accurate and free of error; (2) is constructed so that it is permanent in its adjustments and repeats its indications correctly; (3) does not facilitate the perpetration of fraud; (4) will be used only to dispense biodiesel blend fuel for use by active fully paid members of the organization; and (5) is clearly marked to indicate that it is not legal for trade and its use is restricted to members;
- require the applicant organization to certify that all fees and fuel prices are the same for all members of the organization;
- require the applicant organization to certify that the department has the organization's permission to inspect the device, required records, and the biodiesel blend fueling facility;
- establish fees of \$50.00 per business location and \$12.50 per meter;
- specify that a registration expires on May 31 following the date of issuance and may be renewed in the same manner as the initial registration;
- require an organization that has a registered device to keep for three years, and make available to the department on request, certain records;

- authorize the department to deny an application for renewal or to revoke or suspend the registration of any device (1) if an organization is operating a device without a current registration; (2) for any violation of COMAR 15.03.12, including providing false information to the department or noncompliance with a required certification; or (3) if the department determines that the biodiesel blend fuel is commercially available in the market area where the device is located; and
- require the department to give reasonable notice and the opportunity for a hearing before denying a renewal or revoking or suspending a registration.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 11-203(b) and (c) of the Agriculture Article as statutory authority for the regulations. Section 11-203(b) requires the Secretary of Agriculture to adopt regulations, specifications, tolerances, and other technical requirements that are designed to eliminate from use, without prejudice to any weight and measure that conforms as closely as feasible to the official standards, weights and measures that (1) are not accurate; (2) are not reasonably permanent in adjustment or do not repeat their indications correctly; or (3) facilitate the perpetration of fraud. Section 11-203(c) requires that, unless modified or rescinded by regulation, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices must be those adopted by the National Conference on Weights and Measures and included in the *National Institute of Standards and Technology Handbook 44*.

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

Technical Corrections

In response to suggestions from the Department of Legislative Services, the department has agreed to make several technical corrections to Regulations .02, .03, .04, .05, and .07.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department indicates that the regulations do not materially impact State or local governments. The Department of Legislative Services concurs. While the regulations establish a

registration fee, the department is only aware of one facility (one business location, one meter) that may register as a result of the regulations.

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 a meaningful economic impact on small businesses in the State. The department indicates that the action will save biodiesel cooperatives that meet the requirements of the regulations \$20,000 that they otherwise would need to spend on fuel dispensing equipment that meets current weights and measures requirements under State law. The Department of Legislative Services generally disagrees. While the regulations may benefit at least one biodiesel cooperative, it is not clear that there would be a broader meaningful impact on small businesses.

Contact Information

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