

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	07/07/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 8/7/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

15 20 05 .01-.10

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Iva Benson

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5. Name of Person to Call About this Document

Louise Lawrence

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6. Check applicable items:

- New Regulations
 - Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: July 7, 2015.
 - 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.: 14-354-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 July 7, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joseph Bartenfelder

Title

Secretary

Telephone No.

410-841-5884

Date

July 7, 2015

Title 15
DEPARTMENT OF AGRICULTURE
Subtitle 20 SOIL AND WATER CONSERVATION

15.20.05 Manure Transport Project

Authority: Agriculture Article, Section 8-704.2, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Agriculture proposes to amend Regulations .02, .03, .04, and .06, adopt new Regulation .07, and renumber existing Regulations .07, .08, and .09 to be Regulations .08, .09, and .10 under COMAR 15.20.05 Manure Transport Project

Statement of Purpose

The purpose of this action is to implement Ch. 12 Laws of Maryland 2014 that eliminates the 50% match requirement that the poultry companies were formerly required to pay as an eligibility requirement for state cost share to transport poultry litter; this action explains that MDA is to establish the match percentage amount. The 87.5% cost share for non-poultry growers is unchanged. Additional modifications are to clarify the administration of the program.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

This action will allow more farmers with excess manure to utilize the Manure Transport Program and reduce economic impacts of nutrient management requirements. Farmers receiving excess manure can improve soil health and potentially save on nutrient input costs for their crops. Truckers may also benefit from increased business.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	Nominal
B. On other State agencies:	NONE	
C. On local governments:	(E-)	Nominal

Benefit (+) Cost (-)	Magnitude
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- | | | |
|---|-----|----------|
| D. On regulated industries or trade groups: | (+) | Moderate |
| E. On other industries or trade groups: | (+) | Moderate |
| F. Direct and indirect effects on public: | (+) | Unknown |

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

- A. Economic impacts to agency are nominal. The agency will use existing administrative staff to implement regulatory changes.
- C. Soil conservation districts assist farmers in applying for Manual Transport grants. Regulatory changes could result in increased participation and related workload costs.
- D. Participations voluntarily use the Manure Transport Program to reduce costs in addressing excess manure or issues in complying with nutrient management requirements; program reduces costs.
- E. Manure brokers and truckers could benefit from additional business.
- F. The public will benefit from accelerating water quality improvements.

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 Louise Lawrence, Chief, Maryland Department of Agriculture, 50 Harry Truman Parkway, Annapolis, Maryland 21401, or call 410-841-5734, or email to louise.lawrence@maryland.gov, or fax to 410-841-5873. Comments will be accepted through September 9, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2015
- 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:
General, special and reimbursable

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:

SMALL BUSINESS ANALYSIS WORKSHEET

1a. Intended Beneficiaries.

Farm operators, manure brokers, truckers

1b. Intended Beneficiaries: Households.

General public-improvements to water quality

1c. Intended Beneficiaries: Businesses.

Farm operators, manure brokers, truckers

Program is voluntary. Participants who have manure they can't use on agricultural land due to nutrient management requirements receive financial assistance to transport it to other farms or alternative uses where it can be used safely. It benefits recipients and senders. Manure brokers and truckers benefit from increased business opportunities.

2a. Other Direct or Indirect Impacts: Adverse.

none

2b. Other Direct or Indirect Impacts: Positive.

none

3. Long-Term Impacts.

Accelerate improvements to water quality

4. Estimates of Economic Impact.

A. Cost of providing goods and services. +benefit

B. Effect on the workforce. N/A

C. Effect on the cost of housing. N/A

D. Efficiency in production and marketing. + benefit

E. Capital investment, taxation, competition and economic development. +benefit

F. Consumer choice. N/A

Attached Document:

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

Chapter 05 Manure Transportation Project

Authority: Agriculture Article, §8-704.2, Annotated Code of Maryland

.01 (text unchanged)

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Alternative uses" means [using] *when a person uses litter or other animal manure* in environmentally acceptable ways, as determined by the Department, other than by direct land application in an unprocessed form.

(2) — (7) (text unchanged)

(8) "Manure broker" or "broker" means a person approved by the Department who moves, arranges, or otherwise acts as the intermediary in the movement of manure from an eligible producer to a person meeting the eligibility requirements *to receive manure* provided in this chapter.

(9) "*Nutrient management plan*" means a plan prepared by a certified nutrient management consultant or certified farm operator to manage the amount, placement, timing, and application of animal 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.*

([9]10) "Phosphorus overenriched soil" means soil that tests with a FIV value of 150 or greater and posing a water quality risk [in the excessive range for phosphorus] as determined by the Department.

([10]11) "Pooling agreement" means a written agreement between persons, approved by the Department, to:

(a) — (b) (text unchanged)

([11]12) "Poultry litter producer" means a person who:

(a) — (b) (text unchanged)

([12]13) "Producer" means a person who generates manure from animal production.

([13]14) "Project" means the Manure Transportation Project.

([14]15) "Soil having the capacity to hold additional phosphorus" means, as determined by the Department, the capability of soil to tie up or retain increased amounts of phosphorus without release or movement from the soil or soil medium into the waters of the State.

([15]16) "Stackable manure" or "stacked manure" means manure having less than an average of 60 percent moisture *or less and having physical properties to be* [is] unloaded and arranged into a stable pile.

.03 Cost-Share Program—Eligibility.

A. — B. (text unchanged)

C. A person is eligible to participate in the project if that person has the ability to [process or] use manure for alternative uses, or to use manure as a source of plant nutrients, if the manure is applied according to [State certified] a nutrient management plan *meeting State regulatory requirements* under the following conditions:

(1) — (2) (text unchanged)

D. (text unchanged)

E. A person other than a poultry litter producer may participate in the project if that person:

(1) (text unchanged)

(2) Manages land within 1 mile of the production or storage site that is overenriched with phosphorus, as determined through the use of a nutrient management plan; [and]

(3) Applies manure in compliance with this chapter; *and*

(4) *Transports manure to land owned or managed by the person if that land is more than one mile from their production or storage site; or*

(5) *Transports manure to a farm not owned or managed by the producer.*

F. — H. (text unchanged)

I. A person who uses or processes manure *for [as] an alternative use[; other than directed land application.]* to create *value or products* produced from manure shall provide the Department with the following information:

(1) — (4) (text unchanged)

(5) The location *and manner* of the storage or stockpile of manure stored [in a manner that] protects it from rainfall, runoff, or leaching; and

(6) (text unchanged)

J. Only one of the following is eligible to apply for and receive State cost-share assistance: a producer, manure broker, *an approved alternative use*, or manure receiver. However, [if] a producer or a broker *shall [applies] apply* for assistance, [they shall do so] only under a pooling agreement with the receiver.

K. An applicant, producer, manure broker, *alternative use* or transporter who participates in the project shall comply with all departmental biosecurity and public safety requirements, including the following:

(1) — (6) (text unchanged)

.04 Cost-Share Rate.

A. Expenses eligible for State cost-share for an applicant shall be established by the Department based on the following:

(1) —(6) (text unchanged)

(7) Amount of matching cost-share funds to transport poultry litter provided by a commercial poultry producer for eligible costs, [with] *and* the State's share *as determined by the Department. The Department will consider factors including but not limited to the following when establishing match [not to exceed \$10 per ton]:*

(a) *The amount of funds a commercial poultry producer has committed to provide during the fiscal year;*

(b) *The amount of current fiscal year funds from the commercial poultry producer as yet to be committed or available for use by a poultry litter producer;*

(c) *The amount of State funds available for the project; and,*

(d) *Poultry litter producer demand for project funds.*

B. (text unchanged)

C. The maximum amount of eligible cost-share *for transportation of poultry litter* under this chapter is the total of eligible expenses [equal to any match provided to transport poultry liter by a commercial poultry producer for eligible costs, with the State's share not to exceed \$10 per ton].

D. The maximum amount of cost-share under this chapter for the transport of animal manure other than poultry litter is up to 87.5 percent of eligible expenses[, not to exceed \$20 per ton].

E. — F. (text unchanged)

.05 (text unchanged)

.06 Cost-Share Program—Manure Broker Participation.

A. (text unchanged)

B. A manure broker has the option of stockpiling or storing manure if the broker:

(1) —(5) (text unchanged)

(6) When combining, mixing, or blending manure from more than one producer:

(a) (text unchanged)

(b) Obtains a new nutrient analysis for this manure *as directed by the Department*, before and as close as possible to the date the manure is transported to a receiver;

(7) (text unchanged)

(8) Obtains a performance bond or other security, as provided under Regulation [.07] .08 of this chapter.

.07 Cost Share Program- Alternative Use

A. A person using an alternative use in a project shall:

(1) *Use Departmental forms to apply and enter into an agreement with the Department;*

(2) *Obtain manure only from an eligible producer;*

(3) *Use poultry litter or manure in an environmentally acceptable way, as determined by the Department, other than by direct land application in an unprocessed form;*

(4) *Provide proof to the Department of compliance and evidence that all applicable permits or approvals to operate a facility and to store or stockpile manure have been obtained; and*

(5) *Provide a delivery site for the off-loading of poultry litter or manure that:*

(a) *Allows for the safe handling of poultry litter or manure; and*

(b) *Does not pose any undue environmental risk to water quality, as determined by the Department.*

(6) *Stockpiles or stores manure in a manner, approved by the Department, that protects the manure from rainfall, runoff, or leaching;*

- (7) Allows a Department representative, during normal business hours, to inspect and to have access to the stockpile, storage area, and place of business where records are kept, to determine compliance;*
- (8) Obtains a performance bond or other security, as provided under Regulation .08 of this chapter; and,*
- (9) Maintains inventory records for at least three years, showing:*
 - (a) The name of the producer who provided the poultry litter or manure, including address, telephone number, and property account identification number used by the Maryland Department of Assessments and Taxation to indicate location of the producer;*
 - (b) The amount of poultry litter or manure obtained from that producer;*
 - (c) The amount of poultry litter or manure stored daily and amount(s) of each type of product or by-product processed or produced daily;*
 - (d) The amount(s) of commodities or additives blended or processed;*
 - (e) The name of the receiver(s) of the product or by-product produced, including address, telephone number, and location; and*
 - (f) The amount of product or by-product shipped to each receiver.*
- B. Cost share rates are established in Regulation 04 and the payment to an alternative use shall be based on:*
 - (1) Either transporting poultry litter or manure*
 - (a) From an eligible operation to an Alternative Use facility or*
 - (b) From the Alternative User's facilities to the receiving operation; and*
 - (2) The lesser of the litter or manure tonnage from the producer to the alternative use, or the tonnage from the alternative use to the receiver.*

.08 Bond or Security.

A. — G. (text unchanged)

.09 Project—Annual Reporting.

A. — C. (text unchanged)

.10 Compliance Provisions

A. — B. (text unchanged)