

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The rule requires operations defined as CAFOs in the beef and dairy subcategories to monitor groundwater for total dissolved solids (TDS), total chlorides, fecal coliform, total coliform, ammonia-nitrogen and TKN. EPA performed a search to identify potentially voluntary consensus standards that could be used to measure the analytes in today's proposed guideline. EPA's search revealed that consensus standards exist and are already specified in the tables at 40 CFR Part 136.3 for measurement of many of the analytes. All pollutants in today's proposed rule have voluntary consensus methods. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

XIV. Solicitation of Comments

A. Specific Solicitation of Comment and Data

EPA solicits comments on all aspects of today's proposal. In addition, throughout this preamble, EPA has solicited specific comments and data on many individual topics. The Agency reiterates its interest in receiving comments and data on the following issues:

1. EPA solicits comment on the use of a two tier structure based on lowering the existing 1,000 animal unit threshold to 500 for determining which AFOs are defined as CAFOs, and the elimination of the existing 300 to 1,000 animal unit category. EPA also solicits comment on the effect of a 500 AU threshold on the horse, sheep, lamb and duck sectors, as well as on the use of a 750 animal unit threshold for all sectors.
2. EPA solicits comment on the use of a three tier structure, including the proposed criteria that could result in an AFO in the middle Group being defined as a CAFO and on whether to use different criteria that provide more flexibility than those in today's proposal.
3. EPA solicits comment on revising the requirements for designation to eliminate the direct contact and man-made device criteria from the designation requirements of the CAFO regulations, and allow the designation of CAFOs by EPA in States with NPDES authorized programs. EPA also solicits comment on whether or not to eliminate the "on-site" requirement for conducting inspections and, instead, allow other forms of site-specific information gathering to be used.
4. EPA solicits comment on its proposal to clarify the definition of an AFO to clearly distinguish feedlots from pasture land and clarify coverage of winter feeding operations.

5. EPA solicits comment on eliminating the use of the term “animal unit” or AU and the mixed animal calculation in determining which AFOs are CAFOs.

6. EPA solicits comment on removing the 25-year, 24-hour storm event exemption from the definition of a CAFO.

7. EPA solicits comment on the proposal to remove the limitation on the type of manure handling or watering system employed at poultry operations (i.e., subjecting dry poultry operations to the CAFO regulations). With regard to a two tier structure, EPA solicits comment on establishing the threshold for poultry operations at 50,000 birds or greater.

8. EPA solicits comment on including immature swine and dairy cattle, or heifers, when confined apart from the dairy, for purposes of defining potential CAFOs. With regard to a two tier structure, EPA solicits comment on establishing the threshold limit for immature swine (weighing 55 pounds or less) at 5,000.

9. EPA solicits comment on requiring, under a two tier structure, all CAFOs to apply for a NPDES permit and issuing permits to those operations that cannot demonstrate they have no potential to discharge pollutants.

10. EPA solicits comment on requiring, under a three tier structure, all AFOs from 300 AU to 1000 AU to certify they do not meet threshold conditions, receive a determination they have no potential to discharge, or apply for a permit.

11. EPA solicits comments on the proposed co-permitting provisions and the factors for determining substantial operational control. EPA solicits comment on whether there are additional factors that indicate substantial operational control which should be included in the regulation. EPA also requests comment on how to structure the co-permitting provisions of the rulemaking to achieve the intended environmental outcome without causing negative impacts on growers. EPA requests comments on its cost passthrough assumptions in general and as they relate to the analysis of processor level impacts under the proposed co-permitting requirements.

12. EPA solicits comment on addressing discharges to ground water with a direct hydrological connection to surface water. EPA requests comment on how a permit writer might identify CAFOs at risk of discharging to surface water via ground water. EPA is also requesting comment on the proposal to place the burden on the permit applicant to provide a hydrologist’s statement when rebutting the presumption that a CAFO has potential to discharge to surface water via direct hydrological connection with ground water. EPA solicits comment on the assumption that 24 percent of the affected operations have a hydrologic connection to surface waters.

13. EPA solicits comment on the definition of CAFO including the production area and land application area, and on the proposed requirements that would subject land application to specified permit requirements.

14. EPA solicits comment on defining the agricultural storm water discharge exemption to apply only to those discharges which occurred despite the implementation of all the practices required by today’s proposal at CAFO land application areas. EPA also requests comments on the alternative applications of the agricultural storm water discharge exemption discussed.

15. EPA solicits comment on requiring a certification from off-site recipients of CAFO-generated manure that such manure is being land applied according to proper agricultural practices or,

the alternative of tracking such off-site transfers through record keeping and providing information to the recipients regarding proper management.

16. EPA solicits comment on restricting the land application of manure to those conditions where it serves an agricultural purpose and does not result in pollutant discharges to waters of the U.S. (potentially including prohibiting land application at certain times or using certain methods).

17. EPA solicits comment on requiring CAFO operators to develop and implement a PNP for managing manure and wastewater at both the production area and land application area.

18. EPA invites comment on today's proposal to define PNPs as the effluent guideline subset of elements addressed in the CNMP. EPA is especially interested in knowing whether PNP is the best term to use to refer to the regulatory components of the CNMP, and whether EPA's explanation of both the differences and relationship between these two terms (PNP and CNMP) is clear and unambiguous. EPA is also soliciting comments on whether a PNP with the addition of erosion control practices would be sufficient additional controls to prevent runoff. EPA further requests comment on the proposal to require that PNPs be developed, or reviewed and modified, by certified planners, as well as on conditions, such as no changes to the crops, herd or flock size, under which rewriting the PNP would not be necessary and therefore, would not require the involvement of a certified planner.

19. EPA requests comment on the public availability of PNPs, including whether it is proper to determine that the PNPs must be publicly available under CWA Section 402(j) and under CWA Section 308 as "effluent data," or whether only a portion of PNP information should be publically available. EPA solicits comment on today's proposal that the operator of a permitted CAFO must make a copy of the PNP cover sheet and executive summary available for public review. EPA is also requesting comment on whether CAFOs should be able to claim these elements of the PNP as confidential business information and withhold those elements of the PNP from public review on that basis, or alternately, that whether other portions of the PNP should be made available as well. EPA also requests comment on the proposal to require new facilities seeking coverage under a general permit, as well as applicants for individual permits, to submit a copy of the PNP to the permit authority along with the NOI or permit application, and whether, for individual permits, the PNP should be part of the public notice and comment process along with the permit.

20. EPA is requesting public comment on the suitability of requiring erosion control as a special condition of a NPDES permit to protect water quality from sediment eroding from fields where CAFO manure is applied to crops. If erosion control is desirable, EPA is soliciting comment as to which approach would be the most cost-efficient. EPA solicits comment and data on the costs and benefits of controlling erosion and whether erosion control should be a required component of PNPs.

21. EPA solicits comment on requiring an operator of a permitted CAFO that ceases to be a CAFO to maintain permit coverage until his or her facility is properly closed.

22. EPA requests comment on whether the procedures discussed regarding general permits are adequate to ensure public participation or whether individual permits should be required for any of the categories of facilities discussed above. Specifically, EPA requests comment on whether individual permits should be required for a) facilities over a certain size threshold; b) all new facilities; c) facilities that are significantly expanding; d) facilities that have historical compliance problems; or e) operations that are located in areas with significant environmental concerns.

23. EPA solicits comment on the applicability of the proposed revised effluent limitations guidelines, including the thresholds under the two tier and three tier structure, the inclusion of veal production as a new subcategory, and the changes regarding applicability to chickens, mixed animals, and immature swine and dairy. EPA also requests comment on another three-tier option for defining a CAFO under which the effluent guidelines proposed today would not be applicable to facilities with 1,000 AU or less.

24. EPA solicits comment on the proposed revised effluent limitations guidelines for CAFOs, specifically today's proposed requirements on the land application of manure and wastewater. EPA solicits comment on the proposal to allow States to establish the appropriate phosphorus-based method to be used as the basis for the land application rate at CAFOs.

25. EPA requests comment on its analysis and on its proposed determination that Option 3 is economically achievable as BAT for the beef and dairy sectors. In addition, consistent with its intention at the time of the SBREFA outreach process, EPA requests comment on retaining the 25-year, 24-hour storm design standard (and thus basing BAT on Option 2) for the swine, veal and poultry subcategories.

26. EPA solicits comment on the assumptions used for estimating the compliance cost impacts for feedlots to implement each of the model technologies considered for the proposed standards. EPA also solicits comment on the proposal's impact on small businesses.

27. EPA solicits comment on the new source option for dairies that would prohibit any wastewater discharge from the production area. Specifically whether this option is technically feasible, since it assumes that all animals in confinement will be maintained under roof.

28. EPA solicits comment on establishing BAT requirements on pathogens. Specifically on the appropriate technologies that will reduce pathogens and the estimated cost for these technologies.

B. General Solicitation of Comment

EPA encourages public participation in this rulemaking. EPA asks that comments address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections be supported by data.

EPA invites all parties to coordinate their data collection activities with the Agency to facilitate mutually beneficial and cost-effective data submissions. Please refer to the "For Further Information" section at the beginning of this preamble for technical contacts at EPA.

National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations Page 690 of 740

List of Subjects

40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 412

Environmental protection, Feedlots, livestock, waste treatment and disposal, Water pollution control.

Dated:

Carol M. Browner,
Administrator

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows: