

MARYLAND REGISTER

**Emergency Action on Regulations**

<b>TO BE COMPLETED BY AELR COMMITTEE</b>	<b>EMERGENCY Transmittal Sheet</b>	<b>TO BE COMPLETED BY DSD</b>
Date Received by AELR Committee		Date Filed with Division of State Documents
11/22/2021		Document Number
Emergency Status Approved		Date of Publication in MD Register
_ -Yes _ -No		
Emergency Status Begins On		
Emergency Status Ends On		
Name of AELR Committee Counsel		

**1. COMAR Codification**

**Title Subtitle Chapter Regulation**

15 01 19 01.-10

**2. Name of Promulgating Authority**

Department of Agriculture

**3. Name of Regulations Coordinator**

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Filbert, Assistant Attorney General, (telephone #410-841-5895) on November 22, 2021. A signed copy of the approval is on file at this agency.

**Name of Authorized Officer**

Julianne A. Oberg

**Title**

Deputy Secretary

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**Date**

November 22, 2021

**Title 15**  
**DEPARTMENT OF AGRICULTURE**

**Subtitle 01 OFFICE OF THE SECRETARY**

**15.01.19 Certified Local Farm Enterprise Program**

Authority: Agriculture Article, Section 2-103; State Finance & Procurement Article, Section 14-704, Annotated Code of Maryland

**Notice of Emergency Action**

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulations .01-10 under a new chapter, COMAR 15.01.19, Certified Local Farm Enterprise Program.

**Emergency status began:**

**Emergency status expires:**

**Comparison to Federal Standards**

There is no corresponding federal standard to this emergency action.

**Estimate of Economic Impact**

The emergency action has no economic impact.

**Economic Impact on Small Businesses**

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

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2022

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 - the fiscal year 2021 operating budget authorizes MARBIDCO to transfer \$140,000 of its general fund appropriation to MDA by budget amendment to cover the costs of: (a) The two positions assigned to the office required by this legislation; and (b) equipping the office.

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:

While the Department and other State agencies will bear certain costs to ensure that the participation goals of the Certified Local Farm Enterprise Program are met, MDA does not believe these costs will be greater than those reflected in the Fiscal and Policy Note for H.B. 1488 (2020 Regular Session) or otherwise anticipated by the legislation.

To the extent that the Program incentivizes local farm operations to comply with the State's Nutrient Management Law, the legislation, implemented by the Emergency Action, should benefit the public and the waters of the State.

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

The Fiscal and Policy Note for H.B. 1488 (2020 Regular Session) indicated that the "Small Business Effect" would be meaningful. The Emergency Action will not alter this effect. Specifically, the legislation, implemented by the Emergency Action, should increase State purchases of locally grown food, benefiting farm operations in the State that meet the requirements of the State's Nutrient Management Law--a principal criterion for being a Certified Local Farm Enterprise.

G. Response to small business worksheet:

Attached Document:

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**Title 15**  
**MARYLAND DEPARTMENT OF AGRICULTURE**  
**Subtitle 01 OFFICE OF THE SECRETARY**  
**Chapter 19 Certified Local Farm Enterprise Program**

*Authority: Agriculture Article §2-103; State Finance & Procurement Article, §14-704, Annotated Code of Maryland.*

**.01 General - Purpose.**

*Each procurement agency shall structure its procurement procedures for food to try to achieve an overall goal of 20 percent of the unit's total dollar value of all such procurement contracts made directly or indirectly from Certified Local Farm Enterprises.*

**.02 Scope.**

*This chapter applies to every procurement of food by a procurement agency.*

**.03 Definitions.**

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

*B. Terms Defined.*

*(1) "Certification" means a determination by the Office for the Certified Local Farm Enterprise Program through the procedures outlined in this chapter that a legal entity is a Certified Local Farm Enterprise for purposes of these regulations.*

*(2) "Certified Local Farm Enterprise" means a local farm enterprise that holds a certification issued by the Office for the Certified Local Farm Enterprise Program.*

*(3) "Department" means the Maryland Department of Agriculture.*

*(4) "Food" or "food product" means any locally grown agricultural, horticultural, vegetable, or fruit product of the soil, including livestock, meats, poultry, eggs, dairy products, nuts, honey, and every food product of a farm, forest, orchard, garden or water.*

*(5) "Locally grown" means food grown in Maryland or within 50 miles of the Maryland State border.*

*(6) "Office" means the Office for the Certified Local Farm Enterprise Program.*

*(7) "Procurement agency" means a principal department or independent unit of the Executive Branch of the State, not otherwise exempted from application of this chapter, that is authorized under State law to procure food.*

*(8) "Program" means the Certified Local Farm Enterprise Program.*

*(9) "Solicitation" means public notice of a solicitation for bids, offers, or expressions of interest which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of, but is not limited to:*

*(a) Legal advertisement;*

*(b) Newspaper notice;*

*(c) Bid board notice;*

*(d) Bid or proposal documents including the invitation for bids or request for proposals; or*

*(e) eMaryland Marketplace notice.*

**.04 Criteria to Become a Certified Local Farm Enterprise.**

*A. To become a Certified Local Farm Enterprise, the Office need only determine that a local farm enterprise meets the nutrient management requirements established under Title 8, Subtitle 8 of the Agriculture Article. No other criteria shall be required for certification.*

*B. The Office shall certify and decertify local farm enterprises through a single process, which process may occur by mail, hand-delivery or electronic application on a form created by the Office. The Office may decertify a local farm enterprise that no longer meets the nutrient management requirements established under Title 8, Subtitle 8 of the Agriculture Article.*

*C. The Office may consider initial applications for certification at any time. The Office shall re-certify local farm enterprises on an annual basis in January of each year.*

*D. The Office may decertify any local farm enterprise if the Department determines that a local farm enterprise does not meet the nutrient management requirements established under Title 8, Subtitle 8 of the Agriculture Article.*

**.05 Central Directory.**

*A. The Office shall publish and maintain in an electronic format available to the general public through the internet a Central Directory of local farm enterprises it has certified under this chapter. The Central Directory shall specify the type of food primarily provided by the Certified Local Farm Enterprise, and the date of certification. It shall include the address, phone number, and contact person for the Certified Local Farm Enterprise.*

*B. The Central Directory shall include all contact information available to the Office for the Certified Local Farm Enterprise, except when disclosure is prohibited by State Government Article, Title 10, Subtitle 6, Part III, Annotated Code of Maryland, and the certification number of the local farm enterprise.*

*C. The Central Directory may include other information the Office considers necessary or appropriate to encourage participation in the procurement process by Certified Local Farm Enterprises.*

*D. The Central Directory shall:*

*(1) Be updated in January of each year;*

*(2) Identify the date of certification for each local farm enterprise that has obtained certification during the previous calendar year;*

*(3) Include a list of all local farm enterprises that have become ineligible to participate in the Program in the previous calendar year because they have been decertified; and*

*(4) Not include any local farm enterprise that has a pending certification application.*

***.06 Procurement Solicitations.***

*A. To attain the Certified Local Farm Enterprise purpose under Regulation .01 of this chapter, a procurement agency shall set an overall Certified Local Farm Enterprise participation goal of 20 percent of the unit's total dollar value of all procurement contracts for food.*

*B. Prebid and Preproposal Conferences. When prebid or preproposal conferences are held, the procurement agency shall explain the Certified Local Farm Enterprise provisions of the solicitation, the documentation required, and its relationship to the determinations that will be made in connection with the evaluation process.*

***.07 Waiver.***

*A. An agency head may waive any of the provisions of Regulation .06 of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.*

*B. If, for good reason, the apparent successful bidder or offeror is unable to achieve the overall Certified Local Farm Enterprise contract goal, the bidder or offeror shall submit to the procurement agency the following documentation in support of a waiver request:*

*(1) A detailed statement of the efforts made to utilize Certified Local Farm Enterprises;*

*(2) A detailed statement of the efforts made to contact and negotiate with Certified Local Farm Enterprises, including:*

*(a) The names, address, dates, telephone and certification numbers of Certified Local Farm Enterprises contacted;*

*(b) A description of the information provided to Certified Local Farm Enterprises contacted regarding any solicitation; and*

*(3) A list of Certified Local Farm Enterprises found to be unavailable.*

*C. A procurement agency may only grant a waiver of a Certified Local Farm Enterprise contract goal upon a reasonable demonstration by the bidder or offeror that Certified Local Farm Enterprise participation was unable to be obtained, or was unable to be obtained at a reasonable price, and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider supply estimates, food prices, general market availability, and availability of Certified Local Farm Enterprises in the area where the food is to be supplied, other bids or offers substantiating significant variances between Certified Local Farm Enterprises and non-certified suppliers, and their impact on the overall cost of the contract to the State and any other relevant factor.*

*D. The Office may waive any of the requirements of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of the requirements in this chapter.*

*E. When a waiver is granted, one copy of the waiver determination and the reasons for the determination shall be kept by the Office.*

*F. Not later than July 31 of each year, the Office shall submit directly to the Board of Public Works an Annual Report of Waivers Granted under this regulation.*

*G. The report required under §E of this regulation shall contain the following information on those contracts where Certified Local Farm Enterprise goals are present and one or more waiver requests have been approved:*

*(1) The contract titles, numbers, and dates;*

*(2) The number of waiver requests received;*

*(3) The number of waiver requests granted; and*

*(4) Any other information specifically requested by the Board of Public Works.*

*H. The Board of Public Works shall:*

*(1) Retain a copy of the Annual Report of Waivers Granted; and*

*(2) Forward a copy of the Annual Report of Waivers Granted to the Senate Education, Health and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1 of each year.*

***.08 Amendment of Procurement Bid.***

*A. If at any time after submission of a bid or proposal and before execution of a contract, a bidder or offeror determines that a Certified Local Farm Enterprise listed on the Certified Local Farm Enterprise participation schedule has become or will become unavailable or ineligible to provide the food products required under the contract, then the bidder or offeror:*

(1) Within 72 hours of making the determination, shall provide written notice to the procurement officer; and  
(2) Within 5 business days of making the determination, may make a written request to the procurement officer to amend the Certified Local Farm Enterprise participation portion of the bid.

B. For purposes of this regulation, "ineligible" means a farm enterprise may not be counted toward meeting the goal of 20 percent of the unit's total dollar value of a procurement contract because the farm enterprise is no longer certified by the Office.

C. The request to amend the Certified Local Farm Enterprise participation shall include:

(1) An explanation of the reason for excluding the ineligible supplier;  
(2) The name of each Certified Local Farm Enterprise that will substitute for the ineligible supplier; and  
(3) A full description of the bidder's or offeror's efforts to substitute another Certified Local Farm Enterprise to supply the food that the unavailable or ineligible Certified Local Farm Enterprise would have supplied.

D. If a bidder or offeror cannot designate a substitute Certified Local Farm Enterprise for an ineligible supplier, the bidder or offeror's bid may be disqualified.

E. If, during the term of a procurement contract, a Certified Local Farm Enterprise becomes decertified, the bidder or offeror shall designate within 30 calendar days a substitute Certified Local Farm Enterprise to complete the contract obligations.

#### **.09 Compliance.**

A. Each procurement agency is responsible for ensuring compliance with Certified Local Farm Enterprise participation goals.

B. To ensure compliance with Certified Local Farm Enterprise participation goals, each procurement agency shall:

(1) Verify that the Certified Local Farm Enterprises listed in the Certified Local Farm Enterprise participation contract are actually providing the farm products and receiving required compensation; and

(2) Monitor and collect data on contractor compliance with Certified Local Farm Enterprise participation goals.

C. The contractor shall permit the procurement agency to inspect any relevant matter, including records.

D. Upon determining that a contractor did not make good faith efforts to comply with Certified Local Farm Enterprise participation goals, the procurement agency shall notify the contractor in writing of its findings and shall specify what corrective actions are required. The contractor is required to initiate the corrective actions within 10 calendar days and complete them within the time specified by the procurement agency.

E. If a procurement agency determines that material noncompliance with local farm enterprise contract provisions exists and that the contractor refuses or fails to take the corrective action required by the procurement agency, then the following sanctions may be invoked:

(1) Termination of the contract;

(2) Referral to the Office of the Attorney General for appropriate action; or

(3) Initiation of any other specific remedy identified by contract.

F. Upon completion of any contract, the procurement agency shall:

(1) Prepare a report that compares the dollar value of the payments actually received by Certified Local Farm Enterprises with the dollar value of the amount that Certified Local Farm Enterprises were intended to have received under the contract's Certified Local Farm Enterprise participation goal; and

(2) Include in the report an explanation of any discrepancy.

G. A procurement agency may use any other compliance mechanism authorized by contract or this chapter.

#### **.10 Reporting.**

A. Within 90 days after the end of each fiscal year, each procurement agency shall report to the Office.

B. A report under this regulation for the preceding fiscal year shall:

(1) State the total number and value of procurement contracts for food, as applicable, between the procurement agency; and

(a) A Certified Local Farm Enterprise; or

(b) A primary contractor, showing the number and value of contracts that the primary contractor has with Certified Local Farm Enterprises;

(2) State the percentage that those procurement contracts for food in §B of this regulation represent of the total number and value of procurement contracts for food awarded by the procurement agency;

(3) State the total number and the names of Certified Local Farm Enterprises that participated in procurement contracts for food awarded by the procurement agency; and

(4) For each Certified Local Farm Enterprise included in the report under §B(3) of this regulation, list all procurement contracts for food awarded by the procurement agency to the Certified Local Farm Enterprise or a vendor who has contracted with a Certified Local Farm Enterprise, including a description of the contract.

C. Reports required by this regulation shall be:

(1) In a form prescribed by the Office; and

(2) Approved by the Board of Public Works.

JULIANNE A. OBERG  
Deputy Secretary