

the public, shall issue a written statement of its policy on which CAFOs will be eligible for general permits, including a statement of how it will apply the criteria in paragraph (b)(3)(i)(G) of this section.

6. Remove Appendix B to part 122.

9. Part 412 is amended to read as follows:

PART 412 - CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) POINT SOURCE CATEGORY

Sec.

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412.45 New source performance standards (NSPS).

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

§ 412.0 General applicability.

This part applies to process wastewater discharges resulting from concentrated animal feeding operations (CAFOs). Manufacturing activities which may be subject to this part are generally reported under one or more of the following Standard Industrial Classification (SIC) codes: SIC 0211, SIC 0213, SIC 0241, SIC 0259, or SIC 3523 (1987 SIC Manual).

§ 412.1 General Definitions.

As used in this part:

(a) The general definitions and abbreviations at 40 CFR part 401 shall apply.

(b) *Concentrated Animal Feeding Operation (CAFO)* is defined at 40 CFR 122.23(a)(3).

(c) *Fecal coliform* means the bacterial count (Parameter 1) at 40 CFR ' 136.3 in Table 1A, which also cites the approved methods of analysis.

(d) *Process wastewater* means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing or spray cooling of animals; litter or bedding; dust control; and stormwater which comes into contact with any raw materials, products or by-products of the operation.

(e) *Certified specialist* shall mean someone who has been certified to prepare Comprehensive Nutrient Management Plans (CNMPs) by USDA or a USDA sanctioned organization.

(f) *Land application area* means any land under the control of the CAFO operator, whether it is owned, rented, or leased, to which manure and process wastewater is or may be applied.

(g) *New source* means a source that is subject to subparts C or D of this part and, not withstanding the criteria codified at 40 CFR 122.29(b)(1): (i) Is constructed at a site at which no other source is located; or (ii) Replaces the housing including animal holding areas, exercise yards, and feedlot, waste handling system, production process, or production equipment that causes the discharge or potential to discharge pollutants at an existing source; or (iii) constructs a production area that is substantially independent of an existing source at the same site. Whether processes are substantially independent of an existing source, depends on factors such as the extent to which the new facility is

integrated with the existing facility; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(h) *Overflow* means the process wastewater discharge resulting from the filling of wastewater or liquid manure storage structures to the point at which no more liquid can be contained by the structure.

(i) *Production area* means that part of the CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyard, exercise yards, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, sheds, under house or pit storage, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms, and diversions which separate uncontaminated stormwater. Also included in the definition of production area is any egg washing or egg processing facility.

(j) *Setback* means a specified distance from surface waters or potential conduits to surface waters where manure and wastewater may not be land applied. Examples of conduits to surface waters include, but are not limited to, tile line intake structures, sinkholes, and agricultural well heads.

(k) *Soil test phosphorus* is the measure of the phosphorus content in soil as reported by approved soil testing laboratories using a specified analytical method.

(l) *Phosphorus threshold or TH level* is a specific soil test concentration of phosphorus established by states. The concentration defines the point at which soluble phosphorus may pose a surface runoff risk.

(m) *Phosphorus index* means a system of weighing a number of measures that relate the potential for phosphorus loss due to site and transport characteristics. The phosphorus index must at a minimum include the following factors when evaluating the risk for phosphorus runoff from a given field or site:

- (1) Soil erosion.
- (2) Irrigation erosion.
- (3) Run-off class.
- (4) Soil phosphorus test.
- (5) Phosphorus fertilizer application rate.
- (6) Phosphorus fertilizer application method.
- (7) Organic phosphorus application rate.
- (8) Method of applying organic phosphorus.

(n) *Permit Nutrient Plan* means a plan developed in accordance with §412.33 (b) and '412.37. This plan shall define the appropriate rate for applying manure or wastewater to crop or pasture land. The plan accounts for soil conditions, concentration of nutrients in manure, crop requirements and realistic crop yields when determining the appropriate application rate.

(o) *Crop removal rate* is the application rate for manure or wastewater which is determined by the amount of phosphorus which will be taken up by the crop during the growing season and subsequently removed from the field through crop harvest. Field residues do not count towards the amount of phosphorus removed at harvest.

(p) *Ten(10)-year, 24-hour rainfall event* and *25-year, 24-hour rainfall event* mean precipitation events with a probable recurrence interval of once in ten years, or twenty five years, respectively, as defined by the National Weather Service in Technical Paper No. 40, *A Rainfall Frequency Atlas of the United States*, May, 1961, and subsequent amendments, or equivalent regional or State rainfall probability information developed from this source.

(q) The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1B at 40 CFR §136.3 are defined as follows:

- (1) *Ammonia (as N)* means ammonia reported as nitrogen.
- (2) *BOD₅* means 5-day biochemical oxygen demand.
- (3) *Chloride* means total chloride.
- (4) *Nitrate (as N)* means nitrate reported as nitrogen.
- (5) *Total dissolved solids* means non-filterable residue.

(r) The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1A at 40 CFR §136.3 are defined as follows:

- (1) *Fecal coliform* means fecal coliform bacteria.
- (2) *Total coliform* means all coliform bacteria.

§ 412.3 General pretreatment standards.

Any source subject to this part that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.

Subpart A - Horses and Sheep

§ 412.10 Applicability.

This subpart applies to discharges resulting from the production areas at CAFOs where sheep are confined in open or housed lots; and horses are confined in stables such as at racetracks. This subpart does not apply to such CAFOs with less than the following capacities:

Applicable CAFOs	
Livestock	Minimum capacity
Sheep	10,000
Horses	500

§ 412.11 Special definitions.

For the purpose of this subpart:

(a) *Housed lot* means totally roofed buildings, which may be open or completely enclosed on the sides, wherein animals are housed over floors of solid concrete or dirt and slotted (partially open) floors over pits or manure collection areas, in pens, stalls or cages, with or without bedding materials and mechanical ventilation.

(b) *Open lot* means pens or similar confinement areas with dirt, concrete paved or hard surfaces,

wherein animals are substantially or entirely exposed to the outside environment, except where some protection is afforded by windbreaks or small shed-type shaded areas.

§ 412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR '125.30 through ' 125.32 and when the provisions of paragraph (b) of this section apply, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

There must be no discharge of process wastewater pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process-generated wastewaters plus the runoff from a 10-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the *overflow* may be allowed to be discharged into U.S. waters.

§ 412.13 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR '125.30 through '125.32 and when the provisions of paragraph (b) of this section apply, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

There must be no discharge of process wastewater pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the *overflow* may be allowed to be discharged into U.S. waters.

§ 412.15 New source performance standards (NSPS).

(a) Except as provided in paragraph (b) of this section, any new point source subject to this subpart must achieve the following performance standards:

There must be no discharge of process wastewater pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the *overflow* may be allowed to be discharged into U.S. waters.

Subpart B - Ducks

§ 412.20 Applicability.

This subpart applies to discharges resulting from dry and wet duck feedlots with a capacity of at least 5000 ducks.

§ 412.21 Special definitions.

For the purpose of this subpart:

(a) *Dry lot* means a facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(b) *Wet lot* means a confinement facility for raising ducks which is open to the environment, has a small number of sheltered areas, and with open water runs and swimming areas to which ducks have free access.

§ 412.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR '125.30 through '125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the application of BPT:

Effluent Limitations

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹	Maximum daily ²	Maximum monthly avg. ²
BOD ₅	3.66	2.0	1.66	0.91
Fecal coliform	(³)	(³)	(³)	(³)

¹ Pounds per 1000 ducks.

² Kilograms per 1000 ducks

³ Not to exceed MPN of 400 per 100 ml at any time.

§ 412.25 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following standards:

(a) Except as provided in paragraph (b) of this section, there must be no discharge of process wastewater pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the *overflow* may be allowed to be discharged into U.S. waters.

§ 412.26 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR §403.7 and in paragraph (b) of this section, any new source subject to this subpart must achieve the following pretreatment standards:

There must be no discharge of process wastewater pollutants into a POTW.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed and operated to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the new source, the discharge of any process wastewater pollutants in the *overflow* may be allowed.

Subpart C - Beef and Dairy

§ 412.30 Applicability.

This subpart applies to concentrated animal feeding operations (CAFOs), as defined in 40 CFR §122.23, and includes the following types of animals: Mature dairy cows, either milking or dry; and cattle other than mature dairy or veal

§ 412.31 Effluent limitations attainable by the application of the best practicable control

technology currently available (BPT).

Except as provided in 40 CFR §125.30 through §125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) For CAFO production areas:

(1) Except as provided in paragraph (a)(2) of this section, there must be no discharge of process wastewater pollutants into U.S. waters.

(2) Whenever rainfall causes an overflow of process wastewater, pollutants in the overflow may be discharged into U.S. waters during those periods subject to following conditions:

(i) The production area is designed and constructed to contain all process wastewaters including the runoff from a 25 year, 24 hour rainfall event; and

(ii) The production area is operated in accordance with the requirements of §412.37(a)(1) through (3) .

(b) For CAFO land application areas:

(1) Discharges resulting from the application of manure or process wastewater to land owned or under the control of the CAFO must achieve the following:

(i) Develop and implement a Permit Nutrient Plan (PNP) that includes the requirements specified at §412.37; and establishes land application rates for manure in accordance with §412.31 (b)(1)(iv).

(ii) The PNP must be developed or approved by a certified specialist.

(iii) The PNP must be written taking into account realistic yield goals based on historic yields from the CAFO, or county average data when historic yields are not appropriate. County average data may be used when a facility plants a crop that no yield data for that CAFO land application area has been obtained within the previous 10 years. CAFOs shall review the PNP annually and revise as necessary, and must rewrite the PNP at least once every five years.

(iv) Apply manure and process wastewater at a rate established in accordance with one of the three methods defined below. State approved indices, thresholds, and soil test limits shall be utilized such that application does not exceed the crop and soil requirements for nutrients:

Table 1 Phosphorus Index

Phosphorus Index Rating	Manure and Wastewater Application Rate
Low Risk	Application of manure and wastewater may not exceed the nitrogen requirements of the crop.
Medium Risk	Application of manure and wastewater may not exceed the nitrogen requirements of the crop.
High Risk	Application of phosphorus in manure and wastewater may not exceed the amount of phosphorus removed from the field with crop harvest.
Very High Risk	No land application of manure or wastewater.

Table 2 Phosphorus Threshold

Soil Phosphorus Threshold Level	Manure and Wastewater Application Rate
< 3/4 TH application	Manure and wastewater may not exceed the nitrogen requirements of the crop.
> 3/4 TH, < 2 TH application	Phosphorus in manure and wastewater may not exceed the amount of phosphorus removed from the field with crop harvest.

> 2 TH application	No land application of manure or wastewater
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Table 3 Soil Test Phosphorus

Soil Test Phosphorus Level	Manure and Wastewater Application Rate
Low	Application of manure and wastewater may not exceed the nitrogen requirements of the crop.
Medium	Application of manure and wastewater may not exceed the nitrogen requirements of the crop
High	Application of phosphorus in manure and wastewater may not exceed the amount of phosphorus removed from the field with crop harvest.
Very High	No land application of manure and wastewater.

(2) Multi-year phosphorus applications are prohibited when either the P-Index is rated high, the soil phosphorus threshold is between 3/4 and 2 times the TH value, or the soil test phosphorus level is high as determined in paragraph (1) (iv) unless:

(i) Manure application equipment designed for dry poultry manure or litter cannot obtain an application rate low enough to meet a phosphorus based application rate as determined by the PNP. In the event a phosphorus application occurs during one given year which exceeds the crop removal rate for that given year, no additional manure or process wastewater shall be applied to the same land in subsequent years until all applied phosphorus has been removed from the field via harvest and crop removal.

§ 412.32 Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR §125.30 through §125.32 and §412.41(2), any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:

(a) For CAFO production areas:

Discharges must achieve the same requirements as specified in §412.31(a).

(b) For CAFO land application areas:

Discharges resulting from the application of manure or process wastewater to crop or pasture land owned or under the control of the CAFO must achieve the same requirements as specified in §412.31(b) and §412.37.

§ 412.33 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §125.30 through §125.32 and §412.33(a)(2), any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) For CAFO production areas:

(1) There must be no discharge of process wastewater pollutants into U.S. waters, including any pollutants discharged to ground water which has a direct hydrologic connection to surface waters.

(2) Whenever rainfall causes an overflow of process wastewater, pollutants in the overflow may be discharged into U.S. waters during those periods when the following conditions are met:

- (i) The production area is designed and constructed to contain all process wastewaters including the runoff from a 25 year, 24 hour rainfall event; and
- (ii) The production area is operated in accordance with the requirements of §412.37(a).

(3) (i) The ground water beneath the production area must be sampled twice annually to demonstrate compliance with the no discharge requirement unless the CAFO has determined to the satisfaction of the permitting authority that the ground water beneath the production area is not connected to surface waters through a direct hydrologic connection.

(ii) Ground water samples shall be collected up-gradient and down-gradient of the production area and analyzed for:

Total coliforms.

Fecal coliform.

Total dissolved solids.

Nitrates.

Ammonia.

Chloride

(b) For CAFO land application areas:

Discharges resulting from the application of manure or process wastewater to crop or pasture land owned or under the control of the CAFO must achieve the same requirements as specified in §412.31(b) and §412.37.

§ 412.35 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following standards:

(a) For CAFO production areas:

Subject to the provisions of paragraph (c) of this section, discharges must achieve the same requirements as specified in §412.33(a).

(b) For CAFO land application areas:

Subject to the provisions of paragraph (c) of this section, discharges resulting from the application of manure or process wastewater to crop or pasture land owned or under the control of the CAFO must achieve the same requirements as specified in §412.31(b) and §412.37.

(c) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days from the publication date of the final rule]* and before *[insert date that is 60 days from the publication date of the final rule]* must continue to achieve the standards specified in the 2000 version of §412.15, provided that the new source was constructed to meet those standards. For toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the standards specified in paragraphs (a) and (b) of this section.

§ 412.37 Additional measures

(a) Each CAFO subject to this subpart must implement the following requirements:

(1) There must be routine visual inspections of the CAFO production area to check the following:

(i) Weekly inspections of all stormwater diversion devices, such as roof gutters, to ensure they are free of debris that could interfere with the diversion of clean stormwater;

(ii) Weekly inspections of all stormwater diversion devices which channel contaminated stormwater to the wastewater and manure storage and containment structure, to ensure that they are

free of debris that could interfere with ensuring this contaminated stormwater reaches the storage or containment structure;

(iii) Daily inspections of all water lines providing drinking water to the animals to ensure there are no leaks in these lines that could contribute unnecessary volume to liquid storage systems or cause dry manure to become too wet;

(iv) Runoff diversion structures and animal waste storage structures must be visually inspected for: seepage, erosion, vegetation, animal access, reduced freeboard, and functioning rain gauges and irrigation equipment, on a weekly basis manure storage area to ensure integrity of the structure. All surface impoundments must have a depth marker which indicates the design volume and clearly indicates the minimum freeboard necessary to allow for the 25 year 24 hour rainfall event. The inspection shall also note the depth of the manure and process wastewater in the impoundment as indicated by this depth marker.

(2) Any deficiencies found as a result of these inspections shall be corrected as soon as possible. Deficiencies and corrective action taken shall be documented.

(3) Mortalities may not be disposed of in any liquid manure or stormwater storage or treatment system, and must be handled in such a way as to prevent discharge of pollutants to surface water.

(4) Land application of manure generated by the CAFO to land owned or controlled by the CAFO must be done in accordance with the following practices:

(i) Manure may not be applied closer than 100 feet to any surface water, tile line intake structure, sinkhole or agricultural well head.

(ii) The CAFO must take manure samples at least once per year and analyzed for nitrogen, phosphorus and potassium. Samples must be collected from all manure storage areas, both liquid and dry storage, as well as any wastewater or storm water storage. The CAFO must take soil samples once every three years if they apply manure to crop or pasture land under their control, and analyze the soil sample for phosphorus. Samples shall be collected in accordance with accepted Extension protocols and the analyses must be conducted in accordance with the state nutrient management standard. These protocols shall be documented in the PNP.

(iii) Manure that is transported off-site must be sampled at least once a year for nitrogen, phosphorus and potassium. The results of these analyses must be provided to the recipient of the manure.

(iv) Manure application equipment must be calibrated prior to land application of manure and/or process wastewaters at a minimum of once per year.

(b) Record keeping requirements:

Each CAFO must maintain on its premises a complete copy of the current PNP and the records specified in paragraphs (b)(1) through (12) of this section. The CAFO must make the PNP available to the permitting authority and the Regional Administrator, or his or her designee, for review upon request. Records must be maintained for 5 years from the date they are created.

(1) Cover Sheet which includes the following information:

(i) the name and location of the CAFO,

(ii) name and title of the owner or operator

(iii) name and title of the person who prepared the plan,

- (iv) date the plan was prepared,
- (v) date the plan was amended
- (2) Executive Summary which includes the following information:
 - (i) Total average herd or flock size
 - (ii) Identification of manure collection, handling, storage, and treatment practices
 - (iii) Amount of manure generated annually
 - (iv) Identification of planned crops (rotation)
 - (v) Realistic yield goal as described in §412.31(b)(1)(iii)
 - (vi) Field condition as determined by the phosphorus index, soil test phosphorus, or phosphorus threshold (for each field unit that will receive manure)
 - (vii) number of acres that will receive manure
 - (viii) amount of manure transported off-site
 - (ix) animal waste application rate (gallons or tons/acre)
 - (x) identification of watershed or nearest surface water body
- (3) Records documenting the inspections required under paragraph (a)(1) of this section.
- (4) Records tracking the repairs performed on drinking water lines, automated feeding equipment, feed storage and silos, manure storage, manure treatment facilities, as well as maintenance of berms and diversions that direct clean stormwater away from any manure and other process wastewater.
- (5) Records documenting the following information about manure application and crop production
 - (i) Expected crop yield based on historical data for the CAFO for its land application area, or county average yield data when the CAFO does not have a prior history of crop yields
 - (ii) The date(s) manure is applied,
 - (iii) Weather conditions at time of application and for 24 hours prior to and following application,
 - (iv) Results from manure and soil sampling,
 - (v) Test methods used to sample and analyze manure and soil,
 - (vi) Whether the manure application rate is limited to nitrogen, phosphorus, or some other parameter,
 - (vii) The amount of manure and manure nutrients applied,
 - (viii) The amount of any other nutrients applied to the field reported in terms of nitrogen, phosphorus and potassium (including commercial fertilizer, legume credits, and biosolids),
 - (ix) Calculations showing the total nutrients applied to land,
 - (x) Calibration of manure application equipment,
 - (xi) The rate of application of manure,
 - (xii) The method used to apply the manure, estimated nitrogen losses based on application method used, and the route of nitrogen loss,
 - (xiii) The field(s) to which manure was applied and total acreage receiving manure,
 - (xiv) What crop(s) was planted,
 - (xv) The date that crops were planted in the field, and
 - (xvi) The crop yields obtained.
- (6) Records of the total volume or amount of manure and process wastewater generated by all animals at the facility during each 12 month period. This must include milk parlor washwater and egg

washwater. The volume or amount may be determined through direct measurements or an estimated value provided all factors are documented.

(7) Records of rainfall duration, amount of rainfall, and the estimated volume of any overflow that occurs as the result of any catastrophic or chronic rainfall event.

(10) A copy of the emergency response plan for the CAFO.

(11) Records of how mortalities are handled by the CAFO.

(12) Name of state approved specialist that prepared or approved the PNP, or record and documentation of training and certification for owners or operator writing their own PNP.

Subpart D - Swine, Poultry and Veal

§ 412.40 Applicability.

This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR §122.23 and includes the following animals: Swine, each weighing 55 lbs. or more; swine, each weighing less than 55 lbs.; veal cattle; chickens; and turkeys.

§ 412.41 Effluent limitation attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §125.30 through §125.32 , any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) For CAFO production areas:

Discharges must achieve the same requirements as specified in §412.31(a).

(b) For CAFO land application areas:

Discharges resulting from the application of manure or process wastewater to crop or pasture land owned or under the control of the CAFO must achieve the same requirements as specified in §412.31(b) and §412.37.

§ 412.42 Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR §125.30 through §125.32 , any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:

(a) For CAFO production areas:

The limitations are the same as specified in §412.41(a).

(b) For CAFO land application areas:

The limitations are the same as specified in §412.41(b).

§ 412.43 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §125.30 through §125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) For CAFO production areas:

(1) There must be no discharge of process wastewater pollutants into U.S. waters.

(2) Any CAFO subject to this subpart must also comply with the requirements specified in §412.37(a)(1) through (3).

(b) For CAFO land application areas:

The limitations are the same as specified in §412.41(b).

§ 412.45 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following standards:

(a) For CAFO production areas:

(1) There must be no discharge of process wastewater pollutants into U.S. waters, including any pollutants discharged to ground water which have a direct hydrological connection to surface waters.

(2) The ground water beneath the production area must be sampled twice annually to demonstrate compliance with the provisions of paragraph (a)(1) of this section, unless the CAFO has determined to the satisfaction of the permitting authority that the ground water beneath the production area is not connected to surface waters through a direct hydrologic connection.

Ground water samples must be collected up-gradient and down-gradient of the production area, and analyzed for:

Total coliforms

Fecal coliform

Total dissolved solids

Nitrates

Ammonia

Chloride

(3) Any CAFO subject to this subpart must also comply with the requirements specified in §412.37(a)(1) through (3).

(b) For CAFO land application areas:

Discharges resulting from the application of manure or process wastewater to crop or pasture land owned or under the control of the CAFO must achieve the same requirements as specified in §412.31(b) and §412.37.

(c) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days from the publication date of the final rule]* and before *[insert date that is 60 days from the publication date of the final rule]* must continue to achieve the standards specified in ' 412.15, provided that the new source was constructed to meet those standards. For “toxic” and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR §122.29(d)(1); thereafter, the source must achieve the standards specified in paragraphs (a) and (b) of this section.