

MARYLAND REGISTER

## Emergency Action on Regulations

<b>TO BE COMPLETED BY AELR COMMITTEE</b>	<b>EMERGENCY</b>  <b>Transmittal Sheet</b>	<b>TO BE COMPLETED BY DSD</b>
Date Received by AELR Committee		Date Filed with Division of State Documents
05/06/2020		Document Number
Emergency Status Approved		Date of Publication in MD Register
_ -Yes _ -No		
Emergency Status Begins On		
Emergency Status Ends On		
Name of AELR Committee Counsel		

### 1. COMAR Codification

**Title Subtitle Chapter Regulation**

15 20 05 01-.10

### 2. Name of Promulgating Authority

Department of Agriculture

### 3. Name of Regulations Coordinator

Susan Z Sams

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**5. Check applicable items:**

- ☒- New Regulations  
☐- Amendments to Existing Regulations  
☒- Repeal of Existing Regulations  
☐- Incorporation by Reference of Documents Requiring DSD Approval

**6. Date Requested for Emergency Status to Begin:** 05/22/2020

**Date Requested for Emergency Status to Expire:** 11/01/2020

**7. Agency Will Take the Following Action on These Regulations**

- ☒- Promulgate them in accordance with State Government Article, §§ 10-101 -- 10-126  
☐- Allow them to expire

**8. Is there proposed text which is identical to emergency text:**

☒- Yes ☐- No

If yes, corresponding proposed text published in:

- ☒- same issue  
☐- future issue  
☐- previous issue; it appeared in  
: Md. R  
(vol.) (issue) (page no's) (date)

Under Maryland register docket no.: --E.

**9. Check the following item if it is included in the attached document:**

- ☐- 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.)

**10. Reason for Request for Emergency Status**

The proposed action is necessary to help keep the implementation of the Phosphorus Management Tool ("PMT") on schedule. The PMT is a University of Maryland Extension-designed methodology used by Maryland farmers to determine phosphorus applications on their farms. The phase-in period for the PMT began in 2016 and, unless delayed by the Secretary of Agriculture, the PMT is scheduled to be fully implemented on Maryland farms by 2022. The Secretary of Agriculture may delay implementation of the PMT if, following an evaluation of such factors as "participation in and additional capacity of the Manure Transport Program," the results indicate an insufficient capacity to support the additional volume of manure expected to be created when operations are required to determine phosphorus applications under the PMT. See COMAR 15.20.08. The proposed action, which expands and increases the efficiency of the Manure Transport Project, is intended to facilitate the transportation of additional manure from farms in all areas of the State that experience phosphorus overenrichment to other areas inside and outside the State that can safely utilize this material.

**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 Thomas F.

Filbert, Assistant Attorney General, (telephone #410-841-5883) on 5/6/2020. A signed copy of the approval is on file at this agency.

**Name of Authorized Officer**

Julianne Oberg

**Title**

Deputy Secretary

**Telephone No.**

410-841-5881

**Date**

5/6/2020

**Title 15**  
**DEPARTMENT OF AGRICULTURE**  
**Subtitle 20 SOIL AND WATER CONSERVATION**

**15.20.05 Manure Transportation Project**

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

**Notice of Emergency Action**

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to take the following actions under COMAR 15.20.05: (a) Repeal Regulations .01—.10; and (b) Adopt New Regulations .01—.16.

**Emergency status began:**

**Emergency status expires:**

**Comparison to Federal Standards**

There is no corresponding federal standard to this emergency action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

The proposed action will facilitate the movement of additional manure under the Manure Transport Project, a statutory program, from areas of the State with phosphorus overenriched soils to other areas inside and outside the State that can safely utilize this material. The movement of additional manure from farms experiencing phosphorus overenrichment to farms that can safely utilize this material benefits the State's agricultural community—moving manure from sending farm operations which, under the Phosphorus Management Tool, may no longer be able to utilize this material to receiving farm operations, which can safely utilize this material. It also benefits the

public. The movement of additional manure in this manner will have a positive impact on the Chesapeake Bay and the waters of the State.

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

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

A. The proposed action, which expands and increases the efficiency of the Manure Transport Project, is intended to facilitate the transportation of additional manure from farms in all areas of the State that experience phosphorus overenrichment to other areas inside and outside the State that can safely utilize this material. Many of the changes are purely technical changes. Some of the changes are substantive, such as introducing the Poultry Manure Export Process and fully implementing the Fast Track Process.

The Project's purpose, as noted in State law, is to establish a cost-share matching program to assist in the transportation of manure from farms that experience phosphorus overenrichment for use: (a) on land that can safely apply this material; or (b) in other environmentally acceptable ways. During the past legislative session, the Department received additional funds that will facilitate the transportation of additional manure for this purpose. This work will be handled by existing staff.

The proposed action is one of the steps that the Department is taking to help keep the implementation of the Phosphorus Management Tool ("PMT") on schedule. The PMT is a University of Maryland Extension-designed methodology used by Maryland farmers to determine phosphorus applications on their farms. The phase-in period for the PMT began in 2016 and, unless delayed by the Secretary of Agriculture, is scheduled to be fully implemented on Maryland farms by 2022. The proposed action will help ensure that sufficient capacity exists to support the additional volume of manure expected to be created when many Maryland farms begin undertaking the final transition to the fully implemented PMT.

D. The proposed action, which facilitates the transportation of additional manure under the Manure Transport Project, benefits farms generating manure that cannot utilize this material because they are experiencing phosphorus overenrichment. It also benefits farms that can safely utilize this material, providing them an additional source of

nutrients. By facilitating the transportation of additional manure, the proposed action fulfills the goals not only of the Manure Transport Project but also those of the State's Nutrient Management, while imposing no additional fees or costs on Maryland's farms.

E. Facilitating the movement of manure from eligible sending farm operations will benefit brokers who will be able to transport more manure more quickly to eligible receiving farm operations. This is particularly true under the Department's Fast Track Process.

F. The proposed action benefits the public. The movement of additional manure from farms in the State experiencing phosphorus overenrichment to farms and alternative use operations that can safely utilize this material will have a positive impact on Chesapeake Bay and other waters of the State.

### **Economic Impact on Small Businesses**

The emergency action has minimal or no economic impact on small businesses.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2021

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 funds; Special funds (matching funds from certain commercial poultry producers); Reimbursable funds (2010 Chesapeake Bay Trust Fund).

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. Response to small business worksheet:

# ***Title 15 MARYLAND 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 Scope.***

A. This chapter describes the Department's voluntary Manure Transportation Project required by the Maryland Water Quality Improvement Act of 1998. The project is intended to facilitate the transport of poultry manure and livestock manure from farms in all areas of the State that are subject to phosphorus overenrichment.

B. This project is intended to encourage voluntary participation to remove or redirect at least 20 percent of the poultry manure produced in Dorchester, Somerset, Wicomico, and Worcester counties.

#### ***.02 Definitions.***

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

B. Terms Defined.

(1) "Alternative use" means using poultry manure or other animal manure in environmentally acceptable ways, as determined by the Department, other than by direct land application in an unprocessed form.

(2) "Alternative use operation" means a person or entity that uses or processes poultry or livestock manure in environmentally acceptable ways, as determined by the Department, other than by direct land application in an unprocessed form.

(3) "Commercial poultry producer" means an entity that contracts with a farmer to raise poultry for the producer on property owned or leased by the farmer.

(4) "Cost-share" means a grant from the Department for the purpose of handling and transporting manure from a farm in any area of the State that the Department determines is subject to phosphorus overenrichment.

(5) "Department" means the Maryland Department of Agriculture.

(6) "Eligible cost" means a cost that the Department determines is necessary for the transport and handling of manure.

(7) "Eligible receiving operation" means a person who land-applies manure and:

(a) Receives manure from an eligible sending operation;

(b) Has fields containing soils that are not phosphorus overenriched; and

(c) Has a certified nutrient management plan for the operation that allows manure to be applied as a source of primary nutrients to these fields.

(8) "Eligible sending operation" means a person who:

(a) Either is:

(i) A poultry grower under contract with a commercial poultry producer participating in the project; or

(ii) A person who raises or manages livestock; and

(b) Has land identified as being phosphorus overenriched or cannot use for crop production all of the generated manure because the person:

(i) Has no cropland; or

(ii) An insufficient amount of cropland near the production site to apply the manure according to a nutrient management plan.

(9) "Fast Track Process" means an expedited process by which an eligible person applies for cost-share to transport manure under certain conditions including, but not limited to, the following:

(a) All receiving fields must have soil phosphorus FIV less than 101(or an equivalent value); and

(b) Manure shall be applied only to certain crops, at certain rates and times, consistent with the Maryland Nutrient Management Manual, Section I-D, or as determined by the Department in consultation with the University of Maryland Extension.

(10) "Fertility index value" or "FIV" means an index used to describe the relative availability of a nutrient to a plant or crop.

(11) "Livestock manure" means manure generated from farm animals other than broiler chickens raised under contract for a commercial poultry producer.

(12) "Manure" means the fecal and urinary excretion of poultry and livestock, including poultry litter and materials used as bedding.

- (13) "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 sending operation to:
- (a) An eligible receiving operation;
  - (b) A person who can utilize manure for an alternative use; or
  - (c) A person outside the Chesapeake Bay watershed pursuant to the Poultry Manure Rail Export Process.
- (14) "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.
- (15) "Phosphorus overenriched soil" means soil with a phosphorus FIV value of 150 or greater (or an equivalent test result value for phosphorus) and poses a water quality risk as determined by the Department.
- (16) "Poultry grower" means a person who:
- (a) Is under contract with a commercial poultry producer; and
  - (b) Generates manure from poultry.
- (17) "Poultry manure" means manure generated by a poultry grower under contract with a commercial poultry producer.
- (18) "Primary nutrients" means a plant food that is essential for normal plant growth and includes nitrogen (N), available phosphate (P2O5), or soluble potash (K2).
- (19) "Producer" means a person who generates manure from animal production.
- (20) "Production site" means the portion of the poultry grower's or livestock producer's land encompassing the operation's manure generation and storage facilities.
- (21) "Project" means the Manure Transportation Project Program.
- (22) "Stackable manure" or "stacked manure" means manure having less than an average of 60 percent moisture and having physical properties to be unloaded and arranged into a stable pile.
- (23) "Standard Process" means a process by which an eligible person applies for cost-share to transport manure under certain conditions including, but not limited to, the following:
- (a) All receiving fields must have soil phosphorus FIV less than 150 (or an equivalent value);
  - (b) The manure must be applied according to a certified nutrient management plan excepting, however, for fields having phosphorus FIV range from 101 to 149 (or equivalent values), the operator must follow manure recommendations using phosphorus as a limiting factor; and
  - (c) The applicant shall submit to the Department the receiving operation's current certified nutrient management plan so that the Department can verify the manure recommendations and soil phosphorus levels.

### **.03 Poultry and Livestock Cost-Share Programs.**

A. *Eligible Persons.* The following persons, using the applicable Departmental forms, may apply to receive cost-share funds under the Department's Poultry and Livestock Cost-Share Programs:

- (1) An eligible receiving operation;
- (2) A broker who meets the requirements of Regulation .13 of this chapter; and
- (3) An alternative use operation that meets the requirements of Regulation .09 of this chapter.

B. *Poultry Cost-Share Program.* To participate in the Department's Poultry Cost-Share Program, an eligible person may utilize:

- (1) The Department's Standard Process, as described in Regulation .07 for the transport of poultry manure to an eligible receiving operation;
- (2) The Department's Fast Track Process, as described in Regulation .08 for the transport of poultry manure to an eligible receiving operation;
- (3) The Department's Alternative Use Process, as described in Regulation .09 for the transport of poultry manure to approved alternative uses; or
- (4) The Department's Poultry Manure Rail Export Process, as described in Regulation .10 for the transport of poultry manure to farms outside the Chesapeake Bay watershed.

C. *Livestock Cost-Share Program.* To participate in the Department's Livestock Cost-Share Program, an eligible person may utilize:

- (1) The Department's Standard process, as described in Regulation .07 for the transport of livestock manure to an eligible receiving operation;
- (2) The Department's Fast Track process, as described in Regulation .08 for the transport of livestock manure to an eligible receiving operation; or
- (3) The Department's Alternative Use process, as described in Regulation .09 for the transport of livestock manure to approved alternative uses.

### **.04 Biosecurity and Other Environmental Safeguards.**

A. *Biosecurity Requirements.* A person transporting manure under the project shall comply with all applicable departmental biosecurity and animal health requirements, including the following:

- (1) For Poultry and Livestock Manure.

(a) A transport vehicle shall contain the livestock or poultry manure within the cargo area or tank without any loss of material during transport on a public road or railway; and

(b) Cleanse, wash, and disinfect all equipment used to handle or transport manure before operating this equipment on or near another poultry or livestock operation.

(2) For Poultry Manure Only. In addition to the requirements referenced in §A(1) of this regulation, a person transporting poultry manure shall:

(a) Ensure that all poultry manure is covered while being moved on a public road, highway or railway.

(b) Ensure that a truck-mounted or a tractor-drawn spreader is covered during the movement of this equipment from one farm to another unless the farms are contiguous; and

(c) Not transport manure containing dead birds that are not completely composted.

**B. Delivery Site Requirements.** The person receiving the manure, including an eligible receiving operation, a broker, or a person using manure for an alternative use, shall provide a delivery site for the off-loading of the manure that:

(1) Is safe; and

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

**C. Manure Handling Upon Receipt.** The operator of the eligible receiving operation shall:

(1) Apply liquid manure upon receipt;

(2) Apply stackable manure within 7 days of its receipt; or

(3) Stockpile or store manure in a manner that protects it from rainfall, runoff, and leaching.

**D. Storage Requirements.** An alternative use operation or a broker may store transported manure in a manner approved by the Department so long as:

(1) Storage or containment does not result in spillage, leakage, or runoff of manure;

(2) All applicable permits or approvals to operate a facility to store or stockpile manure are secured; and

(3) A bond or security has been obtained, as provided under Regulation .14 of this chapter.

#### **.05 Minimum Distance Requirement.**

**A.** A person is not eligible to receive funds for transporting manure under the project unless:

(1) For poultry manure, the production or storage site is at least seven miles from the location where the manure may be used in a manner consistent with this chapter; and

(2) For livestock manure, the production or storage site is at least one mile from the location where the manure may be used in a manner consistent with this chapter.

**B.** A producer may receive funds for transporting manure generated in the producer's own operation if the producer is transporting manure to a location that meets the minimum distance set forth in this regulation.

#### **.06 Manure Testing Requirement.**

**A.** A person may not transport poultry or livestock manure under the project unless it has been tested within 2 years of the transport date. If the manure has not been tested within this 2-year period, the person may seek financial assistance from the Department to have it tested in accordance with departmental procedures. If the person is a broker, the person shall provide the testing information to the person receiving the manure.

#### **.07 Standard Cost-Share Process.**

**A.** Applications to Transport Manure.

(1) To receive cost-share funds for transporting manure under the Standard Process, the applicant shall submit a signed, complete, accurate, and legible Departmental application, as follows:

(a) If a broker is submitting the application, the broker shall submit the application directly to the Department for review and approval; and

(b) If an eligible receiving operation is submitting the application, the operation shall submit the application to the local soil conservation district for a preliminary review which, following this review, will forward the application to the Department for final review and approval.

(2) The applicant shall provide the following information on the application:

(a) The applicant's name, address, telephone number, and email address;

(b) The eligible receiving operation's name and address (if different than the applicant's name and address);

(c) For poultry manure:

(i) The name and address of the eligible sending operation; and

(ii) The name of the commercial poultry producer that contracts with the eligible sending operation to grow poultry;

(d) For livestock manure, the name and address of the eligible sending operation;

(e) A signed statement by the owner or operator of the receiving operation acknowledging that manure transported under the Standard Process will be applied only to fields that are not phosphorus overenriched in accordance with the certified nutrient management plan, as follows:

(i) For soil testing less than 101 for phosphorus on the fertility index value, a person shall use manure according to a nutrient management plan using nitrogen or phosphorus as a limiting factor; and



(ii) For soil testing 101 to 149 for phosphorus on the fertility index value, a person shall use manure according to a nutrient management plan using phosphorus as a limiting factor.

(f) Certain information from the current certified nutrient management plan for the eligible receiving operation, including organic recommendations, soil tests and manure analysis.

B. Prior Approval of Application is Necessary. A person may not transport manure under the Standard Process until the person's application has been approved by the Department.

C. Determining Eligible Costs. The applicant shall submit transport records to the Department, as specified in the claim for payment forms, for the Department to determine eligible costs.

#### **.08 Fast Track Process.**

A. Application to Transport Manure. To receive cost-share funds for transporting manure under the Fast Track Process, the applicant, whether a broker or an eligible receiving operation, shall submit a signed, complete, accurate, and legible Departmental application directly to the Department that includes:

(1) The applicant's name, address, telephone number, and email address;

(2) The eligible receiving operation's name and address (if different than the applicant's name and address);

(3) For poultry manure:

(a) The name and address of the eligible sending operation;

(b) The name of the commercial poultry producer that contracts with the eligible sending operation to grow poultry;

(4) For livestock manure, the name and address of the eligible sending operation;

(5) The date of the eligible receiving operation's most recent nutrient management plan;

(6) The name and certification number of the consultant who prepared the plan for the eligible receiving operation;

(7) A signed statement by the applicant to comply with the applicable Fast Track Project Rules;

(8) A signed statement by the eligible receiving operation, if different than the applicant, to comply with the applicable Fast Track Project rules;

(9) Information pertaining to the fields on which the manure will be applied, including the field's property account identification number, its acreage, the crop to be raised, and the soil phosphorus data from the operation's most recent nutrient management plan; and

(10) Copies of soil tests and field maps.

B. Prior Approval of Application Is Not Necessary. A person may transport manure under the Fast Track Process before the person's application has been approved by the Department. The Department, however, may deny the person's claim for payment if the requirements of this chapter are not met.

C. Eligible Soils. A person may transport manure under the Fast Track Process only to an eligible receiving operation with fields that test less than 101 for phosphorus on the fertility index value (or an equivalent value).

D. Eligible Crops and Manure Application Rates. The operator of the eligible receiving operation may apply manure transported under the Fast Track Process only to specified crops and at rates as determined by the Department after consultation with the University of Maryland Extension.

E. Determining Eligible Costs. The applicant shall submit transport records to the Department, as specified in the claim for payment forms, for the Department to determine eligible costs.

#### **.09 Alternative Use Process.**

A. Application to Transport Manure.

(1) To receive cost-share funds for transporting manure under the Alternative Use Process, the applicant, whether a broker or an alternatives use operation, shall submit directly to the Department a signed, complete, accurate, and legible Departmental application, as follows:

(a) The applicant's name, address, telephone number, and email address;

(b) For poultry manure:

(i) The farm name of the eligible sending operation and the owner or operator's name and address;

(ii) The name of the commercial poultry producer that contracts with the eligible sending operation to grow poultry;

(c) For livestock manure, the name of the eligible sending operation and the owner or operator's name and address;

(d) The name and address of the approved alternative use operation.

B. Participation Requirements for Alternative Use Operations. To participate as an Alternative Use Operation under the project, the operation shall:

(1) Submit the following information to the Department:

(a) Documentation regarding planned use or treatment of any nutrient-enriched by-products produced from the processing of manure;

(b) Documentation of proof of compliance and evidence that all applicable permits or approvals to operate a facility have been obtained;

(c) Documentation, if not covered by a permit, regarding efforts to minimize environmental impacts during the manufacturing or processing of products containing manure;

(d) The location of a delivery site for the off-loading of manure that is safe and does not pose any undue environmental risk to water quality as determined by the Department;

(e) The location and manner of storing or stockpiling manure that protects it from rainfall, runoff, and leaching; and

(f) Documentation that a performance bond or other security, as provided under Regulation .14 of this chapter, has been obtained; and

(2) Agree to:

(a) Obtain manure only from an eligible sending operation;

(b) Use manure in an environmentally acceptable way, as determined by the Department, other than by direct land application in an unprocessed form;

(c) Handle and transport manure in accordance with all biosecurity and environmental safeguards as provided under Regulation .04 of this chapter;

(d) Allow 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; and

(e) Maintain inventory records for at least 3 years from date of payment, showing:

(i) The name and location of the producer, including the property account identification number used by the Maryland Department of Assessments and Taxation to indicate the location of the producer;

(ii) The amount of manure obtained from that producer;

(iii) The amount of manure stored daily and amount of each type of product or byproduct processed or produced daily;

(iv) The amount of commodities or additives blended or processed;

(v) The name of the receiver or receivers of the product or byproduct produced, including address, telephone number, and location; and

(vi) The amount of product or byproduct shipped to each receiver.

C. Cost-share rates are established in Regulation .11 and the payment to an alternative use participant shall be based on:

(1) Transporting manure either:

(a) From an eligible sending operation to an alternative use facility; or

(b) From the alternative use facility to the receiver of the processed product; and

(2) The lesser of the manure tonnage from the sending operation to the alternative use facility, or the tonnage from the alternative use facility to the receiver of the processed product.

#### **.10 Poultry Manure Rail Export Process.**

A. Application to Transport Manure. To receive cost-share funds for transporting manure under the Poultry Manure Rail Export Process, a person shall submit to the Department a signed, complete, accurate, and legible Departmental application that includes:

(1) The applicant's name, address, telephone number, and email address;

(2) The name and address of the eligible sending operation;

(3) The name of the commercial poultry producer that contracts with the eligible sending operation to grow poultry;

(4) A signed statement by the applicant to comply with the applicable Poultry Manure Rail Export Rules;

(5) The location and distance between the railway depots at which the manure will be:

(a) Loaded onto rail cars before being shipped outside the Chesapeake Bay watershed;

(b) Unloaded from rail cars after being shipped outside the Chesapeake Bay watershed; and

(6) A statement that all applicable permits or approvals necessary for shipping the manure by rail have been obtained;

(7) Following shipment by rail outside the Chesapeake Bay watershed, the location or facility at which the manure will be stored before being transported to farms for land application; and

(8) Documentation that a performance bond or other security, as provided under Regulation .14 of this chapter, has been obtained.

B. A person transporting manure under the Poultry Manure Rail Export Process shall:

(1) Obtain manure only from an eligible sending operation;

(2) Handle and transport manure safely to prevent spillage and combustion, and in accordance with all biosecurity and environmental safeguards provided under Regulation .04 of this chapter;

(3) Allow a Department representative, during normal business hours, to inspect and to have access to the place of business where records are kept, to determine compliance;

(4) Obtain a performance bond or other security, as provided under Regulation .14 of this chapter; and,

(5) Maintain inventory records for at least 3 years from date of payment, showing:

(a) The name of the sending operation that provided the poultry manure, including address, telephone number, and property account identification number used by the Maryland Department of Assessments and Taxation to indicate the location of the producer;

(b) The amount of poultry manure obtained from that producer;

(c) *The amount of poultry manure shipped under the Poultry Manure Rail Export Process.*

C. *Cost-share rates are established in Regulation .11 and the payment to a poultry manure export participant shall be based on transporting poultry manure from the railway depot in Maryland to the depot outside the Chesapeake watershed.*

**.11 Cost-Share Rate.**

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

- (1) *Either mileage or distance, or both, of manure transported;*
- (2) *Amount of manure transported;*
- (3) *Mode of transportation;*
- (4) *Cost of analyzing manure before transporting;*
- (5) *Cost of loading manure on transportation equipment;*
- (6) *Cost of hauling manure from a producing or storage area to a receiving area; and*
- (7) *Amount of matching cost-share funds to transport poultry manure provided by a commercial poultry producer for eligible costs, and the State's share as determined by the Department. The Department will consider factors including but not limited to the following when establishing the match:*
  - (a) *The amount of funds a commercial poultry producer has committed to provide during the fiscal year;*
  - (b) *The amount of State funds available for the project; and*
  - (c) *Demand for project funds.*

B. *The Department may provide additional cost-share funds for the transport of poultry manure from Dorchester, Somerset, Wicomico, or Worcester counties to eligible fields for land application or for alternative uses.*

C. *The maximum amount of eligible cost-share for transportation of poultry manure under this chapter is the total of eligible expenses.*

D. *The maximum amount of cost-share under this chapter for the transport of animal manure other than poultry manure is up to 87.5 percent of eligible expenses.*

E. *The Department may not provide cost-share for any repeated transportation of the same manure, unless a participant can successfully demonstrate to the Department that the transportation is:*

- (1) *To or from a staging area or centralized collection facility; and*
- (2) *Cost effective.*

F. *If a manure broker stockpiles or stores manure, the broker may apply for cost-share funds for transporting the manure. However, the manure broker is eligible only to receive payment for the mileage which represents the most direct transport route from the eligible sending operation to the eligible receiving operation or alternative use facility.*

**.12 Commercial Poultry Producer Participation.**

A. *The Department shall enter into a written agreement with each commercial poultry producer participating in the project. The written agreement shall set forth, at a minimum, the following:*

- (1) *The responsibilities of the participating commercial poultry producer;*
- (2) *The responsibilities of the Department;*
- (3) *The amount of financial support for payment of eligible costs that the participating commercial poultry producer shall provide to the project on an annual basis;*
- (4) *The manner by which the Department shall calculate and collect eligible costs from the participating commercial poultry producer; and*
- (5) *An express commitment by the participating commercial poultry producer that it may not:*
  - (a) *Pass on part or all of its project participation costs to any poultry grower with which it contracts, or*
  - (b) *Penalize a poultry grower for participating in the project.*

B. *The Department shall maintain the written agreements and all supporting documentation in a centralized location, open to public inspection during regular business hours.*

**.13 Cost-Share Program — Manure Broker Participation.**

A. *Poultry Manure. To receive cost-share for transporting poultry manure, a manure broker participating in the project shall:*

- (1) *Obtain manure only from an eligible sending operation;*
- (2) *Unless storing the manure as provided in paragraph (3) of this subsection, directly transport the manure only to an eligible receiving operation, an alternative use facility or a person outside the Chesapeake Bay watershed under the Poultry Manure Rail Export Process;*
- (3) *If unable to transport the manure as provided in paragraph (2) of this subsection, stockpile or store the manure as provided in Regulation .04 of this chapter in a manner that protects the manure from rainfall, runoff, or leaching;*
- (4) *Maintain for a minimum of 3 years from date of transport inventory records which show:*
  - (a) *The name of the eligible sending operation and the amount of manure obtained from that person,*
  - (b) *If the manure is land applied, the name of the eligible receiving operation and the amount of manure transported to that person, and*

- (c) *The amount of manure stored or stockpiled;*
  - (5) *Allow the Department to review inventory records during normal business hours;*
  - (6) *Obtain all applicable permits or approvals to operate a facility to store or stockpile; and*
  - (7) *Obtain a performance bond or other security, as provided under Regulation .14 of this chapter.*
- B. Livestock Manure. To receive cost-share for transporting livestock manure, a manure broker participating in the project shall:*
- (1) *Obtain manure only from an eligible sending operation;*
  - (2) *Directly transport the manure only to an eligible receiving operation or alternative use facility unless the manure, if stackable, can be stockpiled or stored as provided in Regulation .04 or, if liquid, can be safely contained in a manner that does not pose an environmental threat to water quality;*
  - (3) *Maintain for a minimum of 3 years from date of transport inventory records which show:*
    - (a) *The name of the sending operation and the amount of manure obtained from that person;*
    - (b) *If the manure is land applied, the name of the receiving operation and the amount of manure transported to that person, and*
    - (c) *The amount of manure stored or stockpiled;*
  - (4) *Allow the Department to review inventory records during normal business hours; and*
  - (5) *Obtain a performance bond or other security, as provided under Regulation .14 of this chapter.*

**.14 Bond or Security.**

- A. The broker or alternative use operation shall file with the Department a bond, or other security, on a form satisfactory to the Department. The bond shall be payable to the Department, and the obligation of the bond shall be conditioned upon fulfilling the cost-share agreement and manure stockpiling and storage requirements provided in this chapter.*
- B. The Department may waive the bonding and security requirements for a participant if the participant:*
- (1) *Stockpiles or stores 500 tons of manure or less; and*
  - (2) *Has contingency plans to relocate the manure, which are provided and acceptable to the Department.*
- C. An acceptable security or bond is limited to:*
- (1) *A bond in a form satisfactory to the Department and underwritten by a surety company authorized to do business in this State;*
  - (2) *A bank certified check, bank cashier's check, or bank treasurer's check equal to the required bond amount;*
  - (3) *Pledges of securities backed by the full faith and credit of the United States Government, or bonds issued by the State, having a market value equal to the required bond amount; or*
  - (4) *An irrevocable letter of credit that is:*
    - (a) *In a form satisfactory to the Department,*
    - (b) *Issued by a financial institution approved by the State,*
    - (c) *Equivalent to the required bond, and*
    - (d) *Guaranteed to be available and payable directly to the State on demand, in the event of forfeiture.*
- D. The bond liability required under this regulation shall terminate 2 years after the:*
- (1) *Participation in the project ceases;*
  - (2) *Stockpiling or storing manure ceases; or*
  - (3) *Bond is canceled.*
- E. The bond amount shall be the estimated cost of remediation if, in the event of forfeiture:*
- (1) *Manure must be removed from the stockpile or storage site;*
  - (2) *Manure must be protected from rainfall, runoff, and leaching, until such time that it can be removed from the stockpile or storage site because of failure to stockpile it in a manner approved by the Department; or*
  - (3) *The stockpile or storage site must be cleaned up or reclaimed because of failure to stockpile or store the manure in a manner approved by the Department, or as otherwise required under this chapter.*
- F. The bond amount shall be based on, but not limited to, the quantity of manure stockpiled or stored.*
- G. The obligation of the broker, alternative use participant, and any corporate surety under the bond shall become due and payable, and all or any part of any cash or securities shall be applied to payment of the costs of remediation, including, but not limited to, stabilizing, protecting, and removing the manure, and cleaning up or reclaiming the storage site, if the Department has:*
- (1) *Notified the broker or alternative use operation and any corporate surety that the requirements imposed under this chapter for stockpiling or storing manure have not been fulfilled, and specified in the notice the particular deficiencies;*
  - (2) *Given the broker or alternative use operation and any corporate surety a reasonable opportunity to correct the deficiencies; and*
  - (3) *Determined that, at the end of a reasonable length of time, some or all of the deficiencies specified remain uncorrected.*

**.15 Project — Annual Reporting.**

*On or before July 1 of each year, the Department shall submit to the General Assembly a report detailing the:*

- A. Participation levels in the project;*

- B. Total amount of manure transported to and from each county in the State; and*
- C. Amount of funds distributed by the State and each participating commercial poultry producer for the preceding year.*

**.16 Compliance Provisions.**

*On or before July 1 of each year, the Department shall submit to the General Assembly a report detailing the:*

- A. Participation levels in the project;*
- B. Total amount of manure transported to and from each county in the State; and*
- C. Amount of funds distributed by the State and each participating commercial poultry producer for the preceding year.*