



United States  
Environmental  
Protection Agency

Office of Water,  
Office of Wastewater  
Management

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## Proposed National Pollutant Discharge Elimination System Concentrated Animal Feeding Operation Reporting Rule

### What is the EPA proposing in this rule?

A: The EPA is co-proposing two options for obtaining basic information from CAFOs to support the EPA in meeting its water quality protection responsibilities under the Clean Water Act (CWA). The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve the EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA. Under one co-proposed option, the EPA would use the authority of CWA section 308 to obtain certain identifying information from all CAFOs. Under the other option, the EPA could use the authority of CWA section 308 to obtain this information from CAFOs that fall within areas that have been identified as having water quality concerns likely associated with CAFOs (focus watersheds).

### Q: Why is the EPA proposing this rule?

A: The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve the EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA. Section 402 of the CWA authorizes the EPA to regulate all point source discharges through the NPDES permitting program. The NPDES program regulates discharges from such industries as manufacturing and processing plants (e.g., textile mills, pulp and paper mills), municipal wastewater treatment plants, construction sites and CAFOs. Unlike many other point source industries, the EPA does not have facility-specific information for all CAFOs in the United States. Facility location and basic operational characteristics that relate to how and why a facility may discharge is essential information needed to carry out NPDES programmatic functions, which include the following:

- Evaluating NPDES program effectiveness;
- Identifying and permitting CAFOs that discharge;
- Conducting education and outreach to promote best management practices;
- Determining potential sources of water quality impairments and taking steps to address those impairments;
- Estimating CAFO pollutant loadings – by facility, by watershed, or some other geographical area; and
- Targeting resources for compliance assistance or enforcement.

The six categories listed above represent key activities necessary to ensure that CAFOs are meeting their obligations under the CWA regarding protection of water quality from CAFO discharges and can be carried out most efficiently and effectively when the EPA and states have access to facility contacts and other basic information about CAFOs. This information could be

used to better protect public health and welfare of communities near CAFOs, including environmental justice for minority, indigenous or low-income communities.

**Q: Who would be subject to the requirements under the proposed rule?**

A: As part of the proposal, the EPA is co-proposing two regulatory options regarding which CAFOs would be required to submit information to the EPA. Under the first option, all CAFOs would be required to report to the EPA regardless of the size of a CAFO and the permit status of a CAFO. The EPA estimates that the universe of CAFOs subject to this option is approximately 20,000 out of the approximate 212,000 animal feeding operations (AFOs) in the United States. As part of this option, the EPA proposes to allow states with approved NPDES programs to submit the information on behalf of CAFOs within the state. If a state chooses to provide the information on behalf of its CAFOs, then those CAFOs would not be required to submit information to the EPA.

Under the second option, only CAFOs in focus watersheds that have water quality concerns associated with CAFOs would be required to report information to the EPA. Additional criteria for identifying focus watersheds include: high densities of animals, patterns of vulnerable soils, and other relevant information, such as proximity to environmental justice communities. The Agency would determine on a case-by-case basis which areas meet the proposed criteria. States would not be allowed to report information on behalf of CAFOs under this option.

**Q: How do I know if my operation is a CAFO?**

A: An operation must first meet the AFO definition before it can be considered a CAFO. An AFO is a lot or a facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and where vegetation is not sustained in the confinement area during the normal growing season.

A CAFO is an AFO that is either defined or designated as a CAFO. An AFO is defined as a Large CAFO on the basis of the number of animals confined. An AFO is defined as a Medium CAFO based on the number of animals confined and whether pollutants are discharged either through a man-made device or into waters that come into direct contact with confined animals. A medium-sized AFO that does not meet those two discharge criteria or an AFO that contains fewer animals than a medium-sized operation can only become a CAFO if the EPA or the state permitting authority designates the facility as a CAFO.

The table below contains the number of animals for Large, Medium, and Small CAFOs by animal sector. This table is not intended to be exhaustive but rather provides a guide regarding operations likely to be subject to the proposed rule requirements.

Sector	Large	Medium <sup>1</sup>	Small <sup>2</sup>
Cattle or cow/calf pairs	1,000 or more	300-999	Less than 300
Mature dairy cattle	700 or more	200-699	Less than 200
Veal calves	1,000 or more	300-999	Less than 300
Swine (weighing over 55 pounds)	2,500 or more	750-2,499	Less than 750
Swine (weighing less than 55 pounds)	10,000 or more	3,000-9,999	Less than 3,000
Horses	500 or more	150-499	Less than 150
Sheep or lambs	10,000 or more	3,000-9,999	Less than 3,000

Turkeys	55,000 or more	16,500-54,999	Less than 16,500
Laying hens or broilers (liquid manure handling system)	30,000 or more	9,000-29,999	Less than 9,000
Chickens other than laying hens (other than a liquid manure handling system)	125,000 or more	37,500-124,999	Less than 37,500
Laying hens (other than a liquid manure handling system)	82,000 or more	25,000-81,999	Less than 25,000
Ducks (other than a liquid manure handling system)	30,000 or more	10,000-29,999	Less than 10,000
Ducks (liquid manure handling system)	5,000 or more	1,500-4,999	Less than 1,500

<sup>1</sup>May be designated or must meet one of the following two criteria to be defined as a medium CAFO: (A) Discharges pollutants through a man-made device; or (B) directly discharges pollutants into waters of the U.S., which pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6).

<sup>2</sup>Not a CAFO by regulatory definition but may be designated as a CAFO on a case-by-case basis. 40 CFR 122.23(b)(9).

**Q: What if an operation meets the animal size threshold for being a Large CAFO, but claims not to be a CAFO for some other reason?**

A: If an operation is not an AFO, it cannot be a CAFO. A large range or pasture-based operation would not be an AFO and, therefore, cannot be a CAFO, as long as its animals are not maintained in confinement. There are a significant number of these facilities in the United States. Such operations would not be subject to the proposed rule requirements.

**Q: Are smaller operations subject to the proposed rule requirements?**

A: AFOs that are not CAFOs are not subject to the proposed rule requirements. AFOs that are not defined as Large or Medium CAFOs would only need to respond if the operation is designated as a CAFO.

**Q: Under the first regulatory option, why is the EPA proposing to allow states with approved NPDES programs to submit the information on behalf of CAFOs within the state?**

A: States with approved NPDES programs may already collect the information required by the proposed rule. In particular, information collected by a state as part of the NPDES permit permitting program is publicly available and may be in a format that could be easily shared with the EPA. In addition to NPDES permits, a state may collect the information required by the proposed rule through state permits or through other state programs.

**Q: Under the second option, what criteria would the EPA use to identify the focus watersheds in which CAFOs would be required to submit information to EPA?**

A: Under the second option, EPA must first determine that the focus watershed has water quality concerns associated with CAFOs. Additional criteria for identifying focus watersheds include:

- High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supply, watersheds with high recreational value, or outstanding natural resources waters (Tier 3 waters);
- Vulnerable soil types;
- High density of animal agriculture; and/or

- Other relevant information (such as an area with minority, indigenous, or low-income populations).
- Additional criteria for identifying focus watersheds.

**Q: What would the proposed rule require of CAFOs?**

A: The proposed rule would require CAFOs to submit information to the EPA electronically or by completing and mailing to the EPA a hard copy of the proposed survey form. The information required includes basic facility information, such as contact information, location of the CAFO's production area, permit status, the number and type of animals confined and the number of acres available for land application of manure. Under the first option, the proposal would require CAFOs with NPDES permit coverage to submit the information to the EPA once, and CAFOs without NPDES permit coverage to submit or update the information every 10 years. Under the second option, CAFOs located within a focus watershed would be required to submit the information once.

**Q: Under the first option, why is the EPA proposing to collect information from CAFOs with NPDES permit coverage once?**

A: CAFOs with NPDES permit coverage would be required to submit the information required by the proposed rule once because the EPA expects to obtain detailed information from these operations subsequently from annual reports and during resubmission of their NPDES permit applications.

**Q: Why is the EPA seeking comment on alternatives to the proposed rule to gather information about CAFOs?**

A: The EPA is seeking comment on the most effective and efficient way to collect information about CAFOs. The EPA wants to minimize duplicative efforts to collect information about CAFOs. The EPA would like to know if the information in the proposed rule is available to determine whether a regulation is necessary.