

Comparison of Agricultural Certainty Program Design in Maryland and Virginia

As of April 15, 2013

The following table provides a comparison of key issues to be considered in designing an agricultural certainty program. The concept seeks to encourage agricultural producers to voluntarily implement a high level of best management practices on their farmlands to accelerate improvement of water quality, in exchange for protection for a designated time period from additional regulation.

This table compares Maryland’s legislation, S.B. 1029 (passed), with the Virginia statute (§ 10.1-104.7 and § 10.1-104.8) and Virginia regulations proposed in March 2013 and effective Dec 2013. (4VAC50-70, dated July 16, 2012).

KEY ELEMENTS	MARYLAND	VIRGINIA
Authority	Proposed legislation with Ag Certainty elements and authority to promulgate regulations MD Code §8-1001-1009	VA Code § 10.1-104.7 & 104.8. Resource management plans; proposed regulations 4VAC50-70
Definitions	Defines “agricultural sources of N, P or sediment” to include operational sources and exclude residential, municipal, industrial, or commercial sources; defines “program”	Numerous definitions in regulations to support specific needs of Resource Management Plan (RMP) implementation; 4VAC50-70-10
Purpose	To accelerate implementation of Ag BMP’s to meet state agricultural nitrogen, phosphorus and sediment reduction goals. Ag Certainty provides a ten year delay to implement new state and local laws and regulations targeting nutrient reductions to meet Chesapeake Bay/Local TMDL or WIP requirements for farms that meet certain requirements related to reducing nitrogen, phosphorus and sediment; Entire operation must meet standards. §8-1004 & 1006	Full implementation and maintenance of RMP for the “management unit” (whole or part of a farm) deems owner/operator to be in full compliance with any load allocation in a TMDL, WIP or state water quality requirements for benthic, bacteria, nutrients or sediment; 4VAC50-70-20. VA Code § 10.1-104.7 does not prevent or preclude compliance with existing state or federal law.

Minimum Standards	Fully implemented Soil Conservation & Water Quality (SCWQP) plan addressing all soil conservation and water quality resource concerns; Current Nutrient Management Plan (NMP); State/Federal law/regulation/ and permit condition compliance; N, P, and sediment load reductions necessary to meet Bay TMDL, WIP, local TMDLs and “any other water quality requirements” §8-1004	Implement BMPs sufficient to implement the Bay TMDL/WIP and other local TMDL water quality requirements; requirements set out specifically for three agriculture land uses: cropland and specialty crops, hayland and pasture; requirements include NMP, forest or grass buffer (buffer does not apply to pasture) , soil conservation plan to soil loss “T”, cover crops, and livestock exclusion; 4VAC50-70-40
Components of Certification	Establishes eligibility standards of certification; establishes certification requirements for entities evaluating and certifying farms; establishes verification intervals; includes reporting requirements §8-1004 – §8-1009	Sets criteria for assessment of the management unit and required information on BMPs, certification of BMP suitability and owner responsibility; provides for authority to conduct inspections of property; 4VAC50-70-50
Revision of Certification	Certification valid assuming no changes to operation or ownership. Regulations will address ownership changes. 8-1004. Certification revoked for non-compliance with the Program, including the legislation and any regulations promulgated under it. 8-1011. Certification terms remain in force for full ten year term even if program is terminated. 8-1006.	Covers change of management unit owner or operator and change in the farming operation type or production level; covers revision of RMP by plan developer; 4VAC50-70-60
Certification of Meeting Certainty Standards	The operator requests verification of implementation; field & record review required; Ag Certainty eligibility determined by a certified verifier who is certified by MDA or a program recognized by MDA; MDA issues certification; §8-1004	RMP must be approved by the local SWCD or DCR; local SWCD must establish a Technical Review Committee; the owner/operator requests verification of RMP implementation; onsite verification required; local SWCD Board affirms implementation; VA DCR issues Certificate of RMP Implementation. 4VAC50-70-70 and 4VAC50-70-80
Term of Certainty Certification	10 years as long as operator remains in compliance §8-1004	Certificate of RMP Implementation valid for 9 years so long as owner/operator is deemed in full compliance; 4VAC50-70-80
Expiration of Certification of Certainty	Ag Certainty operation must meet all new laws, regulations, rules and	Once expired, a new RMP must conform with all current TMDL

	<p>permit conditions and TMDL requirements applicable to the farm on the first day of the end of their certainty period. Farms that comply with all new laws can then apply for recertification §8-1004 & 8-1005</p>	<p>implementation plan requirements applicable to the management unit at time of recertification; 4VAC50-70-80</p>
Inspections/Reporting	<p>Annually submit to MDA the farm's NMP (including soil analysis data, crop fertility recommendations, operation map)SCWQP records, signed certification, and other reports determined by the MDA Secretary to demonstrate compliance. §8-1007</p> <p>On-site inspections required every three years §8-1008</p>	<p>Each management unit is subject to periodic inspections no less than once every three years but not more than annually as long as no deficiencies have been noted; owner/operator required to cooperate with inspections; inspection advance notice of 48 hours required; inspections done by local SWCD with report submitted to VA DCR; 4VAC50-70-90</p>
Compliance & Corrective Action	<p>Enforcement of new water quality laws re: nitrogen, phosphorus and sediment within the Environment Article must be in accordance with Ag Certainty; MDA Secretary may revoke both farmer's Ag Certainty certification and Certifier's certification for non-compliance with certainty program or regulations. Procedures for revocation will be established by regulation. §8-1006; §8-1011</p>	<p>If deficiencies are noted by inspection a written notice goes to owner/operator and addresses actions necessary for full compliance. A corrective action agreement with implementation schedule will be submitted within 90 days. VA DCR can revoke certification if corrective action inadequate; 4VAC50-70-100</p>
Appeals	<p>Due process, notice and hearing, as required by the Administrative Procedures Act is afforded to parties before revocation of certification by MDA. §8-1011.</p>	<p>Owner/operator can appeal SWCD action to the VA DCR and VA DCR will hold informal fact finding proceeding; any party may appeal a VA DCR decision to the VA SWC Board; VA SWC Board decision can be appealed to court of competent jurisdiction; revocation is suspended pending any appeals; 4VAC50-70-110</p>
Reporting/Confidentiality	<p>All records and information concerning certified operation are publicly available in a form that provides the greatest public disclosure of records but also protects operator identity; Secretary maintains NMP and SCWQP to protect farmer identity; no disclosure of records prior to full</p>	<p>BMP data reported from RMP assessment, upon changes or revisions, upon verification of full implementation, upon inspections, and as otherwise needed, will go into VA Agricultural BMP Tracking Program; any personal or proprietary information is exempt from the VA Freedom of</p>

	certification. §8-1010.	Information Act VA Code § 10.1-104.7(E) and 4VAC50-70-120;VA DCR required to maintain a public registry of all current Certificates of RMP Implementation; 4VAC50-70-80
Review of SWCD / Verifier Duties	Oversight Committee will meet yearly and assist in development of regulations to implement program and shall monitor and provide oversight on the development and implementation of the policies and standards relating to the program. Committee can recommend improvements to or termination of the program . 8-1013. MDA must submit annual report to Governor and Legislative Committees by Dec. 8-1010.	VA DCR will review SWCD performance of RMP duties at least once every 5 years, identify SWCD deficiencies and corrective actions; VA DCR may withhold SWCD funding; 4VAC50-70-130
Certainty Verifier Qualifications	MDA certifies verifiers; verifiers cannot have an interest in operation; verifier who did original verification cannot do subsequent verifications; continuing education; designates trainers/certifiers/recertifiers; assesses fees and charges; maintains a public registry; Authority to revoke verification certification privileges 8-1009; 8-1011.	Sets forth competence requirements for RMP plan developer; VA DCR determines competency and issues RMP Developer Certificate; VA DCR can revoke developer certificate; VA DCR to maintain a public registry of issued developer certifications; 4VAC-50-70-140
Promote Application of Certainty	MDA shall publish and maintain a list of entities certified to evaluate farms for meeting Certainty requirements. §8-1009. MDA must submit annual report to Governor and Legislature by Dec. each year on participation in the program and oversight committee recommendations. 8-1010.	VA DCR and SWCDs shall promote the adoption of RMPs among agricultural communities across the Commonwealth; 4VAC50-70-150