

Regulation Authorization Sheet

Codification: 15.20.12

Department: Agriculture

Type of Action:

☒ Proposed
☐ Emergency
☐ Final

Attorney General's/Counsel Certification of Legality

I certify that I approve the attached document as to its legality, pursuant to State Government Article, §10-107, Annotated Code of Maryland.

Craig A. Nielsen

410-841-5883

Name of Assistant Attorney General/Counsel

Telephone Number

Craig A. Nielsen
Signature

Apr. 15, 2016
Date

Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act and is being promulgated under the authority of Agriculture Article §2-303.

Joseph Bartenfelder

Name of Authorized Officer

Deputy
Secretary

Title

410-841-5884

Telephone Number

Joseph Bartenfelder
Signature

4/15/16
Date

PROPOSED OR RE-PROPOSED Action on Regulations

(Submit 2 copies of all documents
when filing with DSD)

DSD Document Number

Date of Publication in Maryland Register

DO NOT WRITE ABOVE THIS LINE

1. Desired date of publication in Maryland Register
12/11/2015

2. Name of regulations Coordinator Telephone Number
Iva Benson (410) 841-5883

3. Name of person to Call re Document Telephone Number
Iva Benson (410) 841-5883

4. Name of Promulgating Authority
Joseph Bartenfelder, Secretary

5. Statutory Authority for Promulgating Regulations
Agriculture Article, Sections 2-103(b), 8-902, and 8-903,
Annotated Code of MD

6. Chapter Number of Newly Enacted Legislation

7. Codification Number and Name of COMAR Title
15 Department of Agriculture

8. Codification Number and Name of COMAR Subtitle
20 Soil and Water Conservation

9. Codification Number and Name of COMAR Chapter
12 Agricultural Nutrient and Sediment Credit Certification Program

10. COMAR Regulation Number(s)
* See attachment

13. Certificate of Authorization Officer

I certify that the attached documents are in compliance with State Government Article, §§7-201--7-222 and §§10-101--10-117, Annotated Code of Maryland. I also certify that the attached document is the same as that filed with the AELR Committee in compliance with State Government Article, §10-110(b) (HB 1677, Acts of 1985), and that any changes made to the document after filing with the Committee have been made with the knowledge and consent of the committee.

Name of Authorized Officer
Joseph Bartenfelder

Title
Dep. Secretary

Telephone Number
(410) 841-5880

Signature

Date

4/15/16

11. Check applicable items:

- ☒ New Regulations
☐ Amendments to Existing Regulations
☐ Repeal of Existing Regulations
☐ Incorporation by Reference
☐ Re-proposal of Substantially Different Text:

• Previous proposal appeared in:

42 : 26 Md. R. 1639-1642 (12/28/2015)
 (Vol.) (issue) (page #) (date)

• Give Maryland Register document no. of previous proposal:

15 -- 401 --P

___ Proposed text previously published as an emergency in:

___ : ___ Md. R. ___ (___)
 (Vol.) (issue) (page #) (date)

• Give Maryland Register document no. of previous emergency:

___ -- ___ --E

• Proposed text identical to emergency text:

___ Yes ___ No

12. Check the following required items to show that they are included in the document:

- ☒ NOTICE OF PROPOSED ACTION
☒ ESTIMATE OF ECONOMIC IMPACT
☒ OPPORTUNITY FOR PUBLIC COMMENT
☒ 30 days allowed

___ If promulgating authority (see No. 4 above) is a public body (see State Government Article §§ 10-501 -- 10-510) a notice that proposed action was considered at an OPEN MEETING held pursuant to State Government Article §10-506(c).

___ If applicable incorporation by Reference approval form(s) and required number of copies of documents to be incorporated.

14. Certificate of Legality

I certify that I approve the attached document as to its legality, pursuant to State Government Article, §10-107, Annotated Code of Maryland.

Name of Assistant Attorney General
Craig Nielsen

Telephone Number
(410) 841-5883

Signature

Date

Craig G. Nielsen

Apr. 15, 2016

MARYLAND REGISTER

Proposed Action on Regulations

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

1. Desired date of publication in Maryland Register: 5/13/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

15 20 12 .01, .02, .05, .07, .08, .09

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

Susan Payne

Telephone No.

410-841-5897

Email Address

susan.payne@maryland.gov

6. Check applicable items:

X- 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:
42: 26 Md. R 1639-1642 12/28/15
(vol.) (issue) (page nos) (date)
Under Maryland Register docket no.: 15-401-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 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 Nielsen, Assistant Attorney General, (telephone #410-841-5883) on April 15, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joseph Bartenfelder

Title

Secretary

Date

April 15, 2016

Telephone No.

410-841-5884

DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

15.20.12 Agricultural Nutrient and Sediment Credit Certification Program

Authority: Agriculture Article, §§2-103(b), 8-902, and 8-903, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Agriculture proposes to amend Regulations .01, .02, .05, .07, .08 and .09 under COMAR 15.20.12 Agricultural Nutrient and Sediment Credit Certification Program.

Statement of Purpose

The purpose of this action is to clarify existing requirements under the Department's Agricultural Nutrient and Sediment Credit Certification Program by amending certain definitions and explaining other requirements, making stylistic changes and correcting grammatical and typographical errors.

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 Susan Payne, Program Coordinator, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, or call 410-841-5897, or email to susan.payne@maryland.gov, or fax to 410-841-5914. Comments will be accepted through June 13, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 17

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.

G. Small Business Worksheet:

Attached Document:

Title 15 DEPARTMENT OF AGRICULTURE

SUBTITLE 20 SOIL AND WATER CONSERVATION

Chapter 12 Agricultural Nutrient and Sediment Credit Certification Program

Authority: Agriculture Article, §§2-103(b), 8-902, and 8-903, Annotated Code of Maryland

.01 Scope.

A. [text unchanged]

B. The purpose of the Program is to reduce the amount of nitrogen, phosphorus, and sediment entering the Chesapeake Bay and its tributaries through *support of* a form of water quality trading utilizing a market-based strategy.

C. [text unchanged]

.02 Definitions.

A. [text unchanged]

B. Terms Defined.

(1) — (7) [text unchanged]

(8) "Category 1 Practice" means a BMP as determined by the Department *and approved by the Chesapeake Bay Program Partnership* that is currently in widespread use, with fully documented installation and maintenance specifications and well-established and understood nutrient *and sediment* removal efficiencies.

(9) — (10) [text unchanged]

(11) "Credit" means a pollution reduction credit or the unit of trade that is equal to one pound of nitrogen, phosphorus, or sediment delivered to [the main stem of the Chesapeake Bay] *a specified location* per year.

(12) — (14) [text unchanged]

(15) "Nonpoint Source" means a source of pollution that is not from a single point of origin or from a specific outlet. *Nonpoint source pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification.*

(16) — (17) [text unchanged]

(18) "Nutrient or Sediment Reduction" means the difference between the nutrient and sediment loads delivered to [the mainstem of the Chesapeake Bay] *a specified location* achieved by implementation of best management practices and the current load after meeting eligibility requirements.

(19) — (22) [text unchanged]

(23) "Total Maximum Daily Load" or "TMDL" means [a limit set by U.S. Environmental Protection Agency in accordance with Clean Water Act requirements that 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.

(24) "Watershed Implementation Plan" or "WIP" means the plan [required and approved by the U.S. Environmental Protection Agency] *developed by a jurisdiction showing how the jurisdiction, in partnership with federal and local governments, will achieve [ing] and maintain the pollution reduction goals and allocations necessary in implementing the Chesapeake Bay TMDL.*

.03 Eligibility for Credit Certification.

A. [text unchanged]

.04 Baseline Requirements.

A. — B. [text unchanged]

.05 Agricultural Nutrient and Sediment Credit Generation.

A. [text unchanged]

B. Acceptable practices shall be consistent with the following:

(1) [text unchanged]

(2) The practice is approved by a local soil conservation district but was not implemented using state or federal cost-share monies, or private cost-share monies identified by the Department, and is currently maintained by the owner/operator [tion] at his own expense; or

(3) The practice was implemented through a state or federal cost-share program, or a [county] mitigation banking program, or with private cost-share monies identified by the Department, but has exceeded its specified lifespan as determined under the cost-share contract and is deemed by the Department as now being properly maintained by the owner/operator at his own expense.

C. [text unchanged]

.06 Lifespan of Credits.

A. — C. [text unchanged]

.07 Approval and Registration of Credits.

A. [text unchanged]

B. [text unchanged]

C. The Department or its designee shall visit any farm operation to verify the baseline requirements and that the applicant's credit generation proposal is effective and appropriate in reducing the discharge of nutrients *or sediment* from the farm. In addition, credits certified pending implementation of a BMP or other improvement are subject to further inspection to verify that the proposed generating practice is in place and functioning correctly.

D. — F. [text unchanged]

G. Upon approval *and verification* of any application for agricultural nutrient and sediment credits, the Department shall assign each credit a unique registration number and provide for their registration on the Department's online trading registry.

H. — I. [text unchanged]

.08 Annual Verification and Reporting.

A. [text unchanged]

B. A person who buys certified credits shall employ a Department-approved verifier who does not hold an interest in the agricultural operation generating the credits or was not [in] involved in the original application or qualification of the credits.

C. [text unchanged]

D. The Department, Maryland Department of the Environment, the buyer and the seller, and the owner or operator shall receive a copy of the report prepared by the verifier conducting [of] any inspection and records review within 30 days *of the site visit*.

E. [text unchanged]

F. Within 30 days of receiving a copy of the report, an owner or operator may dispute information in the report that owner or operator believes is in error or does not accurately represent the condition or management of the operation and may address these concerns in writing [with] to the Department with a copy to the verifier.

.09 Departmental Review.

A. The Department shall schedule site *inspections* [reviews] and records *reviews* [inspection] on at least 10 percent of all traded credits annually.

B. — C. [text unchanged]

D. An owner or operator *and all other affected parties* shall receive a copy of the report prepared by the verifier conducting the inspection and review of the records within 30 days of the site visit;

E. — F. [text unchanged]

.10 Verifier Approval Protocol.

A. — D. [text unchanged]

.11 Enforcement.

A. [text unchanged]

JOSEPH BARTENFELDER
Secretary of Agriculture