

APPENDIX L

**CODE OF MARYLAND REGULATIONS (COMAR)
TITLE 26, SUBTITLE 13
(Disposal of Controlled Hazardous Substances)**

COMAR 26.13.01 – 26.13.10

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Title 26
DEPARTMENT OF THE ENVIRONMENT
Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES
Chapter 01 Hazardous Waste Management System: General

Authority: Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland

.01 General.

A. This chapter provides definitions of terms, general standards, and overview information applicable to this subtitle.

B. In this chapter:

(1) Regulation .02 sets forth the rules that the Department will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities shall follow to assert claims of business confidentiality with respect to information that is submitted to the Department under this subtitle.

(2) Regulation .03 defines terms which are used in this subtitle.

(3) Regulation .04A establishes procedures for petitioning the Department to amend, modify, or revoke any provision of this subtitle and establishes procedures governing the Department's action on these petitions.

(4) Regulation .04B establishes procedures for petitioning the Department to approve testing methods as equivalent to those prescribed in COMAR 26.13.02, 26.13.05, or 26.13.06.

(5) Regulation .04C establishes procedures for petitioning the Department to amend COMAR 26.13.02.03 or 26.13.02.15 -- .19 to exclude a waste from a particular facility.

C. The provisions of this subtitle shall be supplemental and additional to the air control regulations under COMAR 26.11.01-- 26.11.20 and may not be interpreted as in derogation of any authority of the Secretary to implement and enforce those regulations.

.02 Availability of Information Confidentiality of Information.

A. Except in accordance with §E, the department shall protect any information contained in the application, or other records, reports, or plans as confidential upon a showing by any person that the information, if made public, would divulge methods or processes entitled to protection as trade secrets, or proprietary business information relating to processes of production, methods of manufacturing, or production volume which are of financial or commercial value.

B. Claims of confidentiality for the name and address of any permit applicant or permittee will be denied. Claims for other information shall be made and substantiated at the time the application is submitted. If substantiation is not provided, the Secretary will notify the applicant by certified mail of the requirement. If the substantiation is not provided after 10 days of receipt of the certified mail, the information in question shall be placed in the public file.

C. The Department shall insure that any permit forms or any public comment upon those forms shall be available to the public for inspection and copying. The Department shall make available to the public any other records, reports, plans, or any information obtained by the State other than that information designated as confidential.

D. The Department shall provide facilities for the inspection of information relating to permit forms and insure that State employees honor requests for inspection promptly without undue requirements or restrictions. The Department shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or otherwise provide for coordination with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly.

E. Information that is required to be supplied to the Department contained in any application or other record that would be considered as confidential shall still be made available by the Department to the U.S. Environmental Protection Agency at their request or shall be included in any regular report, if the information has been submitted by the Department with this claim to the EPA. If EPA obtains from the State information that is not claimed to be confidential, that information is available for public distribution.

.03 Definitions.

- A. When used in this subtitle the following terms have the meanings given.
- B. Terms Defined.

(1) "Above-ground tank" means a tank that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(1-1) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Secretary receives certification of final closure.

(2) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of this subtitle and which is not a closed portion.

(2-1) "Active range" means a military range that is currently in service and is being regularly used for range activities.

(2-2) "Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

(2-3) "Ancillary equipment" means a device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank or tanks, between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(3) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(4) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (that is, part of a facility); for example, the plant manager, superintendent, or person of equivalent responsibility.

(4-1) "Battery" means:

(a) A device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy; or

(b) An intact, unbroken device which would otherwise meet the definition of battery in §B(4-1)(a) of this regulation from which the electrolyte has been removed.

(5) "Boiler" means an enclosed device using controlled flame combustion and having one of the following characteristics:

(a) The unit satisfies all of the following criteria:

(i) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

(ii) The unit's combustion chamber and primary energy recovery section or sections shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section or sections, such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section or sections are joined only by ducts or connections carrying flue gas is not integrally designed. However, secondary energy recovery equipment such as economizers or air preheaters need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. Process heaters which are units that transfer energy directly to a process stream and fluidized bed combustion units are not precluded from being boilers solely because they are not of integral design.

(iii) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel.

(iv) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, credit may not be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.

(b) The unit is one which the Secretary has determined, on a case-by-case basis, to be a boiler, after considering the standards in Regulation .04F of this chapter.

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(5-1) Chemical Agents and Munitions.

(a) "Chemical agents and munitions" means an agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings.

(b) "Chemical agents and munitions" does not include riot control agents, chemical herbicides, smoke, and other obscuration materials.

(6) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

(6-1) "Component" means either the tank or ancillary equipment of a tank system.

(7) "Confined aquifer" means an aquifer:

(a) Bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself;

(b) Containing confined ground water.

(7-1) "Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which a hazardous waste will be sent.

(8) "Constituent" or "hazardous waste constituent" means a constituent which caused the Secretary to list the hazardous waste in COMAR 26.13.02.15—.19 or a constituent listed in Table 1 of COMAR 26.13.02.14.

(9) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(9-1) "Containment building" means a hazardous waste management unit that:

(a) Is a completely enclosed, self-supporting structure;

(b) Is designed and constructed of manmade materials; and

(c) Provides for containment of hazardous constituents within the unit comparable to the degree of containment that would be provided by a:

(i) Container managed in accordance with COMAR 26.13.05.09; or

(ii) Tank managed in accordance with COMAR 26.13.05.10.

(10) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(10-1) "Controlled hazardous substance" means a hazardous waste as defined in COMAR 26.13.02, except as provided in COMAR 26.13.02.06.

(10-2) "Corrosion expert" means an individual who is:

(a) Qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks by reason of that individual's knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience; and

(b) Certified as being qualified by the National Association of Corrosion Engineers (NACE), or who is a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(10-3) Debris.

(a) "Debris" means solid material exceeding a 60-millimeter particle size that is intended for disposal and that is:

(i) A manufactured object;

(ii) Plant or animal material;

(iii) Natural geologic material; or

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(iv) A mixture consisting of debris as defined in §B(10-3)(a)(i)–(iii) of this regulation that has not been treated to the standards established in 40 CFR §268.45, and other material if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(b) "Debris" does not mean any material for which a specific treatment standard is provided in 40 CFR Part 268 Subpart D, namely:

(i) Lead acid batteries;

(ii) Cadmium batteries;

(iii) Radioactive lead solids;

(iv) Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and

(v) Intact containers of hazardous waste that are not ruptured and that retain at least 75 percent of their original volume.

(11) "Department" means the Department of the Environment.

(12) "Designated facility" means:

(a) A hazardous waste treatment, storage, disposal, or recycling facility which has been designated on the manifest by the generator under COMAR 26.13.03.04, a corresponding regulation of another state, or 40 CFR §262.20, and:

(i) Has received a permit or interim status in accordance with the requirements of COMAR 26.13.07;

(ii) Has received a permit or interim status in accordance with the requirements of 40 CFR Parts 270 and 124;

(iii) Has received a permit or interim status from a state authorized in accordance with 40 CFR Part 271;

(iv) Is allowed by the state in which the facility is located to accept the waste, if the state has been authorized in accordance with 40 CFR Part 271 but the state has not yet obtained authorization from EPA to regulate that particular waste as hazardous; or

(v) Is regulated under COMAR 26.13.02.06C(2), COMAR 26.13.10.04, 40 CFR §261.6(c)(2), 40 CFR Part 266, Subpart F, or analogous authorities in other states; or

(b) A generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with COMAR 26.13.05.05C(6) or 26.13.06.05A.

(12-1) Destination Facility.

(a) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except as provided in §B(12-1)(b) of this regulation.

(b) "Destination facility" does not mean:

(i) A facility for which the treatment, disposal, or recycling of a particular category of universal waste consists only of the management activities described in COMAR 26.13.10.12, .14, or .15B(3), including large quantity handlers of universal waste that are made subject to these requirements in COMAR 26.13.10.20A, C, and D; or

(ii) A facility at which a particular category of universal waste is only accumulated, with respect to that category of universal waste.

(13) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(13-1) "Dioxins" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins.

(14) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(15) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

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(16) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(16-1) "Drip pad" means an engineered structure consisting of a curbed, free-draining base which is constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood-preserving plants.

(16-2) "Electrochemical cell" means a system consisting of an anode, a cathode, an electrolyte, and any electrical or mechanical connections that may be needed to allow the system to deliver or receive electrical energy.

(17) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes which are hazardous waste only because they exhibit the corrosivity characteristic defined in COMAR 26.13.02.12, or are listed in COMAR 26.13.02.16—.19 only for this reason; and

(b) Is a tank, tank system, container, transport vehicle, or vessel.

(17-1) "EPA Acknowledgement of Consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept a hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(18) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in COMAR 26.13.02.15—.19, and to each characteristic identified in COMAR 26.13.02.10—.14.

(19) "EPA identification number" means the number assigned by EPA or by a state acting on EPA's behalf to each generator, transporter, and treatment, storage, or disposal facility.

(20) "Equivalent method" means any testing or analytical method approved by the Secretary under Regulation .04A and B of this chapter.

(21) "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before November 18, 1980. Construction had commenced if:

(a) The owner or operator has obtained all necessary federal, State, and local preconstruction approvals or permits;

(b) A continuous physical, on-site construction program has begun, or the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(22) "Existing portion" means that land surface area of an existing hazardous waste management facility on which wastes have been placed before July 26, 1982.

(22-1) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that satisfies the following criteria:

(a) It is in operation; or

(b) It is an underground tank which cannot be entered for inspection for which installation has begun on or before July 14, 1986, or it is any other tank for which installation has begun by July 1, 1993, with the beginning of installation being determined by the criteria of COMAR 26.13.05.10A(4).

(22-2) "Explosive or munitions emergency" means a situation that:

(a) In the professional opinion of an explosive or munitions emergency response specialist, creates an actual or imminent threat to:

(i) Human health, including safety; or

(ii) The environment, including property; and

(b) May require immediate and expeditious action by an explosives or munitions specialist to control, mitigate, or eliminate the threat involving the suspected or detected presence of:

(i) Unexploded ordnance (UXO);

(ii) Damaged explosives or munitions;

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- (iii) Deteriorated explosives or munitions;
- (iv) An improvised explosive device (IED);
- (v) Some other material or device that is potentially explosive; or
- (vi) Some other potentially harmful military chemical munition or device.

(22-3) "Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, including:

(a) For example, the following activities:

- (i) In-place render-safe procedures;
- (ii) Treatment or destruction of explosives or munitions; or
- (iii) Transporting explosives or munitions to another location to be rendered safe, treated, or destroyed;

(b) Activities undertaken to deal with an explosives or munitions emergency after a reasonable delay caused by a necessary, unforeseen, or uncontrollable circumstance; and

(c) Activities undertaken to deal with an explosives or munitions emergency on public lands, on private lands, at RCRA facilities, and at locations that are not RCRA facilities.

(22-4) "Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including:

- (a) Department of Defense (DOD) emergency explosive ordnance disposal (EOD) personnel;
- (b) DOD technical escort unit (TEU) personnel;
- (c) DOD-certified civilian or contractor personnel; and

(d) Other federal, State, or local government or civilian personnel trained in explosives or munitions emergency responses similar to the individuals identified in §B(22-4)(a)—(c) of this regulation.

(23) "Facility" means all continuous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

(23-1) "Facility mailing list" means the mailing list developed by the Department in accordance with COMAR 26.13.07.20-2E(1)(d).

(24) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the Government Printing Office.

(24-1) "FFDCA" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§321—394.

(24-2) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136—136y.

(25) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under COMAR 26.13.05 and 26.13.06 are no longer conducted at the facility unless subject to the provisions in COMAR 26.13.03.05E.

(26) "Food-chain crops" means tobacco, crops grown for human consumption and crops grown for feed for animals whose products are consumed by humans.

(27) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained in it.

(28) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(29) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in COMAR 26.13.02 or whose act first causes a hazardous waste to become subject to regulation.

(30) "Ground water" means water below the land surface in a zone of saturation.

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(30-1) "Hazardous debris" means debris that contains a hazardous waste listed in COMAR 26.13.02.15--19 or that exhibits a characteristic of hazardous waste identified in COMAR 26.13.02.10--14.

Agency Note: Any deliberate mixing of hazardous waste prohibited from land disposal under 40 CFR Part 268 Subpart C with debris that changes its treatment classification, that is, from "waste" to "hazardous debris", is not allowed under the dilution prohibition of 40 CFR §268.3.

(31) "Hazardous waste" means a hazardous waste as defined in COMAR 26.13.02. Hazardous waste shall be synonymous with Controlled Hazardous Substance or CHS, except as provided in COMAR 26.13.02.06.

(32) "Hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste or a material listed in COMAR 26.13.02.19 which, because it is discharged, becomes a hazardous waste, onto or into the land or water.

(33) "Hazardous waste incinerator" means an enclosed device used to thermally treat or decompose a hazard waste that:

(a) Uses controlled flame combustion, does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, and is not listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(34) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit. The unit includes containers and the land or pad upon which they are placed.

(35) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(36) "Inactive disposal facility" means a disposal facility that is no longer operated but is maintained to permanently contain CHS.

(37) "Inactive portion" means that portion of a facility which is not operated after the effective date of this subtitle. (See also "active portion" and "closed portion").

(37-1) "Inactive range" means a military range that:

(a) Is not currently being used;

(b) Is still under military control and considered by the military to be a potential range area; and

(c) Has not been put to a new use that is incompatible with range activities.

(38) "Incompatible waste" means a hazardous waste which is unsuitable for:

(a) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

(b) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases (see COMAR 26.13.05.24 for examples).

(39) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(40) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

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- (e) Coke ovens;
 - (f) Blast furnaces;
 - (g) Smelting, melting and refining furnaces including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces;
 - (h) Titanium dioxide chloride process oxidation reactor;
 - (i) Methane reforming furnaces;
 - (j) Pulping liquor recovery furnace;
 - (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid; and
 - (l) Such other devices as the Secretary may, by regulation, add to this list on the basis of one or more of the following factors:
 - (i) The design and use of the devices primarily to accomplish recovery of material products;
 - (ii) The use of the device to burn or reduce raw materials to make a material product;
 - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
 - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (v) The use of the device in common industrial practice to provide a material product; and
 - (vi) Other factors, as appropriate.
- (40-1) "Infrared incinerator" means an enclosed device that:
- (a) Uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion; and
 - (b) Is not listed as an industrial furnace.
- (40-2) "In-ground tank" means a tank which has a portion of the tank wall situated to any degree within the ground, thereby preventing visual inspection of the external surface area of the tank that is in the ground.
- (41) "Injection well" means a well into which fluids are injected. (See also "underground injection".)
- (42) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.
- (42-1) "Installation inspector" means an individual who is qualified to supervise the installation of tank systems by reason of that individual's knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience.
- (42-2) "Interim status" means:
- (a) The period of time beginning when the owner or operator complies with COMAR 26.13.06.01B(2), and ending when the owner or operator:
 - (i) Obtains a CHS permit under COMAR 26.13.07;
 - (ii) Meets the requirements of COMAR 26.13.06.07—.15; or
 - (iii) Has the interim status terminated under COMAR 26.13.07.23D; or
 - (b) A designation by the Secretary that the owner or operator of an affected hazardous waste management facility has met the requirements of COMAR 26.13.06.01B(2) — (4) and 26.13.07.23A.
- (43) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- (43-1) "Kick-back" means the excessive preservative that exudes slowly from pressure-treated wood as the wood is removed from a treatment vessel and gradually returns to atmospheric pressure.

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(43-2) "Lamp" means an item that is:

- (a) The bulb or tube portion of an electric lighting device; and
- (b) Specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum.

(44) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, or a cave.

(45) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(46) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(46-1) "Large quantity handler of universal waste" means a universal waste handler which accumulates 5,000 kilograms or more of universal waste at any time during a calendar year.

(47) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(47-1) "Leak-detection system" means a system, capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure, which:

- (a) Employs operational controls, such as daily visual inspections for releases into the secondary containment system of above-ground tanks; or

- (b) Consists of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(48) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste constituents, or leachate.

(49) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(50) "Manifest" means the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, originated and signed by the generator or offeror in accordance with the instructions in the appendix to 40 CFR Part 262 and the applicable requirements of:

- (a) COMAR 26.13.02—26.13.06;

- (b) 40 CFR Parts 262—265; or

- (c) Regulations of the state in which the shipment originated that are analogous to 40 CFR Parts 262—265.

(51) "Manifest tracking number" means the alphanumeric identification number consisting of a unique three letter suffix preceded by nine numerical digits that is preprinted in Item 4 of the manifest by a person approved by the U.S. EPA to be a source of manifests in accordance with 40 CFR §262.21(c) and (e).

(51-1) "Manufactured gas plant waste" means wastes generated from environmental remediation of facilities that produced gas from coal or oil for lighting, cooking, and heating during the 1800s until the mid-1900s, including, for example, tars, sludges, lampblack, light oils, spent oxide wastes, and other hydrocarbons, and soils and debris contaminated with these materials.

(51-2) Mercury-Containing Equipment.

- (a) "Mercury-containing equipment" means a device or part of a device that contains elemental mercury integral to its function, such as a thermostat.

- (b) "Mercury-containing equipment" does not mean a battery or a lamp.

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(51-3) "Military" means the United States Department of Defense (DOD), United States Armed Services, United States Coast Guard, National Guard, United States Department of Energy (DOE), or other parties that handle military munitions under contract with or acting as an agent for these agencies.

(51-4) Military Munitions.

(a) "Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel.

(b) "Military munitions" includes:

(i) Component items such as liquid propellants, solid propellants, confined gaseous propellants, explosives including bulk explosives, pyrotechnics, chemical agents including bulk chemical warfare agents, riot control agents, smokes, incendiaries, warheads, cluster munitions and dispensers, and demolition charges;

(ii) Munition product items such as chemical munitions, rockets, guided and ballistic missiles, bombs, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, and demolition devices;

(iii) Components of munition product items; and

(iv) Nonnuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations have been completed as required by the Atomic Energy Act of 1954.

(c) "Military munitions" does not include wholly inert items, improvised explosive devices, nuclear weapons, nuclear devices, or nuclear components of weapons or devices.

(51-5) Military Range.

(a) "Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling.

(b) "Military range" includes, for example, firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas used for the purposes identified in §B(51-5)(a) of this regulation.

(52) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(53) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well, containment building, or unit eligible for a research, development, and demonstration permit under COMAR 26.13.07.19.

(54) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(55) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 18, 1980. (See also "existing hazardous waste management facility".)

(55-1) "New tank system" or "new tank system component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is:

(a) An underground tank which cannot be entered for inspection for which installation has begun after July 14, 1986, with the beginning of installation being determined by the criteria of COMAR 26.13.05.10A(4); or

(b) A tank for which installation has begun after July 1, 1993, and is either an underground tank which can be entered for inspection, an above-ground tank, an in-ground tank, or an on-ground tank.

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(55-2) Offeror:

(a) "Offeror" means a person that:

(i) Performs, or is responsible for performing, any pretransportation function required under the U.S. Department of Transportation's hazardous material regulations of 49 CFR Parts 171—180 for transportation of a hazardous material in commerce; or

(ii) Tenders or makes a hazardous material available to a carrier for transportation in commerce.

(b) Unless the carrier is otherwise considered an offeror, "offeror" does not mean a carrier that:

(i) Performs a function required by 49 CFR Parts 171—180 as a condition of acceptance of a hazardous material for transportation in commerce, such as reviewing shipping papers, examining packages to ensure that they are in conformance with 49 CFR Parts 171—180, or preparing shipping documentation for the carrier's own use; or

(ii) Transfers a hazardous material to another carrier for continued transportation in commerce without performing a pretransportation function.

(55-3) "On-ground tank" means a tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(56) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties, owned by the same person but connected by a right-of-way which the property owner controls and to which the public does not have access, are also considered on-site property.

(57) "Open burning" means the combustion of any material without the following characteristics:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products. (See also "thermal destruction" and "thermal treatment".)

(58) "Operator" means the person responsible for the overall operation of a facility.

(59) "Owner" means the person who owns a facility or part of a facility.

(59-1) "Part A" means information submitted to satisfy the informational requirements of COMAR 26.13.07.02D(1)—(14).

(59-2) "Part B" means information submitted to satisfy the informational requirements of COMAR 26.13.07.02D(15)—(38), .02-1—02-11, and any additional information requested by the Secretary in connection with an application for a CHS facility permit.

(60) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of COMAR 26.13.05 and 26.13.06 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(60-1) "PCB-containing lamp ballast" means a device that:

(a) Limits the lamp current of fluorescent or mercury lamps to the value required for proper operation by means of inductance, capacitance, or resistance, singly or in combination;

(b) Provides for low-voltage cathode heating for rapid-start lamps;

(c) May include capacitor-discharge resistors and a capacitor for power-factor correction; and

(d) Incorporates polychlorinated biphenyls (PCBs) as an element of the device's composition.

(61) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

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(62) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of COMAR 26.13.05 or 23.13.06.

(62-1) Pesticide.

(a) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than the substances identified in §B(62-1)(b) of this regulation;

(b) "Pesticide" does not mean:

(i) A new animal drug under §201(w) of FFDC A;

(ii) An animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or

(iii) An animal feed under §201(x) of FFDC A that bears or contains any substances identified in §B(62-1)(b)(i)—(ii) of this regulation.

(63) "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(63-1) "Plasma arc incinerator" means an enclosed device that:

(a) Uses a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion; and

(b) Is not listed as an industrial furnace.

(64) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(64-1) "Primary exporter" means a person who is:

(a) Required to originate the manifest for a shipment of hazardous waste in accordance with COMAR 26.13.03.04, who specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent; or

(b) An intermediary arranging for the export of a hazardous waste to a receiving country.

(65) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial waste of a liquid nature which is owned by a State or municipality (as defined by Section 502(4) of the CWA).

(65-1) "Qualified ground water scientist" means a scientist or engineer who:

(a) Has received a baccalaureate or a post-graduate degree in the natural sciences or engineering;

(b) Is able to make sound professional judgements regarding ground water monitoring and contaminant fate and transport as a result of having obtained sufficient training and experience in ground water hydrology and related fields; and

(c) Is able to demonstrate the capability described in §B(65-1)(b) of this regulation by having:

(i) Obtained relevant state registration,

(ii) Obtained relevant professional certifications, or

(iii) Completed relevant accredited university courses.

(66) "RCRA" means the Solid Waste Disposal Act, as amended (42 U.S.C. §§6901—6991i).

(66-1) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal, except short-term storage incidental to transportation.

(67) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

(68) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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(69) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(69-1) "Sanitization operation" means the irreversible modification or destruction of a component or part of a component of a nuclear weapon, device, trainer, or test assembly as necessary to prevent revealing classified or otherwise controlled information, such as unclassified information that is restricted from the standpoint of export control because of its significance for nuclear explosives research, development, fabrication, or proliferation purposes, as required by the Atomic Energy Act of 1954, as amended.

(70) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(71) "Secretary" means the Secretary of the Environment or the designee of the Secretary of the Environment.

(72) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(72-1) "Sludge dryer" means an enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu per pound of sludge treated on a wet-weight basis.

(72-2) "Small quantity handler of universal waste" means a universal waste handler that does not accumulate 5,000 kilograms or more of universal waste at any time during a calendar year.

(73) "Solid waste" means a solid waste as defined in COMAR 26.13.02.

(74) "Spill" means the accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or onto any land or water.

(75) "State" means any of several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(76) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(76-1) "Sump" means any pit or reservoir that is a tank, and the troughs or trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities.

(77) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(78) "Tank" means a stationary device, designed to contain an accumulation of hazardous wastes which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, plastic) which provide structural support.

(78-1) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(79) "Thermal destruction" means thermal treatment using controlled flame combustion. "Thermally destroy" or "incinerate" means the act of thermal destruction.

(80) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "hazardous waste incinerator" and "open burning".)

(80-1) "Thermostat" means:

(a) A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element; or

(b) A mercury-containing ampule that has been removed from a temperature control device described in §B(80-1)(a) of this regulation in accordance with the requirements of COMAR 26.13.10.14B(2), either by:

(i) A small quantity handler of universal waste; or

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(ii) A large quantity handler of universal waste operating in compliance with COMAR 26.13.10.20C.

(81) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent of hazardous waste into the environment during treatment.

(81-1) "Transit country" means a foreign country, other than a receiving country, through which a hazardous waste is transported.

(82) "Transportation" means the movement of hazardous waste by air, rail, highway, or water.

(83) "Transport vehicle" means a motor vehicle, vessel, or rail car used for the transportation of hazardous waste by any mode. Each cargo-carrying body (trailer, railroad car, etc.) is a separate transport vehicle.

(84) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(85) Treatability Study.

(a) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine whether the waste is amenable to the treatment process, what pretreatment if any is required, the optimal process conditions needed to achieve the desired treatment, the efficiency of a treatment process for a specific waste or wastes, or the characteristics and volumes of residuals from a particular treatment process.

(b) "Treatability study" also includes, for the purpose of the exemptions of COMAR 26.13.02.04-4 and .04-5, liner compatibility, corrosion, and other material compatibility studies, and toxicological and health effects studies.

(86) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so far as to:

(a) Neutralize the waste;

(b) Recover energy or material resources from the waste;

(c) Render the waste:

(i) Nonhazardous or less hazardous;

(ii) Safer to transport, store, or dispose of; or

(iii) Amenable for recovery, amenable for storage, or reduced in volume.

(87) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(87-1) "Underground tank" means a tank that has its entire surface area totally below the surface of and covered by the ground.

(87-2) "Unexploded ordnance (UXO)" means military munitions that:

(a) Have been primed, fused, armed, or otherwise prepared for action;

(b) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(c) Remain unexploded either by malfunction, design, or any other cause.

(87-3) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be capable no longer of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(88) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(89) "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(89-1) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of COMAR 26.13.10.06—.25:

(a) Batteries as described in COMAR 26.13.10.07;

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(b) Pesticides as described in COMAR 26.13.10.08; or

(c) Mercury-containing equipment, lamps, or PCB-containing lamp ballasts, each as described in COMAR 26.13.10.09.

(89-2) Universal Waste Handler.

(a) "Universal waste handler" means:

(i) A generator of universal waste;

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, a destination facility, or a foreign destination; or

(iii) A person that treats universal waste as described in COMAR 26.13.10.12, .14, or .15B(3)(c), including large quantity handlers as described in COMAR 26.13.10.20A, B, or D.

(b) "Universal waste handler" does not mean a:

(i) Person that treats universal waste, except for persons identified in §B(89-2)(a)(iii) of this regulation;

(ii) Person that disposes of universal waste;

(iii) Person that recycles universal waste;

(iv) Person engaged in the off-site transportation of universal waste by air, rail, highway, or water; or

(v) Universal waste transfer facility.

(89-3) "Universal waste transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other similar areas, where shipments of universal waste are held during the normal course of transportation.

(89-4) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(90) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facilities' property boundary.

(90-1) "Used oil" means oil that has been refined from crude oil, or any synthetic oil, that has been used and, as a result of the use, is contaminated by physical or chemical impurities.

(90-2) "Used oil re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil.

(91) "Vessel" means every description of watercraft used, or capable of being used, as a means of transportation on the water.

(92) "Wastewater treatment unit" means a device which:

(a) Is part of a wastewater treatment facility which is subject to regulation under either §402 or 307(b) of the Clean Water Act;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in COMAR 26.13.02 or generates and accumulates a wastewater treatment sludge which is hazardous waste as defined in COMAR 26.13.02 or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in COMAR 26.13.02; and

(c) Is a tank or tank system.

(93) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(94) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

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(95) "Well injection" (see "underground injection").

(96) "Zone of engineering control" means an area under the control of an owner or operator that, upon detection of a hazardous waste release, can be readily cleaned up before any hazardous waste or hazardous constituents are released to ground water or surface water.

.04 Rule-Making Petitions.

A. General.

(1) Any person may petition the Secretary to modify or revoke any provision in this subtitle. This section sets forth general requirements which apply to these petitions. Section B of this regulation sets forth additional requirements for petitions to add a testing or analytical method to COMAR 26.13.02, 26.13.05, or 26.13.06. Section C of this regulation sets forth additional requirements for petitions to exclude a waste at a particular facility from COMAR 26.13.02.03 or the lists of hazardous wastes in COMAR 26.13.02.15–.19. Section J of this regulation sets forth additional requirements for petitions to amend COMAR 26.13.10.06–.25 to include additional hazardous waste as universal waste.

(2) Each petition shall be submitted to the Secretary by certified mail and shall include:

- (a) The petitioner's name and address;
- (b) A statement of the petitioner's interest in the proposed action;
- (c) A description of the proposed action, including (when appropriate) suggested regulatory language; and
- (d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(3) The Secretary will make a tentative decision to grant or deny a petition and will publish notice of the tentative decision, either in the form of an advanced notice of proposed rule making, a proposed rule, or a tentative determination to deny the petition, in the Maryland Register for written public comment.

(4) Upon the written request of any interested person, the Secretary may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Secretary may in any case decide on his own motion to hold an informal public hearing.

(5) After evaluating all public comments, the Secretary will make a final decision by publishing in the Maryland Register a regulatory amendment or a denial of the petition.

B. Petitions for Equivalent Testing or Analytical Methods.

(1) Any person seeking to add a testing or analytical method to COMAR 26.13.02, 26.13.05, or 26.13.06 may petition for a regulatory amendment under this section and §A of this regulation. To be successful, the person shall demonstrate to the satisfaction of the Secretary that the proposed method is equal to or superior to the corresponding method prescribed in COMAR 26.13.02, 26.13.05, or 26.13.06 in terms of its sensitivity, accuracy, and precision, that is, its reproducibility.

(2) Each petition shall include, in addition to the information required by §A(2) of this regulation:

- (a) A full description of the proposed method, including all procedural steps and equipment used in the method;
- (b) A description of the types of wastes or waste matrices for which the proposed method may be used;
- (c) Comparative results obtained from using the relevant or corresponding methods prescribed in COMAR 26.13.02, 26.13.05, or 26.13.06;
- (d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
- (e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(3) After receiving a petition for an equivalent method, the Secretary may request any additional information on the proposed method which he may reasonably require to evaluate the method.

C. Petitions to Amend COMAR 26.13.02 to Exclude a Waste Produced at a Particular Facility.

(1) A person seeking to exclude a waste at a particular generating facility from the lists in COMAR 26.13.02.15—.19 may petition for a regulatory amendment under this section and §A of this regulation. To be successful:

(a) The petitioner shall demonstrate to the satisfaction of the Secretary that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(b) Based on a complete application, the Secretary shall determine where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that these factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of COMAR 26.13.02.10—.14.

(2) The procedures in this section and §A may also be used to petition the Secretary for a regulatory amendment to exclude from COMAR 26.13.02.03A(2)(b) or B which is described in those sections and is either a waste listed in COMAR 26.13.02.15—.19, contains a waste listed in COMAR 26.13.02.15—.19, or is derived from a waste listed in COMAR 26.13.02.15—.19. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by §C(1), except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of COMAR 26.13.02.10—.14.

(3) If the waste is listed with codes "I", "C", "R", or "E" in COMAR 26.13.02.15—.19:

(a) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in COMAR 26.13.02.11—.14 using any applicable methods prescribed there. The petitioner shall also show that the waste does not exhibit any of the other characteristics defined in COMAR 26.13.02.11—.14 using any applicable methods prescribed there.

(b) Based on a complete application, the Secretary shall determine when he has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that these factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of COMAR 26.13.02.10—.14.

(4) For waste listed with code "T" in COMAR 26.13.02.15—.19:

(a) The petitioner shall demonstrate that the waste:

(i) Does not contain the constituent or constituents, as defined in COMAR 26.13.02.23, that caused the Secretary to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in Regulation .05 of this chapter, or

(ii) Although containing one or more of the hazardous constituents as defined in COMAR 26.13.02.24 that caused the Secretary to list the waste, does not meet the criterion of COMAR 26.13.02.09A(3) when considering the COMAR 26.13.02.09A(3)(a)—(k) under which the waste was listed as a the waste was listed as a hazardous waste;

(b) Based on a complete application, the Secretary shall determine, when he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that these factors do not warrant retaining the waste as a hazardous waste;

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in COMAR 26.13.02.10—.14 using any applicable methods prescribed there; and

(d) A waste which is so excluded, however, still may be a hazardous waste under COMAR 26.13.02.10—.14.

(5) If the waste is listed with the code "H" in COMAR 26.13.02.15—.19:

(a) The petitioner shall demonstrate that the waste does not meet the criterion of COMAR 26.13.02.09A(2);

(b) Based on a complete application, the Secretary shall determine, when he has a reasonable basis to believe that additional factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that these factors do not warrant retaining the waste as a hazardous waste;

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(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in COMAR 26.13.02.11–.14 using any applicable methods prescribed there; and

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of COMAR 26.13.02.10–.14.

(6) Demonstration samples shall consist of enough representative samples, but not less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(7) Each petition shall include, in addition to the information required by Regulation .04A(2) of this chapter:

(a) The name and address of the laboratory facility performing the sampling or tests of the waste;

(b) The names and qualifications of the persons sampling and testing the waste;

(c) The dates of sampling and testing;

(d) The location of the generating facility;

(e) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether these processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(f) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(g) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in COMAR 26.13.02.09A(3);

(h) A description of the methodologies and equipment used to obtain the representative samples;

(i) A description of the sample handling and preparation techniques used for extraction, containerization, and preservation of the samples;

(j) A description of the tests performed (including results);

(k) The names and model numbers of the instruments used in performing the tests; and

(l) The following statement signed by the generator of the waste or his authorized representative: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(8) After receiving a petition for an exclusion, the Secretary may request any additional information which he may reasonably require to evaluate the petition.

(9) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(10) The Secretary may exclude only part of the waste from which the demonstration is submitted when he has reason to believe that variability of the waste justifies a partial exclusion.

D. Variances from Classification as a Solid Waste. In accordance with the standards and criteria in §E and the procedures in §G of this regulation, the Secretary may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(1) Materials that are accumulated speculatively without sufficient amounts being recycled as defined in COMAR 26.13.02.01C(3)(h);

(2) Materials that are reclaimed and then reused within the original primary production process in which they were generated; or

(3) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

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E. Standards and Criteria for Variances from Classification as a Solid Waste.

(1) The Secretary may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Secretary's decision will be based on all of the following standards and criteria:

(a) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur, as evidenced by, for example, past practices, market factors, the nature of the material, or contractual arrangements for recycling.

(b) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year.

(c) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled.

(d) The extent to which the material is handled to minimize loss.

(e) Other relevant factors.

(2) The Secretary may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(a) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(b) The prevalence of the practice on an industry-wide basis;

(c) The extent to which the material is handled before reclamation to minimize loss;

(d) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(e) The location of the reclamation operation in relation to the production process;

(f) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(g) Whether the person who generates the material also reclaims it; and

(h) Other relevant factors.

(3) The Secretary may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like, even though it is not yet a commercial product, and has to be reclaimed further. This determination will be based on the following factors:

(a) The degree of processing the material has undergone and the degree of further processing that is required;

(b) The value of the material after it has been reclaimed;

(c) The degree to which the reclaimed material is similar to an analogous raw material;

(d) The extent to which an end market for the reclaimed material is guaranteed;

(e) The extent to which the reclaimed material is handled to minimize loss; and

(f) Other relevant factors.

F. Variance to be Classified as a Boiler. In accordance with the standards and criteria in Regulation .03B(5) of this chapter defining "boiler", and the procedure in §G of this regulation, the Secretary may determine on a case-by-case basis that certain

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enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in Regulation .03B(5) of this chapter, after considering the following criteria:

- (1) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
- (2) The extent to which the combustion chamber and energy recovery equipment are of integral design;
- (3) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
- (4) The extent to which exported energy is used;
- (5) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
- (6) Other factors, as appropriate.

G. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler. The Secretary shall use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The applicant shall apply to the Secretary. The application shall address the relevant criteria contained in §E or F of this regulation.

(2) The Secretary shall evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision shall be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The Secretary will accept comment on the tentative decision for 45 days, and may also hold a public hearing upon request or at his discretion. The Secretary will issue a final decision after receipt of comments and after any scheduled hearing.

H. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis.

(1) The Secretary may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in COMAR 26.13.02.06A(2)(b)(iii) shall be regulated under COMAR 26.13.02.06B and C. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Secretary shall consider the following factors:

- (a) The types of materials accumulated or stored and the amounts accumulated or stored;
- (b) The method of accumulation or storage;
- (c) The length of time the materials have been accumulated or stored before being reclaimed;
- (d) Whether any contaminants are being released into the environment, or are likely to be so released; and
- (e) Other relevant factors.

(2) The procedures for this decision are set forth in §I of this regulation.

I. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities. The Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in COMAR 26.13.02.06A(2)(b)(iii), under the provisions of COMAR 26.13.02.06B and C, rather than under the provisions of COMAR 26.13.10.03:

(1) If a generator is accumulating the waste:

(a) The Secretary shall issue a notice setting forth the factual basis for the decision to regulate and stating that the person shall comply with the applicable requirements of COMAR 26.13.03.01—03 and .05—07;

(b) The notice referred to in §I(1)(a) of this regulation becomes final within 30 days, unless the person served challenges the decision; and

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(c) If the person who is served a notice under §I(1)(a) of this regulation challenges the serving of the notice, the Secretary shall:

- (i) Hold a public hearing;
- (ii) Provide notice of the public hearing to the public and allow public participation at the hearing;
- (iii) Issue a final order after the public hearing stating whether or not compliance with COMAR 26.13.03 is required;
- (iv) Make the order required by §I(1)(c)(iii) of this regulation effective 30 days after it is received by the person to whom it is directed, unless the Secretary specifies a later date.

(2) If the person is accumulating the recyclable material at a storage facility, the Secretary shall issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of COMAR 26.13.07.

(3) The following additional requirements apply in instances when the person is accumulating the recyclable material at a storage facility:

(a) The owner or operator of the facility shall apply for a permit within not less than 60 days and not more than 6 months of notice under §I(2) of this regulation, as specified in the notice;

(b) The owner or operator of the facility may challenge the Secretary's decision under §I(2) of this regulation to require a permit in:

- (i) The permit application;
- (ii) A public hearing held on the draft permit; or
- (iii) Comments filed on the draft permit or the notice of intent to deny the permit;

(c) The Secretary shall specify in the fact sheet accompanying the permit for the storage facility the reasons for the Secretary's determination that a permit is required; and

(d) The question of whether the Secretary's decision to require a permit was proper remains open for consideration during the public comment period associated with the permit and in any subsequent hearing on the permit.

J. Petitions to Amend COMAR 26.13.10.06—.25 to Include Additional Hazardous Wastes as Universal Wastes.

(1) A person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of COMAR 26.13.10.06—.25 may petition for a regulatory amendment under this section, §A of this regulation, and COMAR 26.13.10.25.

(2) To be successful, a petitioner shall:

(a) Demonstrate to the satisfaction of the Secretary that regulation under the universal waste regulations of COMAR 26.13.10.06—.25:

- (i) Is appropriate for the waste or category of waste;
- (ii) Will improve management practices for the waste or category of waste; and
- (iii) Will improve implementation of the hazardous waste program;

(b) Include in the petition the information required by §A(2) of this regulation; and

(c) Address in the petition as many of the factors listed in COMAR 26.13.10.25B as are appropriate for the waste or category of waste that is the subject of the petition.

(3) The Secretary shall:

(a) Grant or deny a petition to include additional hazardous wastes as universal wastes using the factors listed in COMAR 26.13.10.25B to evaluate the merits of the petition;

(b) Base the decision to grant or deny the petition on the weight of evidence showing that regulation under COMAR 26.13.10.06—.25:

- (i) Is appropriate for the waste or category of waste;
- (ii) Will improve management practices for the waste or category of waste; and

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(iii) Will improve implementation of the hazardous waste program.

(4) The Secretary may request additional information to evaluate the merits of a petition to include additional hazardous wastes as universal wastes.

.05 Incorporation by Reference.

A. When used in COMAR 26.13.01 – 26.13.10, the following publications are incorporated by reference:

(1) "ASTM Standard Test Methods of Flash Point of Liquids by Setflash Closed Tester." ASTM Standard D-3278-78 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(2) "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester," ASTM Standard D-93-79 or D-93-80. D-93-80 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) "NFPA 30 Flammable and Combustible Liquids Code" (1990), available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(4) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA SW-846, Third Edition (1986), as amended by Update I (July, 1992), Update II (September, 1994), Update IIA (August, 1993), and Update IIB (January, 1995). Refer to 40 CFR §260.11 for information on availability of these documents.

B. Incorporation of Federal Regulations by Reference.

(1) As qualified by §B(2) of this regulation, certain federal regulations are incorporated by reference as follows:

(a) When used in COMAR 26.13.05, 40 CFR §§144.3 and 264.140–264.151 as of July 1, 2007, are incorporated by reference;

(b) When used in COMAR 26.13.06, the federal regulations as of July 1, 2007, in 40 CFR §§265.90–265.94, 265.140–265.148, 265.270–265.282, 265.340–265.351, 265.370–265.382, and 265.400–265.406 are incorporated by reference;

(c) When used in COMAR 26.13.01–26.13.10, the federal regulations as of July 1, 2007, in 40 CFR Part 264, Appendix IX Ground Water Monitoring List, 40 CFR Part 261, Appendix III Chemical Analysis Test Methods, and 49 CFR 173, 178, and 179 are incorporated by reference; and

(d) When used in COMAR 26.13.03.07-5, the federal regulations as of July 1, 2007, in 40 CFR §§262.81–262.89 are incorporated by reference.

(2) References to Other Federal Regulations in Federal Regulations That Have Been Incorporated by Reference.

(a) For the purposes of this subtitle, a reference to a federal regulation within a federal regulation that has been incorporated by reference in §B(1) of this regulation shall be to the analogous provision within the Code of Maryland Regulations.

(b) The following table lists federal regulations and the analogous provisions within the Code of Maryland Regulations:

<i>40 CFR Provision Referenced</i>	<i>State of Maryland Analog to the Referenced 40 CFR Provision</i>
§122.72(c). Note that, although there is a cross-reference to this citation in 40 CFR 265.276, it has been recodified. The current citation for this provision is 40 CFR 270.72(a)(3).	26.13.07.23C(1)(c)
§124.5	26.13.07.20B
§144.62(a)–(c)	No analog. Maryland prohibits underground injection.
§144.70(f)	No analog. Maryland prohibits underground injection.
§260.10	26.13.01.03
§261.3(c) and (d)	26.13.02.03C and D
Part 261, Subpart C	26.13.02.10–.14
Part 261, Subpart D	26.13.02.15–.19-5
§261.21	26.13.02.11
§261.22	26.13.02.12
§261.23	26.13.02.13

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<i>40 CFR Provision Referenced</i>	<i>State of Maryland Analog to the Referenced 40 CFR Provision</i>
§261.23(a)(4) and (5)	26.13.02.13A(4) and (5)
§261.23(a)(1)–(3) and (6)–(8)	26.13.02.13A(1)–(3) and (6)–(8)
§261.24	26.13.02.14
Part 261, Appendix VIII	26.13.02.24
Part 262	26.13.03
Part 262, Subpart B	26.13.03.04
Part 262, Subpart F	26.13.03.07-3
§262.23(c) and (d)	26.13.03.04E(4) and (5)
§262.41	26.13.03.06B
§262.42	26.13.03.06C
§262.51	26.13.01.03B
§262.54(a)–(d) and (i)	26.13.03.07-2A(1)–(4) and (10)
§262.58	26.13.03.07-5A–D
§262.58(a)(1) and (2)	26.13.03.07-5C(1) and (2)
§262.80(a)	26.13.03.07-5A
Part 263	26.13.04
Part 264	26.13.05
§264.1	26.13.05.01A
§264.17(b)	26.13.05.02H(2)
§264.111	26.13.05.07B
§264.112	26.13.05.07C
§264.112(b)	26.13.05.07C(2)
§264.113	26.13.05.07D
§264.113(d)	26.13.05.07D(6)
§264.114	26.13.05.07E
§264.115	26.13.05.07F
§264.117	26.13.05.07G
§264.118	26.13.05.07H
§264.119	26.13.05.07I
§264.120	26.13.05.07J
§§264.140–264.151 (Part 264, Subpart H)	26.13.05.08
§264.178	26.13.05.09I
§264.197	26.13.05.10-7
§264.228	26.13.05.11G
§264.258	26.13.05.12I
§264.280	26.13.05.13K
§264.310	26.13.05.14J
Part 264, Subpart O	26.13.05.16
§264.351	26.13.05.16E
§§264.601–264.603 (Part 264, Subpart X)	26.13.05.16-1
Part 265	26.13.06
§265.1	26.13.06.01A

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40 CFR Provision Referenced

§265.13
 §265.15(e)
 §265.17(b)
 §265.21
 §265.73
 §§265.90 – 265.94 (Part 265, Subpart F)
 §265.111
 §265.112
 §265.112(b)
 §265.113
 §265.113(d)
 §265.114
 §265.115
 Part 265, Subpart G
 §265.117
 §265.118
 §265.119
 §265.120
 §§265.140 – 265.148 (Part 265, Subpart H)
 §265.178
 Part 265, Subpart J
 §265.197
 Part 265, Subpart K
 §265.228
 §265.258
 §§265.270—265.282 (Part 265, Subpart M)
 §265.310
 §§265.340—265.351 (Part 265, Subpart O)
 §§265.370—265.382 (Part 265, Subpart P)
 §§265.400—265.406 (Part 265, Subpart Q)
 Part 265, Appendix III
 Part 265, Appendix V
 Part 266
 Part 268
 §270.14
 §270.19
 §270.41(a)(5)
 §270.62

State of Maryland Analog to the Referenced 40 CFR Provision

26.13.06.02A – C and 26.13.05.02D
 26.13.06.02A, D, E and 26.13.05.02F
 26.13.06.02A and 26.13.05.021(2)
 26.13.02.11
 26.13.06.05A, B(1) – (4), C and 26.13.05.05D
 26.13.06.06
 26.13.06.07B
 26.13.06.08
 26.13.06.08B—C
 26.13.06.09
 26.13.06.09H
 26.13.06.10
 26.13.06.11
 26.13.06.12
 26.13.06.12C
 26.13.06.13
 26.13.06.14
 26.13.06.15
 26.13.06.16
 Maryland has not adopted regulations governing organic air emissions from containers. Use 40 CFR 265.178.
 26.13.06.18
 26.13.06.18D
 26.13.06.19
 26.13.06.19B(4) and 26.13.05.11G(1)—(2)
 26.13.06.20B(6) and 26.13.05.12I(1)—(2)
 26.13.06.21
 26.13.06.22B(3) and 26.13.05.14J
 26.13.06.23
 26.13.06.24
 26.13.06.25
 No analog. Use 40 CFR Part 265, Appendix III.
 No analog. Use 40 CFR Part 265, Appendix V.
 26.13.10
 No analog. Use 40 CFR 268.
 26.13.07.02D(15)—(19) and (20)—(38), and 26.13.07.02-1—.02-11
 26.13.07.02-6
 26.13.07.11B(4)
 26.13.07.17

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C. When used in COMAR 26.13.01—26.13.10, the following federal statutory provisions are incorporated by reference:

- (1) The minimum technological requirements of:
 - (a) §3004(o)(1) of RCRA,
 - (b) §3004(o)(2) and (3) of RCRA, except that "the Administrator" shall be replaced by "the Administrator or the Secretary";
- (2) The requirements concerning interim status surface impoundments in:
 - (a) §3005(j)(1)—(4) of RCRA, and
 - (b) §3005(j)(13) of RCRA, except that the phrase "The Administrator may modify the requirements of paragraph(1)" shall be replaced by the phrase "The Administrator or the Secretary may modify the requirements of paragraph(1)";
- (3) The notification requirements of §3010 of RCRA; and
- (4) The requirements concerning exposure information in §3019 of RCRA.

Administrative History

Effective date:

Regulations .01—.04 adopted as an emergency provision effective November 18, 1980 (7:25 Md. R. S-1); adopted permanently effective April 3, 1981 (8:7 Md. R. 642)

Regulations .02A and .03B amended effective January 18, 1982 (9:1 Md. R. 20)

Regulation .02A-1 adopted effective February 13, 1984 (11:3 Md. R. 202)

Regulation .02D adopted effective January 18, 1982 (9:1 Md. R. 20)

Regulation .03B amended effective January 31, 1983 (10:2 Md. R. 110); February 13, 1984 (11:3 Md. R. 202); July 30, 1984 (11:15 Md. R. 1330); April 18, 1988 (15:8 Md. R. 1009)

Regulation .04C amended, D—1 adopted effective April 18, 1988 (15:8 Md. R. 1009)

Regulation .05 adopted effective January 31, 1983 (10:2 Md. R. 110)

Regulation .05A amended effective April 18, 1988 (15:8 Md. R. 1009)

Chapter recodified from COMAR 10.51.01 to COMAR 26.13.01

Regulation .01B amended effective October 16, 2000 (27:20 Md. R. 1843)

Regulation .03B amended effective April 1, 1991 (18:6 Md. R. 690); December 23, 1991 (18:25 Md. R. 2759); May 24, 1993 (20:10 Md. R. 853); April 11, 1994 (21:7 Md. R. 533); August 28, 1995 (22:17 Md. R. 1321); September 10, 1997 (24:5 Md. R. 413); September 7, 1998 (25:18 Md. R. 1438); October 16, 2000 (27:20 Md. R. 1843); November 1, 2002 (29:21 Md. R. 1647); September 11, 2006 (33:18 Md. R. 1507); May 1, 2008 (35:8 Md. R. 809)

Regulation .04 amended effective October 16, 2000 (27:20 Md. R. 1843); November 1, 2002 (29:21 Md. R. 1647)

Regulation .04F amended effective May 24, 1993 (20:10 Md. R. 853)

Regulation .04I amended effective December 23, 1991 (18:25 Md. R. 2759); October 16, 2000 (27:20 Md. R. 1843)

Regulation .05A amended effective December 23, 1991 (18:25 Md. R. 2759); May 24, 1993 (20:10 Md. R. 853); September 10, 1997 (24:5 Md. R. 413); October 16, 2000 (27:20 Md. R. 1843)

Regulation .05B amended effective October 16, 2000 (27:20 Md. R. 1843); November 1, 2002 (29:21 Md. R. 1647); May 1, 2008 (35:8 Md. R. 809)

Regulation .05C adopted effective October 16, 2000 (27:20 Md. R. 1843)

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