



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Maryland**

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## Nutrient Management Plans

### STATE OF MARYLAND

1) Md. AGRICULTURE Code Ann. §§ 8-801.1–3.2; COMAR 15.20.07.00–.07, 15.20.04.00–.13, 15.20.08.00–.13

2) Md. AGRICULTURE Code Ann. §§ 8-803, 8-803.1, 8-803.3, 8-803.9; COMAR 15.20.08.01–

.11

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Maryland Division of State Documents.*

1) Md. AGRICULTURE Code Ann. §§ 8-801.1–3.2; COMAR 15.20.07.00–.07, 15.20.04.00–.13, 15.20.08.00–.13

#### § 8-801.1. Nutrient management plan

##### (a) Factors.

(1) Each nutrient management plan shall be developed considering factors including:

- (i) Levels of bioavailable nitrogen and phosphorus in the soil;
- (ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer materials to be applied;
- (iii) The amount of nitrogen and phosphorus necessary to achieve the expected crop yield for the land that is the subject of the nutrient management plan, as determined by:
  1. The field's actual yield record and soil productivity for that crop; or
  2. If information concerning actual yield record and soil productivity for a crop is unavailable, relevant information concerning similar fields and soil;
- (iv) Soil erodibility and nutrient retention capacity;

(v)

1. The best reasonable scientific methods accepted by the Department and the University of Maryland Cooperative Extension Service; or

2. Scientifically validated data for the development of a nutrient management plan as defined by the Department in regulation; and

(vi) Existing best management practices.

(2) Each nutrient management plan shall provide flexibility for management decisions that may be required by conditions beyond the control of the farmer.

**(b) Filing with Department.**

(1) A summary of each nutrient management plan shall be filed and updated with the Department at a time and in a form that the Department requires by regulation.

(2) The Department shall maintain a copy of each summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.

**§ 8-802. Certification and license requirement**

**(a) Requirements.** A person may not prepare a nutrient management plan, for purposes of meeting the requirements of this subtitle, unless the person is certified or licensed by the State.

**(b) Certification.** An individual may apply to the Department for certification as a certified nutrient management consultant.

**(c) License.** A person engaged in the business of providing a nutrient management plan provided under this subtitle shall hold an annual license from the Department.

**(d) Penalty.** The Department may impose a penalty not exceeding \$ 250 for a violation of the provisions of this section.

**§ 8-803 Certifications and licenses – Application; issuance; term; renewal.**

**(a) Certification – Application.** To apply for certification as a nutrient management consultant, an applicant shall:

(1) Submit to the Department an application on the form the Department requires; and

(2) Pay to the Department the certification fee stated in § 8-806 of this subtitle.

**(b) Certification – Qualifications.** The Department shall certify any individual who:

- (1) Meets the requirements of this subtitle;
- (2) Meets the Department's educational requirements, including a program on the proper application of nutrients;
- (3) Passes a Department approved examination; and
- (4)
  - (i) Is employed by a person licensed under this subtitle; or
  - (ii) Holds a license as required by this subtitle.

**(c) License – Application.** To apply for a license an applicant shall:

- (1) Submit to the Department an application on the form the Department requires; and
- (2) Pay to the Department the applicable license fee stated in § 8-806 of this subtitle.

**(d) License – Qualifications.** The Department shall license a person who meets the requirements of this subtitle.

**(e) Term.** A certificate or license is issued for 1 year unless the certificate or license is renewed as provided by this subtitle.

**(f) Renewal.** The Department shall renew the certificate or license of any applicant for a 3-year term if the applicant:

- (1) Submits a renewal application on the form that the Department requires;
- (2) Pays to the Department the applicable fee stated in § 8-806 of this subtitle;
- (3) Complies with applicable continuing education requirements;
- (4) Complies with applicable record keeping and reporting requirements; and
- (5) Otherwise is entitled to be certified or licensed.

**(g) Farm operator's plan development certificate.**

(1) The Department may issue a farm operator's plan development certificate to a person operating a farm for the development of that person's own nutrient management plan.

(2) The certificate is valid provided the person operating the farm:

- (i) Has paid the one-time fee provided in § 8-806 of this subtitle;
- (ii) Has passed an examination as determined by the Department;
- (iii) Complies with applicable continuing education requirements;
- (iv) Complies with applicable record keeping and reporting requirements;  
and
- (v) Otherwise is entitled to be certified.

**§ 8-803.1. Nutrient management plans – General provisions.**

**(a) "Gross income" defined.** In this section, "gross income" means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.

**(b) Applicability.** This section does not apply to:

- (1) An agricultural operation with less than \$ 2,500 in gross income; or
- (2) A livestock operation with less than eight animal units defined as 1,000 pounds of live animal weight per animal unit.

**(c) Funding.** The Governor shall provide sufficient funding in each fiscal year's budget to:

- (1) Assist in the development of nutrient management plans;
- (2) Meet the technical assistance and evaluation requirements of this section;
- (3) Meet the State's requirements for the implementation of the Manure Transportation Project under § 8-704.2 of this title; and
- (4) Provide State assistance under the Maryland Agricultural Water Quality Cost Share Program in the Department.

**(d) Cost sharing.**

(1) State cost sharing may be made available to help offset the costs of having a nutrient management plan prepared by a certified nutrient management consultant who is not employed by the federal, State, or a local government.

(2) The Secretary of Agriculture shall adopt regulations authorizing the disbursement of State cost sharing funds under this subsection.

(3) The Department may procure the services of a private certified nutrient management consultant to develop nutrient management plans for persons operating a farm.

**(e) Plan requirements.**

(1) By December 31, 2001, a person who, in operating a farm, uses chemical fertilizer, shall have a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2)

(i) By December 31, 2001, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen.

(ii) By July 1, 2004, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen and phosphorus.

**(f) Compliance with nutrient management plans.**

(1) By December 31, 2002, a person who, in operating a farm, uses chemical fertilizer, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2)

(i) By December 31, 2002, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen that meets the requirements of this subtitle.

(ii) By July 1, 2005, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

**(g) Certified nutrient management consultant.** A person may meet the requirements of subsection (e) of this section by requesting, at least 60 days before the applicable date set forth in subsection (e) of this section, the development of a nutrient management plan by a certified nutrient management consultant.

**(h) Notice of violations.**

(1) If a person violates the provisions of subsection (e) of this section, the Department shall notify the person that the person is in violation of the requirement to have a nutrient management plan.

(2) After a reasonable period of time, if the person fails to have a nutrient management plan, the person is subject to an administrative penalty not to exceed \$ 250.

**(i) Penalties.**

(1) A person who violates any provision of subsection (f) of this section or of any rule, regulation, or order adopted or issued under this section is subject to:

(i) For a first violation, a warning; and

(ii) For a second or subsequent violation, after an opportunity for a hearing which may be waived in writing by the person accused of a violation, an administrative penalty that may be imposed by the Department of Agriculture.

(2) The penalty imposed on a person under paragraph (1)(ii) of this subsection shall be:

(i) Up to \$ 100 for each violation, but not exceeding \$ 2,000 per farmer or operator per year; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health;

3. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

4. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(3)

(i) Except as provided in subparagraph (ii) of this paragraph, each day a violation occurs is a separate violation under this subsection.

(ii) Daily penalties do not continue to accrue as long as the farmer takes reasonable steps to correct the violation.

(4) Any penalty imposed under this subsection is payable to the Maryland Agricultural Water Quality Cost Share Program within the Department.

**(j) Remedies of Department.** If a person violates any provision of this section, the Department may:

(1) Require repayment of cost share funds under Subtitle 7 of this title for the project that is in violation; or

(2) Deny or restrict future cost share payments under Subtitle 7 of this title.

**(k) Compliance; site visits.**

(1) The Department shall determine compliance with the provisions of this section.

(2) The Department may review the nutrient management plan and records relating to the plan at a location agreed to by the Department and the person operating the farm.

(3) In conducting a site visit and reviewing the nutrient management plan and related records, the Department's evaluation shall be limited solely to determining whether the person operating the farm is in compliance with the provisions of this section or the regulations implementing this section.

(4) In conducting a site visit, the Department shall:

(i) Provide the person operating the farm at least 48 hours advance notice;

(ii) Enter the property at a reasonable time that allows the person operating the farm to be present; and

(iii) Conduct the evaluation in a manner that minimizes any inconvenience to the person operating the farm.

(5) If a person operating a farm fails to cooperate with the Department's request to conduct a site visit and review of a nutrient management plan and records relating to the plan, that person is subject to subsections (i) and (j) of this section.



## **§ 8-803.2. Certified nutrient management consultants**

(a) **Certification.** A person who applies nutrients for hire to land used for agricultural purposes shall be a certified nutrient management consultant or work under a nutrient management consultant certified under § 8-803 of this subtitle.

(b) **Documentation by noncertified consultants.** A person who applies nutrients for hire to land used for agricultural purposes, who is not a certified nutrient management consultant, shall make available documentation, in the form of a work order, bill of lading, or similar document, to the landowner or land manager that the person is working under a certified nutrient management consultant.

(c) **Regulations.** The Secretary shall adopt regulations to implement this section.

### **15.20.07.00 Statutory Authority.**

Authority: Agriculture Article, §§ 8-801-- 8-806, Annotated Code of Maryland

#### **.01 Scope.**

This chapter applies to a farm or agricultural operator and requires the operator to develop and implement nitrogen-based and phosphorus-based nutrient management plans for a farm or agricultural operation by certain deadlines.

#### **.02 Incorporation by Reference.**

The performance and technical standards provided in this subtitle are found in the Department of Agriculture's Maryland Nutrient Management Manual (November 1999), Supplement No. 1 (September 2000), Supplement No. 2 (November 2001), Supplement No. 3 (September 2004), Supplement No. 4 (November 2005), Supplement No. 5 (November 2006), Supplement No. 6 (May 2009), Supplement No. 7 (May 2012), and Supplement No. 8 (August 2016), which are incorporated by reference.

#### **.03 Definitions.**

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

B. Terms Defined.

(1) "Agricultural operation" means a business or activity that:

(a) Tills, crops, keeps, pastures, or produces an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, or fiber by in-ground, out-of-ground, container, or other culture; and

(b) Has a gross annual income of \$ 2,500 or more, or has eight or more animal units.

(2) "Animal unit" means the unit of measure equivalent to 1,000 pounds of live animal weight.

(3) "Biosolids" means any thickened liquid, suspended or settled solid, or dried residue extracted from sewage at a sewage treatment plant, including domestic sewage, that:

(a) Contains recognized plant nutrients, or liquid byproducts, that meet federal and State regulations for beneficial use by land application or other methods; and

(b) Is regulated as sewage sludge pursuant to the Environment Article, § 9-201 et seq., Annotated Code of Maryland.

(4) "Certified farm operator" means an individual certified by the Department under this subtitle to prepare a nutrient management plan solely for agricultural land that the individual:

(a) Owns;

(b) Operates; or

(c) Has a legal interest in.

(5) "Certified nutrient management consultant" or "consultant" means an individual certified by the Department under this subtitle to prepare a nutrient management plan.

(6) Chemical Fertilizer.

(a) "Chemical fertilizer" means a manufactured or blended nutrient source, usually in granular or liquid form, containing a guaranteed analysis of primary nutrients.

(b) "Chemical fertilizer" does not include a product blended from all natural organic fertilizer sources.

(7) "Department" means the Maryland Department of Agriculture or its designee.

(8) "Expected crop yield" means a realistic crop yield for the agricultural operation determined by using yield records or soil productivity information.

(9) "Fertilizer" means a substance containing any recognized primary plant nutrient used for its plant nutrient content and designed for use in promoting plant growth.

(10) "Manure management" means operations and conditions specific to an agricultural operation that has animals, or uses animal manure or waste nutrients from animal production. The purpose of manure management in nutrient management planning is to improve efficiency and effectiveness of nutrient utilization and to minimize the potential for nutrient loss from the management of animals or their manure and associated waste nutrients. Guidelines for manure management are described in the Maryland Nutrient Management Manual, Section III-C.

(11) "Nutrient management plan" means a plan prepared by a certified nutrient management consultant or certified farm operator to manage the amount, placement, timing, and application of animal manure, fertilizer, biosolids, or other plant nutrients in order to:

- (a) Minimize nutrient loss or runoff; and
- (b) Maintain the productivity of soil when growing agricultural products.

(12) "Operator" means a person who manages or owns an agricultural operation.

(13) "Person" means the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.

(14) "Plant production goal" means a statement of the estimated length of time that plants will be grown, and some appropriate measure of expected plant size, such as height or diameter.

(15) "Primary nutrients" means a plant food that is essential for normal plant growth and includes total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), and soluble potash (K<sub>2</sub>O).

#### **.04 Nutrient Management Plan – Plan Development and Implementation Deadlines.**

A. An operator shall develop and implement a nutrient management plan for the operator's agricultural operation, according to the following deadlines:

- (1) An operator who uses chemical fertilizer in an agricultural operation shall:

(a) Develop a nutrient management plan addressing both nitrogen and phosphorus as the limiting nutrients on that agricultural operation by December 31, 2001, and

(b) Implement the plan by December 31, 2002;

(2) An operator who uses biosolids or animal manure in an agricultural operation shall:

(a) Develop a nutrient management plan addressing nitrogen as the limiting nutrient on that agricultural operation by December 31, 2001, and

(b) Implement the plan by December 31, 2002;

(3) An operator who uses biosolids or animal manure in an agricultural operation shall:

(a) Develop a nutrient management plan addressing both nitrogen and phosphorus as the limiting nutrients on that agricultural operation by July 1, 2004, and

(b) Implement the plan by July 1, 2005; and

(4) An operator who uses a combination of chemical fertilizer, biosolids, and animal manure in an agricultural operation shall comply with the deadlines in § A(2) and (3) of this regulation if that operator uses biosolids or animal manure on a minimum of 10 acres, or 50 percent of an agricultural operation, whichever is less. Phosphorus application rates under this subsection shall follow Cooperative Extension recommendation rates on individual fields where chemical fertilizer is the only nutrient source.

B. An operator who cannot obtain the services of a certified nutrient management consultant to develop a nutrient management plan to meet the deadlines required in § A of this regulation shall be in compliance if:

(1) The operator provides to the Department proof that:

(a) A good faith effort was made to obtain the services of a certified nutrient management consultant at least 60 days before the applicable deadline, and

(b) Circumstances beyond the reasonable control of the operator prevented the plan from being completed by the deadline; and

(2) The operator provides on a Department form a signed statement from a certified nutrient management consultant indicating:

- (a) The date and time the consultant was contacted by the operator to request plan development,
- (b) That the consultant was unavailable, and
- (c) A reasonable time frame needed for the development of a plan.

C. An operator who meets the conditions in § B of this regulation, but who does not complete plan development within 1 year of the deadlines set forth in § A of this regulation, is in violation of § A requirements for plan development and implementation, unless the Department determines noncompliance to be attributed to circumstances beyond the control of that operator.

D. Upon application to the Department on a Department form, an operator may request an exemption from the requirements of this chapter for certain activities, including research, education, and demonstration, if the operator:

- (1) Documents the proposed activity and provides this information to the Department prior to its implementation;
- (2) Ensures that impacts on water quality are minimized; and
- (3) Receives written notice of approval for the activity from the Department prior to the start of the activity.

E. In determining whether a particular application for exemption will be approved, the Department shall consider the following factors:

- (1) Whether the activity is temporary and its time frame defined;
- (2) Whether a research activity is managed, sponsored, or affiliated with an accredited educational institution or research facility;
- (3) Whether the activity's objectives help to advance knowledge about the management of nutrients; and
- (4) The area and location of the activity in relation to the operation's overall size and potential impacts on adjacent properties, water quality, and natural resources.

F. If an operator is subject to this chapter only because the operator earns \$ 2,500 or more from the occasional sale of agricultural products as a result of participating in a 4-H or other agricultural youth organization project, the operator is exempt if:

- (1) Verification of active participation in the 4-H or agricultural youth organization activity is made available upon request to the Department; and

(2) The activity is conducted so the potential for nutrient loss or runoff is minimized.

G. A nutrient management plan required by this chapter shall include:

(1) All agricultural practices that relate to nutrient use, including, but not limited to, tillage, cropping, pasturage, or production of any agricultural product; and

(2) Identification, management, and disposition of all primary nutrients produced on, or imported to, the agricultural operation, including land application, off-site transportation, composting, or processing.

### **.05 Nutrient Management Plan Implementation Requirements.**

A. An operator who uses chemical fertilizer, animal manure, or biosolids, as provided in Regulation .04A of this chapter, shall have a nutrient management plan that shall:

(1) Be prepared by a certified nutrient management consultant or by the farm operator, if certified in accordance with this subtitle;

(2) Be prepared according to the schedule set forth in Regulation .04A or B of this chapter by using the limiting nutrient determination described in COMAR 15.20.08.05E; and

(3) Address the following existing factors:

(a) All aspects of the agricultural operation, including tillage, cropping, pasture, or production of an agricultural product, such as plants, trees, sod, food, feed, animals, and fiber;

(b) Identification, management, and disposition of all primary nutrients produced on, imported to, and exported from the agricultural operation;

(c) Manure management conditions that protect water quality and improve manure utilization, and:

(i) Encompass all land where animals are kept and all land used for manure storage, treatment, or utilization that is under the control of the agricultural operator,

(ii) Contain or manage manure to minimize the potential for nutrient loss or runoff before export to other agricultural operations or receiving facilities when agricultural operators have insufficient land to utilize manure and waste nutrients associated with animal production, and

(iii) Minimize the potential for nutrient loss or runoff prior, during, and after application when an agricultural operator imports animal manure or waste nutrients associated with animal production for nutrient application on the operator's land.

B. A nutrient management plan shall contain recommendations for an agricultural operation, as provided in COMAR 15.20.08.05B--I, for the management of fertilizer inputs and other nutrient sources. A recommendation shall be based on the best information available at the time a plan is prepared, as determined by the Department on a case-by-case basis. When implementing a plan, the operator may not exceed recommended nutrient application rates. The operator shall follow all other recommendations in the plan.

C. Plan Adjustments.

(1) An operator may adjust the nutrient management recommendation in a plan for any of the following reasons:

(a) Occurrence of a condition beyond the control of the operator, including a natural disaster, unanticipated weather condition, animal mortality, or disease; or

(b) Occurrence of unanticipated conditions, such as market changes or economic factors that may cause modification of the agricultural operation, or other limitations, such as equipment calibration limits, or limits on the availability of commercial fertilizer blends to reasonably meet nutrient management recommendations.

(2) Any adjustment shall be:

(a) Consistent with plan criteria; and

(b) Documented under Regulation .06B of this chapter.

(3) An adjustment by the operator shall require that a revision to a nutrient management plan be made and documented when the adjustment is necessary because either new land or planting area, or animals, are not addressed in the current nutrient management plan and they exceed the thresholds described in § D of this regulation.

D. Plan Maintenance, Updates, and Revisions.

(1) Except as provided in § D(2) of this regulation, at least once every 3 years from the date that the current plan was prepared, the operator shall revise and update the plan.

(2) An operator who uses only commercial fertilizer may use the current plan beyond the 3 years if all of the following conditions apply:

(a) The operator complies with the soil testing requirements set forth in COMAR 15.20.08.05D, including any changes to plan requirements under this chapter;

(b) The soil test analysis verifies that the phosphorus fertility index value (FIV) is 100 or less; and

(c) There have been no significant changes to the operation, including the crop rotation, management and tillage systems, and crop yield goals.

(3) Changes in an agricultural operation may require the operator to modify or update a plan when the information in the plan is inadequate, incomplete, or fails to address a change. These changes include a change:

(a) To the planned crop or cropping rotation, or introduction of a new crop when it is not currently addressed in an existing nutrient management plan, unless the new crop will have fertility management similar to that crop originally planned;

(b) Of nutrient source or soil test results that indicate a change in nutrient recommendations;

(c) Of 10 percent or greater in acreage managed, or 30 acres, whichever is less; or

(d) In the average annual number of animal units of 10 percent or greater, when the resultant manure production will require significant management adjustments.

(4) An operator shall maintain a plan to meet plan objectives, including implementation of best management practices, strategies, or a phased-in approach identified in the plan to achieve soil fertility within optimal ranges.

## **.06 Record-Keeping and Reporting Requirements.**

### **A. Operator Reporting Requirements--Plan Development.**

(1) An operator shall submit to the Department a summary of the nutrient management plan for the agricultural operation in a form that the Department requires when it is first developed to meet requirements of this chapter, according to the deadlines provided by Regulation .04A and B of this chapter.



(2) A nutrient management plan submitted to the Department by an operator for the first time shall include:

(a) A statement agreeing to cooperate with the Department to establish a reasonable time to evaluate compliance with the plan, by reviewing records and visiting the farm site or sites, as provided in § B(2) of this regulation;

(b) Descriptive information of the agricultural operation provided on a Department form, including the owner or operator, location of the operation, type of agricultural operation, and name of the individual preparing the plan;

(c) A summary section of the plan indicating all nutrient recommendations during the plan period, as provided by COMAR 15.20.08.04F;

(d) Soil analysis information; and

(e) A clearly recognizable map or aerial photograph identifying location and boundaries of the agricultural operation, individual field boundaries or management units, and acreage.

(3) Following the first submission of required nutrient management plan information to the Department, all operators subject to this chapter shall file by March 1 of each year an end of the cropping season report that covers the previous calendar year. The report shall be submitted on a form that the Department requires, and shall include, but not be limited to:

(a) A summary of basic information identifying the operator and characterizing the farm operation to include any changes in information on the agricultural operation that was provided in the reporting form for the first submitted plan;

(b) Total acreage managed under a nutrient management plan by crop and total nutrients applied by crop; and

(c) A statement verifying that:

(i) The information provided is true and accurate; and

(ii) A valid nutrient management plan will be followed during the current cropping season and upcoming cropping year.

(4) The Department shall keep, and shall protect the confidentiality of, all nutrient management plan information submitted, so as to protect the identity of the person for whom the plan was developed.

B. Operator Record-Keeping Requirements--Plan Implementation.

(1) The Department may periodically review records of an agricultural operator solely to determine if a nutrient management plan is implemented in accordance with the provisions of this chapter.

(2) When reviewing an operator's records, the Department shall:

(a) Arrange a meeting with the operator at a reasonable time and location, that allows the property owner or operator to be present, with a minimum of 48 hours prior notice; and

(b) Conduct the evaluation in a manner that minimizes any inconvenience to the operator.

(3) A person operating a farm who fails to cooperate with the Department's request to conduct a site visit or review a nutrient management plan and records relating to the plan is subject to the penalties provided in Regulation .07 of this chapter.

(4) Except as provided in this section, an operator subject to this chapter shall retain for 3 years the following records:

(a) Any nutrient management plan prepared for an agricultural operation, as required under this chapter;

(b) Soil analysis results for an agricultural operation;

(c) For agricultural crops produced or harvested annually, specific field or management unit yield information for the last 5 years which may include estimates based on volume or weight;

(d) For agricultural products that are not produced or harvested annually, or whose production is not managed based on an annual yield goal, such as nursery plants, information documenting nutrient use to meet specific production goals for three production cycles, or 3 years, whichever is less;

(e) For out-of-ground or container production, a description of production cycles and methods for all plants grown, including the following:

(i) The length of the production cycle and primary nutrients applied in each growing cycle,

(ii) A description of substrates used, and

(iii) An analysis of organic materials used as a source of nutrients in the substrate;

(f) Receipts related to the purchase of nutrients;

(g) Documentation of the timing, rate, quantity, type or types, and analysis of nutrients used with reference to field location and number, or management unit, consistent with the production plan, site map, or aerial photograph provided in the nutrient management plan identifying that agricultural land;

(h) Manure analysis results when animal manure is used as a nutrient source, and information about the manure management system, if animals are part of the production unit or if animal manure is used as a nutrient source, but animals are not produced on the operation;

(i) Monitoring information on runoff testing, including test results, as required for out-of-ground agricultural operations by COMAR 15.20.08.07D; and

(j) Documentation justifying any changes made to the nutrient management plan, as provided under Regulation .05C of this chapter.

(5) An operator shall keep the records required by § B(4)(a)–(h) of this regulation in a manner acceptable to the Department and shall make them available to the Department, upon request.

#### **.07 Assessment of Penalty.**

A. An operator who violates any deadline for having a nutrient management plan, as provided in Regulation .04A of this chapter, is subject to a written warning for a first violation. If an operator fails to comply with the plan development requirements, as provided in Regulation .04A of this chapter, after a reasonable period of time following notice of a violation, an operator is subject to an administrative penalty of not more than \$ 250 for a second violation and any subsequent violations.

B. Except as provided in § A of this regulation, an operator who violates any provision of this chapter or who fails to implement a plan by the implementation deadline, as provided in Regulation .04A of this chapter, is subject to a written warning for a first violation. If an operator fails to comply with the plan implementation requirements after a reasonable period of time following notice of a violation, an operator is subject to an administrative penalty for subsequent violations of not more than \$ 100 for each

violation. The total penalties imposed on a person for each violation may not exceed \$ 2,000 per operator per year for each nutrient management plan.

C. The Department shall consider the following when assessing a civil penalty under § B of this regulation:

(1) The willfulness of the violation, the extent to which the existence of the violation was known to the violator, but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) Any actual harm to human health or to the environment or the natural resources of this State;

(3) The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

(4) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

D. Each day that a violation of this chapter occurs, except for failing to meet a deadline for having a plan, as provided in Regulation .04A of this chapter, a separate violation under this chapter has occurred. Daily penalties do not continue to accrue as long as the operator takes reasonable steps to correct the violation. The maximum penalty accrued may not exceed \$ 2,000 per operator per year for each nutrient management plan.

E. Unless a stay has been granted, an operator against whom a civil penalty has been imposed under this regulation shall promptly pay the penalty to the Department.

F. If an operator violates any provision of this chapter, the Department may require repayment of Agricultural Water Quality Cost Share funds already disbursed to the operator for a project that an operator is required to maintain, and may deny or restrict future cost share payments to the operator under COMAR 15.01.05.

G. If an operator fails to comply with the provisions of Regulation .04A of this chapter following the third citation by the Department, the violation shall be referred to the Maryland Department of the Environment for further action under COMAR 26.08.02.04.

H. An operator may appeal the Department's decision to impose a penalty under Agriculture Article, § 2-405, Annotated Code of Maryland.

#### **15.20.04.00 Statutory Authority.**

**Authority:** Agriculture Article, §§ 8-801-- 8-806, Annotated Code of Maryland.

#### **.01 Scope.**

A. These regulations describe the Department's certification and licensing program for individuals or businesses that prepare and offer farm nutrient management plans.

B. When a nutrient management plan is prepared for a farm it indicates how essential primary nutrients, that is, nitrogen, phosphorus, and potassium, are to be annually managed on farm fields for crop production and for the protection of water quality. Plans contain recommendations to farmers based on expected crop yield, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental protection, and normal farming practices such as liming, tillage, and crop rotation. The Department shall certify qualified individuals to prepare these plans.

## **.02 Definitions.**

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

B. Terms Defined.

(1) "Certified farm operator" means an individual certified by the Department under this subtitle to prepare a nutrient management plan solely for agricultural land that the individual:

(a) Owns;

(b) Operates, or

(c) Has a legal interest in.

(2) "Certified nutrient management consultant" or "consultant" means an individual certified by the Department under this subtitle to prepare a nutrient management plan.

(3) "Crop nutrient needs" means the primary nutrient requirements of a crop determined as pounds of N, P<sub>2</sub>O<sub>5</sub>, and K<sub>2</sub>O required for production of a crop yield unit such as a bushel of corn or a ton of alfalfa.

(4) "Department" means the Maryland Department of Agriculture or its designee.

(5) "Fertilizer" means any substance containing a recognized plant nutrient used for its plant nutrient content and designed for use in promoting plant growth.

(6) "Field identification number" means a number used by a farmer/operator to distinguish or pinpoint the location of a field or management unit on a farm.

(7) "Nutrient content" means the percentage of any primary nutrients as N, P<sub>2</sub>O<sub>5</sub>, or K<sub>2</sub>O in any type or source of plant nutrients.

(8) "Nutrient management plan" or "plan" means a plan prepared by a certified nutrient management consultant or certified farm operator to manage the amount, placement, timing, and application of animal waste, fertilizer, sewage sludge, or other plant nutrients in order to prevent pollution and to maintain the productivity of soil when growing agricultural products.

(9) "Person" means the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.

(10) "Watershed code" means the code used by the State to identify a hydrologic unit area.

### **.03 Certification and License Requirement.**

A. Unless certified by the Department, an individual may not act as a certified nutrient management consultant or a certified farm operator as provided by this chapter.

B. Unless licensed by the Department, a person may not engage in the business of providing a certified nutrient management plan as provided by this chapter.

### **.04 Certification Application and Examination Requirement.**

A. To apply for the examination to be certified as a nutrient management consultant, an applicant shall file the following with the Department at least 15 days before any announced examination:

(1) An application on the form the Department requires;

(2) Proof of meeting one of the following:

(a) A school-authenticated college degree in an agriculturally related area, and 1 year of practical experience acceptable to the Department in nutrient management planning, or

(b) A combination of education and practical experience related to nutrient management planning which is acceptable to the Department; and

(3) Except for a government agency, the applicable certification fee by check or money order.

B. To apply for the farm operator certification, a person shall:

(1) File the required application forms with the Department; and

(2) Pay the applicable fees by check or money order.

C. Unless timely filed and complete, an application may be denied.

**.05 Examination.**

A. Nutrient Management Consultants.

(1) The Department shall offer a certification examination for nutrient management consultants at least once a year. The Department shall give 30 days public notice of the time and place for each examination.

(2) The Department may provide required training or a list of study materials before any examination is given.

(3) The Department shall allow a candidate who fails a certification examination to take another examination if the candidate:

(a) Makes application to the Department 15 days before the next examination date; and

(b) Pays a certification fee.

B. Farm Operators.

(1) The Department shall offer required certification training and examinations targeted to specific farm operation types for farm operators at least once per year.

(2) The Department shall allow a candidate who fails a certification examination to retake the examination if the candidate files an application with the Department at least 15 days before the date of the next examination.

**.06 Certification.**

A. The Department shall certify any individual as a nutrient management consultant or certified farm operator who:

(1) Meets the requirements of this chapter;

(2) Meets the Department's educational and experience requirements;

(3) Meets the Department's training requirements; and

(4) Passes a Department-approved examination.

B. The Department may issue a supplemental certification to an individual who prepares a nutrient management plan for an agricultural operation producing a specialty plant, crop, animal, or product, and who meets:

- (1) All the requirements of § A of this regulation; and
- (2) Additional educational and experience requirements relating to the production specialty, as approved by the Department.

#### **.07 Employment Requirement.**

An individual who is certified by the Department shall be licensed or employed by a person licensed under this chapter if engaged in the business of providing nutrient management plans. Individuals who are certified may develop a nutrient management plan for the purposes of complying with Regulation .09 of this chapter for land they own or operate without obtaining a license.

#### **.08 Certification Renewal.**

A. A certificate is issued for 1 year and may be renewed for a 3-year term by:

- (1) Submitting a renewal application on the form the Department requires;
- (2) Except for a government agency or a farmer or operator doing a plan for land they manage, paying a renewal fee to the Department;
- (3) Providing proof of satisfactory completion of continuing education, workshops, or other training programs approved by the Department that includes:
  - (a) At least 6 hours of training within the first year, and 12 hours thereafter within the 3-year term for certified consultants; or
  - (b) At least 2 hours of training within the first year, and 6 hours thereafter within the 3-year term for certified farm operators;
- (4) Complying with all requirements on the preparation of a nutrient management plan; and
- (5) Complying with all other requirements of this chapter.

B. An individual who fails to renew the certification may be required to take another certification examination as provided by this chapter.

#### **.09 License Application.**



An applicant for a license to engage in the business of providing a nutrient management plan as provided by this chapter shall do the following:

- A. Submit to the Department an application on the form the Department requires;
- B. Pay, except for a government agency, the applicable fee;
- C. Have at least one individual who is a certified nutrient management consultant as provided by this chapter working under the license; and
- D. Agree to comply with the requirements of this chapter.

#### **.10 License Renewal.**

A license is issued for 1 year and expires unless the applicant renews the license for a 3-year term and qualifies by:

- A. Submitting a renewal application on a form the Department requires;
- B. Except for a government agency, paying a renewal fee to the Department;
- C. Having a minimum of one individual who is a certified nutrient management consultant as provided by this chapter working under the license; and
- D. Complying with the requirements of this chapter.

#### **.11 Record-Keeping and Reporting Requirements.**

A. License Holder Record-Keeping and Reporting Requirements. A person who holds a license under this chapter shall keep records, and file with the Department by September 30 of each year an annual activity report covering the previous year (July 1 through June 30) that contains the following information:

- (1) Name and number of the license holder;
- (2) Name of the certified nutrient management consultant or consultants employed between the previous July 1 and June 30;
- (3) Number of nutrient management plans completed; and
- (4) Acreage covered by the plan and by county and State watershed codes for this acreage.

B. Information Concerning the Phosphorus Management Tool.

(1) As provided in § B(2) and (3) of this regulation, a license holder or a certified consultant who is not operating under a license shall file a report with the Department that includes information relating to nutrient management plans developed for operations which have soils with a phosphorus fertility index value of 150 or above.

(2) The report shall include information that the Department determines necessary to evaluate the implementation of the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2.

(3) The report shall be filed annually on a form developed by the Department not later than September 30th.

(4) The Department shall maintain the information provided in the report in a manner that protects the identity of the person for whom the plan was prepared and that persons personal information.

#### C. Information related to soil test phosphorus

(1) As provided in § C(2)--(4) of this regulation, a license holder or a certified consultant who is not operating under a license shall file a report with the Department that includes field or management-unit information relating to phosphorus levels in the soil determined by a soil analysis conducted in accordance with COMAR 15.20.08.05D related to nutrient management plans developed in accordance with COMAR 15.20.07 and 15.20.08.

(2) The report shall include:

(a) Soil test phosphorus levels for each field or management unit in the nutrient management plan and expressed in terms of the Fertility Index Value;

(b) Acreage associated with a specific soil analysis and field or management unit;

(c) The county in which the field or management unit is located; and

(d) Other information that the Department considers necessary to evaluate soil phosphorus data.

(3) The report shall be filed on a form developed by the Department not later than September 30, 2015 and every sixth year thereafter.

(4) The report may not include any information identifying the person or specific operation about whom the report is prepared.

D. List of Reported Operations. Concurrent with the report required under § C of this regulation, a license holder or a certified consultant who is not operating under a license shall file a separate report with the Department that includes the names of the persons, farm names, as applicable, and addresses of those operations for which soil phosphorus data has been provided to the Department.

E. Nutrient Management License Holder Record-Keeping Requirements. A license holder shall keep:

- (1) A copy of any nutrient management plan prepared under this chapter;
- (2) Records with the following information if the information is not already contained in a plan:
  - (a) Consultant's name and certification and license number,
  - (b) Landowner's or operator's name and address,
  - (c) Location of the land, including county and watershed code,
  - (d) Total acres of land for nutrient application, including acres of each crop or land cover,
  - (e) Date of the initial plan and subsequent revisions,
  - (f) Soil analysis for each field,
  - (g) Organic waste analysis,
  - (h) Expected crop yields by field, and basis used for calculations,
  - (i) Recommended nutrient rates for each field and crop, including application time and methods to be used,
  - (j) Any adjustment of recommendations due to limitations, which shall be justified and documented, and,
  - (k) Any other instructions or suggestions resulting in plan modification; and,
- (3) Required records for at least 5 years and make them available to the Department upon request.

**.12 Denial, Suspension, or Revocation of Certificate or License.**

After the opportunity for a hearing, the Department may deny, suspend, or revoke the certification or license of any person who violates any of the regulatory requirements of this chapter, including:

- A. Providing misleading, false, or fraudulent information in applying for a certificate or license;
- B. Providing the Department with any misleading, false, or fraudulent report;
- C. Offering or preparing a certified nutrient management plan as provided by this chapter without a certificate and license;
- D. Offering or preparing a nutrient management plan that does not comply with the requirements of this chapter;
- E. Failing to have a minimum of one certified nutrient management consultant working under a license;
- F. Failing to promptly provide any report or to allow the Department access to inspect any record required to be kept by this chapter;
- G. Failing to meet continuing education requirements.

### **.13 Reinstatement of Certificate or License after Disciplinary Action.**

Upon application for a certificate, any person whose certificate is denied, suspended, or revoked may be required to retake the certification examination.

### **15.20.08.00 Statutory Authority.**

**Authority:** Agriculture Article, §§ 8-801--8-806, Annotated Code of Maryland.

### **.01 Scope.**

- A. This chapter describes the:
  - (1) Content requirements for a nutrient management plan;
  - (2) Requirements for plan recommendations by a certified nutrient management consultant or certified farm operator; and
  - (3) Requirements for the implementation of a nutrient management plan by a person who manages an agricultural operation.
- B. A nutrient management plan prepared for an agricultural operation indicates how primary nutrients are to be managed annually on farm fields for plant and crop production

and for the protection of water quality. Plans contain recommendations to the agricultural operator based on expected crop yield or plant production goals, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental protection, and normal agricultural practices, such as liming, tillage, and crop rotation. The Department certifies and licenses qualified individuals to prepare plans under COMAR 15.20.04 and requires agricultural operations to implement the plans under COMAR 15.20.07.

C. This chapter addresses nutrient management plans and recommendations for agricultural operations, including container or out-of-ground agricultural operations.

D. This chapter also describes the transition from the Phosphorus Site Index to the Phosphorus Management Tool as a means to identify potential risk of phosphorus loss from farms. Like the Phosphorus Site Index, the Phosphorus Management Tool will be employed when a soil sample analysis shows a phosphorus fertility index value ("P FIV") of 150 or greater. Unless the transition schedule is adjusted as provided in this chapter, the Phosphorus Management Tool will be phased-in over a 7-year period as shown in the chart found in Regulation .10 of this chapter. Farms that have excess soil phosphorus will be placed in one of three tiers, as determined by the particular operations average phosphorus fertility index value. Farms with an average P FIV of 450 and greater will be the first operations required to begin implementing the Phosphorus Management Tool, but will be given a longer time-frame to fully implement it. Farms with an average P FIV of (1) 150 and greater, but less than 300, and (2) 300 and greater, but less than 450, will be required to begin implementing the Phosphorus Management Tool later but will be given less time to complete this transition.

## **.02 Incorporation by Reference.**

The performance and technical standards provided in this subtitle are found in the Department of Agriculture's Maryland Nutrient Management Manual, which is incorporated by reference in COMAR 15.20.07.02.

## **.03 Definitions.**

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

B. Terms Defined.

(1) "Account identification number" means the unique identifier used by the Maryland Department of Assessments and Taxation to identify a unit of land.

(2) "Agricultural operation" means a business or activity that:

(a) Tills, crops, keeps, pastures, or produces an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, or fiber by in-ground, out-of-ground, container, or other culture; and

(b) Has a gross annual income of \$2,500 or more, or has eight or more animal units.

(3) "Animal unit" means the unit of measure equivalent to 1,000 pounds of live animal weight.

(4) "Average Soil Phosphorus Fertility Index Value" or "Average Soil P FIV" means a value:

(a) Determined for an agricultural operation by averaging the P FIV of all fields or management units within the operation that have a P FIV greater than 150 (calculated by adding together the P FIV of each field or management unit within the operation that has a P FIV greater than 150 and dividing this sum by number of any such fields or management units); and

(b) Established not later than June 30, 2016, using soil tests not more than 3 years old.

(5) "Best management practice" means a conservation or pollution control practice that manages soil, nutrient losses, or other potential pollutant sources to:

(a) Minimize nutrient runoff or pollution of water resources; or

(b) Improve agricultural production and management.

(6) "Bioavailable" means a nutrient supply that is either currently, or likely to be, available to a plant or crop.

(7) "Biosolids" means any thickened liquid, suspended or settled solid, or dried residue extracted from sewage at a sewage treatment plant, including domestic sewage, that:

(a) Contains recognized plant nutrients or liquid byproducts that meet federal and State regulations for beneficial use by land application or other methods; and

(b) Is regulated as sewage sludge, pursuant to Environment Article, § 9-201 et seq., Annotated Code of Maryland.

(8) "Certified farm operator" means an individual certified by the Department under this subtitle to prepare a nutrient management plan solely for agricultural land that the individual:

(a) Owns;

- (b) Operates; or
- (c) Has a legal interest in.

(9) "Certified nutrient management consultant" or "consultant" means an individual certified by the Department under this subtitle to prepare a nutrient management plan.

(10) Chemical Fertilizer.

- (a) "Chemical fertilizer" means a manufactured or blended nutrient source, usually in granular or liquid form, containing a guaranteed analysis of primary nutrients.
- (b) "Chemical fertilizer" does not include a product blended from all natural organic fertilizer sources.

(11) "Controlled release fertilizer" means a type of fertilizer that releases nutrients over time and which may be categorized as follows:

- (a) Natural organics;
- (b) Organic, synthetic isobutylidene diurea and urea formaldehyde;
- (c) Sulfur-coated synthetic organic or inorganic fertilizers; and
- (d) Inorganic, resin-coated fertilizers.

(12) "Cover crop" means a crop including, but not limited to, cereal grains, that is planted following the harvest of summer crops for the purpose of:

- (a) Seasonal protection of soil;
- (b) Assimilation of residual nitrogen left from a previous crop; and
- (c) Continued mineralization of nitrogen.

(13) "Crop or plant nutrient needs" means the primary nutrient requirements of a crop, usually determined as pounds of total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O), required for production of a crop yield unit, such as a bushel of corn.

(14) "Department" means the Maryland Department of Agriculture or its designee.

(15) "Environmental risk assessment for out-of-ground production" means a method used to evaluate risk from stormwater and runoff management and water application (irrigation) methods that is acceptable to the Department, as described in the Maryland Nutrient Management Manual, Section II-D.

(16) "Expected crop yield" means a realistic crop yield for the agricultural operation determined by yield records or soil productivity information.

(17) "Fertility index value (FIV)" means an index developed by the University of Maryland that is:

(a) Used to describe the relative availability of nutrients to a plant or crop; and

(b) Described in the Maryland Nutrient Management Manual, Section II-B.

(18) "Fertilizer" means a substance containing a recognized primary plant nutrient used for its plant nutrient content and designed for use in promoting plant growth.

(19) "Field identification number" means a number or unique identifier used by an agricultural operator to distinguish or pinpoint the location of a field or management unit on a farm.

(20) "Liming" means the application of materials containing the carbonates, oxides, or hydroxides of calcium or magnesium in a condition, and in a quantity, adequate to manage soil acidity.

(21) "Management unit" means an area sharing common characteristics, including soil type, nutrient content, and plant type or crop produced, so that nutrients can be recommended and managed in a uniform and consistent manner.

(22) "Manure management" means operations and conditions specific to an agricultural operation that has animals, or uses animal manure or waste nutrients from animal production. The purpose of manure management in nutrient management planning is to improve efficiency and effectiveness of nutrient utilization and to minimize the potential for nutrient loss from the management of animals or their manure and associated waste nutrients. Guidelines for manure management are described in the Maryland Nutrient Management Manual, Section III-C.

(23) "Mineralization" means the process that converts unavailable organic forms of nutrient elements to an available inorganic state as a result of bacterial decomposition.



(24) "Natural organic fertilizer" means a fertilizer derived from plant or animal products, including animal manure, biosolids, green manure, compost, or plant materials, or other residuals used as a source of primary nutrients, which:

(a) Typically are not mixed with synthetic materials; or

(b) Are not changed in any physical or chemical manner from their initial state, except by means of cooking, chopping, composting, drying, grinding, shredding, or pelleting.

(25) "Nutrient application rate" means the quantity of primary nutrients, including total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O), recommended by a certified consultant to:

(a) Supply crop or plant nutrient needs; and

(b) Achieve realistic yield or plant production goals, as defined by this chapter.

(26) "Nutrient content" means the percentage of any primary nutrients as total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O) in any type or source of fertilizer.

(27) "Nutrient management plan" means a plan prepared by a certified nutrient management consultant or certified farm operator to manage the amount, placement, timing, and application of animal manure, fertilizer, biosolids, or other plant nutrients to minimize nutrient loss or runoff and to maintain the productivity of soil when growing agricultural products.

(28) "Operator" means a person who owns or manages an agricultural operation.

(29) "Out-of-ground or container production" means the production of plants whose roots are not actually growing in the soil column.

(30) "Person" means the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.

(31) "Phosphorus Management Tool" means the new procedure developed by the University of Maryland, approved by the Department, and described in the Maryland Nutrient Management Manual, Section II-C, that:

(a) Uses characteristics of soils, landforms, and management practices to identify potential risk of phosphorus losses from soils to waters; and

(b) Shall be phased-in between 2016 and not later than 2024, ultimately replacing the Phosphorus Site Index.

(32) "Phosphorus Site Index" means the original procedure developed by the University of Maryland, approved by the Department, and described in the Maryland Nutrient Management Manual, Section II-C, that uses characteristics of soils, landforms, and management practices to identify potential risk of phosphorus losses from soils to waters.

(33) "Phosphorus Transition Management Phase I" means the first of two management phases that farms with a soil P FIV of 150 or greater shall employ when transitioning from use of the Phosphorus Site Index to the Phosphorus Management Tool as a means to determine the application of additional phosphorus that:

(a) Consists of three risk categories determined by a calculation of the Phosphorus Management Tool; and

(b) Includes a schedule for implementation based on the average soil P FIV for the operation.

(34) "Phosphorus Transition Management Phase II" means the second of two management phases that farms with a soil P FIV of 150 or greater shall employ when transitioning from the use of the Phosphorus Site Index to the Phosphorus Management Tool as a means to determine the application of additional phosphorus that:

(a) Consists of three risk categories determined by a calculation of the Phosphorus Management Tool; and

(b) Includes a schedule for implementation based on the average soil P FIV for the operation.

(35) "Plant production goal" means a statement of the estimated length of time that plants will be grown, and appropriate measure of expected plant size, such as height or diameter.

(36) "Primary nutrients" means a plant food that is essential for normal plant growth, and includes total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O).

(37) "Residual nutrients" means the level of nitrogen, phosphorus, and potassium available in the soil from previous nutrient sources or unharvested plants or plant parts, or the baseline nutrient levels in the soil.

(38) "Soil leaching potential" means the potential for a given soil to be subject to nitrate and soluble chemical leaching below the root zone.

(39) "Soil pH level" means the relative acidity or alkalinity of a soil and refers to the hydrogen ion concentration in the soil solution.

(40) "Substrate" means organic or inorganic material, often bark, peat, and sand, used as media components in a container to support the plant and contain the root system.

(41) "Tier A operations" means those farms that have an average soil P FIV of 150 or greater but less than 300.

(42) "Tier B operations" means those farms that have an average soil P FIV of 300 or greater but less than 450.

(43) "Tier C operations" means those farms that have an average soil P FIV of 450 or greater.

(44) "Volatilization" means a process in which nitrogen losses to the atmosphere occur as ammonia.

(45) "Watershed code" means the code used by the State to identify a hydrologic unit area.

(46) Waters.

(a) "Waters" means surface water or ground water, including:

(i) That part of the Atlantic Ocean within the boundaries of the State;

(ii) The Chesapeake Bay and its tributaries; and

(iii) All ponds, streams, natural wetlands, and drainage ditches or public drainage systems.

(b) "Waters" do not include irrigation and treatment ditches installed to hold, transform, treat, or transfer water or wastewater, if a separation is maintained between the ditches and waters, as defined in § B(38)(a) of this regulation, at all times.

#### **.04 Nutrient Management--Required Plan Content.**

A. A certified nutrient management consultant or certified farm operator shall prepare, and an operator shall have and implement, a nutrient management plan that conforms to the requirements in §§ B--G of this regulation.

B. Plan Identification. A plan shall contain:

- (1) The operator name and address;
- (2) The account identification number or numbers for all tax maps and parcels contained in the plan;
- (3) A county and watershed code of all land under a nutrient management plan;
- (4) The date the plan was prepared or updated;
- (5) The period of time the plan covers;
- (6) The name, certification, and license number of the certified nutrient management consultant responsible for the plan development; and
- (7) The name and certification number of the certified farm operator responsible for the plan development.

C. Map or Aerial Photograph.

- (1) A plan shall contain one or more maps, such as soil survey maps or aerial photographs, that identify:
  - (a) The location and boundaries of the agricultural operation;
  - (b) The individual field boundaries or management units;
  - (c) A field or management unit number or identifier; and
  - (d) Acreage of each field or management unit.
- (2) The map or aerial photograph of the features described in § C(1) of this regulation shall be clearly recognizable. An agricultural operation sketch or soil survey map may be used when a map or aerial photograph is not available, if the features described in § C(1) of this regulation are clearly recognizable.

D. Plan Elements. A plan shall contain the following, when applicable:

- (1) All nutrient recommendations for the period the plan is effective, including crop rotations or recommendations for alternative cropping plans, if applicable,

within specific field or management unit information, described under § E of this regulation;

- (2) The type and average number of animals annually raised, maintained, or housed on the agricultural operation;
- (3) The quantities of animal manure or waste produced and available from animal housing or waste storage structures during the period the plan covers;
- (4) The total animal manure used as crop nutrients, including manure from on-farm and off-farm sources, and its nutrient analysis;
- (5) The quantity of animal manure or waste and location of alternative use, including land application off-site, processing, composting, or other uses of unused animal manure or waste;
- (6) The source and type of information used to determine expected crop yield or plant production goal;
- (7) Any recommendation to change management, install additional best management practices, or implement alternative technologies to reduce risk potential for nutrient movement;
- (8) Any recommendation to ensure efficient application of fertilizers; and
- (9) Any determination of the limiting nutrient as required under Regulation .04 of this chapter, including use of a risk analysis tool indicating the potential for nutrients to move into surface water or ground water, based on current conditions.

E. Field or Management Unit Specific Information. A plan shall contain data for each field or area where nutrients will be applied and shall include:

- (1) The date the recommendations are prepared or updated;
- (2) An account identification number;
- (3) The watershed location code;
- (4) The field or management unit number or identifier and acreage;
- (5) A soil analysis;
- (6) The expected crop or plant and expected crop yield or plant production goal for the period covered by the plan;

(7) Any crop rotation or recommendation for alternative cropping plans, if applicable, to:

(a) Provide the operator greater flexibility, and

(b) Minimize the need for a plan update;

(8) The primary nutrient requirements based on expected crop yield or plant production goals;

(9) Any available nutrients in the soil from the previous crop and mineralization and bioavailability assumptions for organic nutrient sources;

(10) The nutrients to be applied from all fertilizer sources to meet the crop or plant nutrient requirements;

(11) Any recommendation for:

(a) The liming of the soil,

(b) The application time for nutrients, including split applications, and the use of diagnostics to determine crop nutrient requirements,

(c) Any nutrient application method,

(d) The need to calibrate application equipment,

(e) The incorporation of natural organic fertilizers, and

(f) Any management strategy to achieve soil fertility within an optimal range; and

(12) Current or recommended tillage method.

F. Summary of Nutrient Recommendations. A plan shall contain a summary section that lists the following information for each farm field or management unit:

(1) The field or management unit identifier or number;

(2) The field or management unit acreage;

(3) The expected crop or plant;

(4) The expected crop yield or plant production goals for the period covered by the plan;

- (5) Any recommended nutrient rates;
- (6) The amount and type of nutrients, including chemical fertilizer or natural organic fertilizer, per acre or management unit;
- (7) The nutrient application method and, if application method requires incorporation of the nutrient, timing for incorporation; and
- (8) Any liming recommendations, if needed.

G. Plan Maintenance. A plan shall contain information to maintain and update a nutrient management plan. General comments about plan maintenance may be summarized and shall include:

- (1) The length of time the plan is effective;
- (2) The circumstances or changes in the farm operation that would require the plan to be modified or updated, including a change:
  - (a) To the planned crop or cropping rotation, or introduction of a new crop not currently addressed in the existing nutrient management plan, unless the new crop or plant will have fertility management similar to that originally planned,
  - (b) Of nutrient source or soil test results that indicate a change in nutrient recommendations,
  - (c) In acreage managed of 10 percent or greater, or 30 acres, whichever is less, or
  - (d) In animal units of 10 percent or greater if resultant manure production will require significant management adjustments; and
- (3) Any information on soil fertility and management strategies for achieving soil fertility within an optimal range.

#### **.05 Nutrient Management -- Required Plan Recommendations.**

A. A certified nutrient management consultant or certified farm operator shall address all of the elements and use the criteria described in §§ B--I of this regulation to determine recommendations in a nutrient management plan. A consultant's or certified farm operator's recommendations shall be consistent with the Department technical standards and criteria as provided in the Maryland Nutrient Management Manual, Sections I, II, and III.

B. Nutrient Rates.

(1) Nutrient rates of the primary nutrients shall be calculated for plant growth requirements of the crop.

(2) Plant growth requirements shall be based on one of the following:

(a) University of Maryland Plant or Crop Nutrient Recommendations, as provided in the Maryland Nutrient Management Manual, Section I-B; or

(b) Alternative standards, as provided in scientifically validated data for the development of a nutrient management plan acceptable to the Department.

(3) A consultant or certified farm operator may recommend the use of lime, secondary nutrients, or micronutrients needed for optimal plant growth.

(4) A consultant or certified farm operator may recommend nutrient rates that deviate from University of Maryland Plant or Crop Nutrient Recommendations and alternative standards provided in the Maryland Nutrient Management Manual, Section I-B, for application on farm test plots with prior approval from the Department.

(5) A consultant or certified farm operator may recommend nutrient rates based on a single variety tissue sample when used in conjunction with a soil sample.

#### C. Expected Crop Yield or Production Goal.

(1) The calculation of expected crop yield shall be based upon one of the following:

(a) An average of the 3 highest-yielding years for the crop out of the latest consecutive 5-year cropping sequence; or

(b) If yield information exists for more than 5 years for a given field or management unit, crop yield calculations may be based on the average of 60 percent of the highest-yielding years for all consecutive years that crop yield information is available.

(2) If field or management unit-specific yield or plant production goal information is unavailable or unrepresentative due to the inclusion of new seed varieties, irrigation, or new technologies, a consultant or certified farm operator shall use one of the following:

(a) Any soil productivity information;



(b) The average yield based upon an average of the 3 highest-yielding years for the crop out of the latest consecutive 5-year cropping sequence from nearby fields or management units with similar soil type and management conditions; or

(c) Any data acceptable to the Department.

(3) A consultant shall document what information was used as the basis for determining expected yield goal as part of the consultant's record-keeping requirements.

#### D. Soil Analysis Results.

(1) Soil analysis results for each field or management unit shall be based on standard soil sampling and analysis methods acceptable to the Department.

(2) Soil Samples. Variations from the standard sampling process shall be documented by the consultant or certified farm operator and may include:

(a) Soil samples collected from larger fields or acreage with uniform characteristics, including soil types, moisture, or fertility management history; crop rotations may be sampled as one management unit;

(b) Soil samples from fields, such as those common to strip cropping, which may be combined if the soils, previous cropping history, and soil fertility management are similar; and

(c) Any specialized production unit which may warrant smaller sampling units.

(3) Soil analysis results for a plan are valid for 3 years, except if the following conditions exist and are documented by the consultant or certified farm operator:

(a) A less frequent soil analysis is required to implement a management system based on new technologies;

(b) The management system does not require any nutrient application; or

(c) The management system requires nutrient application at a frequency less than once every 3 years.

(4) A recommendation for more than one planting season or crop may be made if anticipated soil fertility changes from the following are documented:

(a) Previous and future crop rotations; and

(b) Residual soil nutrients and nutrients used for previous crops.

E. Determination of Limiting Nutrient.

(1) A consultant or certified farm operator shall:

(a) Use the criteria in this section to determine which nutrient is the limiting factor in the application of nutrients; and

(b) Recommend subsequent nutrient management strategies consistent with this section.

(2) Soil fertility shall be used as an indicator of whether nutrient recommendations should be adjusted to address potential nutrient pollution problems.

(3) If the soil sample analysis results show a phosphorus fertility index value (FIV) of less than 150, nutrient recommendations may be based on nitrogen plant needs as the limiting factor in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section 1-B.

(4) Phosphorus Criteria for Tier A Operations.

(a) Except for nutrient management plans developed in accordance with § E(4)(e) of this regulation, the certified consultant shall:

(i) Provide the operator information outlining the changes in the management of the operation that will be required when the Phosphorus Management Tool becomes effective;

(ii) Calculate the Average Soil Phosphorus Fertility Index Value for the operation; and

(iii) Report the Average Soil Phosphorus Fertility Index Value for the operation to the Department on a form provided by the Department not later than September 1, 2016.

(b) Nutrient management plans implemented before July 1, 2019 shall:

(i) Be developed using both the Phosphorus Site Index and the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C; and

(ii) Use the Phosphorus Site Index set forth in Regulation .06 of this chapter to determine phosphorus applications.

(c) Nutrient management plans implemented between July 1, 2019 and June 30, 2020 shall use the Phosphorus Transition Management Phase I set forth in Regulation .07 of this chapter to determine phosphorus applications.

(d) Unless the transition schedule is adjusted as provided under this paragraph, nutrient management plans implemented between July 1, 2020 and June 30, 2021 shall use the Phosphorus Transition Management Phase II set forth in Regulation .08 of this chapter to determine phosphorus applications. Before January 1, 2020, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under Transition Management Phase II:

(i) Transition Management Phase I shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2021;

(ii) The transition to Transition Management Phase II, as provided in this section, shall be implemented 1 year later, beginning July 1, 2021; and

(iii) The subsequent schedule to transition to the Phosphorus Management Tool, as provided in § E(4)(e) of this regulation, likewise shall be implemented 1 year later, beginning July 1, 2022.

(e) Unless the transition schedule is adjusted as provided under either § E(4)(d) of this regulation or this paragraph, nutrient management plans implemented after July 1, 2021 shall use the Phosphorus Management Tool set forth in Regulation .09 of this chapter to determine phosphorus applications. Before January 1, 2021 or, alternatively, January 1, 2022, if the transition schedule has been adjusted under § E(4)(d) of this regulation, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and

additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under the Phosphorus Management Tool:

(i) Transition Management Phase II shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2022 or, alternatively, June 30, 2023, if the schedule has also been adjusted under § E(4)(d) of this regulation;

(ii) The Phosphorus Management Tool shall be used to determine phosphorus applications after June 30, 2022 or, alternatively, after June 30, 2023, if the schedule has also been adjusted under § E(4)(d) of this regulation.

(5) Phosphorus Criteria for Tier B Operations.

(a) Except for nutrient management plans developed in accordance with § E(5)(e) of this regulation, the certified consultant shall:

(i) Provide the operator information outlining the changes in the management of the operation that shall be required when the Phosphorus Management Tool becomes effective;

(ii) Calculate the Average Soil Phosphorus Fertility Index Value for the operation; and

(iii) Report the Average Soil Phosphorus Fertility Index Value for the operation to the Department on a form provided by the Department not later than September 1, 2016.

(b) Nutrient management plans developed for implementation before July 1, 2018 shall:

(i) Be developed using both the Phosphorus Site Index and the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C; and

(ii) Use the Phosphorus Site Index set forth in Regulation .06 of this chapter to determine phosphorus applications.

(c) Nutrient management plans implemented between July 1, 2018 and June 30, 2019 shall use the Phosphorus Transition Management Phase I set forth in Regulation .07 of this chapter to determine phosphorus applications.

(d) Unless the schedule is adjusted as provided under this paragraph, nutrient management plans implemented between July 1, 2019 and June 30, 2021 shall use the Phosphorus Transition Management Phase II set forth in Regulation .08 of this chapter to determine phosphorus applications. Before January 1, 2019, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under Transition Management Phase II:

(i) Transition Management Phase I shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2020;

(ii) The transition to Transition Management Phase II, as provided in this section, shall be implemented 1 year later, beginning July 1, 2020; and

(iii) The subsequent schedule to transition to the Phosphorus Management Tool, as provided in § E(5)(d) of this regulation, shall be implemented 2 years later, beginning July 1, 2022.

(e) Unless the transition schedule is adjusted as provided under either § E(5)(d) of this regulation or this paragraph, nutrient management plans implemented after July 1, 2021 shall use the Phosphorus Management Tool set forth in Regulation .09 of this chapter to determine phosphorus applications. Before January 1, 2021 or, alternatively, January 1, 2022, if the transition schedule has been adjusted under § E(5)(d) of this

regulation, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under the Phosphorus Management Tool:

(i) Transition Management Phase II shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2022 or, alternatively, June 30, 2023, if the schedule has also been adjusted under § E(5)(d) of this regulation; and

(ii) The Phosphorus Management Tool shall be used to determine phosphorus applications after June 30, 2022 or, alternatively, after June 30, 2023, if the schedule has also been adjusted under § E(5)(d) of this regulation.

(6) Phosphorus Criteria for Tier C Operations.

(a) Except for nutrient management plans developed in accordance with § E(6)(e) of this regulation, the certified consultant shall:

(i) Provide the operator information outlining the changes in the management of the operation that will be required when the Phosphorus Management Tool becomes effective;

(ii) Calculate the Average Soil Phosphorus Fertility Index Value for the operation; and

(iii) Report the Average Soil Phosphorus Fertility Index Value for the operation to the Department on a form provided by the Department not later than September 1, 2016.

(b) Nutrient management plans implemented prior to July 1, 2017 shall:

(i) Be developed using both the Phosphorus Site Index and the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C; and

(ii) Use the Phosphorus Site Index set forth in Regulation .06 of this chapter to determine phosphorus applications.

(c) Nutrient management plans implemented between July 1, 2017 and June 30, 2019 shall use the Phosphorus Transition Management Phase 1 set forth in Regulation .07 of this chapter to determine phosphorus applications.

(d) Unless the schedule is adjusted as provided under this paragraph, nutrient management plans implemented between July 1, 2019 and June 30, 2021 shall use the Phosphorus Transition Management Phase II set forth in Regulation .08 of this chapter to determine phosphorus applications. Before January 1, 2019, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under Transition Management Phase II:

(i) Transition Management Phase I shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2020;

(ii) The transition to Transition Management Phase II, as provided in this section, shall be implemented 1 year later, beginning July 1, 2020; and

(iii) The subsequent schedule to transition to the Phosphorus Management Tool, as provided in § E(6)(e) of this regulation, shall be implemented 2 years later, beginning July 1, 2022.

(e) Unless the transition schedule is adjusted, as provided under either § E(6)(d) of this regulation or this paragraph, nutrient management plans

implemented after July 1, 2021 shall use the Phosphorus Management Tool set forth in Regulation .09 of this chapter to determine phosphorus applications. Before January 1, 2021 or, alternatively, January 1, 2022, if the transition schedule has been adjusted under § E(6)(d) of this regulation, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under the Phosphorus Management Tool:

- (i) Transition Management Phase II shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2022 or, alternatively, June 30, 2023, if the schedule has also been adjusted under § E(6)(d), of this regulation;
- (ii) The Phosphorus Management Tool shall be used to determine phosphorus applications after June 30, 2022 or, alternatively, after June 30, 2023, if the schedule has also been adjusted under § E(6)(d) of this regulation.

#### F. Natural Organic Fertilizer.

- (1) An agricultural operator who uses natural organic fertilizer shall determine its nutrient value as specified in this section.
- (2) Test results for natural organic fertilizer shall be determined by an operator, consultant, or certified farm operator using standard sampling and analysis methods acceptable to the Department.
- (3) The consultant or operator shall conduct animal manure or waste analysis as close to application time as possible, or a consistent baseline for nutrient content may be established and used from analysis results taken at least twice a year until a uniform value is confirmed, and then for every second year thereafter to verify its consistency. If significant changes occur, including feed, management, animals, or storage, a new analysis for nutrient content shall be determined by the consultant or operator for the new manure.



(4) Biosolids analysis shall be conducted according to COMAR 26.04.06.09A(13)(d) as close to nutrient application time as possible, but at least once a year. If changes occur in a sewage treatment facility, or routine biosolids analysis reveals a significant change in available nutrient content during the permit period, nutrient application rates shall be adjusted accordingly by the consultant, or certified farm operator, or the operator.

(5) Analysis of any other natural organic fertilizer or organic materials shall be conducted by the operator as close to nutrient application time as possible, but at least once a year.

(6) Calculations for nutrient content from natural organic fertilizer shall consider mineralization rates and plant availability rates for different forms and sources of organic nutrients. Mineralization of organic nitrogen from the 2 previous years of natural organic fertilizer applications shall be accounted for in the plan.

G. Application Method for Nutrients. A consultant or certified farm operator shall consider the following when making recommendations on nutrient application methods in a plan:

(1) Nutrient application shall be made to minimize nitrogen and phosphorus losses to waters and nitrogen volatilization losses to the atmosphere;

(2) Techniques to achieve accurate and uniform application of nutrients shall be recommended by the consultant or certified farm operator and shall be used by the operator;

(3) Split application of nitrogen on soils identified as having a high leaching potential;

(4) Measures to minimize or control nutrient movement to sensitive areas, including natural or existing wetlands, sinkholes, and steep slopes; and

(5) Recommendations shall ensure efficient application of fertilizers and may include crop rotation, agronomic practices, tillage, and cover crop management.

H. Timing of Nutrient Application. Timing for nutrient applications, as recommended by a consultant or certified farm operator and conducted by an operator, shall:

(1) Be as close to plant nutrient uptake periods as possible;

(2) Maximize plant utilization efficiency and minimize the potential for nutrient movement; and

(3) Be consistent with the guidelines contained in the Maryland Nutrient Management Manual, Section I-D.

I. Manure Management. When an agricultural operation either produces animals or integrates animal manure use with crop production, a consultant or certified farm operator shall:

(1) Take into account the current manure management measures being used to store, stockpile, and handle animal manure and waste nutrients associated with animal production in order to make appropriate recommendations for application rates, timing, and methods;

(2) Evaluate existing conditions and procedures and advise the operator when manure management changes, such as improved stockpiling or storage facilities, would minimize the potential for nutrient loss or runoff or improve nutrient use efficiency and proper timing of manure utilization; and

(3) Take into account animal manure or waste nutrients associated with animal production and all other sources of nutrients when making recommendations.

#### **.06 Nutrient Management -- Phosphorus Site Index.**

A. Except as provided in § F of this regulation, if the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Site Index, as provided in the Maryland Nutrient Management Manual, Section II-C1, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss. If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Site Index, nutrient recommendations by the consultant or certified farm operator may use nitrogen plant needs as the limiting factor.

C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in § C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Site Index, nutrient rates shall be based on nitrogen plant needs as the limiting factor not more than 1 out of every 3 years. Phosphorus rates for the other 2 years shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) Nutrient recommendations may use nitrogen plant needs as the limiting factor if BMPs are implemented by the operator before or during the application of

additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to low.

D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in § D(2) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Site Index, phosphorus rates shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to medium, nutrient rates may be based on nitrogen plant needs as the limiting factor not more than 1 out of every 3 years. Phosphorus rates for the other 2 years shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

E. Very High Risk of Potential Phosphorus Loss.

(1) Except as provided in § E(2) of this regulation, if the risk for potential loss of phosphorus from the site is very high according to the Phosphorus Site Index, no additional phosphorus may be applied.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to high, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing, in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(3) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss, based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

F. If the soil sample analysis results indicate a phosphorus fertility index value of 500 or greater, no phosphorus may be applied.

**.07 Nutrient Management -- Phosphorus Transition Management Phase I.**

A. Except as provided in § E of this regulation, if the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss.

(1) If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, nutrient recommendations by the consultant or certified farm operator may use nitrogen plant needs as the limiting factor.

(2) Nutrient applications shall not exceed the amount of phosphorus removed by the planned crop over a 3-year period.

C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in § C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 3-year period shall not exceed the amount of phosphorus removed by the planned crops over the 3-year period, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by § B of this regulation.

D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in § D(2) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, phosphorus rates shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, nutrient rates may be established as provided by § C of this regulation.

(3) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

E. If the soil sample analysis results indicate a phosphorus fertility index value of 500 or greater, no phosphorus may be applied.

#### **.08 Nutrient Management -- Phosphorus Transition Management Phase II.**

A. Except as provided in § E of this regulation, if the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss. If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 3-year period shall not exceed the amount of phosphorus removed by the planned crops over the 3-year period, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in § C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 2-year period shall not exceed the amount of phosphorus removed by the planned crops over the 2-year period, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by § B of this regulation.

D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in § D(3) and (4) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, phosphorus rates shall be limited to 50 percent of the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If limits of technology of available application equipment prevent application at 50 percent of the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application, phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(3) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, nutrient rates may be established as provided by § C of this regulation.

(4) If the crop to be produced is certified as organic pursuant to the requirements of the federal Organic Foods Production Act, 7 U.S.C. § 6501 et seq., including implementing federal regulations, as amended, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, or the amount indicated by soil testing in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(5) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

E. If the soil sample analysis results indicate a phosphorus fertility index value of 500 or greater, no phosphorus may be applied.

**.09 Nutrient Management – Phosphorus Management Tool.**

A. If the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss. If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 3-year period shall not exceed the amount of phosphorus removed by the planned crops over the 3-year period.

C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in § C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B , whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by § B of this regulation.

D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in § D(2)--(6) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, no additional phosphorus may be applied.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, nutrient rates may be established as provided by § C of this regulation.

(3) If the crop to be produced is certified as organic pursuant to the requirements of the federal Organic Foods Production Act, 7 U.S.C. § 6501 et seq., including implementing federal regulations, as amended, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(4) Except when subject to cold and wet growing conditions, crops determined to be deficient in phosphorus, as demonstrated by a representative tissue analysis by an accredited laboratory, may receive an application of phosphorus not to exceed 25 percent of the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application.

(5) Vegetable and tobacco crops with a recommended phosphorus application rate of 40 pounds or more at optimum or excessive fertility levels as provided in the Maryland Nutrient Management Manual, Section I-B, may receive a phosphorus application at planting not to exceed 25 percent of the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application.

(6) Agricultural operations implementing technologies to reduce the phosphorus content of animal manures by at least 75 percent shall limit phosphorus application rates to 50 percent of the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops.

(7) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

**.10 Summary Schedule – Transition from Phosphorus Site Index to Phosphorus Management Tool.**

7-Year Transition Schedule\*

Crop Year**	2016	2017	2018	2019	2020	2021	2022
Average P FIV>450 (Tier C Operations)	PSI	PSI	TM1	TM1	TM2	TM2	PMT
Average P FIV 300-450 (Tier B Operations)	PSI	PSI	PSI	TM1	TM2	TM2	PMT
Average P FIV 150-299 (Tier A Operations)	PSI	PSI	PSI	PSI	TM1	TM2	PMT
PSI – Phosphorus Site Index							



TM1 – Transition Management Phase 1					
TM2 – Transition Management Phase 2					
PMT – Phosphorus Management Tool					

\*The 7-Year transition period assumes that the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee does not make any adjustments to the transition schedule as provided for in this chapter.

\*\*The term “crop year” means the 1-year period beginning July 1 of the previous year through June 30 of the current year. For example, the 2016 crop year begins on July 1, 2015 and ends on June 30, 2016.

**.11 Phosphorus Management Tool Transition Advisory Committee.**

A. Beginning in 2015 and continuing until the Phosphorus Management Tool is fully implemented, there shall be established within the Department, the Phosphorus Management Tool Transition Advisory Committee.

B. The Committee shall be chaired by the Secretary. Its membership may include the following persons:

- (1) A member of the Senate, appointed by the President;
- (2) A member of the House of Delegates, appointed by the Speaker;
- (3) The Secretary of the Environment, or his designee;
- (4) The Director of the Maryland Environmental Service, or his designee;
- (5) The Director of the Maryland Energy Administration, or his designee;
- (6) The University of Maryland, College of Agriculture and Natural Resources;
- (7) The Chesapeake Bay Commission;
- (8) Members appointed by the Secretary, including a representative from:
  - (a) The Maryland Farm Bureau;
  - (b) The Maryland Grain Producers Association;
  - (c) The Delmarva Poultry Industry, Inc.;

- (d) The Maryland Dairy Industry Association;
- (e) The Chesapeake Bay Foundation;
- (f) Two non-governmental organizations representing environmental interests;
- (g) The biosolids industry;
- (h) The manure hauling industry;
- (i) The manure application industry;
- (j) Two alternative technology vendors or Enterprises; and
- (k) Two representatives of county and municipal government from a list submitted by the Maryland Association of Counties and the Maryland Municipal League.

C. The purpose of the committee shall be to:

- (1) Evaluate information relevant to the implementation of the Phosphorus Management Tool including:
  - (a) The quantity and location of excess animal manure within the State;
  - (b) The status and activity of manure transportation activities in geographic areas with excess animal manures;
  - (c) The viability of markets for animal manures as a crop fertilizer, fuel stock for energy generation and other alternative uses;
  - (d) The status and capacity of alternative use technologies using animal manures; and
  - (e) Other information the Department and the Advisory Committee deems appropriate.
- (2) Recommend to the Secretary strategies to facilitate the effective implementation of the Phosphorus Management Tool;
- (3) Recommend to the Secretary potential changes to the schedule implementing the Phosphorus Management Tool, as provided for in this chapter; and
- (4) Identify resources necessary for the effective transition to the Phosphorus Management Tool.

D. The Committee shall meet at least annually at a time determined by the Department.

E. Annual Report.

(1) Beginning December 1, 2016 and each year thereafter, until the Phosphorus Management Tool is fully implemented, the Committee shall provide a report to the Governor and the General Assembly.

(2) The report shall include:

(a) A summary of the data collected from farms related to the operational changes created by implementing the Phosphorus Management Tool;

(b) The status of certain programs related to or supporting the transition to the Phosphorus Management Tool;

(c) Resource needs considered critical for the effective transition to the Phosphorus Management Tool; and

(d) Policy recommendations to enhance the implementation of the Phosphorus Management Tool.

**.12 Nutrient Management for Container or Out-of-Ground Agricultural Production -- Additional Required Plan Content.**

A. A certified nutrient management consultant or certified farm operator shall prepare, and an operator of container or out-of-ground agricultural production shall conform to the requirements of §§ B--H of this regulation, in addition to applicable requirements described in this chapter, when developing and implementing, a nutrient management plan.

B. Plan Elements. A plan shall contain a summary of planned plant production applicable to the site, including:

(1) A listing of plants to be grown by name, species, and variety and cultivar or both; however, if more than 20 different kinds of plants are grown, general plant categories may be used, such as herbaceous, deciduous shrub, coniferous evergreen, broadleaf evergreen, or trees;

(2) The estimated greatest number of plants, units, or containers that will be in production at any one time during a calendar year and the month this will occur;

(3) The estimated percentages of plants, units, or containers in the following container size categories:

- (a) Less than 1 gallon (less than 2,492 cubic centimeters container volume),
- (b) From 1 to 3 gallons (2,492 to 12,164 cubic centimeters),
- (c) Greater than 3 gallons and less than 15 gallons (more than 12,164, but less than 45,376 cubic centimeters), or
- (d) 15 gallons or greater (45,376 cubic centimeters or more);

(4) An inventory, which may include projected changes during the life of the plan, taken by the operator for any purpose within 12 months of completion of the plan, which shall meet the requirements of § B(1), (2), and (3) of this regulation, if the inventory is representative of planned production during the period covered by a nutrient management plan;

(5) Total growing area under the plan, which may include projected changes in growing area planned to take place during the life of the plan.

C. Summary of Nutrient Recommendations. A plan shall contain summary information on the total amount of primary nutrients recommended for each calendar year covered by the plan, including:

- (1) The estimated total amounts of nitrogen, phosphorus, and potash;
- (2) A listing of all sources of nutrients;
- (3) The estimated amounts of each source of nutrients to be applied for each quarter of the year; and
- (4) A listing or description of the application method or methods for each nutrient.

D. Assessment of Environmental Risk. A nutrient management plan shall contain an assessment of the risk of nutrient losses to surface water, using the Environmental Risk Assessment for out-of-ground production provided in the Maryland Nutrient Management Manual, Section II-D.

E. General Management Recommendations. A plan shall contain general recommendations to ensure efficient application of nutrients, including:

- (1) The calibration of equipment;
- (2) The timing and application methods for water and nutrients;
- (3) Management options to maximize the efficient use of water;

(4) Any operator management options to reduce nutrient losses; and

(5) Any other best management practices that may be applicable as provided in the Maryland Nutrient Management Manual, Section II-E.

F. **Specific Management Recommendations.** A consultant or certified farm operator shall recommend growing area or section-specific management techniques to improve water use efficiency and minimize nutrient losses, including the following:

(1) Grouping plants to improve water and nutrient usage;

(2) Monitoring water and nutrient needs of plants;

(3) Increasing the percentage of water and nutrients entering the plant root zone;

(4) Reducing the amount of leachate or runoff; and

(5) Reducing or containing the flow of water from growing areas.

G. **Program for Monitoring Runoff.** A nutrient management plan shall include recommendations to monitor runoff, as required in Regulation .07C of this chapter, including recommendations on methods, frequency, and locations of monitoring.

H. **Plan Maintenance.** A plan shall contain information to maintain and update the plan. General comments about plan maintenance may be summarized, but shall include:

(1) The length of time the plan is effective, not to exceed 3 years; and

(2) Identification of changes in the agricultural operation that would require the original plan to be modified or updated, including a:

(a) Change in area managed of 20 percent or greater, or 5 acres, whichever is less, or

(b) Substantial change in a production plan or method.

### **.13 Nutrient Management--Required Plan Recommendations for Container or Out-of-Ground Production.**

A. **Nutrient Recommendations.** A certified nutrient management consultant or certified farm operator shall evaluate production cycles and methods and make nutrient recommendations based on at least one of the following:

(1) The label recommendations on fertilizer products for the plants being grown or similar plants;

- (2) The recommendations of the University of Maryland Cooperative Extension for the specific plants being grown or for similar plants;
- (3) The recommendation from other state universities for the specific plants being grown or for similar plants;
- (4) The data from research done by accredited universities on the specific plants being grown or similar plants;
- (5) The general nutrition guidelines for similar plants; or
- (6) Any generally accepted growing practices for plants under comparable growing conditions.

B. Management Recommendations.

- (1) A consultant or certified farm operator shall use the Environmental Risk Assessment for out-of-ground production, as provided in the Maryland Nutrient Management Manual, Section II-D, to identify the potential risk to the environment of nutrient movement from out-of-ground growing areas.
- (2) For growing areas where there is zero or low risk of nutrient movement from the site, recommendations shall be made to maintain this zero or low level of risk.
- (3) For growing areas where there is medium risk of nutrient movement:
  - (a) Management recommendations shall be made to minimize the risk of nutrients moving to, or reaching, surface waters; and
  - (b) The consultant or certified farm operator shall recommend that the operator or other person responsible for irrigation and nutrient management attend Department-approved training on best management practices for out-of-ground production to minimize nutrient losses.
- (4) For growing areas where there is high risk of nutrient movement:
  - (a) Management recommendations shall be made for individual growing areas, as well as for the operation as a whole, to reduce the risk of nutrients moving to, or reaching, surface waters;
  - (b) The consultant or certified farm operator shall recommend that the operator or other person responsible for irrigation and nutrient management attend Department-approved training on best management practices for out-of-ground production that teaches how to minimize nutrient losses; and

(c) Only controlled release fertilizer shall be recommended for use until management changes reduce the risk of nutrient loss to medium.

(5) In recommending field or management unit practices to reduce or minimize nutrient losses, a consultant or certified farm operator shall consider the following:

(a) The appropriate nutrient application methods;

(b) Nutrient application timing; and

(c) Any plant nutrient needs.

(6) Timing of nutrient application shall be as close to plant nutrient uptake as possible, except in the case of controlled release fertilizer, which may be applied at any time.

C. Recommendations for Monitoring Runoff. Unless an operation is assessed as zero risk for nutrient loss from the site, as provided in the Maryland Nutrient Management Manual, Section II-D, the nutrient management consultant shall recommend a monitoring program, including the following:

(1) The periods for monitoring when plant nutrients can reasonably be expected to be available;

(2) The locations immediately next to growing areas or areas where runoff or overflow from collection basins enters surface water, municipal stormwater, or drainage inlets; and

(3) The frequency of sampling for nutrients:

(a) Where the risk of nutrient movement from any growing area is low, monitoring shall include samples for testing a minimum of two different times during each growing season or cycle from each location; and

(b) Where the risk of impacting surface water is medium or high, monitoring recommendations shall be conducted monthly when nutrients are being applied.

D. Methods of Sampling and Testing. Samples may be analyzed by the operator or consultant on-site using calibrated electrical conductivity (EC) or nutrient meters. To evaluate the accuracy of on-site test results, at least two samples per year shall be split, with one part being sent to an independent laboratory for analysis.

**2) Md. AGRICULTURE Code Ann. §§ §§ 8-803, 8-803.1, 8-803.3, 8-803.9; COMAR; 15.20.08.01—.11**

**8-803.1 Nutrient management plans—General provisions**

- (a) In this section, “gross income” means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.
- (b) This section does not apply to:
  - (1) An agricultural operation with less than \$2,500 in gross income; or
  - (2) A livestock operation with less than eight animal units defined as 1,000 pounds of live animal weight per animal unit.
- (c) The Governor shall provide sufficient funding in each fiscal year’s budget to:
  - (1) Assist in the development of nutrient management plans;
  - (2) Meet the technical assistance and evaluation requirements of this section;
  - (3) Meet the State’s requirements for the implementation of the Manure Transportation Project under § 8-704.2 of this title; and
  - (4) Provide State assistance under the Maryland Agricultural Water Quality Cost Share Program in the Department.
- (d)
  - (1) State cost sharing may be made available to help offset the costs of having a nutrient management plan prepared by a certified nutrient management consultant who is not employed by the federal, State, or a local government.
  - (2) The Secretary of Agriculture shall adopt regulations authorizing the disbursement of State cost sharing funds under this subsection.
  - (3) The Department may procure the services of a private certified nutrient management consultant to develop nutrient management plans for persons operating a farm.
- (e)
  - (1) By December 31, 2001, a person who, in operating a farm, uses chemical fertilizer, shall have a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.
  - (2)



(i) By December 31, 2001, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen.

(ii) By July 1, 2004, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen and phosphorus.

(f)

(1) By December 31, 2002, a person who, in operating a farm, uses chemical fertilizer, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2)

(i) By December 31, 2002, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen that meets the requirements of this subtitle.

(ii) By July 1, 2005, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(g) A person may meet the requirements of subsection (e) of this section by requesting, at least 60 days before the applicable date set forth in subsection (e) of this section, the development of a nutrient management plan by a certified nutrient management consultant.

(h)

(1) If a person violates the provisions of subsection (e) of this section, the Department shall notify the person that the person is in violation of the requirement to have a nutrient management plan.

(2) After a reasonable period of time, if the person fails to have a nutrient management plan, the person is subject to an administrative penalty not to exceed \$250.

(i)

(1) A person who violates any provision of subsection (f) of this section or of any rule, regulation, or order adopted or issued under this section is subject to:

(i) For a first violation, a warning; and

(ii) For a second or subsequent violation, after an opportunity for a hearing which may be waived in writing by the person accused of

a violation, an administrative penalty that may be imposed by the Department of Agriculture.

(2) The penalty imposed on a person under paragraph (1)(ii) of this subsection shall be:

(i) Up to \$100 for each violation, but not exceeding \$2,000 per farmer or operator per year; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health;

3. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

4. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(3)

(i) Except as provided in subparagraph (ii) of this paragraph, each day a violation occurs is a separate violation under this subsection.

(ii) Daily penalties do not continue to accrue as long as the farmer takes reasonable steps to correct the violation.

(4) Any penalty imposed under this subsection is payable to the Maryland Agricultural Water Quality Cost Share Program within the Department.

(j) If a person violates any provision of this section, the Department may:

(1) Require repayment of cost share funds under Subtitle 7 of this title for the project that is in violation; or

(2) Deny or restrict future cost share payments under Subtitle 7 of this title.

(k)

(1) The Department shall determine compliance with the provisions of this section.

(2) The Department may review the nutrient management plan and records relating to the plan at a location agreed to by the Department and the person operating the farm.

(3) In conducting a site visit and reviewing the nutrient management plan and related records, the Department's evaluation shall be limited solely to determining whether the person operating the farm is in compliance with the provisions of this section or the regulations implementing this section.

(4) In conducting a site visit, the Department shall:

(i) Provide the person operating the farm at least 48 hours advance notice;

(ii) Enter the property at a reasonable time that allows the person operating the farm to be present; and

(iii) Conduct the evaluation in a manner that minimizes any inconvenience to the person operating the farm.

(5) If a person operating a farm fails to cooperate with the Department's request to conduct a site visit and review of a nutrient management plan and records relating to the plan, that person is subject to subsections (i) and (j) of this section.

### **8-803.3 Nutrient application educational programs**

(a) This section does not apply to:

(1) A person who applies nutrients to 10 acres or less of land each year; or

(2) A person who applies nutrients for hire.

(b) A person who engages in the activity of applying nutrients to land which the person owns or manages and which is used for agricultural purposes shall complete an educational program in nutrient application every 3 years.

(c)

(1) The Secretary, in consultation with the Nutrient Management Advisory Committee under § 8-804 of this subtitle, shall create or approve educational programs under this section.

(2) The nutrient application educational programs are to be offered at sites distributed throughout the State.

(3) The Department shall issue to a participant upon completion of an education program under this section, a voucher of completion.

- (4) The Department shall maintain a registry of persons who have received vouchers of completion in a nutrient application educational program under this section.

### **8-803.9 Regulations**

The Department may adopt regulations for agricultural research, education, and demonstration exemptions to this subtitle.

#### **15.20.08.01 Scope.**

A. This chapter describes the:

- (1) Content requirements for a nutrient management plan;
- (2) Requirements for plan recommendations by a certified nutrient management consultant or certified farm operator; and
- (3) Requirements for the implementation of a nutrient management plan by a person who manages an agricultural operation.

B. A nutrient management plan prepared for an agricultural operation indicates how primary nutrients are to be managed annually on farm fields for plant and crop production and for the protection of water quality. Plans contain recommendations to the agricultural operator based on expected crop yield or plant production goals, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental protection, and normal agricultural practices, such as liming, tillage, and crop rotation. The Department certifies and licenses qualified individuals to prepare plans under COMAR 15.20.04 and requires agricultural operations to implement the plans under COMAR 15.20.07.

C. This chapter addresses nutrient management plans and recommendations for agricultural operations, including container or out-of-ground agricultural operations.

D. This chapter also describes the transition from the Phosphorus Site Index to the Phosphorus Management Tool as a means to identify potential risk of phosphorus loss from farms. Like the Phosphorus Site Index, the Phosphorus Management Tool will be employed when a soil sample analysis shows a phosphorus fertility index value ("P FIV") of 150 or greater. Unless the transition schedule is adjusted as provided in this chapter, the Phosphorus Management Tool will be phased-in over a 7-year period as shown in the chart found in Regulation .10 of this chapter. Farms that have excess soil phosphorus will be placed in one of three tiers, as determined by the particular operation's average phosphorus fertility index value. Farms with an average P FIV of 450 and greater will be the first operations required to begin implementing the Phosphorus Management Tool, but will be given a longer time-frame to fully implement it. Farms with an average P FIV of (1) 150 and greater, but less than 300, and (2) 300 and greater, but less than 450, will be required to begin implementing the Phosphorus Management Tool later but will be given less time to complete this transition.

## **.02 Incorporation by Reference.**

The performance and technical standards provided in this subtitle are found in the Department of Agriculture's Maryland Nutrient Management Manual, which is incorporated by reference in COMAR 15.20.07.02.

## **.03 Definitions.**

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

B. Terms Defined.

(1) "Account identification number" means the unique identifier used by the Maryland Department of Assessments and Taxation to identify a unit of land.

(2) "Agricultural operation" means a business or activity that:

(a) Tills, crops, keeps, pastures, or produces an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, or fiber by in-ground, out-of-ground, container, or other culture; and

(b) Has a gross annual income of \$2,500 or more, or has eight or more animal units.

(3) "Animal unit" means the unit of measure equivalent to 1,000 pounds of live animal weight.

(4) "Average Soil Phosphorus Fertility Index Value" or "Average Soil P FIV" means a value:

(a) Determined for an agricultural operation by averaging the P FIV of all fields or management units within the operation that have a P FIV greater than 150 (calculated by adding together the P FIV of each field or management unit within the operation that has a P FIV greater than 150 and dividing this sum by number of any such fields or management units); and

(b) Established not later than June 30, 2016, using soil tests not more than 3 years old.

(5) "Best management practice" means a conservation or pollution control practice that manages soil, nutrient losses, or other potential pollutant sources to:

(a) Minimize nutrient runoff or pollution of water resources; or

(b) Improve agricultural production and management.

(6) "Bioavailable" means a nutrient supply that is either currently, or likely to be, available to a plant or crop.

(7) "Biosolids" means any thickened liquid, suspended or settled solid, or dried residue extracted from sewage at a sewage treatment plant, including domestic sewage, that:

(a) Contains recognized plant nutrients or liquid byproducts that meet federal and State regulations for beneficial use by land application or other methods; and

(b) Is regulated as sewage sludge, pursuant to Environment Article, §9-201 et seq., Annotated Code of Maryland.

(8) "Certified farm operator" means an individual certified by the Department under this subtitle to prepare a nutrient management plan solely for agricultural land that the individual:

(a) Owns;

(b) Operates; or

(c) Has a legal interest in.

(9) "Certified nutrient management consultant" or "consultant" means an individual certified by the Department under this subtitle to prepare a nutrient management plan.

(10) Chemical Fertilizer.

(a) "Chemical fertilizer" means a manufactured or blended nutrient source, usually in granular or liquid form, containing a guaranteed analysis of primary nutrients.

(b) "Chemical fertilizer" does not include a product blended from all natural organic fertilizer sources.

(11) "Controlled release fertilizer" means a type of fertilizer that releases nutrients over time and which may be categorized as follows:

(a) Natural organics;

(b) Organic, synthetic isobutylidene diurea and urea formaldehyde;

- (c) Sulfur-coated synthetic organic or inorganic fertilizers; and
- (d) Inorganic, resin-coated fertilizers.

(12) "Cover crop" means a crop including, but not limited to, cereal grains, that is planted following the harvest of summer crops for the purpose of:

- (a) Seasonal protection of soil;
- (b) Assimilation of residual nitrogen left from a previous crop; and
- (c) Continued mineralization of nitrogen.

(13) "Crop or plant nutrient needs" means the primary nutrient requirements of a crop, usually determined as pounds of total nitrogen (N), available phosphate (P2O5), or soluble potash (K2O), required for production of a crop yield unit, such as a bushel of corn.

(14) "Department" means the Maryland Department of Agriculture or its designee.

(15) "Environmental risk assessment for out-of-ground production" means a method used to evaluate risk from stormwater and runoff management and water application (irrigation) methods that is acceptable to the Department, as described in the Maryland Nutrient Management Manual, Section II-D.

(16) "Expected crop yield" means a realistic crop yield for the agricultural operation determined by yield records or soil productivity information.

(17) "Fertility index value (FIV)" means an index developed by the University of Maryland that is:

- (a) Used to describe the relative availability of nutrients to a plant or crop; and
- (b) Described in the Maryland Nutrient Management Manual, Section II-B.

(18) "Fertilizer" means a substance containing a recognized primary plant nutrient used for its plant nutrient content and designed for use in promoting plant growth.

(19) "Field identification number" means a number or unique identifier used by an agricultural operator to distinguish or pinpoint the location of a field or management unit on a farm.

(20) "Liming" means the application of materials containing the carbonates, oxides, or hydroxides of calcium or magnesium in a condition, and in a quantity, adequate to manage soil acidity.

(21) "Management unit" means an area sharing common characteristics, including soil type, nutrient content, and plant type or crop produced, so that nutrients can be recommended and managed in a uniform and consistent manner.

(22) "Manure management" means operations and conditions specific to an agricultural operation that has animals, or uses animal manure or waste nutrients from animal production. The purpose of manure management in nutrient management planning is to improve efficiency and effectiveness of nutrient utilization and to minimize the potential for nutrient loss from the management of animals or their manure and associated waste nutrients. Guidelines for manure management are described in the Maryland Nutrient Management Manual, Section III-C.

(23) "Mineralization" means the process that converts unavailable organic forms of nutrient elements to an available inorganic state as a result of bacterial decomposition.

(24) "Natural organic fertilizer" means a fertilizer derived from plant or animal products, including animal manure, biosolids, green manure, compost, or plant materials, or other residuals used as a source of primary nutrients, which:

(a) Typically are not mixed with synthetic materials; or

(b) Are not changed in any physical or chemical manner from their initial state, except by means of cooking, chopping, composting, drying, grinding, shredding, or pelleting.

(25) "Nutrient application rate" means the quantity of primary nutrients, including total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O), recommended by a certified consultant to:

(a) Supply crop or plant nutrient needs; and

(b) Achieve realistic yield or plant production goals, as defined by this chapter.

(26) "Nutrient content" means the percentage of any primary nutrients as total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O) in any type or source of fertilizer.

(27) "Nutrient management plan" means a plan prepared by a certified nutrient management consultant or certified farm operator to manage the amount,



placement, timing, and application of animal manure, fertilizer, biosolids, or other plant nutrients to minimize nutrient loss or runoff and to maintain the productivity of soil when growing agricultural products.

(28) "Operator" means a person who owns or manages an agricultural operation.

(29) "Out-of-ground or container production" means the production of plants whose roots are not actually growing in the soil column.

(30) "Person" means the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.

(31) "Phosphorus Management Tool" means the new procedure developed by the University of Maryland, approved by the Department, and described in the Maryland Nutrient Management Manual, Section II-C, that:

(a) Uses characteristics of soils, landforms, and management practices to identify potential risk of phosphorus losses from soils to waters; and

(b) Shall be phased-in between 2016 and not later than 2024, ultimately replacing the Phosphorus Site Index.

(32) "Phosphorus Site Index" means the original procedure developed by the University of Maryland, approved by the Department, and described in the Maryland Nutrient Management Manual, Section II-C, that uses characteristics of soils, landforms, and management practices to identify potential risk of phosphorus losses from soils to waters.

(33) "Phosphorus Transition Management Phase I" means the first of two management phases that farms with a soil P FIV of 150 or greater shall employ when transitioning from use of the Phosphorus Site Index to the Phosphorus Management Tool as a means to determine the application of additional phosphorus that:

(a) Consists of three risk categories determined by a calculation of the Phosphorus Management Tool; and

(b) Includes a schedule for implementation based on the average soil P FIV for the operation.

(34) "Phosphorus Transition Management Phase II" means the second of two management phases that farms with a soil P FIV of 150 or greater shall employ when transitioning from the use of the Phosphorus Site Index to the Phosphorus

Management Tool as a means to determine the application of additional phosphorus that:

(a) Consists of three risk categories determined by a calculation of the Phosphorus Management Tool; and

(b) Includes a schedule for implementation based on the average soil P FIV for the operation.

(35) "Plant production goal" means a statement of the estimated length of time that plants will be grown, and appropriate measure of expected plant size, such as height or diameter.

(36) "Primary nutrients" means a plant food that is essential for normal plant growth, and includes total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), or soluble potash (K<sub>2</sub>O).

(37) "Residual nutrients" means the level of nitrogen, phosphorus, and potassium available in the soil from previous nutrient sources or unharvested plants or plant parts, or the baseline nutrient levels in the soil.

(38) "Soil leaching potential" means the potential for a given soil to be subject to nitrate and soluble chemical leaching below the root zone.

(39) "Soil pH level" means the relative acidity or alkalinity of a soil and refers to the hydrogen ion concentration in the soil solution.

(40) "Substrate" means organic or inorganic material, often bark, peat, and sand, used as media components in a container to support the plant and contain the root system.

(41) "Tier A operations" means those farms that have an average soil P FIV of 150 or greater but less than 300.

(42) "Tier B operations" means those farms that have an average soil P FIV of 300 or greater but less than 450.

(43) "Tier C operations" means those farms that have an average soil P FIV of 450 or greater.

(44) "Volatilization" means a process in which nitrogen losses to the atmosphere occur as ammonia.

(45) "Watershed code" means the code used by the State to identify a hydrologic unit area.

(46) Waters.

(a) "Waters" means surface water or ground water, including:

(i) That part of the Atlantic Ocean within the boundaries of the State;

(ii) The Chesapeake Bay and its tributaries; and

(iii) All ponds, streams, natural wetlands, and drainage ditches or public drainage systems.

(b) "Waters" do not include irrigation and treatment ditches installed to hold, transform, treat, or transfer water or wastewater, if a separation is maintained between the ditches and waters, as defined in §B(38)(a) of this regulation, at all times.

**.04 Nutrient Management—Required Plan Content.**

A. A certified nutrient management consultant or certified farm operator shall prepare, and an operator shall have and implement, a nutrient management plan that conforms to the requirements in §§B—G of this regulation.

B. Plan Identification. A plan shall contain:

(1) The operator name and address;

(2) The account identification number or numbers for all tax maps and parcels contained in the plan;

(3) A county and watershed code of all land under a nutrient management plan;

(4) The date the plan was prepared or updated;

(5) The period of time the plan covers;

(6) The name, certification, and license number of the certified nutrient management consultant responsible for the plan development; and

(7) The name and certification number of the certified farm operator responsible for the plan development.

C. Map or Aerial Photograph.

(1) A plan shall contain one or more maps, such as soil survey maps or aerial photographs, that identify:

- (a) The location and boundaries of the agricultural operation;
- (b) The individual field boundaries or management units;
- (c) A field or management unit number or identifier; and
- (d) Acreage of each field or management unit.

(2) The map or aerial photograph of the features described in §C(1) of this regulation shall be clearly recognizable. An agricultural operation sketch or soil survey map may be used when a map or aerial photograph is not available, if the features described in §C(1) of this regulation are clearly recognizable.

D. Plan Elements. A plan shall contain the following, when applicable:

- (1) All nutrient recommendations for the period the plan is effective, including crop rotations or recommendations for alternative cropping plans, if applicable, within specific field or management unit information, described under §E of this regulation;
- (2) The type and average number of animals annually raised, maintained, or housed on the agricultural operation;
- (3) The quantities of animal manure or waste produced and available from animal housing or waste storage structures during the period the plan covers;
- (4) The total animal manure used as crop nutrients, including manure from on-farm and off-farm sources, and its nutrient analysis;
- (5) The quantity of animal manure or waste and location of alternative use, including land application off-site, processing, composting, or other uses of unused animal manure or waste;
- (6) The source and type of information used to determine expected crop yield or plant production goal;
- (7) Any recommendation to change management, install additional best management practices, or implement alternative technologies to reduce risk potential for nutrient movement;
- (8) Any recommendation to ensure efficient application of fertilizers; and
- (9) Any determination of the limiting nutrient as required under Regulation .04 of this chapter, including use of a risk analysis tool indicating the potential for nutrients to move into surface water or ground water, based on current conditions.

E. Field or Management Unit Specific Information. A plan shall contain data for each field or area where nutrients will be applied and shall include:

- (1) The date the recommendations are prepared or updated;
- (2) An account identification number;
- (3) The watershed location code;
- (4) The field or management unit number or identifier and acreage;
- (5) A soil analysis;
- (6) The expected crop or plant and expected crop yield or plant production goal for the period covered by the plan;
- (7) Any crop rotation or recommendation for alternative cropping plans, if applicable, to:
  - (a) Provide the operator greater flexibility, and
  - (b) Minimize the need for a plan update;
- (8) The primary nutrient requirements based on expected crop yield or plant production goals;
- (9) Any available nutrients in the soil from the previous crop and mineralization and bioavailability assumptions for organic nutrient sources;
- (10) The nutrients to be applied from all fertilizer sources to meet the crop or plant nutrient requirements;
- (11) Any recommendation for:
  - (a) The liming of the soil,
  - (b) The application time for nutrients, including split applications, and the use of diagnostics to determine crop nutrient requirements,
  - (c) Any nutrient application method,
  - (d) The need to calibrate application equipment,
  - (e) The incorporation of natural organic fertilizers, and

(f) Any management strategy to achieve soil fertility within an optimal range; and

(12) Current or recommended tillage method.

F. Summary of Nutrient Recommendations. A plan shall contain a summary section that lists the following information for each farm field or management unit:

- (1) The field or management unit identifier or number;
- (2) The field or management unit acreage;
- (3) The expected crop or plant;
- (4) The expected crop yield or plant production goals for the period covered by the plan;
- (5) Any recommended nutrient rates;
- (6) The amount and type of nutrients, including chemical fertilizer or natural organic fertilizer, per acre or management unit;
- (7) The nutrient application method and, if application method requires incorporation of the nutrient, timing for incorporation; and
- (8) Any liming recommendations, if needed.

G. Plan Maintenance. A plan shall contain information to maintain and update a nutrient management plan. General comments about plan maintenance may be summarized and shall include:

- (1) The length of time the plan is effective;
- (2) The circumstances or changes in the farm operation that would require the plan to be modified or updated, including a change:
  - (a) To the planned crop or cropping rotation, or introduction of a new crop not currently addressed in the existing nutrient management plan, unless the new crop or plant will have fertility management similar to that originally planned,
  - (b) Of nutrient source or soil test results that indicate a change in nutrient recommendations,
  - (c) In acreage managed of 10 percent or greater, or 30 acres, whichever is less, or

(d) In animal units of 10 percent or greater if resultant manure production will require significant management adjustments; and

(3) Any information on soil fertility and management strategies for achieving soil fertility within an optimal range.

**.05 Nutrient Management—Required Plan Recommendations.**

A. A certified nutrient management consultant or certified farm operator shall address all of the elements and use the criteria described in §§B—I of this regulation to determine recommendations in a nutrient management plan. A consultant's or certified farm operator's recommendations shall be consistent with the Department technical standards and criteria as provided in the Maryland Nutrient Management Manual, Sections I, II, and III.

B. Nutrient Rates.

(1) Nutrient rates of the primary nutrients shall be calculated for plant growth requirements of the crop.

(2) Plant growth requirements shall be based on one of the following:

(a) University of Maryland Plant or Crop Nutrient Recommendations, as provided in the Maryland Nutrient Management Manual, Section I-B; or

(b) Alternative standards, as provided in scientifically validated data for the development of a nutrient management plan acceptable to the Department.

(3) A consultant or certified farm operator may recommend the use of lime, secondary nutrients, or micronutrients needed for optimal plant growth.

(4) A consultant or certified farm operator may recommend nutrient rates that deviate from University of Maryland Plant or Crop Nutrient Recommendations and alternative standards provided in the Maryland Nutrient Management Manual, Section I-B, for application on farm test plots with prior approval from the Department.

(5) A consultant or certified farm operator may recommend nutrient rates based on a single variety tissue sample when used in conjunction with a soil sample.

C. Expected Crop Yield or Production Goal.

(1) The calculation of expected crop yield shall be based upon one of the following:

(a) An average of the 3 highest-yielding years for the crop out of the latest consecutive 5-year cropping sequence; or

(b) If yield information exists for more than 5 years for a given field or management unit, crop yield calculations may be based on the average of 60 percent of the highest-yielding years for all consecutive years that crop yield information is available.

(2) If field or management unit-specific yield or plant production goal information is unavailable or unrepresentative due to the inclusion of new seed varieties, irrigation, or new technologies, a consultant or certified farm operator shall use one of the following:

(a) Any soil productivity information;

(b) The average yield based upon an average of the 3 highest-yielding years for the crop out of the latest consecutive 5-year cropping sequence from nearby fields or management units with similar soil type and management conditions; or

(c) Any data acceptable to the Department.

(3) A consultant shall document what information was used as the basis for determining expected yield goal as part of the consultant's record-keeping requirements.

#### D. Soil Analysis Results.

(1) Soil analysis results for each field or management unit shall be based on standard soil sampling and analysis methods acceptable to the Department.

(2) Soil Samples. Variations from the standard sampling process shall be documented by the consultant or certified farm operator and may include:

(a) Soil samples collected from larger fields or acreage with uniform characteristics, including soil types, moisture, or fertility management history; crop rotations may be sampled as one management unit;

(b) Soil samples from fields, such as those common to strip cropping, which may be combined if the soils, previous cropping history, and soil fertility management are similar; and

(c) Any specialized production unit which may warrant smaller sampling units.



(3) Soil analysis results for a plan are valid for 3 years, except if the following conditions exist and are documented by the consultant or certified farm operator:

- (a) A less frequent soil analysis is required to implement a management system based on new technologies;
- (b) The management system does not require any nutrient application; or
- (c) The management system requires nutrient application at a frequency less than once every 3 years.

(4) A recommendation for more than one planting season or crop may be made if anticipated soil fertility changes from the following are documented:

- (a) Previous and future crop rotations; and
- (b) Residual soil nutrients and nutrients used for previous crops.

#### E. Determination of Limiting Nutrient.

(1) A consultant or certified farm operator shall:

- (a) Use the criteria in this section to determine which nutrient is the limiting factor in the application of nutrients; and
- (b) Recommend subsequent nutrient management strategies consistent with this section.

(2) Soil fertility shall be used as an indicator of whether nutrient recommendations should be adjusted to address potential nutrient pollution problems.

(3) If the soil sample analysis results show a phosphorus fertility index value (FIV) of less than 150, nutrient recommendations may be based on nitrogen plant needs as the limiting factor in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section 1-B.

(4) Phosphorus Criteria for Tier A Operations.

(a) Except for nutrient management plans developed in accordance with §E(4)(e) of this regulation, the certified consultant shall:

- (i) Provide the operator information outlining the changes in the management of the operation that will be required when the Phosphorus Management Tool becomes effective;

(ii) Calculate the Average Soil Phosphorus Fertility Index Value for the operation; and

(iii) Report the Average Soil Phosphorus Fertility Index Value for the operation to the Department on a form provided by the Department not later than September 1, 2016.

(b) Nutrient management plans implemented before July 1, 2019 shall:

(i) Be developed using both the Phosphorus Site Index and the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C; and

(ii) Use the Phosphorus Site Index set forth in Regulation .06 of this chapter to determine phosphorus applications.

(c) Nutrient management plans implemented between July 1, 2019 and June 30, 2020 shall use the Phosphorus Transition Management Phase I set forth in Regulation .07 of this chapter to determine phosphorus applications.

(d) Unless the transition schedule is adjusted as provided under this paragraph, nutrient management plans implemented between July 1, 2020 and June 30, 2021 shall use the Phosphorus Transition Management Phase II set forth in Regulation .08 of this chapter to determine phosphorus applications. Before January 1, 2020, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under Transition Management Phase II:

(i) Transition Management Phase I shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2021;

(ii) The transition to Transition Management Phase II, as provided in this section, shall be implemented 1 year later, beginning July 1, 2021; and

(iii) The subsequent schedule to transition to the Phosphorus Management Tool, as provided in §E(4)(e) of this regulation, likewise shall be implemented 1 year later, beginning July 1, 2022.

(e) Unless the transition schedule is adjusted as provided under either §E(4)(d) of this regulation or this paragraph, nutrient management plans implemented after July 1, 2021 shall use the Phosphorus Management Tool set forth in Regulation .09 of this chapter to determine phosphorus applications. Before January 1, 2021 or, alternatively, January 1, 2022, if the transition schedule has been adjusted under §E(4)(d) of this regulation, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under the Phosphorus Management Tool:

(i) Transition Management Phase II shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2022 or, alternatively, June 30, 2023, if the schedule has also been adjusted under §E(4)(d) of this regulation;

(ii) The Phosphorus Management Tool shall be used to determine phosphorus applications after June 30, 2022 or, alternatively, after June 30, 2023, if the schedule has also been adjusted under §E(4)(d) of this regulation.

(5) Phosphorus Criteria for Tier B Operations.

(a) Except for nutrient management plans developed in accordance with §E(5)(e) of this regulation, the certified consultant shall:

(i) Provide the operator information outlining the changes in the management of the operation that shall be required when the Phosphorus Management Tool becomes effective;

(ii) Calculate the Average Soil Phosphorus Fertility Index Value for the operation; and

(iii) Report the Average Soil Phosphorus Fertility Index Value for the operation to the Department on a form provided by the Department not later than September 1, 2016.

(b) Nutrient management plans developed for implementation before July 1, 2018 shall:

(i) Be developed using both the Phosphorus Site Index and the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C; and

(ii) Use the Phosphorus Site Index set forth in Regulation .06 of this chapter to determine phosphorus applications.

(c) Nutrient management plans implemented between July 1, 2018 and June 30, 2019 shall use the Phosphorus Transition Management Phase I set forth in Regulation .07 of this chapter to determine phosphorus applications.

(d) Unless the schedule is adjusted as provided under this paragraph, nutrient management plans implemented between July 1, 2019 and June 30, 2021 shall use the Phosphorus Transition Management Phase II set forth in Regulation .08 of this chapter to determine phosphorus applications. Before January 1, 2019, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under Transition Management Phase II:

(i) Transition Management Phase I shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2020;

(ii) The transition to Transition Management Phase II, as provided in this section, shall be implemented 1 year later, beginning July 1, 2020; and

(iii) The subsequent schedule to transition to the Phosphorus Management Tool, as provided in §E(5)(d) of this regulation, shall be implemented 2 years later, beginning July 1, 2022.

(e) Unless the transition schedule is adjusted as provided under either §E(5)(d) of this regulation or this paragraph, nutrient management plans implemented after July 1, 2021 shall use the Phosphorus Management Tool set forth in Regulation .09 of this chapter to determine phosphorus applications. Before January 1, 2021 or, alternatively, January 1, 2022, if the transition schedule has been adjusted under §E(5)(d) of this regulation, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under the Phosphorus Management Tool:

(i) Transition Management Phase II shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2022 or, alternatively, June 30, 2023, if the schedule has also been adjusted under §E(5)(d) of this regulation; and

(ii) The Phosphorus Management Tool shall be used to determine phosphorus applications after June 30, 2022 or, alternatively, after June 30, 2023, if the schedule has also been adjusted under §E(5)(d) of this regulation.

(6) Phosphorus Criteria for Tier C Operations.

(a) Except for nutrient management plans developed in accordance with §E(6)(e) of this regulation, the certified consultant shall:

(i) Provide the operator information outlining the changes in the management of the operation that will be required when the Phosphorus Management Tool becomes effective;

(ii) Calculate the Average Soil Phosphorus Fertility Index Value for the operation; and

(iii) Report the Average Soil Phosphorus Fertility Index Value for the operation to the Department on a form provided by the Department not later than September 1, 2016.

(b) Nutrient management plans implemented prior to July 1, 2017 shall:

(i) Be developed using both the Phosphorus Site Index and the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C; and

(ii) Use the Phosphorus Site Index set forth in Regulation .06 of this chapter to determine phosphorus applications.

(c) Nutrient management plans implemented between July 1, 2017 and June 30, 2019 shall use the Phosphorus Transition Management Phase 1 set forth in Regulation .07 of this chapter to determine phosphorus applications.

(d) Unless the schedule is adjusted as provided under this paragraph, nutrient management plans implemented between July 1, 2019 and June 30, 2021 shall use the Phosphorus Transition Management Phase II set forth in Regulation .08 of this chapter to determine phosphorus applications. Before January 1, 2019, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are

required to determine phosphorus applications under Transition Management Phase II:

(i) Transition Management Phase I shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2020;

(ii) The transition to Transition Management Phase II, as provided in this section, shall be implemented 1 year later, beginning July 1, 2020; and

(iii) The subsequent schedule to transition to the Phosphorus Management Tool, as provided in §E(6)(e) of this regulation, shall be implemented 2 years later, beginning July 1, 2022.

(e) Unless the transition schedule is adjusted, as provided under either §E(6)(d) of this regulation or this paragraph, nutrient management plans implemented after July 1, 2021 shall use the Phosphorus Management Tool set forth in Regulation .09 of this chapter to determine phosphorus applications. Before January 1, 2021 or, alternatively, January 1, 2022, if the transition schedule has been adjusted under §E(6)(d) of this regulation, the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee, shall conduct an evaluation of the existing markets for animal manures, participation in and additional capacity of the Manure Transport Program, the capacity of existing infrastructure for manure transportation, handling and land application, the availability of public and private sector resources, and the status and capacity of alternative uses to utilize animal manures. The evaluation shall be comprehensive in scope, considering all available, relevant information to address current major animal agriculture sectors in the State with the objective of advancing implementation of the next level of management to the maximum extent practicable. If the results of this evaluation indicate insufficient capacity to support the additional volume of animal manure expected to be created when operations are required to determine phosphorus applications under the Phosphorus Management Tool:

(i) Transition Management Phase II shall continue to be used to determine phosphorus applications for 1 additional year, through June 30, 2022 or, alternatively, June 30, 2023, if the schedule has also been adjusted under §E(6)(d), of this regulation;

(ii) The Phosphorus Management Tool shall be used to determine phosphorus applications after June 30, 2022 or, alternatively, after June 30, 2023, if the schedule has also been adjusted under §E(6)(d) of this regulation.

#### F. Natural Organic Fertilizer.

- (1) An agricultural operator who uses natural organic fertilizer shall determine its nutrient value as specified in this section.
- (2) Test results for natural organic fertilizer shall be determined by an operator, consultant, or certified farm operator using standard sampling and analysis methods acceptable to the Department.
- (3) The consultant or operator shall conduct animal manure or waste analysis as close to application time as possible, or a consistent baseline for nutrient content may be established and used from analysis results taken at least twice a year until a uniform value is confirmed, and then for every second year thereafter to verify its consistency. If significant changes occur, including feed, management, animals, or storage, a new analysis for nutrient content shall be determined by the consultant or operator for the new manure.
- (4) Biosolids analysis shall be conducted according to COMAR 26.04.06.09A(13)(d) as close to nutrient application time as possible, but at least once a year. If changes occur in a sewage treatment facility, or routine biosolids analysis reveals a significant change in available nutrient content during the permit period, nutrient application rates shall be adjusted accordingly by the consultant, or certified farm operator, or the operator.
- (5) Analysis of any other natural organic fertilizer or organic materials shall be conducted by the operator as close to nutrient application time as possible, but at least once a year.
- (6) Calculations for nutrient content from natural organic fertilizer shall consider mineralization rates and plant availability rates for different forms and sources of organic nutrients. Mineralization of organic nitrogen from the 2 previous years of natural organic fertilizer applications shall be accounted for in the plan.

G. Application Method for Nutrients. A consultant or certified farm operator shall consider the following when making recommendations on nutrient application methods in a plan:

- (1) Nutrient application shall be made to minimize nitrogen and phosphorus losses to waters and nitrogen volatilization losses to the atmosphere;
- (2) Techniques to achieve accurate and uniform application of nutrients shall be recommended by the consultant or certified farm operator and shall be used by the operator;
- (3) Split application of nitrogen on soils identified as having a high leaching potential;



(4) Measures to minimize or control nutrient movement to sensitive areas, including natural or existing wetlands, sinkholes, and steep slopes; and

(5) Recommendations shall ensure efficient application of fertilizers and may include crop rotation, agronomic practices, tillage, and cover crop management.

H. Timing of Nutrient Application. Timing for nutrient applications, as recommended by a consultant or certified farm operator and conducted by an operator, shall:

(1) Be as close to plant nutrient uptake periods as possible;

(2) Maximize plant utilization efficiency and minimize the potential for nutrient movement; and

(3) Be consistent with the guidelines contained in the Maryland Nutrient Management Manual, Section I-D.

I. Manure Management. When an agricultural operation either produces animals or integrates animal manure use with crop production, a consultant or certified farm operator shall:

(1) Take into account the current manure management measures being used to store, stockpile, and handle animal manure and waste nutrients associated with animal production in order to make appropriate recommendations for application rates, timing, and methods;

(2) Evaluate existing conditions and procedures and advise the operator when manure management changes, such as improved stockpiling or storage facilities, would minimize the potential for nutrient loss or runoff or improve nutrient use efficiency and proper timing of manure utilization; and

(3) Take into account animal manure or waste nutrients associated with animal production and all other sources of nutrients when making recommendations.

#### **.06 Nutrient Management—Phosphorus Site Index.**

A. Except as provided in §F of this regulation, if the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Site Index, as provided in the Maryland Nutrient Management Manual, Section II-C1, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss. If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Site Index, nutrient recommendations by the consultant or certified farm operator may use nitrogen plant needs as the limiting factor.

### C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in §C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Site Index, nutrient rates shall be based on nitrogen plant needs as the limiting factor not more than 1 out of every 3 years. Phosphorus rates for the other 2 years shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) Nutrient recommendations may use nitrogen plant needs as the limiting factor if BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to low.

### D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in §D(2) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Site Index, phosphorus rates shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to medium, nutrient rates may be based on nitrogen plant needs as the limiting factor not more than 1 out of every 3 years. Phosphorus rates for the other 2 years shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

### E. Very High Risk of Potential Phosphorus Loss.

(1) Except as provided in §E(2) of this regulation, if the risk for potential loss of phosphorus from the site is very high according to the Phosphorus Site Index, no additional phosphorus may be applied.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to high, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing, in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(3) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss, based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

F. If the soil sample analysis results indicate a phosphorus fertility index value of 500 or greater, no phosphorus may be applied.

#### **.07 Nutrient Management—Phosphorus Transition Management Phase I.**

A. Except as provided in §E of this regulation, if the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss.

(1) If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, nutrient recommendations by the consultant or certified farm operator may use nitrogen plant needs as the limiting factor.

(2) Nutrient applications shall not exceed the amount of phosphorus removed by the planned crop over a 3-year period.

C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in §C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 3-year period shall not exceed the amount of phosphorus removed by the planned crops over the 3-year period, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by §B of this regulation.

**D. High Risk of Potential Phosphorus Loss.**

(1) Except as provided in §D(2) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, phosphorus rates shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, nutrient rates may be established as provided by §C of this regulation.

(3) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

E. If the soil sample analysis results indicate a phosphorus fertility index value of 500 or greater, no phosphorus may be applied.

**.08 Nutrient Management—Phosphorus Transition Management Phase II.**

A. Except as provided in §E of this regulation, if the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss. If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 3-year period shall not exceed the amount of phosphorus removed by the planned crops over the 3-year period, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

### C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in §C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 2-year period shall not exceed the amount of phosphorus removed by the planned crops over the 2-year period, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by §B of this regulation.

### D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in §D(3) and (4) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, phosphorus rates shall be limited to 50 percent of the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(2) If limits of technology of available application equipment prevent application at 50 percent of the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application, phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(3) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, nutrient rates may be established as provided by §C of this regulation.

(4) If the crop to be produced is certified as organic pursuant to the requirements of the federal Organic Foods Production Act, 7 U.S.C. §6501 et seq., including implementing federal regulations, as amended, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, or the amount indicated by soil testing in accordance with

recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(5) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

E. If the soil sample analysis results indicate a phosphorus fertility index value of 500 or greater, no phosphorus may be applied.

#### **.09 Nutrient Management—Phosphorus Management Tool.**

A. If the soil sample analysis results show a phosphorus fertility index value of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

B. Low Risk of Potential Phosphorus Loss. If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, total phosphorus applications related to crops anticipated to be planted in a 3-year period shall not exceed the amount of phosphorus removed by the planned crops over the 3-year period.

C. Medium Risk of Potential Phosphorus Loss.

(1) Except as provided in §C(2) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B , whichever is greater.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by §B of this regulation.

D. High Risk of Potential Phosphorus Loss.

(1) Except as provided in §D(2)—(6) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, no additional phosphorus may be applied.

(2) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, nutrient rates may be established as provided by §C of this regulation.

(3) If the crop to be produced is certified as organic pursuant to the requirements of the federal Organic Foods Production Act, 7 U.S.C. §6501 et seq., including implementing federal regulations, as amended, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops, or the amount indicated by soil testing in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.

(4) Except when subject to cold and wet growing conditions, crops determined to be deficient in phosphorus, as demonstrated by a representative tissue analysis by an accredited laboratory, may receive an application of phosphorus not to exceed 25 percent of the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application.

(5) Vegetable and tobacco crops with a recommended phosphorus application rate of 40 pounds or more at optimum or excessive fertility levels as provided in the Maryland Nutrient Management Manual, Section I-B, may receive a phosphorus application at planting not to exceed 25 percent of the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application.

(6) Agricultural operations implementing technologies to reduce the phosphorus content of animal manures by at least 75 percent shall limit phosphorus application rates to 50 percent of the expected amount removed from the field by the planned crop or plant rotation immediately following the phosphorus application, not to exceed two crops.

(7) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

## **.10 Summary Schedule—Transition from Phosphorus Site Index to Phosphorus Management Tool.**

7-YEAR TRANSITION SCHEDULE\*

Crop Year**	2016	2017	2018	2019	2020	2021	2022
Average P FIV>450 (Tier C Operations)	PSI	PSI	TM1	TM1	TM2	TM2	PMT
Average P FIV 300-450 (Tier B Operations)	PSI	PSI	PSI	TM1	TM2	TM2	PMT
Average P FIV 150-299 (Tier A Operations)	PSI	PSI	PSI	PSI	TM1	TM2	PMT
PSI — Phosphorus Site Index							
TM1 — Transition Management Phase 1							
TM2 — Transition Management Phase 2							
PMT — Phosphorus Management Tool							

\*The 7-Year transition period assumes that the Department, in consultation with the Phosphorus Management Tool Transition Advisory Committee does not make any adjustments to the transition schedule as provided for in this chapter.

\*\*The term “crop year” means the 1-year period beginning July 1 of the previous year through June 30 of the current year. For example, the 2016 crop year begins on July 1, 2015 and ends on June 30, 2016.

### **.11 Phosphorus Management Tool Transition Advisory Committee.**

A. Beginning in 2015 and continuing until the Phosphorus Management Tool is fully implemented, there shall be established within the Department, the Phosphorus Management Tool Transition Advisory Committee.

B. The Committee shall be chaired by the Secretary. Its membership may include the following persons:

- (1) A member of the Senate, appointed by the President;
- (2) A member of the House of Delegates, appointed by the Speaker;
- (3) The Secretary of the Environment, or his designee;
- (4) The Director of the Maryland Environmental Service, or his designee;
- (5) The Director of the Maryland Energy Administration, or his designee;



- (6) The University of Maryland, College of Agriculture and Natural Resources;
- (7) The Chesapeake Bay Commission;
- (8) Members appointed by the Secretary, including a representative from:
  - (a) The Maryland Farm Bureau;
  - (b) The Maryland Grain Producers Association;
  - (c) The Delmarva Poultry Industry, Inc.;
  - (d) The Maryland Dairy Industry Association;
  - (e) The Chesapeake Bay Foundation;
  - (f) Two non-governmental organizations representing environmental interests;
  - (g) The biosolids industry;
  - (h) The manure hauling industry;
  - (i) The manure application industry;
  - (j) Two alternative technology vendors or Enterprises; and
  - (k) Two representatives of county and municipal government from a list submitted by the Maryland Association of Counties and the Maryland Municipal League.

C. The purpose of the committee shall be to:

- (1) Evaluate information relevant to the implementation of the Phosphorus Management Tool including:
  - (a) The quantity and location of excess animal manure within the State;
  - (b) The status and activity of manure transportation activities in geographic areas with excess animal manures;
  - (c) The viability of markets for animal manures as a crop fertilizer, fuel stock for energy generation and other alternative uses;

(d) The status and capacity of alternative use technologies using animal manures; and

(e) Other information the Department and the Advisory Committee deems appropriate.

(2) Recommend to the Secretary strategies to facilitate the effective implementation of the Phosphorus Management Tool;

(3) Recommend to the Secretary potential changes to the schedule implementing the Phosphorus Management Tool, as provided for in this chapter; and

(4) Identify resources necessary for the effective transition to the Phosphorus Management Tool.

D. The Committee shall meet at least annually at a time determined by the Department.

E. Annual Report.

(1) Beginning December 1, 2016 and each year thereafter, until the Phosphorus Management Tool is fully implemented, the Committee shall provide a report to the Governor and the General Assembly.

(2) The report shall include:

(a) A summary of the data collected from farms related to the operational changes created by implementing the Phosphorus Management Tool;

(b) The status of certain programs related to or supporting the transition to the Phosphorus Management Tool;

(c) Resource needs considered critical for the effective transition to the Phosphorus Management Tool; and

(d) Policy recommendations to enhance the implementation of the Phosphorus Management Tool.