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# Maryland Register

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before September 9, 2019, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of September 9, 2019.

Gail S. Klakring  
Administrator, Division of State Documents  
Office of the Secretary of State



**Title 13A  
STATE BOARD OF  
EDUCATION**

**Subtitle 01 STATE SCHOOL  
ADMINISTRATION**

**13A.01.05 Appeals to the State Board of  
Education**

Authority: Education Article, §§2-205, 4-205, 6-202, 7-305, and 23-406; State Government Article, §§10-122 and 10-201 et seq.; Annotated Code of Maryland

**Notice of Proposed Action**  
[19-179-P]

The Maryland State Board of Education proposes to amend Regulation .06 under **COMAR 13A.01.05 Appeals to the State Board of Education**. This action was considered by the State Board of Education at their meeting held on July 23, 2019.

**Statement of Purpose**

The purpose of this action is to establish a standard of review for the State Board of Education to use when deciding student transfer appeals.

**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 Mary L. Gable, Assistant State Superintendent, Division of Student Support, Academic Enrichment, and Educational Policy, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0472 (TTY 410-333-6442), or email to mary.gable@maryland.gov, or fax to 410-333-8148. Comments will be accepted through October 28, 2019. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by State Board of Education during a public meeting to be held on December 3, 2019, 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

**.06 Standard of Review.**

A.—G. (text unchanged)

H. *Appeals of School Transfer Decisions.*

(1) *For an appeal of a denial of a request to transfer to a different school, the local board's decision shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision fails to address with particularity the best interests of the student, including, when appropriate, how denying the transfers reasonably meets:*

- (a) *The educational needs of the student;*
- (b) *The physical or emotional needs of the student; or*
- (c) *The safety needs of the student.*

(2) *If there are barriers that negatively impact the transfer request, such as school capacity, course availability, transportation, or other barriers, even if the transfer is in the best interests of the student, the State Board may substitute its judgment for that of the local board if the decision fails to explain with particularity why the barriers could not be overcome.*

KAREN B. SALMON, Ph.D.  
State Superintendent of Schools

**Title 26  
DEPARTMENT OF THE  
ENVIRONMENT**

**Subtitle 08 WATER POLLUTION**

**26.08.04 Permits**

Authority: Environment Article, §§1-601—1-606, 9-313, 9-315, 9-323—9-328, and 9-330, Annotated Code of Maryland

**Notice of Proposed Action**  
[19-183-P]

The Secretary of the Environment proposes to amend Regulations .09 and .09-1 under **COMAR 26.08.04 Permits**.

**Statement of Purpose**

The purpose of this action is to amend regulations regarding the requirements for a concentrated animal feeding operation (CAFO) applying for or continuing coverage under a discharge permit for animal feeding operations (AFOs), in conformance with statutory changes. The Maryland Department of the Environment (the Department) issues a 5-year general discharge permit (GD permit) for AFOs and, upon the discretion of the Department, an individual discharge permit for AFOs. The next GD Permit will become effective on December 1, 2019.

Beginning October 1, 2019, Ch. 760, Acts of 2019, requires a person to hold a discharge permit for AFOs before beginning construction on any part of a new CAFO, prohibits the Department from waiving discharge permit fees for CAFOs, and requires the Department to collect specified permit application and annual fees from CAFOs with a house capacity of 350,000 square feet or more.

The proposed action establishes permit application fees that are based on a CAFO's size category, repeals the existing annual permit fees in regulation, and adopts the permit application and annual fees for CAFOs with a house capacity of 350,000 square feet or more established under Ch. 760, Acts of 2019. This action also, in conformance with Ch. 760, Acts of 2019, requires a person to hold a discharge permit before beginning construction on any part of a new CAFO.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** Relative to the existing regulations, the proposed action reduces discharge permit fees for CAFOs by an estimated average of \$425,708 annually over the 2019 GD permit term. Specifically, this proposed action would result in a \$425,708 average annual reduction of 1) revenue to the Department's Maryland Clean Water Fund, and 2) permit fees paid by Maryland CAFOs industry-wide. This economic impact estimate may fluctuate depending on how changes in the market demand for animal products

affect the quantity of CAFOs applying for and continuing coverage under a GD permit.

The fees for the discharge permit for AFOs were established by regulation in 2009 as annual permit fees based on the size category (small, medium, or large) of a CAFO as defined in Table 1 under COMAR 26.08.03.09A(3). The current annual permit fees in regulation are \$120, \$600 and \$1,200 for small, medium, and large CAFOs, respectively. These annual permit fees were revised in the GD permit effective December 1, 2014, to \$60, \$300 and \$800 for small, medium, and large CAFOs, respectively. Since 2009, the Department has suspended the collection of the AFO Permit fees to 1) encourage the regulated community to come into compliance at the outset of the AFO program, and 2) to gain a better sense of the resource needs to operate the AFO program before beginning fee collection. However, Ch. 760, Acts of 2019, prohibits the Department from waiving discharge permit fees for CAFOs.

The proposed action would repeal the existing annual permit fees and establish application fees of \$60, \$300, and \$800 for small, medium, and large CAFOs, respectively, due upon submission of the Notice of Intent (NOI) once every 5-year permit term. The proposed action, as required under Ch. 760, Acts of 2019, would also establish the following fees for a CAFO with a house capacity of 350,000 square feet or more: a one-time application fee of \$2,000 due upon submission of an NOI for a proposed new CAFO with a house capacity of 350,000 square feet or more or an existing CAFO expanding its house capacity to 350,000 square feet or more; and an annual fee of \$1,200 to continue coverage under a discharge permit. Relative to the annual fees in the existing regulations, the fee amounts paid by each small, medium, or large CAFO would be reduced by \$540, \$2,700, and \$5,200, respectively, per 5-year permit term. The annual fee amount paid by each existing CAFO with a house capacity of 350,000 square feet or more would remain unchanged; however, a proposed new CAFO with a house capacity of 350,000 square feet or more or an existing CAFO expanding its house capacity to 350,000 square feet or more would experience a one-time fee increase of \$800.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
		\$425,708
A. On issuing agency:	(R-)	annually
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	\$425,708 annually
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. There are currently 576 CAFOs registered under the GD permit for AFOs. Presently there are 1 small, 343 medium, and 227 large CAFOs, and 5 CAFOs with a house capacity of 350,000 square feet

or more. The Department assumes these existing CAFOs will apply for coverage under the new GD permit, effective December 1, 2019, and would pay their applicable permit fees. The Department also assumes that 2 new CAFOs per fiscal year (10 total) will apply for coverage under the GD permit; or, 0 small CAFOs, 1 medium CAFO, 1 large CAFO, and 0 CAFOs with a house capacity of 350,000 square feet or more will apply for coverage each fiscal year.

For a CAFO with a house capacity of less than 350,000 square feet, under the proposed action, the Department would only collect an application fee once every 5-year permit term instead of collecting a fee annually. In conformance with Ch. 760, Acts of 2019, the Department would collect a one-time application fee from a proposed new CAFO with a house capacity of 350,000 square feet or more or an existing CAFO expanding its house capacity to 350,000 square feet or more. The Department would annually collect a fee from existing CAFOs with a house capacity of 350,000 square feet or more for as long as they continue coverage under a discharge permit.

D. Using the same assumptions and analysis as under A, a CAFO with a house capacity of less than 350,000 square feet would pay an application fee once every 5-year permit term instead of an annual fee. As required under Ch. 760, Acts of 2019, a proposed new CAFO with a house capacity of 350,000 or more or an existing CAFO expanding its house capacity to 350,000 square feet or more will pay a one-time application fee. An existing CAFO with a house capacity of 350,000 square feet or more will pay an annual fee for as long as they continue coverage under a discharge permit.

**Economic Impact on Small Businesses**

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

The proposed action will reduce discharge permit fees for CAFOs by an estimated average of \$425,708 annually over the 5-year 2019 GD Permit term. Relative to the annual fees in the existing regulations, the fee amounts paid by each small, medium, or large CAFO would be reduced by \$540, \$2,700, and \$5,200, respectively, per permit term. The annual fee amount paid by each existing CAFO with a house capacity of 350,000 square feet or more would remain unchanged; however, a proposed new CAFO with a house capacity of 350,000 square feet or more or an existing CAFO expanding its house capacity to 350,000 square feet or more would experience a one-time fee increase of \$800.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to John Sullivan, Resource Management Program Manager, Land and Materials Administration, Maryland Department of the Environment, 1800 Washington Blvd., Suite 610, Baltimore, MD 21230-1719, or call (410) 537-3314, or email to john.sullivan1@maryland.gov, or fax to 410-537-3842. Comments will be accepted through October 28, 2019. A public hearing on the proposed action will be held on October 21, 2019, beginning at 4 p.m., at the Wicomico Youth & Civic Center, 500 Glen Avenue, Salisbury, Maryland 21804.

**.09 General Discharge Permits.**

- A.—M. (text unchanged)
- N. General Discharge Permit for Animal Feeding Operations.
  - (1)—(2) (text unchanged)
  - (3) *In accordance with Environment Article, §9-323(a)(2), Annotated Code of Maryland, a person shall have coverage under a CAFO discharge permit before the person may begin construction on any part of a new CAFO.*
  - [(3)] (4) Public Process for CAFOs and MAFOs.
    - (a)—(i) (text unchanged)

(j) The Department shall publish public notice of a preliminary approval of the required plans in accordance with [§N(3)(c)] §N(4)(c) of this regulation. The notice shall provide for a period of 30 days for public comment and shall specify how to review and copy the preliminary approval, NOI, and the required plans. For a CAFO, the notice shall also specify the procedure for making a written request for a public hearing regarding the preliminary approval of the terms of the required plans.

(k)—(n) (text unchanged)

(o) Interested Persons.

(i)—(ii) (text unchanged)

(iii) The Department shall provide a copy of the public notice of the preliminary approval in [§N(3)(i)] §N(4)(i) of this regulation to interested persons and provide them access to a copy of the preliminary approval via electronic mail or U.S. mail or through providing a link to the Department's website.

(iv) (text unchanged)

(p)—(q) (text unchanged)

O.—P. (text unchanged)

**.09-1 Fees for General Discharge Permits.**

A.—I. (text unchanged)

J. Fee for Discharges from Concentrated Animal Feeding Operations.

[(1)] A CAFO shall pay an annual permit fee. The first annual fee payment shall be submitted to the Department with the NOI form. The Department will bill the permittee annually, and the fee shall be paid annually not later than the anniversary of the effective date of the permit. The following permit fees shall be collected based on the size category of the facility defined in Table 1 under Regulation 26.08.03.09A(3):

Size Category	Large	Medium	Small
Annual Permit Fee	\$1200	\$600	\$120]

(1) A CAFO with a total house capacity of 350,000 square feet or more shall pay fees to the Department in accordance with the following requirements:

(a) The CAFO shall pay to the Department an application fee of \$2,000 with the NOI form if the operation is:

(i) A proposed new CAFO; or

(ii) A modification of an existing CAFO to expand the total house capacity of the facility to 350,000 square feet or more; and

(b) A CAFO that holds a discharge permit and has a total house capacity of 350,000 square feet or more shall pay to the Department an annual permit fee of \$1,200 no later than 1 year after the date of renewed coverage under a discharge permit, and pay a \$1,200 permit fee for every year thereafter.

(2) Except as provided under §J(1) of this regulation, a CAFO shall pay to the Department an application fee with the NOI form that is based on the size category of the CAFO defined in Table 1 under COMAR 26.08.03.09A(3), in the accordance with the following schedule:

Size Category	Large	Medium	Small
Application Fee	\$800	\$300	\$60

(3) There is no annual fee for a CAFO with a total house capacity of less than 350,000 square feet.

[(2)] (4) (text unchanged)

K. (text unchanged)

BENJAMIN H. GRUMBLES  
Secretary of the Environment

**Subtitle 11 AIR QUALITY**

**26.11.08 Control of Incinerators**

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, 2-406, 10-102, and 10-103, Annotated Code of Maryland

**Notice of Proposed Action**

[19-190-P]

The Secretary proposes to amend Regulations .01 and .10 under **COMAR 26.11.08 Control of Incinerators.**

**Statement of Purpose**

The purpose of this action is to amend nitrogen oxide (NO<sub>x</sub>) reasonable available control technology (RACT) requirements under COMAR 26.11.08.01 and COMAR 26.11.08.10 for large municipal waste combustors (Large MWCs). In order to satisfy the Environmental Protection Agency's (EPA) updated startup, shutdown, and malfunction (SSM) policy (80 Fed. Reg. 33840), NO<sub>x</sub> emission limits shall be extended to cover periods when a Large MWC is combusting only fossil fuel, as a means to warm up the furnace and other critical components prior to municipal solid waste being fed to the combustor. Additional amendments are being made to clarify how the 24-hour block average emission rates and 30-day rolling average emission rates are to be calculated.

The amendments will be submitted to the U.S. Environmental Protection Agency for approval as part of Maryland's State Implementation Plan (SIP).

**Background**

On December 6, 2018, the Maryland Department of the Environment (MDE) adopted updates to NO<sub>x</sub> RACT for Large MWCs with a capacity greater than 250 tons per day. New regulation COMAR 26.11.08.10 requires that Maryland's two Large MWCs shall meet specific NO<sub>x</sub> 24-hour block average emission rates by May 1, 2019, and NO<sub>x</sub> 30-day rolling average emission rates by May 1, 2020, except during periods of startup and shutdown.

During periods of startup and shutdown, additional ambient air is introduced into the furnace making concentration-based emission limits not practical during these times. The excess ambient air makes it technically infeasible for MWCs to comply with the emission rates due to the "7 percent oxygen correction factor" that is required to be applied to the NO<sub>x</sub> 24-hour block rates. Therefore, an equivalent mass-based emission limit is required during startup and shutdown. In addition to the mass-based emission limit, the NO<sub>x</sub> 24-hour block average emission rate will apply for the 24-hour period after startup is completed and before shutdown commences, as applicable.

EPA informed MDE that since the definition of "startup" excludes warm-up periods, the regulations present a period of time when no NO<sub>x</sub> emission limits are in place. As is the case with startup and shutdown, warm-up periods require excess ambient air to be introduced into the furnace, making concentration-based emission limits not practical. Therefore, an equivalent mass-based emission limit will be required during warm-up periods.

Large MWCs operate solely on natural gas during warm-up periods. Input to natural gas burners and corresponding furnace temperatures are increased gradually to ensure safe operations and integrity of incinerator components. Warm-up periods may run from 3 hours to 16 hours depending upon a number of variables, such as ambient temperatures, duration of unit shutdown, furnace temperature, etc. The warm-up period ends when startup begins, which entails municipal solid waste being fed to the combustor. By definition, under COMAR 26.11.08 periods of startup and shutdown are limited to 3 hours in duration.