



COMPLIANCE GUIDE FOR PROPOSED AFO REGULATIONS

New CAFO Construction Requirements & Discharge Permit Fees

This compliance guide for the proposed Animal Feeding Operation (AFO) regulations provides a clear and concise explanation of how a small business Concentrated Animal Feeding Operation (CAFO) may comply with the proposed regulatory changes. This compliance guide is for informational purposes and should not be construed as legal advice. If the proposed regulations are adopted by the Secretary of the Environment and become effective, affected small businesses should consult the law, Environment Article, §§ 9-323 and 9-325, Annotated Code of Maryland, Code of Maryland Regulations (COMAR), or consult legal counsel. This document is subject to change if the proposed regulations are substantively changed during the regulatory proposal process.

Summary of the Proposed Regulations

The proposed regulations would amend COMAR [26.08.04.09N](#) to prohibit a person from constructing any part of a new CAFO before they receive coverage under a discharge permit for AFOs. The proposed regulations would also amend COMAR [26.08.04.09-1J](#) to require a CAFO applying for new or continuing coverage under a discharge permit for AFOs to pay specific fees to the Maryland Department of the Environment (MDE).

Who is affected by the Proposed Regulatory Changes

The proposed regulations would affect a small business CAFO that plans to apply for new or continue coverage under a discharge permit for AFOs.

Construction of a New CAFO

What is the GD Permit for AFOs:

The federal Clean Water Act defines CAFOs as a point source of pollution; discharges of pollutants from point sources to waters of the United States are required to be regulated under the National Pollution Discharge Elimination System. MDE is authorized by the U.S. Environmental Protection Agency to administer a discharge permitting program for CAFOs. MDE issues a General Discharge (GD) Permit, and an individual discharge permit at its discretion, for AFOs to regulate the discharges of animal waste and process wastewater from AFOs to waters of the state. This discharge permit and the [AFOs regulations](#) are a part of a statewide effort to address all sources of pollution that are impairing or may impair Maryland's waterways.



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A person who seeks to register a CAFO under the GD Permit for AFOs must comply with the application and public participation requirements set forth in the existing COMAR [26.08.04.09N\(3\)](#). Learn more about the GD Permit for AFOs on the [AFO website](#).

New Requirements under the Proposed Regulations - New COMAR 26.08.04.09N(3):

Under the proposed regulations, a person **may not** begin construction **on any part** of a new CAFO until MDE registers the person under the GD Permit for AFOs, or an individual discharge permit if deemed appropriate by MDE. Construction does not include the clearing or grading of land. This new regulatory requirement is proposed in order to conform to the requirements established by [Chapter 760, Acts of 2019](#), a new law enacted by the General Assembly of Maryland in 2019.

Discharge Permit Fees

Why are there discharge permit fees:

Maryland law requires that MDE adopt regulations that set a “reasonable application fee [for a discharge permit] in an amount designed to cover the cost of the permit procedure” and a “reasonable permit fee schedule for industrial users based on” costs of the administering the discharge permitting program (Environment Article, § 9-325, Annotated Code of Maryland). In 2009, MDE established in regulation GD Permit for AFOs annual fees that are based on the size category (small, medium, or large) of a CAFO as defined in COMAR [26.08.03.09A\(3\)](#). Since 2009, MDE has suspended the collection of the GD Permit for AFOs fees. The fees were suspended to encourage CAFOs to come into compliance at the outset of the AFO program, and to allow MDE to gain a better sense of the resources needed to operate the AFO program before beginning fee collection.

The General Assembly of Maryland with the passage of [Chapter 760, Acts of 2019](#) has prohibited MDE from waiving discharge permit fees for CAFOs beginning on Oct. 1, 2019. Chapter 760 also sets specific discharge permit application and annual fees for CAFOs with a house capacity of 350,000 square feet or more.

New Requirements under the Proposed Regulations – New COMAR 26.08.04.09-1J:

Beginning on Oct. 1, 2019, a CAFO with a house capacity of 350,000 square feet **or more** would be required to pay the following fees to MDE:

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- A proposed new CAFO with a total house capacity of, or a modification of an existing CAFO to expand its house capacity to, 350,000 square feet or more must pay a one-time application fee of \$2,000 upon submission of the Notice of Intent form; and
- If the CAFO holds a discharge permit **and** has a total house capacity of 350,000 square feet or more, 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.

Beginning on Oct. 1, 2019, a CAFO with a house capacity of **less than** 350,000 square feet would be required to pay to MDE an application fee, based on the size category of the CAFO as defined in Table 1 under COMAR [26.08.03.09A\(3\)](#), once every 5-year permit term when submitting the Notice of Intent form. These CAFOs do not need to pay an annual fee. Both existing CAFOs covered under the current GD Permit for AFOs and new CAFOs will be required to pay the proposed application fees to MDE if they apply for coverage under the next GD Permit for AFOs, which will become effective on Dec. 1, 2019.

Table 1. Proposed Regulation Application Fees

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

Table 2. AFO Size Categories

Animal Type	Size Categories Number of Animals or Total House Capacity (square feet)		
	Large	Medium	Small
Cattle (includes heifers)	1,000 or more animals	300—999 animals	Less than 300 animals
Dairy cattle	700 or more animals	200—699 animals	Less than 200 animals
Horses	500 or more animals	150—499 animals	Less than 150 animals
Veal	1,000 or more animals	300—999 animals	Less than 300 animals
Swine greater than 55 pounds	2,500 or more animals	750—2,499 animals	Less than 750 animals
Swine less than 55 pounds	10,000 or more animals	3,000—9,999 animals	Less than 3,000 animals
Sheep/lambs	10,000 or more animals	3,000—9,999 animals	Less than 3,000 animals
Ducks with liquid manure handling	5,000 or more animals	1,500—4,999 animals	Less than 1,500 animals



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Animal Type	Size Categories Number of Animals or Total House Capacity (square feet)		
	Large	Medium	Small
Chickens with liquid manure handling	30,000 or more animals	9,000—29,999 animals	Less than 9,000 animals
Ducks with dry manure handling	30,000 or more animals	10,000—29,999 animals	Less than 10,000 animals
Laying hens with dry manure handling	82,000 or more animals	25,000—81,999 animals	Less than 25,000 animals
Chickens (other than laying hens) with dry manure handling	125,000 or more animals; or 100,000 or more square feet	37,500—124,999 animals; and less than 100,000 square feet	Less than 37,500 animals
Turkeys	55,000 or more animals	16,500—54,999 animals	Less than 16,500 animals

Comments

Interested parties may submit public comments on the proposed AFO regulations through **Oct. 28, 2019**, by:

1. Submitting a written comment or comment via telephone to:

Mr. John Sullivan, Resource Management Program Manager
Land and Materials Administration
Maryland Department of the Environment
1800 Washington Blvd., Suite 610, Baltimore, Maryland 21230-1719
410-537-3314 (telephone)
410-537-3842 (fax)
john.sullivan1@maryland.gov

If submitting a written comment, please include “Proposed AFO Regulations” in the subject line.

2. Providing oral testimony at the public hearing on **Oct. 21, 2019**.

The public comment period for the draft proposed AFO regulations ended on Aug. 14, 2019. The public comments period for the proposed AFO regulations published on Sept. 27, 2019, in the Maryland Register will end COB on **Oct. 28, 2019**. To view the Notice of Proposed Action published in Volume 46, Issue 20 of the Maryland Register, please visit [Maryland Register Online](#).