

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: 1/25/2013

2. COMAR Codification

Title Subtitle Chapter Regulation

15 20 06 01, .02, .04, .05 and .07

15 20 10 01 - .17

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Tonia C Martin

Telephone Number

410-841-5829

Mailing Address

50 Harry S. Truman Parkway

City State Zip Code
Annapolis MD 21401

Email

5. Name of Person to Call About this Document

Jo Mercer, Ed.D.

Telephone No.

410-841-5959

Email Address

Jo.Mercer@maryland.gov

6. Check applicable items:

X- New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 12/13/12.

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

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 State Government Article, §10-506(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 December 17, 2012. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Earl F. Hance

Title

Secretary of Agriculture

Date

December 17, 2012

Telephone No.

410-841-5880

DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

15.20.06 Nutrient and Commercial Fertilizer Application Requirements for Agricultural Land [and Land, Including State Property, Not Used for Agricultural Purpo

Subtitle 20 SOIL AND WATER CONSERVATION

15.20.10 Fertilizer Application Requirements for Land Not Used for Agricultural Purposes

Authority: Agriculture Article, §§8-801—8-806, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Agriculture proposes to amend Regulations .01, .02, .04, .05, and .07 under COMAR 15.20.06 Nutrient and Commercial Fertilizer Application Requirements for Agricultural Land [and Land, Including State Property, Not Used for Agricultural Purposes].

The Secretary of Agriculture also proposes new Regulations .01—.17 under a new Chapter, COMAR 15.20.10 Fertilizer Application Requirements for Land Not Used for Agricultural Purposes.

Statement of Purpose

The purpose of this action is to establish requirements related to fertilizer application and training applicable to persons who apply fertilizers to land that is not used for agricultural purposes. Specifically, the proposed regulations establish certification and licensing requirements for professional fertilizer applicators, registration requirements for employees of professional applicators, certain record keeping and reporting requirements for professional applicators, soil testing, civil penalties, as well as establishing timing and rate of application criteria for fertilizers applied by professionals and non-professional applicators. This action will also amend COMAR 15.20.06 to remove obsolete regulatory requirements.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

While the existing regulation affects businesses that fertilize ten or more acres, the proposed regulations, based on the Lawn Fertilizer Act of 2011, affects all businesses that fertilize turf, including very small businesses.

These proposed regulations require professional fertilizer applicators to become certified

and be licensed by MDA. Record-keeping requirements and annual reporting requirements may result in additional operating costs for regulated entities. The Department does not have data to assess the number of lawn care businesses affected by this regulation. Based on current regulatory activities in this area the Department estimates there are 1400 business entities that will be affected by these proposed regulations.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	Undeterminable
B. On other State agencies:	(E+)	Undeterminable
C. On local governments:	(E+)	Undeterminable
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Undeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Undeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Department will generate revenue through certification, licensing and registration fees. The funds generated will be used to support: 1) an additional urban Nutrient Management Specialist to enforce the new regulations; 2) training and certification; and 3) public outreach.

B. A certified professional fertilizer is required at each location where fertilization is performed. Cost of certification is \$100/year. Each location is also required to have a business license (\$50/year). Employees who fertilize under the direct supervision of a certified professional fertilizer applicator are required to be registered. Cost of registration is \$15/yr. Most of the fertilization performed by State agencies is done by SHA. The average cost of a soil test, including administrative cost, is \$20/3years.

C. A certified professional fertilizer is required at each location where fertilization is performed. Cost of certification is \$100/year. Each location is also required to have a business license (\$50/year). Employees who fertilize under the direct supervision of a certified professional fertilizer applicator are required to be registered. Cost of registration is \$15/yr. The average cost of a soil test, including administrative cost, is \$20/3 years. The provisions of the 2011 Fertilizer Use Act will increase the number of regulated local government entities by approximately one-third.

D. A certified professional fertilizer is required at each location where fertilization is performed. Cost of certification is \$100/year. Each location is also required to have a business license (\$50/year). Employees who fertilize under the direct supervision of a

certified professional fertilizer applicator are required to be registered. Cost of registration is \$15/yr. The provisions of the 2011 Fertilizer Use Act will increase the number of regulated businesses by approximately 100%.

F. Individuals who care for their own lawns will be required to obtain soil test at a cost of \$20/3 years, if they wish to apply phosphorus. Homeowners and businesses that employ a lawn care company will be required to have a soil test performed by the lawn care company at a cost of \$20/3 years.

The public will benefit from the proposal through improved water quality and environmental conditions in local rivers and streams. The quality of life of Marylanders will improve by virtue of healthy local water bodies and additional measures toward a restored Chesapeake Bay.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

While the existing regulation affects businesses that fertilize ten or more acres, the proposed regulations, based on the Lawn Fertilizer Act of 2011, affects all businesses that fertilize turf, including very small businesses.

The proposed regulations require professional fertilizer applicators to become certified and be licensed by MDA as described in Part A. Record keeping requirements and annual reporting requirements may result in additional operating costs for regulated entities. The Department does not have data to assess the number of lawn care businesses affected by this regulation. Based on current regulatory activities in this area the Department estimates there are 1400 business entities that will be affected by the proposed regulation.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jo A. Mercer, Ed.D., Administrator, Nutrient Management Program, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, or call 410-841-5959, or email to Jo.Mercer@maryland.gov, or fax to 410-841-5950. Comments will be accepted through February 25, 2013. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2013

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:

Special Funds - "Chesapeake Bay Trust Pioneer Grant"

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:

12/13/12

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

15.20.06 Nutrient and Commercial Fertilizer Application Requirements for Agricultural Land [and Land, Including State Property, Not Used for Agricultural Purposes]

Authority: Agriculture Article, §§8-801—8-806, Annotated Code of Maryland

.01 Scope.

[A.] This chapter requires a person who applies nutrients to more than 10 acres of agricultural land, which that person owns or manages, to:

(1) — (4) Text unchanged.

[B. This chapter also requires certain persons to follow the application recommendations of the University of Maryland Cooperative Extension when applying commercial fertilizer in any 12-month period to land not used for agricultural purposes that is:

- (1) 10 or more acres, regardless of individual parcel size; or
- (2) State-owned land.]

.02 Definitions.

A. Text unchanged.

B. Terms Defined.

- (1) — (8) Text unchanged.

[(9)] "Land not used for agricultural purposes" means a parcel of land that does not qualify for agricultural use assessment under Tax-Property Article, §8-209, Annotated Code of Maryland.]

[(10)] (9) "Nutrient" means a fertilizer or any substance used to promote plant growth.

[(11)] (10) "Nutrient application rate" means the quantity of primary nutrients, as total nitrogen (N), available phosphate (P₂O₅), and soluble potash (K₂O), recommended by a certified nutrient management consultant to:

(a) — (b) Text unchanged.

[(12)] (11) "Nutrient content" means the percentage of any primary nutrient, as total nitrogen (N), available phosphate (P₂O₅), or soluble potash (K₂O), in any type or source of plant nutrients.

[(13)] (12) "Nutrient management plan" means a plan prepared by a certified nutrient management consultant or a certified farm operator to manage the amount, placement, timing, and application of animal manure, fertilizer, biosolids, or other plant nutrients in order to protect water quality and maintain the productivity of soil in accordance with COMAR 15.20.08.

[(14)] (13) "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)] "State property" means land that the State owns, but does not include land subject to a State-owned easement or other State restriction.]

[(16)] (14) "Supervision" means that a nutrient management consultant, a certified farm operator, or a person who holds a voucher is responsible for:

(a) — (b) Text unchanged.

.03 Text unchanged.

.04 For-Hire Application of Nutrients to Agricultural Land [or Application of Commercial Fertilizer to Land Not Used for Agricultural Purposes].

[A.] A person who for-hire applies nutrients to agricultural land shall:

(1) — (3) Text unchanged.

(4) On or after December 31, 2002, apply nutrients according to the University of Maryland Cooperative Extension recommendation rates when a nutrient management plan is not required.

[B. A person, including an employee of the owner or manager of the land, hired to apply commercial fertilizer to 10 or more acres, regardless of individual parcel size of land not used for agricultural purposes, and all State property not used for agricultural purposes, shall apply commercial fertilizer in a manner that is consistent with the recommendations of the University of Maryland Cooperative Extension.]

.05 Record-Keeping and Reporting Requirements.

[A.] A person who for-hire applies nutrients to agricultural land shall:

(1) — (2) Text unchanged.

(3) Make available for inspection, at the Department's request, the records required by §A(1) and (2) of this regulation.

[B. Nonagricultural Applicator Record-Keeping Requirements.

(1) The record-keeping requirements of this section apply to a person who:

(a) Owns or manages land not used for agricultural purposes that consists of 10 or more acres, regardless of individual parcel size, or is State property, when an application of nutrients is made by an employee; or

(b) Applies nutrients for-hire to land not used for agricultural purposes that in any 12-month period consists of 10 or more acres, regardless of individual parcel size, or is State property.

(2) The records required by this section shall:

(a) Be kept in a form approved by the Department; and

(b) Provide commercial fertilizer recommendations prepared for the land and for the plants, documenting that University of Maryland Cooperative Extension recommendations were followed, including:

(i) Soil tests,

(ii) Production or management objectives, and

(iii) Timing of nutrient application.

(3) For each application of nutrients to the land and to plants, the person shall make and keep for at least 3 years a record that includes:

(a) The amount of nutrients applied to the land and to the plants;

(b) The location of the nutrient application;

(c) The timing and rate of the application; and

(d) The nutrient content of any fertilizer applied to the land and to the plants.

(4) The records required by §B(2) and (3) of this regulation shall be made available for inspection at the Department's request.]

.06 Text unchanged.

[.07 Assessment of Civil Penalty.

A. Imposition of Civil Penalty.

(1) The Department may impose a civil penalty on a person who violates any provision of Regulation .01B, .04B, or .05B of this chapter.

(2) The Department may impose a civil penalty of not more than \$1,000 for a first violation, and a civil penalty of not more than \$2,000 for each subsequent violation. The total penalties imposed on a person for violations that result from the same facts and circumstances may not exceed \$10,000.

(3) In assessing a civil penalty imposed under this regulation, the Department shall give consideration to:

(a) The willfulness of the violation, the extent to which the existence of the violation was known to the violator, but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(b) Any actual harm to human health or to the environment, including injury to, or impairment of, the use of the waters of this State or the natural resources of this State;

(c) The cost of control;

(d) The nature and degree of injury to, or interference with, general welfare, health, and property;

(e) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health and safety; 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 violator.

B. A person aggrieved by any decision of the Department over the assessment of a civil penalty imposed under this chapter may appeal under Agriculture Article, §2-405, Annotated Code of Maryland.

C. Unless a stay has been granted, a person against whom a civil penalty has been imposed under this regulation shall promptly pay the penalty to the Department.]

Subtitle 20 SOIL AND WATER CONSERVATION

15.20.10 Fertilizer Application Requirements for Land Not Used for Agricultural Purposes

Authority: Agriculture Article, §§8-801—8-806, Annotated Code of Maryland

.01 Scope.

This chapter explains the requirements and training applicable to persons who apply nutrients to land that is not used for agricultural purposes.

.02 Definitions.

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

B. *Terms Defined.*

(1) *“Applicator” means a person who applies any type of nutrient, as defined by this chapter, to any crop, plant, or land intended to be planted.*

(2) *“Department” means the Maryland Department of Agriculture or its designee.*

(3) *“Direct Supervision” means the act or process whereby a fertilizer application is made by a trained employee acting under the instructions and control of a certified professional fertilizer applicator who:*

(a) *Is responsible for the actions of that person; and*

(b) *Maintains immediate contact with the trained employee via radio or mobile phone (voice) communication.*

(4) *“Enhanced efficiency fertilizer” means a fertilizer product that increases plant uptake and decreases the potential of nutrient loss to the environment, including gaseous loss, leaching, or runoff, when compared to an appropriate reference fertilizer product.*

(5) *“Fertilizer” or “commercial fertilizer” means a substance containing a recognized plant nutrient used for its plant nutrient content and designed for use, or claimed to have value, in promoting plant growth, except unmanipulated animal and vegetable manure, marl, lime, wood ashes, and gypsum.*

(6) *“Impervious Surface” means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes concrete, asphalt, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.*

(7) "Label" means the display of all written, printed, or graphic matter on the immediate container or a statement accompanying a commercial fertilizer or soil conditioner.

(8) "Land not used for agricultural purposes" means a parcel of land that does not qualify for agricultural use assessment under Tax-Property Article, §8-209, Annotated Code of Maryland.

(9) "Licensee" means an entity that holds a business license that is issued by the Department, in accordance with this chapter.

(10) "Lawn patch product" means a premixed blend of grass seed, fertilizer, and mulch.

(11) "Low phosphorous fertilizer" means fertilizer:

(a) Containing not more than 5% of available phosphate (P_2O_5); and

(b) That has an application rate not to exceed 0.25 pound of available phosphate (P_2O_5)/1000 square feet/ application and 0.5 pound of available phosphate (P_2O_5)/1000 square feet/year.

(12) "Management unit" means an area of land similar soil types, having similar use and management history, and having similar fertility levels as determined by valid soil tests, and will be managed the same in the future.

(13) (a) "Natural organic fertilizer" means a fertilizer product that is derived from either a plant or animal product containing carbon, and one or more elements, other than hydrogen or oxygen that are essential for plant growth.

(b) "Natural organic fertilizer" does not include a fertilizer product that contains:

(i) Synthetic materials; or

(ii) Materials that are changed in any physical or chemical manner from their initial state, except by physical manipulation, including drying, cooking, chopping, grinding, shredding, or pelleting.

(14) "Non-professional" means any person who applies fertilizer to turf and is not for-hire.

(15) "Nutrient" means a fertilizer or any substance used to promote plant growth.

(16) "Nutrient content" means the percentage of any primary nutrient, as total nitrogen (N), available phosphate (P_2O_5), or soluble potash (K_2O), in any type or source of plant nutrients.

(17)(a) "Organic fertilizer" means a fertilizer product that is derived from either a plant or animal product containing carbon and one or more elements, other than hydrogen or oxygen, that are essential for plant growth.

(b) "Organic fertilizer" includes a fertilizer product that contains:

(i) Synthetic materials; or

(ii) Materials that are changed in a physical or chemical manner from their initial state.

(18) "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.

(19) "Professional fertilizer applicator" means any person who:

(a) Is certified to apply fertilizer in accordance with this chapter; and

(b) Applies fertilizer for hire or within the scope of that person's employment.

(20) "Slow-release nitrogen" means nitrogen in a form that:

(a) Delays its availability for plant uptake and use after application; or

(b) Extends its availability to the plant significantly longer than a reference "rapidly available nutrient" such as ammonium nitrate or urea, ammonium phosphate, or potassium chloride.

(21) "Soil conditioner" means any substance or mixture of substances intended for sale, offered for sale, or sold for:

(i) Manurial, soil enriching, or soil corrective purposes;

(ii) Promoting or stimulating the growth of plants;

(iii) Increasing the productivity of plants;

(iv) Improving the quality of crops; or

(v) Producing any chemical or physical change in the soil, except a commercial fertilizer, unmanipulated animal and vegetable manures, agricultural liming material, and gypsum.

(b) "Soil conditioner" includes but is not limited to materials such as compost, peat, vermiculite, or perlite that are incorporated into the soil.

(22) "Soil test" means a technical analysis of soil conducted by a laboratory using standards recommended by the University of Maryland.

(23) "Trained employee" means a person who applies fertilizer under the direct supervision of a certified professional fertilizer applicator.

(24) "Turf" means land, including residential property and publicly owned land that is planted in grass, except land that is used in the sale and production of sod, as defined in § 9-101 of the Agriculture Article.

(25) "Water-soluble nitrogen" means nitrogen that is readily soluble in water.

(26) "Waters of the State" has the meaning stated in § 5-101 of the Environment Article.

.03 Certification Requirement

A. A person who is paid to apply fertilizer to turf not used for agricultural purposes may not apply fertilizer containing nitrogen or phosphorus to turf unless that person is a certified professional fertilizer applicator, or working under the direct supervision of a professional fertilizer applicator.

B. A person, other than a certified professional fertilizer applicator, a trained employee, or a person who merely markets services for a certified professional fertilizer applicator, may not offer to provide turf fertilization services for compensation.

C. Each business location, agency, golf course, or other location shall employ a certified professional fertilizer applicator when an employee is paid to fertilize.

.04 Certification Program

A. The Department, in consultation with the University of Maryland, shall establish a program to train and certify professional fertilizer applicators.

B. This program shall include training and education in;

(1) The proper use and calibration of fertilizer application equipment;

(2) The hazards involved in, and the environmental impact of, applying fertilizer, including nutrient pollution to the waters of the State;

(3) All applicable State and federal laws, rules, and regulations;

- (4) *The correct interpretation of fertilizer labeling information; and*
- (5) *The recommendations developed by the University of Maryland for nutrient management on turf, including the appropriate time to:*
 - (a) *Apply fertilizer when rain is forecast; and*
 - (b) *Apply fertilizer when soils are wet and the potential for fertilizer movement off-site exists.*

.05 Professional Fertilizer Applicator

A. *Certification. Each applicant for a professional fertilizer applicator certificate shall register with the Department, on a form approved by the Department.*

B. *Certification Requirements. Each applicant for a professional fertilizer applicator certificate shall;*

- (1) *Pay a fee of \$100; and*
- (2) *Pass an examination given by the Department.*

C. *Recertification. A certification shall be renewed annually by:*

- (1) *Applying to the Department;*
- (2) *Annually attending two hours of continuing education course(s) approved by the Department, or by reexamination;*
- (3) *Paying the recertification fee of \$100; and,*
- (4) *Complying with all other requirements of this chapter.*

D. *Duration and Renewal*

(1) *A professional fertilizer applicator certificate is valid beginning July 1, or whenever obtained, until the following June 30.*

(2) *If an application for renewal of a professional fertilizer applicator certificate is received by the Department more than 30 days after the expiration date of the certificate, the applicant is subject to a \$30 late fee.*

(3) *An individual who has not renewed the certificate within 12 months of its expiration shall be required by the Department to retake the examination.*

.06 Examinations for Professional Fertilizer Applicator Certificate

A. *Each applicant for certification shall pass a written examination given by the Department.*

B. *Each applicant shall register with the Department at least 1 month before the scheduled examination date.*

C. *The Department shall give the examination at least once a year.*

D. *There is a \$10 fee for each reexamination.*

E. *The Department shall publish and maintain a list of all certified professional fertilizer applicators on its website.*

.07 Business Licenses

A. *Each location that employs a person who is paid to fertilize turf shall have a license as provided under section B of this regulation.*

B. *An applicant for license or renewal of a business license shall:*

- (1) *Apply to the Department on a departmental form;*
- (2) *Designate an employee who is a certified professional fertilizer applicator; and*
- (3) *Pay a \$50 fee.*

C. Vehicle Identification Requirement. If the business provides turf fertilization services for hire, the business license number, preceded by the letters "MDA," shall appear on any service vehicle used on a job site.

D. Duration and Renewal

(1) A license is valid beginning July 1, or whenever obtained, to June 30 of the following June 30;

(2) If an application for renewal of a business license is received by the Department more than 30 days after the expiration date of the license, the applicant is subject to a \$30 late fee; and

(3) Renewals may be issued to licensees provided they have a record of compliance with the requirements of this chapter and continue to employ at least one certified professional fertilizer applicator.

E. Each licensee shall immediately notify the Department in writing if there is a change in business ownership, name, address, phone number, or certified professional fertilizer applicator.

.08 Trained Employees

A. The licensee shall annually register with the Department each person who applies fertilizer for hire under the direct supervision of a certified professional applicator.

B. There is a \$15 fee for each employee registered.

C. Each trained employee shall receive initial and annual training in fertilizer application as determined by the Department.

D. Each employer shall document the time and dates of required training. Training shall be completed before the employee is registered with the Department.

E. The Department shall issue a registration card to each trained employee. Trained employees shall carry their registration card at all times when fertilizing turf, and shall show the registration card at the request of the Department. Upon termination, the trained employee shall return the identification card to the employer.

F. Registration is valid from July 1, or whenever registered, until the following June 30.

G. If an application for renewal of a registration of a trained employee is received by the Department more than 30 days after the expiration date of the registration, the applicant is subject to a \$30 late fee.

H. The employer shall notify the Department immediately after the termination of a trained employee, and shall return the registration card to the Department within 15 days.

I. Upon request, the Department may approve the training program of any outside agency, educational institution, or company.

.09 General Requirements for the application of fertilizer

A. A professional fertilizer applicator or trained employee may not:

(1) Apply fertilizer intended for use on turf to an impervious surface; or

(2) Apply fertilizer containing nitrogen or phosphorus to turf:

(a) At any time when the ground is frozen;

(b) Within 15 feet of waters of the state, however, if using a drop spreader, rotary spreader with a deflector or a targeted spray, then the distance may be reduced to 10 feet; or

(c) In an amount that is inconsistent with the annual recommended rate established by the University of Maryland ((Maryland Nutrient Management Manual I-E1, COMAR 15.20.07.02).

B. A professional fertilizer applicator or trained employee may not apply enhanced efficiency fertilizer to turf;

(1) At a rate exceeding 2.5 pounds per 1,000 square feet of nitrogen per year;

(2) Before March 1 or after November 15 of any calendar year;

(3) In excess of 80% of the total annual recommended rate of nitrogen established by the University of Maryland Extension (Maryland Nutrient Management Manual I-E1, COMAR 15.20.07.02); and

(4) Having a release rate in excess of 0.7 pounds per 1000 square feet of nitrogen per month.

C. Except as specified for enhanced efficiency fertilizer, neither a professional fertilizer applicator, nor a trained employee may apply fertilizer to turf;

(1) At an application rate of more than 0.7 pounds per 1000 square feet of water-soluble nitrogen; and

(2) At an application rate of more than 0.9 pounds per 1,000 square feet of total nitrogen.

D.(1) Except as provided for in subsection 2 below, a professional fertilizer applicator, or trained employee shall apply nitrogen or phosphorus to turf only from March 1 through November 15 of any calendar year; and

(2) From November 16 through December 1, a professional fertilizer applicator or a trained employee may apply up to 0.5 pounds per 1000 square feet of water-soluble nitrogen.

.10 Soil Testing

A. Except as provided for in section (B) of this regulation, a professional fertilizer applicator or trained employee shall obtain a soil test prior to any initial application of P₂O₅ and prior to any second application of nitrogen to a management unit.

B. A soil test is not required if:

(1) The nutrient application is made for the purpose of establishing turf on bare ground; and

(2) The nutrient application is made in accordance with the seeding recommendations of the University of Maryland Extension (Maryland Nutrient Management Manual I-E2, COMAR 15.20.07.02):

(a) The land has been disturbed such as by construction or tillage; or

(b) A lawn patch product is used.

(3) If a soil test, that is not more than 3 years old, exists for the property, it shall be used to determine the appropriate P₂O₅ application.

C. Section B of this regulation does not authorize a professional fertilizer applicator or a trained employee to apply fertilizer containing phosphorus to turf when over seeding without basing the application on the results of a soil test.

D. Any subsequent fertilizer applications to the same management unit shall be based on the results of a soil test.

E. Soil tests are valid for three years.

F. The soil test shall be obtained from a laboratory which uses a method that is approved by the University of Maryland for use in Maryland.

G. Soil tests shall be associated with individual properties or management units.

H. The University of Maryland shall identify laboratories that follow the soil testing methods and procedures recommended for use in Maryland. Professional fertilizer applicators must convert the soil test value for phosphorus to the equivalent University of Maryland Fertility Index Value to determine the appropriate University of Maryland Extension recommendation for P₂O₅ (Maryland Nutrient Management Manual II-B, COMAR 15.20.07.02).

.11 Phosphorus Restrictions

A. Neither a professional fertilizer applicator, nor a trained employee may apply an organic or natural organic fertilizer containing phosphorus to turf unless;

(1) A soil test taken not more than 3 years before the application indicates a low or medium level of phosphorus as determined by the equivalent University of Maryland FIV;

(2) The fertilizer application rate does not exceed the rate recommended by the University of Maryland Extension (Maryland Nutrient Management Manual I-E1 and I-E2, COMAR 15.20.07.02); and

(3) The fertilizer is a low phosphorus fertilizer.

B. Neither a professional fertilizer applicator, nor a trained employee may apply a fertilizer, which is not an organic or natural organic fertilizer, containing phosphorus to turf unless either:

(1) The application is made based on the results of a soil test taken not more than 3 years before the application; and, the application rate does not exceed the rate recommended by the University of Maryland Extension (Maryland Nutrient Management Manual I-E1 and I-E2, COMAR 15.20.07.02); or

(2) The application is made for the purpose of establishing turf on bare ground; and the application is made in accordance with the seeding recommendations of the University of Maryland Extension (Maryland Nutrient Management Manual I-E2, COMAR 15.20.07.02), and either:

(a) The land has been disturbed such as by construction or tillage; or

(b) A lawn patch product is used.

.12 Other Nutrient Sources

In determining the amount of nitrogen and phosphorus fertilizer that may be applied, professional fertilizer applicators shall account for the amount of nutrients known to have been applied in any compost, effluent or other organic nutrient sources, or soil conditioners as specified by the Department, and make necessary adjustments to comply with the annual University of Maryland Extension recommendations (Maryland Nutrient Management Manual I-E1 and E2, COMAR 15.20.07.02).

.13 Record-Keeping and Reporting Requirements for Licensees

A. The records required by this section shall be kept in a form approved by the Department; and

B. Each licensee shall maintain for 3 years records of each fertilizer, or non-fertilizer nutrient application. The following information shall be recorded, when applicable:

(1) Name of applicator;

(2) Date of application;

(3) Size of the area;

(4) Address of the property;

- (5) Fertilizer analysis;
- (6) Rate of fertilizer application;
- (7) Total amount of fertilizer used; and
- (8) An original or legible copy of the label of the fertilizer used.

C. The records required under this section shall be made available for inspection at the Department's request.

.14 Annual Reporting

A. Each licensee shall submit an annual report to the Department on a form designated by the Department.

B. This report shall be submitted by March 1 of each calendar year and information provided will summarize fertilizer applications in the previous calendar year.

C. Failure to submit this report by March 1, may result in the suspension of a business license or professional fertilizer applicator certificate.

.15 Assessment of Civil Penalty.

A. The Department may impose a civil penalty on a person who violates any provision of regulations .02-.14 of this chapter.

B. The Department may impose a civil penalty of not more than \$1,000 for a first violation, and a civil penalty of not more than \$2,000 for each subsequent violation.

C. Each day a violation occurs under this section is a separate violation.

D. The total penalties imposed on a person for violations of this section that result from the same set of facts and circumstances may not exceed \$10,000.

E. In assessing a civil penalty imposed under this regulation, the Department shall give consideration to:

(1) The willfulness of the violation, the extent to which the existence of the violation was known to the violator, but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) Any actual harm to human health or to the environment, including injury to, or impairment of, the use of the waters of this State or the natural resources of this State;

(3) The cost of control;

(4) The nature and degree of injury to, or interference with, general welfare, health, and property;

(5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health and safety; and

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

F. A person aggrieved by any decision of the Department over the assessment of a civil penalty imposed under this chapter may appeal under Agriculture Article, §2-405, Annotated Code of Maryland.

G. Unless a stay has been granted, a person against whom a civil penalty has been imposed under this regulation shall promptly pay the penalty to the Department.

.16 Non-Professional Fertilizer Applicators

A. A non-professional fertilizer applicator may not;

(1) Apply fertilizer intended for use on turf to an impervious surface;

(2) Apply fertilizer containing nitrogen or phosphorus to turf;

(a) *At any time when the ground is frozen;*
(b) *Before March 1 or after November 15 of any calendar year; or*
(c) *Within 15 feet of waters of the state, however, if using a drop spreader, rotary spreader with a deflector or a targeted spray, then the distance may be reduced to 10 feet.*

B. A non-professional fertilizer applicator may not apply enhanced efficiency fertilizer to turf;

(1) *At a rate exceeding 2.5 pounds per 1,000 square feet of nitrogen per year;*
(2) *In excess of 80% of the total annual recommended rate of nitrogen established by the University of Maryland Extension (Maryland Nutrient Management Manual I-E1 and I-E2, COMAR 15.20.07.02);*
(3) *That has a release rate in excess of 0.7 pounds per 1000 square feet per month of nitrogen; or*
(4) *Before March 1 or after November 15 of any calendar year.*

C. Except as specified in section B. of this regulation, for enhanced efficiency fertilizer, a non-professional fertilizer applicator may not apply fertilizer to turf:

(1) *At an application rate of more than 0.7 pounds per 1000 square feet of water-soluble nitrogen;*
(2) *At an application rate of more than 0.9 pounds per 1,000 square feet of total nitrogen;*
(3) *That contains less than 20% slow-release nitrogen; or*
(4) *In an amount that is inconsistent with the annual recommended rate established by the University of Maryland Extension (Maryland Nutrient Management Manual I-E1 and I-E2, COMAR 15.20.07.02).*

D. Phosphorus Restrictions.

A non-professional fertilizer applicator may not apply a fertilizer containing phosphorus to turf unless either:

(1) *The application is made based on the results of a soil test taken not more than 3 years before the application; and, the application rate does not exceed the rate recommended by the University of Maryland Extension (Maryland Nutrient Management Manual I-E1 and I-E2, COMAR 15.20.07.02); or*

(2) *The application is made for the purpose of establishing turf on bare ground; and the application is made in accordance with the seeding recommendations of the University of Maryland Extension (Maryland Nutrient Management Manual I-E2, COMAR 15.20.07.02, and either):*

(a) *The land has been disturbed such as by construction or tillage; or*
(b) *A lawn patch product is used.*

E. Counties, municipalities, or other political subdivisions of the State, may enforce regulation .16 of this chapter.

.17 Exemptions

Educational institutions and researchers may apply to the Department for an exemption to these regulations for research, education, and demonstration purposes.