

**Title 26
DEPARTMENT OF THE ENVIRONMENT**

Subtitle 08 WATER POLLUTION

**26.08.01 General;
26.08.03 Discharge Limitations;
26.08.04 Permits.**

Authority: Environment Article, §§1-601—1-606, 9-313—9-316, 9-319—9-328,
and 9-330, Annotated Code of Maryland

Notice of Final Action

Unofficial Copy (official version is published January 2 in the Maryland Register)

On December 16, 2008, the Secretary of the Environment adopted

- (1) Amendments to Regulation .01 under COMAR 26.08.01 General;
- (2) New Regulation .09 under COMAR 26.08.03 Discharge Limitations; and
- (3) Amendments to Regulations .01, .09, and .09-1 under COMAR 26.08.04 Permits.

This action, which was proposed for adoption in 35:19 Md. R. 1737—1742 (September 12, 2008), has been adopted with the nonsubstantive changes below.

Effective Date: January 12, 2009

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

COMAR 26.08.01.01B(5-2)(b): This change corrects a typographical error and makes the definition of “animal waste” consistent with the definition of the same term in the Department’s tentative and final determinations on the general permit for animal feeding operations by adding “process” to the term “wastewater”.

COMAR 26.08.01.01B(11-1) This change corrects a typographical error and makes the reference to this Animal Type category consistent with the terminology used in Table 1 of 26.08.03.09A(3).

COMAR 26.08.01.01B(11-1)(d): This change clarifies that AFOs certifying conformance must agree to provide the same access to researchers that MAFOs are required to provide under the general permit for animal feeding operations. This change

also removes a reference to the University of Maryland in order to clarify that the University has no regulatory role in connection with this rulemaking. The change does not decrease, in any significant way, the benefits that would have been achieved by the proposed regulation or increase, in any significant way, the burdens that would have been imposed by the proposed regulation.

COMAR 26.08.01.01B(42-1)(c): This change corrects a typographical error and makes the reference to this Animal Type category consistent with the terminology used in Table 1 of 26.08.03.09A(3).

COMAR 26.08.01.01B(65): Large animal feeding operations are point sources under the Federal Act. This change clarifies that large animal feeding operations continue to be defined as point sources in Maryland.

COMAR 26.08.03.09A(3): The change in the twelfth item in the Animal Type column of Table 1 moves the phrase “other than laying hens” to make the term more grammatically correct and to make it consistent with all other references to this category in the subtitle.

COMAR 26.08.03.09A(3): The change in the twelfth item in the “Large Size” Category column adds “125,000 animals” as an alternative expression of the threshold for Large AFOs of the Animal Type “chickens (other than laying hens) with dry manure handling.” This addition incorporates the animal number threshold for a Large AFO of this Animal Type category under the Federal Act and is the animal number threshold used by Maryland to derive the alternative square footage criterion. The change clarifies that Maryland’s use of the square footage criterion is intended to be as comprehensive as the federal definition. The change does not decrease, in any significant way, the benefits that would have been achieved by the proposed regulation or increase, in any significant way, the burdens that would have been imposed by the proposed regulation.

COMAR 26.08.03.09B(1): These changes eliminate redundant text and clarify how Maryland is incorporating the requirements under the Federal Act and the relationship of the federal and state program requirements.

COMAR 26.08.03.09B(1)(b): This change to text that, prior to the changes, was in 26.08.03.09B(1)(c) corrects a typographical error and makes the reference to this Animal Type category consistent with the terminology used in Table 1 of 26.08.03.09A(3).

COMAR 26.08.03.09B(1)(c): This change strikes the text formerly in proposed 26.08.03.09B(1)(b) and restates more clearly in new 26.08.03.09B(1)(c) how AFOs that are “CAFOs” under federal regulations are treated under these Maryland regulations.

COMAR 26.08.03.09F(1): This change corrects a typographical error and makes the reference to this Animal Type category consistent with the terminology used in Table 1 of 26.08.03.09A(3).

COMAR 26.08.04.09-1J: This change corrects a typographical error by changing “\$120”

to “\$600,” which is also consistent with the fees identified in the Department’s tentative and final determinations on the general permit for animal feeding operations.

Attached Document:

26.08.01 General

Authority: Environment Article, §§9-313—9-316, 9-319, 9-320, 9-325, 9-327, and 9-328,

Annotated Code of Maryland

.01 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1)—(5-1) (proposed text unchanged)

(5-2) *Animal Waste.*

(a) *“Animal waste” means liquid or solid waste, or both, from animal feeding, milking, holding, or other animal operations.*

(b) *“Animal waste” includes manure, poultry litter, offal, and process wastewater generated by an AFO.*

(6)—(11) (proposed text unchanged)

(11-1) “Certification of conformance” means a certification by a dry manure [[poultry]] chicken (other than laying hens) AFO that:

(a)—(c) (proposed text unchanged)

(d) The AFO agrees to provide [[representatives of]] researchers authorized by the Maryland Department of Agriculture (MDA) and the Department [[representatives of the University of Maryland College of Agriculture and Natural Resources]] the same access otherwise applicable to MAFOs as required in the general permit for animal feeding operations issued under COMAR 26.08.04.09N in effect at the time of the certification [[to study the effectiveness of best management practices for manure management]].

(11-2)—(42) (proposed text unchanged)

(42-1) “Maryland animal feeding operation (MAFO)” means an AFO that is not a CAFO and is:

(a)—(b) (proposed text unchanged)

(c) A chicken (other than laying hens) AFO with dry manure handling and at least 75,000 square feet total house capacity:

(i)—(ii) (proposed text unchanged)

(43)—(64) (proposed text unchanged)

(65) "Point source" means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,

large animal feeding operation, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged.

(66)—(103) (proposed text unchanged)

26.08.03 Discharge Limitations

Authority: Environment Article, §§9-313—9-316, 9-319, 9-320—9-325, and 9-328,
Annotated Code of Maryland

.09 Animal Feeding Operations.

A. Animal Feeding Operation Size Categories.

(1)—(2) (proposed text unchanged)

(3) *Table 1. Small, Medium, and Large AFO Size Categories.*

<i>Animal Type</i>	<i>Size Category—Number of Animals or Total House Capacity (square feet)</i>		
	<i>Large—greater than or equal to</i>	<i>Medium</i>	<i>Small—less than</i>
<i>Cattle (includes heifers)</i>	<i>1,000 animals</i>	<i>300—999 animals</i>	<i>300 animals</i>
<i>Dairy cattle</i>	<i>700 animals</i>	<i>200—699 animals</i>	<i>200 animals</i>

<i>Horses</i>	<i>500 animals</i>	<i>150—499 animals</i>	<i>150 animals</i>
<i>Veal</i>	<i>1,000 animals</i>	<i>300—999 animals</i>	<i>300 animals</i>
<i>Swine greater than 55 pounds</i>	<i>2,500 animals</i>	<i>750—2,499 animals</i>	<i>750 animals</i>
<i>Swine less than 55 pounds</i>	<i>10,000 animals</i>	<i>3,000—9,999 animals</i>	<i>3,000 animals</i>
<i>Sheep/lambs</i>	<i>10,000 animals</i>	<i>3,000—9,999 animals</i>	<i>3,000 animals</i>
<i>Ducks with liquid manure handling</i>	<i>5,000 animals</i>	<i>1,500—4,999 animals</i>	<i>1,500 animals</i>
<i>Chickens with liquid manure handling</i>	<i>30,000 animals</i>	<i>9,000—29,999 animals</i>	<i>9,000 animals</i>
<i>Ducks with dry manure handling</i>	<i>30,000 animals</i>	<i>10,000—29,999 animals</i>	<i>10,000 animals</i>
<i>Laying hens with dry manure handling</i>	<i>82,000 animals</i>	<i>25,000—81,999 animals</i>	<i>25,000 animals</i>
<i>Chickens (other than laying hens) with dry manure handling [[other than laying hens]]</i>	<i><u>125,000 animals or 100,000 square feet</u></i>	<i><u>37,500—124,999 animals and [[L]]less than 100,000 square feet [[and greater than or equal to 37,500 animals]]</u></i>	<i>37,500 animals</i>
<i>Turkeys</i>	<i>55,000 animals</i>	<i>16,500—54,999 animals</i>	<i>16,500 animals</i>

B. Concentrated Animal Feeding Operations.

(1) [[Except as otherwise specified in this regulation, f]] For [[C]]AFOs that are defined or designated as CAFOs under the federal regulations, at 40 CFR 122.23, as amended, the requirements of the federal regulations applicable to [[State NPDES programs for]] concentrated animal feeding operations at 40 CFR Parts 122 and 412, as amended, are incorporated by reference with the following changes:

(a) (proposed text unchanged)

(b)[[A large or medium AFO that meets the federal criteria for a CAFO and requires an NPDES discharge permit under the Federal Act is a CAFO under Maryland regulations;

(c)]] The size threshold for defining a large dry manure chicken (other than laying hens) AFO is 125,000 chickens or a total house capacity of greater than or equal to 100,000 square feet;[[.]]

(c) An AFO that is a large or medium CAFO under the federal regulations is also subject to the permit requirements for a CAFO under Maryland regulations only if it discharges or proposes to discharge. An AFO that is a large CAFO under the federal regulations that does not discharge or propose to discharge is subject to the requirements for a MAFO under the Maryland regulations.

(2)—(3) (proposed text unchanged)

C.—E. (proposed text unchanged)

F. *Certification of Conformance.*

(1) A chicken (other than laying hens) AFO with dry manure and a total house size capacity of 75,000 square feet or greater that is not otherwise categorized as a CAFO or MAFO, shall submit to the Department a certification of conformance within the time period specified in the general permit for AFOs issued under COMAR 26.08.04.09N.

(2)—(4) (proposed text unchanged)

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

.09-1 Fees for General Discharge Permits.

A.—I. (proposed 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):

<i>Size Category</i>	<i>Large</i>	<i>Medium</i>	<i>Small</i>
<i>Annual Permit Fee</i>	\$1200	\$ [[120]] <u>600</u>	\$120

(2) (proposed text unchanged)

K. (proposed text unchanged)

SHARI T. WILSON

Secretary of the Environment
