

# **Title 15 DEPARTMENT OF AGRICULTURE**

## **Subtitle 20 SOIL AND WATER CONSERVATION**

### ***15.20.11 Maryland Agricultural Certainty Program***

*Authority: Agriculture Article, §§8-1001—8-1013, Annotated Code of Maryland*

#### **Notice of Proposed Action**

[14-306-P]

The Secretary of Agriculture proposes to adopt new Regulations **.01 — .10** under a new chapter, **COMAR 15.20.11 Maryland Agricultural Certainty Program**.

#### **Statement of Purpose**

The purpose of this action is to implement the voluntary Agricultural Certainty Program that will improve water quality compliance by agricultural operations. Under this program, operators who meet and maintain compliance with State water quality requirements may be certified for a 10-year period, during which time their farms are not subject to new State and local nutrient and sediment reduction requirements. This action explains the requirements, responsibilities, and benefits for agricultural operators who participate in the Agricultural Certainty Program; it also explains the requirements for individuals who verify certainty compliance and the responsibilities of the Maryland Department of Agriculture when administering this program.

#### **Opportunity for Public Comment**

Comments may be sent to Louise Lawrence, Chief, Maryland Department of Agriculture, Office of Resource Conservation, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, or call 410-841-5873, or email to [Louise.Lawrence@maryland.gov](mailto:Louise.Lawrence@maryland.gov), or fax to 410-841-5734. Comments will be accepted through November 17, 2014. A public hearing has not been scheduled.

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### ***15.20.11 Maryland Agricultural Certainty Program***

*Authority: Agriculture Article, §§8-1001—8-1013, Annotated Code of Maryland*

#### ***.01 Scope.***

*A. This chapter establishes the requirements and standards to be met for agricultural operations to achieve voluntary certification under the Maryland Agricultural Certainty Program and the privileges and responsibilities that arise through certification.*

*B. The purpose of the Program is to accelerate the implementation of best management practices to meet State agricultural nitrogen, phosphorus, and sediment reduction goals.*

*C. This chapter also establishes a program for certifying professionals qualified to review and evaluate agricultural operations that apply or are enrolled in the Program.*

## **.02 Definitions.**

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

*B. Terms Defined.*

*(1) "Agricultural Certainty", "Certainty", or "Program" means the Maryland Agricultural Certainty Program.*

*(2) "Agricultural operation" or "operation" means a business or activity where a person tills, crops, keeps, pastures, or produces an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, or fiber by in-ground, out-of-ground, or other culture.*

*(3) "Agricultural sources of nitrogen, phosphorus, or sediment" means sources of nitrogen, phosphorus, or sediment that originate from an agricultural operation's land or animals. This does not include sources of nitrogen, phosphorus, or sediment that originate from residential, municipal, industrial, or a commercial activity.*

*(4) "Best management practice" or "BMP" means a conservation or pollution control practice that manages soil loss due to farming practices or manages animal wastes or agricultural chemicals so as to minimize movement of nitrogen, phosphorus, and sediment into waters of the State.*

*(5) "Certainty agreement" means a written agreement between the owner or operator of an agricultural operation and the Department, as provided under this chapter.*

*(6) "Certified verifier" means an individual certified by the Department under this chapter to review, inspect, and evaluate conditions, records, and management of an operation for purposes of qualifying for and maintaining compliance with the Maryland Agricultural Certainty Program.*

*(7) "Department" or "MDA" means Maryland Department of Agriculture.*

*(8) "Department of the Environment" or "MDE" means the Maryland Department of the Environment.*

*(9) "Farm parcel" means agricultural land that is separately described by deed or tax parcel.*

*(10) "Holds an interest" means a person who:*

*(a) Has any ownership interest or any other legal or equitable interest in an operation;*

*(b) Has any outside employment relationship with the owner or operator of the operation; or*

*(c) Has a relationship to the owner or operator of the agricultural operation as spouse, parent, child, sibling, grandchild, grandparent, step-parent, step-child, step-sibling, step-grandchild, or step-grandparent.*

*(11) "Interfamily transfer" means a transfer of ownership or management of an operation between or among individuals who have a familial relationship including parent, spouse, child, sibling, grandchild, grandparent, step-parent, step-child, step-sibling, step-grandchild, or step-grandparent.*

*(12) "Maryland Nutrient Tracking Tool" or "MNTT" means a Department-approved online platform with a performance-based calculation component that enables users to analyze agricultural parcels and their management to determine baseline compliance with the more stringent of the nutrient loading baselines outlined in either the Chesapeake Bay Total Maximum Daily Load (TMDL) for each watershed or the local TMDL that has been adopted for an impaired water body including Watershed Implementation Plan goals and any other nitrogen, phosphorus, and sediment control requirements. Through site- and operation-specific data inputs, the calculation component can generate multiple management scenarios and compute the nutrient reductions achieved by the application of agricultural best management practices.*

*(13) "Nutrient management plan" or "NMP" means a plan that complies with the requirements of COMAR 15.20.07 and 15.20.08 that is prepared by a certified nutrient management consultant to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other plant nutrients in order to:*

*(a) Minimize nutrient loss or runoff; and*

*(b) Maintain the productivity of soil when growing agricultural products.*

*(14) "Person" means the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.*

*(15) "Soil conservation and water quality plan" or "SCWQP" means a farm plan approved by a local soil conservation district to minimize soil erosion and to minimize the movement of sediment, animal waste, nutrients, or agricultural chemicals into waters of the State.*

*(16) "Total maximum daily load" or "TMDL" means an estimate set in accordance with Clean Water Act requirements which 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.*

*(17) "Watershed Implementation Plan" or "WIP" means a plan required by the U.S. Environmental Protection Agency for achieving the pollution reduction goals and allocations necessary in implementing the Chesapeake Bay TMDL.*

## **.03 Eligibility.**

*A. Except as provided by this regulation, a person who operates an operation is eligible to apply for the Program.*

*B. An application for agricultural certainty shall include a farm parcel in its entirety but need not include all farms or farm parcels under the management of a person.*

*C. An operation or a part of an operation defined as a concentrated animal feeding operation (CAFO) in COMAR*

26.08.01.01B or any operation in the process of applying for a CAFO permit is not eligible for certification under the Program.

**.04 Certification Process — Agricultural Certainty.**

A. A person who applies for certification for an operation shall submit to the Department the following:

- (1) An application on a Department form that includes a farm parcel in its entirety but need not include all farm parcels under the applicant's management;
- (2) Documentation from the local soil conservation district that the current SCWQP for the operation is fully implemented to address all soil conservation and water quality issues;
- (3) A map identifying the location and boundaries of the operation showing field identification numbers and location of BMPs;
- (4) A current NMP that is fully implemented and is developed for the operation in accordance with regulations adopted by the Department; and
- (5) A report from a certified verifier engaged by the applicant that contains the information specified in §B of this regulation.

B. A certified verifier who complies with §C of this regulation and is engaged by the owner or operator of an operation to prepare a certified report in support of an application under §A of this regulation shall:

- (1) Inspect the operation before making the report;
- (2) Review all relevant records, including but not limited to those provided in §A of this regulation; and
- (3) Prepare a report on a Department form, supplemented by the verifier, that confirms the following:
  - (a) The SCWQP provided by the applicant for the operation is being fully implemented and addresses all nitrogen, phosphorus, and sediment runoff issues on the operation;
  - (b) The NMP provided by the applicant for the operation is being implemented in accordance with applicable Department regulations COMAR 15.20.07 and 15.20.08;
  - (c) The agricultural management and BMPs implemented on the operation which enable that operation to meet the approved local or Chesapeake Bay TMDL baseline requirements as determined by an analysis using the MNTT; and
  - (d) No deficiencies exist and no corrective measures are needed on the operation.

C. A person who holds an interest in an operation may not act as a certified verifier for that operation.

D. Prior to approving an application for certification under the Program, the Department:

- (1) Shall review the application and information submitted to assure that it is complete, true, and accurate and notify the applicant of any deficiencies;
- (2) Shall notify MDE by providing a copy of the application or any portion of the application as requested by MDE, after receipt of which MDE shall advise the Department if:
  - (a) The operation holds or has applied for a permit from MDE;
  - (b) MDE will participate in an inspection of the operation, with the verifier if requested by MDE; and
  - (c) Either:
    - (i) MDE approves the operation, if the operation holds or has applied for a permit from MDE, for participation in the Program; or
    - (ii) Any conditions are required to be satisfied by the operation, if the operation holds or has applied for a permit from MDE, before MDE would approve the operation for participation in the Program;
- (3) Shall determine the compliance status of the operation and applicant with all the Department's laws, regulations, and permit conditions applicable to nitrogen, phosphorus, and sediment;
- (4) Shall review information submitted by the certified verifier to assure that it meets the requirements set forth in this chapter;
- (5) May inspect the operation, with the verifier if requested by the Department, and request records pertaining to the SCWQP, NMP or management otherwise related to addressing nitrogen, phosphorus, and sediment issues on the operation in order to verify the application; and
- (6) Shall retain as required by law the application, information, and records in a manner that protects its confidentiality prior to certification and retain all records and information in a manner that protects the identity of the person applying in perpetuity.

E. A certification may be approved if the Department determines that an operation:

- (1) Meets the laws, regulations, rules, and permit conditions applicable to the operation at the time of certification;
- (2) Has no outstanding conditions resulting in movement of nitrogen, phosphorus, or sediment that impacts water quality;
- (3) Receives approval from MDE if the operation is permitted or has an application submitted to be permitted by MDE;
- (4) Is managed under a current SCWQP that fully implements BMPs to address all nitrogen, phosphorus, and sediment runoff on the operation;
- (5) Manages fertility using a current NMP fully implemented in accordance with COMAR 15.20.07 and 15.20.08;
- (6) Is in compliance with all State and federal laws, regulations, and permit conditions related to agricultural sources of nitrogen, phosphorus, and sediment on the operation;
- (7) Meets the agricultural nitrogen, phosphorus, and sediment reduction thresholds required for achieving the local and Chesapeake Bay TMDLs approved by the U.S. Environmental Protection Agency at the time of certification as determined by MNTT; and
- (8) Enters into the Certainty agreement required under §F of this regulation.

F. The person responsible for the management of an operation approved for the Program shall enter into a Certainty agreement with the Department identifying requirements for maintaining the certification including:

- (1) Continued compliance with applicable local, State, and federal laws, regulations, and permit requirements pertaining to nitrogen, phosphorus, and sediment control;
- (2) Maintenance and full implementation of a current NMP;
- (3) Maintenance of BMPs that address nitrogen, phosphorus, and sediment control, and are part of the SCWQP and any other BMPs necessary to achieve certification;
- (4) Meeting record-keeping and annual reporting requirements;
- (5) Agreeing to site reviews and inspection of records at least once every 3 years to verify current conditions on the operation and compliance with certification requirements and recognizing that the Department reserves the right to inspect more frequently if it determines a need;
- (6) Agreeing to notify the Department no later than 60 days prior to any change in the owner or operator;
- (7) Agreeing to notify the Department as soon as practicable, but in any case no later than 60 days after the occurrence of any condition or event which would impact the certification under the Program, including but not limited to property title transfers or changes in the operation, pursuant to Regulation .05A(2) of this chapter, that result in or increase nitrogen, phosphorus, or sediment runoff or change adherence to TMDL baseload; and
- (8) Agreeing to address within a time frame established by the Department, after concurrence by MDE, any nitrogen, phosphorus, or sediment runoff problem arising on a certified operation during the certification period through no fault of the operator.

**.05 Agricultural Certainty Certification — General Requirements.**

A. Unless suspended or revoked, a certification remains in effect for a 10-year period following approval by the Department if:

- (1) The operation remains in compliance with the Certainty agreement set forth in Regulation .04F of this chapter and all other requirements of the Program under this chapter; and
- (2) There are no changes to the operation, including no change in the:
  - (a) Operator with the exception of an interfamily transfer;
  - (b) Owner when it results in a change in the operator;
  - (c) Average annual number of animal units of 10 percent or greater; or
  - (d) Operation resulting in the operation being ineligible for the Program.

B. An operator who has any of the changes identified in Regulation .04F(7) or Regulation .05A(2) of this chapter shall notify the Department within 60 days and:

- (1) Execute an agreement with the Department to bring the operation into compliance to meet certification requirements;
- (2) Reapply for certification; and
- (3) Terminate the Certainty agreement.

C. For changes in the operation that would not result in suspension of certification under this chapter, including rotation of crops, implementation of additional BMPs, or other changes that receive prior approval by MDA provided they do not exceed the allowable TMDL threshold for the operation, MDA may:

- (1) Approve changes not deemed significant; and
- (2) Require documentation be provided by a new MNTT analysis verifying TMDL thresholds continue to be met.

D. When nitrogen, phosphorus, or sediment runoff conditions arise as a result of natural causes, such as severe weather events, which are not within the control of the operator of the operation:

- (1) The certification holder shall provide notice within 60 days to the Department describing the condition;
- (2) The Department will coordinate a site inspection with MDE and may assign a certified verifier to conduct a site inspection; and

(3) Following a Department review, the Department, with concurrence from MDE, shall:

- (a) Allow continuation under the Program if a repair, correction, or installation of additional BMPs to address the nitrogen, phosphorus, or sediment runoff is accomplished within a reasonably expeditious time frame identified by an agreement executed with the Department; or
- (b) Suspend certification if the Department finds the condition arose due to mismanagement, lack of maintenance, or the failure of the operator of the operation to provide notice to the Department within 60 days.

E. Following the site inspection that takes place nearest to year 9 during the 10-year certification period, the operator shall take steps to address compliance issues with any new local, State, or federal law, regulation, or requirement that took effect during the Certainty agreement period.

F. After each review conducted at the direction of MDA under Regulation .06D of this chapter, the certified verifier shall list on a Department form and orally explain to the certification holder any current or proposed laws that will require changes to the operation before the 10-year completion of the Program.

G. At the expiration of the certification, an operation shall be in compliance with all laws, regulations, or permit requirements relating to nitrogen, phosphorus, and sediment runoff control and that are in effect at that time.

H. An operation certified under Regulation .04 of this chapter may apply and qualify for recertification if:

- (1) The application and information required under Regulation .04A of this chapter reflect current conditions as submitted to the Department;

- (2) All the requirements in Regulation .04 of this chapter are met; and
- (3) MDE approves the recertification if an operation is permitted or has a permit pending with MDE.

**I. An operation that is certified:**

(1) Except as provided in §I(2) and (3) of this regulation, is not subject during its 10-year certification period to local and State laws, regulations, or requirements enacted or adopted after the date of certification that require the reduction of agricultural sources of nitrogen, phosphorus, or sediment runoff to meet the Chesapeake Bay TMDL, including requirements of the WIP, local TMDLs, or other water quality requirements for managing agricultural sources of nitrogen, phosphorus, or sediment;

(2) Is not protected from enforcement or corrective actions related to water quality impacts or violations; and

(3) Is not protected from the application or enforcement of any other laws, regulations or permits, including the following:

(a) Corrective actions issued under Environment Article, Title 4, Subtitle 4, Annotated Code of Maryland, which addresses, for example, water pollution abatement;

(b) Environment Article, Title 5, Annotated Code of Maryland, which addresses, for example, water resource management including flood control and water appropriations;

(c) Environment Article, Title 9, Subtitle 2, Annotated Code of Maryland, which addresses, for example, water supply systems, sewage systems, refuse disposal, and sewage sludge;

(d) Environment Article, Title 9, Subtitle 3, Annotated Code of Maryland, which addresses, for example, discharge permits;

(e) Environment Article, Title 16, Annotated Code of Maryland, which addresses, for example, wetland protection programs;

(f) Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, which addresses, for example, land use and protections in the Atlantic Coastal and Chesapeake Bays Critical Area;

(g) Growth tier maps adopted by a local jurisdiction under Land Use Article Title 1, Subtitle 5, Annotated Code of Maryland;

(h) Any State or local law or regulation that regulates the development of land;

(i) The federal Clean Water Act;

(j) Regulations governing the management of agricultural sources of nitrogen, phosphorus, or sediment initiated by the Department before the enactment of authorizing legislation for this program, including regulations to revise the phosphorus site index or to implement a phosphorus management tool, regardless of when they are adopted; or

(k) Any applicable laws enacted or regulations adopted prior to certification that are subject to a delayed implementation period.

**.06 Verification.**

A. The applicant shall employ a certified verifier who does not hold an interest in the agricultural operation, as defined by this chapter, in order to apply to the Program.

B. A certified verifier shall provide the following to the Department for the applicant's application:

(1) Information as required on a Department form;

(2) A map delineating the boundaries of the operation and showing field identification numbers and locations of BMPs on site; and

(3) Information following an inspection and review of records for an operation applying for a Certainty agreement including:

(a) Review of the NMP and documentation of any outstanding issues;

(b) Review of the SCWQP and documentation that it:

(i) Is fully implemented to address nitrogen, phosphorus, and sediment runoff; or

(ii) Fails to address any conditions causing movement of nitrogen, phosphorus, and sediment that are impacting water quality;

(c) A farm summary showing outcomes of the MNTT assessment and an operation's status in meeting the Chesapeake Bay or local TMDL; and

(d) Any additional BMPs implemented to meet the nitrogen, phosphorus, or sediment thresholds required by the local or Chesapeake Bay TMDL for the watershed in which the operation exists.

C. As required by law, the verifier shall handle information that is collected and submitted to the Department as a result of the verification for the Certainty certification as confidential.

**D. Reviews.**

(1) The Department shall schedule site reviews and inspection of records at least once every 3 years for each certified operation under the Program to verify current conditions on the operation and compliance with Certainty agreement requirements.

(2) The Department shall notify MDE of operations that are to have site reviews conducted and provide copies of the verifier's report of interim site reviews.

(3) The Department shall assign a certified verifier who:

(a) Meets qualifications set forth in Regulation .07 of this chapter;

(b) Does not hold an interest in the certified operation; and

(c) Is not the same individual who conducted the verification of the operation at the time of application.

- (4) Certified verifiers assigned by the Department to conduct interim inspections and reviews shall:
  - (a) Contact the operator in advance of the inspection to make an appointment so the operator or his representative can be present and have records available for the review;
  - (b) Present a photo identification at the time of the inspection as proof of credentials; and
  - (c) Adhere to all biosecurity and other measures necessary to protect health and safety at the operation.
- (5) Information collected and submitted as a result of the inspection shall be maintained by the verifier and the Department, as required by law, in a manner that protects the identity of the person who holds the certification for the operation.
- (6) An operator shall receive a copy of the report prepared by the verifier conducting a review and inspection of records within 30 days and:
  - (a) May dispute information in the report that the operator believes is in error or does not accurately represent the condition or management of the operation; and
  - (b) May address any concerns about the verification report in writing with the Department and copy the verifier within 30 days of receiving a copy of the report.
- (7) The Department may conduct an investigation that may include additional inspections to determine the actual condition and management of the operation.

**E. Documentation Required by Verifiers.**

- (1) The certified verifier shall provide a certified report within 30 days of the interim site review and inspection to the Department as required on a Department form that includes:
  - (a) A map providing the boundaries of the agricultural operation that shows field numbers and the locations of any BMPs on site;
  - (b) A review of the NMP and implementation records to assure the plan is in accordance with COMAR 15.20.07 and 15.20.08 and is being fully implemented and documentation of any outstanding issues and necessary corrections; and
  - (c) Either:
    - (i) A review of the SCWQP and documentation that it is implemented and that it addresses all nitrogen, phosphorus, and sediment runoff issues; or
    - (ii) A documentation of site evaluation and any nitrogen, phosphorus, and sediment runoff issues that are outstanding or require correction, including necessary BMP maintenance.
- (2) At each review the certified verifier shall provide the operator of the operation with information concerning any applicable new laws, regulations, or requirements that have become effective since the operation's Certainty agreement and that will need to be addressed at the end of the 10-year Certainty agreement period.

**F. Department Certainty Agreement Compliance Requirements.**

- (1) The Department shall determine whether an operation is in compliance with all State water quality programs in effect when the Certainty agreement was signed pertaining to nitrogen, phosphorus, and sediment, and review information submitted from the verifier to ascertain compliance with the Certainty agreement.
- (2) The Department shall notify and provide information received from the verifier to MDE. MDE may seek additional information to assure compliance with laws, regulations, permits, or other requirements administered by MDE, including a site visit if needed and in coordination with the Department.
- (3) The Department may take the following actions based on the outcome of any inspections or the report of the verifier:
  - (a) Determine if an operation is in compliance with the Certainty agreement;
  - (b) Corroborate any conditions identified as a violation of the Certainty agreement;
  - (c) Corroborate any conditions creating nitrogen, phosphorus, or sediment runoff and determine, in concurrence with MDE, whether they:
    - (i) Occurred through any fault of the operator; and
    - (ii) Can be corrected in a timely manner under a written agreement with the operator; or
  - (d) Address any failure to comply with any of the conditions described in Regulation .04E of this chapter or in the Certainty agreement as follows:
    - (i) Provide a time frame for the operator to come into compliance as a condition of retaining any existing Certainty agreement;
    - (ii) Require the operator to apply for a new Certainty agreement without penalty when changes to the operation have occurred; or
    - (iii) After an opportunity for a hearing, revoke or suspend the certification.

**.07 Verifier Certification Program.**

A. An individual may not be certified or act as a certified verifier as provided by this chapter unless the individual meets the following requirements to be established by the Department:

- (1) Education and experience;
- (2) Training; and
- (3) Continuing education.

B. The Department may certify a verifier who meets the following eligibility requirements:

- (1) Has 3 or more years experience developing SCWQPs or qualifies as a U.S. Department of Agriculture, Natural Resource Conservation Service, Conservation Planner level II;
- (2) Is certified in Maryland to prepare NMPs; and

(3) Is certified in the use of the MNTT.

C. A verifier may remain certified only by completing at least 6 hours of Department approved training within the first year, and 12 hours thereafter for each 3-year certification period, as well as completing a training session on the use of any modified version of the MNTT within 6 months of the modification.

#### **.08 Record-Keeping and Reporting Requirements.**

A. A person who manages an operation certified under the Program shall submit annually to the Department on or before March 1, information for the previous calendar year, as follows:

(1) A Department reporting form that includes the person's signed certification that the operation has been managed in accordance with the Certainty agreement and will continue to be so managed during the upcoming calendar year;

(2) Current NMP records including soil analysis within the last 3 years for land receiving nutrients, fertility recommendations for crops produced, nutrients applied by source and crop type, and a map identifying the location and boundaries of the operation showing field identification numbers and location of BMPs; and

(3) SCWQP records related to implementation of any additional BMPs during the reporting period.

B. A person who operates an operation certified under the Program shall keep the following records:

(1) All NMPs and records used to manage soil fertility during the certification period and for 3 years following the termination of any certification; and

(2) The SCWQP for the operation and any updates, information, or documentation that addresses plan implementation or installation of additional BMPs during the certification period and for 3 years following the termination of any certification.

C. Public Access to Program Information.

(1) As required by law all records concerning any agricultural operation shall be maintained by the Department and shall be made available for public review, in a manner that provides the greatest public disclosure of records and information, after the Department redacts records to protect the identity of the person to whom the record or information relates.

(2) The Maryland Public Information Act applies to any request for records.

D. Annual Reporting.

(1) The Department shall submit an annual report to the Governor, the Senate Education, Health, and Environmental Affairs Committee, and the House Environmental Matters Committee on or before December 31, beginning in 2014.

(2) The annual report shall include:

(a) Acres of agricultural land certified under the program and presented by county and watershed at a scale consistent with that applied by the MNTT;

(b) Presentation of information to protect the identity of the certified agricultural operator in accordance with the requirements of the law; and

(c) Recommendations of the Oversight Committee.

#### **.09 Denial, Suspension, or Revocation of Certificate.**

A. Certification of Operations.

(1) After the opportunity for a hearing, the Department may deny, suspend, or revoke the certification of any person who:

(a) No longer meets the eligibility requirements of the Program;

(b) Violates any of the regulatory requirements of this chapter;

(c) Provides misleading, false, or fraudulent information in applying for a certification;

(d) Provides the Department with any misleading, false, or fraudulent report;

(e) Fails to promptly provide any report or to allow the Department access to inspect any operation certified under the Program or any record required to be kept by this chapter;

(f) Fails to comply with Certainty agreement for the operation; or

(g) Performs any action or fails to act in such a manner that the Department determines provides other good cause to deny, suspend, or revoke the certification.

(2) The Department shall give notice and hold hearings in accordance with the Administrative Procedure Act.

(3) The Department may consider the following when assessing whether suspension or revocation is warranted:

(a) The willfulness of the violation;

(b) The extent to which the existence of the violation was known to the violator, but uncorrected by the person;

(c) The extent to which the person exercised reasonable care;

(d) Any actual harm to human health or to the environment or the natural resources of the State;

(e) The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

(f) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the person.

B. Certification of Verifiers.

(1) After the opportunity for a hearing, the Department may deny, suspend, or revoke the certification of any verifier who:

(a) No longer meets the eligibility requirements of the Program;

(b) Violates any of the regulatory requirements of this chapter;

(c) Provides the Department with any misleading, false, or fraudulent report;

(d) Fails to promptly provide any report or any record required to be kept by this chapter;

(e) Fails to adhere to confidentiality requirements required by this chapter;

(f) Fails to meet continuing education requirements for verifiers;

- (g) Is determined to be negligent or incompetent; or*
- (h) Performs any action or fails to act in such a manner that the Department determines provides other good cause to deny, suspend, or revoke the certification.*
- (2) The Department shall give notice and an opportunity to be heard in accordance with the Administrative Procedure Act.*
- (3) The Department may consider the following when assessing whether suspension or revocation is warranted:*
  - (a) The willfulness of the violation;*
  - (b) The extent to which the existence of the violation was known to the violator, but uncorrected by the person;*
  - (c) The extent to which the person exercised reasonable care; and*
  - (d) Any actual harm to human health or to the environment or the natural resources of the State.*

***.10 Agricultural Certainty Oversight Committee.***

- A. There is an Agricultural Certainty Oversight Committee. The responsibility of the Oversight Committee includes:*
  - (1) Assisting in the development of regulations that govern the Program;*
  - (2) Monitoring and providing oversight on the development and implementation of policies and standards relating to the Program;*
  - (3) Evaluating performance of the Program and making recommendations for improvements to the Program based on information provided by the Department; and*
  - (4) Reviewing the draft annual report and other information to make recommendations.*
- B. The Oversight Committee meets when necessary to provide recommendations for developing regulations for the Program and thereafter a minimum of once a year to carry out its responsibilities.*