

**PUBLIC COMMENTER'S GUIDE TO THE
PROPOSED NEW CAFO REGULATIONS**

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Important Note – Please Read: On January 12, 2001, EPA published proposed revisions to its regulations under the Clean Water Act for concentrated animal feeding operations (“CAFOs”). EPA proposed to amend both the National Pollutant Discharge Elimination System (“NPDES”) regulations and the effluent limitations guidelines (“ELG”) for CAFOs. EPA solicited a full range of public comments on any and all aspects of the proposal. The period for submitting public comments closes on July 30, 2001. Directions for how and where to submit comments are in the proposal.

The purpose of this Guide is to assist people who want to submit public comments on the proposed CAFO regulations. It identifies the major issues discussed in the proposal and summarizes how EPA has proposed to treat each issue in the revised regulations. It also cross-references the proposed language of the regulations and the pages of the preamble that contain the primary discussion of each issue.

This Guide is a reference tool only, and you are not required to use it or rely on it in submitting your public comments. It is not intended to limit in any way the issues on which you may want to submit public comments or the types of comments you submit. It does not cover every issue set forth in the proposal. You may comment on any aspect of the proposal that you choose, even if it is not listed in this Guide. In addition, the page citations given below refer to the primary preamble discussion of each particular issue, but you are encouraged to review the rest of the preamble for any further discussions of that issue.

EPA emphasizes that it intends this Guide to be used only as a tool to help you navigate through the preamble and proposed regulations. We will consider all comments we receive, but we encourage you not to base your comments only on the summaries in this Guide, since by doing so you may miss important information contained in the full preamble discussion for each issue. To the extent there are any inadvertent differences between this guide and the proposal (preamble and regulations), the proposal governs.

Description of Issue	Summary of Proposed Change / Specific Information, Data, and Comments EPA is Requesting	Preamble Reference		Proposed Rule Reference(s)
		Federal Register Vol. 66, No. 9	Chapter, Section, Page #	
DEFINING AFOS AND CAFOS				
Definition of an “AFO”	Clarify the definition of an AFO to clearly distinguish confinement areas from pasture and grazing land.	Pages 3004-3005	Chapter 7, Section C.1, Page 106-107	§122.23(a) (2)
Definitions of AFO and CAFO include the land application areas	Define an AFO and a CAFO to include both the animal production area and the land application area under the control of the owner or operator.	Pages 3009-3010	Chapter 7, Section C.2.e, Pages 118-120	§122.23(a) (1)
Delete 25-year, 24-hour storm event permit exemption	Any facility that is defined as a CAFO would be a CAFO even if it only discharges in the event of a 25-year, 24-hour storm.	Pages 3006-3007	Chapter 7, Section C.2.c, Pages 110-113	Deleted; Currently in 122.23 Appendix B

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		Federal Register Vol. 66, No. 9	Chapter, Section, Page #	
NEWLY AFFECTED SECTORS				
Poultry Operations (see also Applicability of Effluent Guideline)	Delete the language in the regulation that defines laying hen and broiler operations as CAFOs only if they use a particular type of manure handling or watering system.	Pages 3010-3012; 3051	Chapter 7, Section C.2.f, Pages 120-124 Chapter 8, Section B.1 Pages 208-209	§122.23(a) (3); and §412.40
Swine Nurseries (See also Applicability of Effluent Guideline)	Under the two-tier structure, include operations that confine at least 5,000 immature pigs (pigs weighing 55 pounds or less) Under the three-tier structure, include operations that confine between 3,000 and 10,000 immature pigs and all operations with more than 10,000 immature pigs.	Pages 3010-3012; 3051	Chapter 7, Section C.2.f, Pages 120-124 Chapter 8, Section B.1 Page 209	§122.23(a) (3); and §412.40
Use of the term “animal unit”	Eliminate the use of the term “animal unit” or AU, and use numbers of animals instead.	Pages 3005-3006	Chapter 7, Section C.2, Page 108-110	Appendix B of Part 122
Mixed animal operations	Eliminate the mixed animal calculation in determining which AFOs are CAFOs. A facility would not be a CAFO unless it meets the size threshold for at least one animal sector.	Pages 3005-3006; 3051	Chapter 7, Section C.2, Page 108-110 Chapter 8, Section B.1, Page 209	Appendix B of Part 122
ALTERNATIVE 1: TWO-TIER STRUCTURE FOR DEFINING CAFOS				
Replace the current three-tier structure with a two-tier structure.	All facilities above a specified threshold would be CAFOs and would be required to apply for a permit. Those below the threshold would only be CAFOs if designated on a case-by-case basis by the permit authority.	Pages 2996-2998	Chapter 7, Section B.2, Pages 87-90	§122.23(a) (3)
500 AU threshold (two-tier structure) Proposed	Establish the threshold for determining which AFOs are CAFOs, at 500 AU. The animal head equivalent in each sector would be: Cattle, excluding mature dairy or veal: 500. Mature Dairy Cattle: 350. Heifers: 500. Swine weighing over 25 kilograms, or 55 pounds: 1,250. Immature Swine weighing less than 25 kilograms, or 55 pounds: 5,000. Chickens: 50,000. Turkeys: 27,500. Ducks: 2,500. Horses: 250. Sheep or Lambs: 5,000. *note: these numbers indicate a one time capacity, not year round production	Pages 2997 and 3010 - 3014	Chapter 7, Sections B.2 and C.2.f, g, h Pages 88, 120-127	§122.23(a) (3)

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		Federal Register Vol. 66, No. 9	Chapter, Section, Page #	
750 AU threshold (two-tier structure)	<p>Establish the threshold for determining which AFOs are CAFOs, at 750 AU. The animal head equivalent in each sector would be:</p> <p>Cattle and Heifers: 750. Veal: 750. Mature Dairy Cattle: 525. Swine weighing over 25 kilograms, or 55 pounds: 1,875. Immature Swine weighing less than 25 kilograms, or 55 pounds: 7,500. Chickens: 75,000. Turkeys: 41,250. Ducks: 3,750. Horses: 375. Sheep or Lambs: 7,500.</p> <p>*note: these numbers indicate a one time capacity, not year round production</p>	Pages 2997-2998	Chapter 7, Section B.2, Page 89-90	§122.23(a) (3)
Other Threshold (two-tier structure)	Please comment on any alternative thresholds such as 300, 500, 750, and 1,000 AU.			
Horses, ducks, sheep and lambs	Adjust thresholds for horse, duck, sheep & lambs to be consistent with the new CAFO structure	Pages 2997-2998	Chapter 7, Section B.2, Page	§122.23(a) (3)
ALTERNATIVE 2: THREE-TIER STRUCTURE FOR DEFINING CAFOS				
Retain Existing Three-tier Structure	<p>Retain the existing threshold for determining which AFOs are CAFOs under a three-tier structure. The animal head equivalent in each sector would be:</p> <p>Large Threshold/Small Threshold (number of head): Cattle and Heifers: 1,000/300. Veal: 1,000/300. Mature Dairy Cattle: 700/200. Swine weighing over 25 kilograms, or 55 pounds: 2,500/750. Immature Swine weighing less than 25 kilograms, or 55 pounds: 10,000/3,000. Chickens: 100,000/30,000. Turkeys: 55,000/17,500. Ducks: 5,000/1,750. Horses: 500/175. Sheep or Lambs: 10,000/3,000.</p> <p>*note: these numbers indicate a one time capacity, not year round production</p>	Page 2998	Chapter 7, Section B.3,	
Certification checklist (three-tier structure)	<p>Require all AFOs in the middle category to either apply for an NPDES permit or to certify to the permit authority that they do not meet any of the conditions which would require them to obtain a permit.</p> <p>The certification would be a check list that must be submitted to the permitted authority.</p>	Pages 3001-3003	Chapter 7, Section B.3, Pages 97-103	§122.23(a) (3)

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		Federal Register Vol. 66, No. 9	Chapter, Section, Page #	
Middle Tier Conditions (three-tier structure) Proposed	Amend the conditions for defining which mid-size facilities are CAFOs as follows: 1) there is direct contact of animals with waters of the U.S. at the facility; 2) there is insufficient storage and containment at the production area to prevent discharges from reaching waters of the U.S.; 3) there is evidence of a discharge from the production area in the last five years; 4) the production area is located within 100 feet of waters of the U.S.; 5) the operator does not have, or is not implementing, a Permit Nutrient Plan that meets EPA's minimum requirements; or 6) more than twelve tons of manure is transported off-site to a single recipient annually, unless the recipient has complied with the requirements for off-site shipment of manure.	Pages 2998-3001	Chapter 7, Section B.3, Pages 90-97	§122.23(a) (3)
Middle Tier Conditions (possible simplification for which EPA is requesting comment)	Amend the middle tier conditions to something simpler than what is proposed, such as: 1) adequate facility design to contain manure and runoff in up to a 25-year, 24-hour storm; 2) use of appropriate BMPs, and application of manure at agronomic rates; 3) assurance by the operator that recipients of off-site manure are provided nutrient test results and information on appropriate manure management.	Page 3002	Chapter 7, Section B.3, Pages 101- 103	
Permit Requirements for 300- 1000 AU facilities (See also: Applicability of the Effluent Guideline)	Should permit requirements for CAFOs in the middle size category continue to be left to the Best Professional Judgement of the permit authority? Should permits for middle size CAFOs be based on an alternate set of effluent guidelines than what is proposed in today's proposal? Should permits for middle size CAFOs include the same requirements as for those with >1000 AU?	Pages 3002 and 3050	Chapter 7, Section B.3, Pages 102 Chapter 8, Section B.1, Page 207	§122.23(a) (3); 412.3; 412.4
DESIGNATION				
Designation: Retain or eliminate criteria for designating small facilities as CAFOs	Under the three-tier Structure: Retain or eliminate the two criteria that must be met before designation for operations with fewer than 300 AU. Under the two-tier structure: Retain or eliminate the two criteria that must be met before designating operations below the regulatory threshold, or eliminate the two criteria only for operations below the regulatory threshold but with greater than 300 AU.	Pages 3021-3022	Chapter 7, Section C.3, Pages 145- 148	§122.23(b)
Modify the on-site inspection for designation of CAFOs	Modify the requirement that the inspection be "on-site" by allowing other forms of site-specific information gathering such as use of monitoring data, fly-overs, satellite imagery, etc.	Page 3022	Chapter 7, Section C.3, Page 148	§122.23(b)
Designation by EPA	Explicitly allow EPA to designate an AFO as a CAFO if it meets the designation criteria even in States with approved NPDES programs.	Page 3023	Chapter 7, Section C.4, Pages 148-150	§122.23(b)

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		Federal Register Vol. 66, No. 9	Chapter, Section, Page #	
Technical correction	Clarifying the term as “significant contributor of <i>pollutants</i> ” rather than “ <i>pollution</i> ”	Pages 3022-3023	Chapter 7, Section C.3, p.148	§122.23(b) 122.26(a)(1) (v)
DUTY TO APPLY FOR, AND OBTAIN, A PERMIT				
Duty to Apply	Require all CAFOs to apply for a NPDES permit, unless a facility can demonstrate that it has no potential to discharge pollutants from either the production area or land application area(s).	Pages 3007-3009	Chapter 7, Section C.2.d Pages 113-118	§122.23(c) (2) and (e)
“No Potential to Discharge”	Burden of proof to show that there is no potential to discharge is with the CAFO owner or operator. Demonstration of no potential to discharge must account for all manure generated at the facility.	Pages 3044-3045	Chapter 7 Section F.3 Pages 198-201	§122.23(c) and (e)
Closure	If a facility ceases to be an active CAFO, it must remain permitted until all wastes at the facility that were generated while the facility was a CAFO no longer have the potential to reach waters of the United States.	Pages 3014-3015	Chapter 7, Section C.2.i and E.5.c Pages 127-130, 189	§122.23(i)(3)
STATE PROGRAMS				
Implement both the two-tier and three-tier structures.	Requesting comment whether to allow States to select either a two-tier or three-tier structure for State NPDES programs.	Page 3003	Chapter 7, Section B.4, Page 103-104	§122.23(a) (3)
Waivers	Where State has an effective program for excess manure, waive: a) requirement for off-site certification b) co-permitting	a) Pages 3038; 3071 b) Pages 3027-3028	a) Chapter 7, Section E.4 Pages 183-184; Chapter 9, Section A b) Chapter 7, Section C.5, Pages 157-160	a) §122.23 (a)(3)(ii) (B)(6) & (j) 4 (opt. 1) b) §122.23(a)(5) & (c)(3)
State CAFO Programs (non-NPDES)	How to address existing State CAFO programs that currently are not authorized as NPDES programs	Pages 3070-3071	Chapter 9, Section A, Page	
CO-PERMITTING				
Co-permitting.	Require co-permitting of corporate or other entities where the permit authority determines that the entity exercises substantial operational control over the CAFO.	Pages 3023-3028	Chapter 7, Section C.5, Pages 150-160	§122.23(a) (5) and (i)(4), §122.44(m)
Definition of Substantial Operational Control	List of factors that are relevant to whether the entity exercises “substantial operational control.”	Pages 3024-3025	Chapter 7, Section C.5, Pages	§122.23(a) (5)(ii)

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Alternatives to co-permitting	Option for States to develop an alternative program for addressing excess manure in lieu of requiring co-permitting. Would the Environmental Management System concept work?	Pages 3027-3028	Chapter 7, Section C.5, Pages 157-160	§122.23(a) (5) and (c)(3)
AFOS THAT ARE NOT CAFOS				
Clarification of which discharges from AFOs are covered by the CWA	Where an AFO is not a CAFO (either because it has not met the definition or has not been designated), clarify which discharges are still regulated under the NPDES program	Page 3028	Chapter 7, Section C.6, Pages 160	§122.23(g)
LAND APPLICATION OF CAFO MANURE				
Agricultural storm water exemption definition.	Define the exemption for “agricultural storm water discharges” to include only discharges that are composed entirely of storm water and occur only after the implementation of proper agricultural practices.	Pages 3029-3030	Chapter 7, Section D.2, Page 163-164	§122.23(a) (1)
Land application at the CAFO	CAFOs must apply for a permit even if the CAFO’s only discharges may potentially qualify as agricultural storm water. The permit would make sure that any discharges qualify as agricultural storm water by requiring CAFOs to employ proper agricultural practices.	Pages 3030-3031	Chapter 7, Section D.3, Page 166	§122.23(e)
EPA is also seeking comment on a number of possible alternative interpretations under which the agricultural storm water exemption would never apply to CAFOs.	Alternative approach #1: Agricultural storm water exemption never applies to CAFOs because Congress specifically identified CAFOs as point sources, and therefore intended all CAFO discharges to be considered industrial rather than agricultural. Alternative approach #2: CAFO land application wastes would be viewed as industrial process waste and therefore not agricultural. Alternative approach #3: Land application discharges would be classified as discharges regulated under Phase I of the NPDES storm water program. Alternative approach #4: Land application discharges would be viewed as process waste waters and therefore not “composed entirely of storm water”. Alternative approach #5: Agricultural storm water discharge exemption does not apply when a facility is required to be permitted.	Page 3031	Chapter 7, Section D.3, Page 167-168	
Effects on water quality from land application	Will the land application practices established under effluent guidelines be sufficient to ensure that there will be little or no discharge due to precipitation from CAFO land application areas?	Page 3032	Chapter 7, Section D.3, Pages 168-169	§122.23(a) (4)

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Recipients of CAFO-generated manure and wastewater	Off-site recipients that land apply CAFO-generated manure and AFOs that land apply their own manure may be subject to the CWA if: <ul style="list-style-type: none"> The field has a point source, through which a discharge occurs that is not eligible for the agricultural storm water exemption; and The land applier is designated by the permit authority as a regulated point source of storm water. 	Page 3032	Chapter 7, Section D.4, Pages 169-170	§122.26(a) (1)(v), §122.26(a) (9)(i)(D)
PERMIT NUTRIENT PLANS				
Permit Nutrient Plan (PNP) definition	CAFO owners or operators must develop and implement a PNP. A PNP is the specific subset of activities in a CNMP that meet the requirements of the effluent guideline and NPDES permit.	Pages 3032-3034	Chapter 7, Section E.1, Pages 170-175	§122.23(k) (4) §412.31(b) (1)(i)(iv)
Specific comments EPA is requesting on the PNP	Is “PNP” the best term to use to refer to the regulatory components of the CNMP? Is EPA’s explanation of both the differences and relationship between PNP and CNMP clear and unambiguous? Please submit suggestions on ways to structure the PNP requirement in order to minimize costs to small operators.	Pages 3032-3034	Chapter 7, Section E.1, Pages 171-175	§122.23(k) (4) §412.31(b) (1)(i)(iv)
When must CAFOs have PNPs?	Applicants for individual permits, and operators of new facilities applying for coverage under a general permit, must submit the cover sheet and executive summary of their draft PNP <i>along with</i> their permit application or NOI. The final PNP for all permit applicants must be developed <i>within three months</i> after submitting an NOI under a general permit or an application for an individual permit, and must submit notification of PNP availability to permit authority upon its completion.	Pages 3034-3035; 3066	Chapter 7, Section E.1.b, Pages 175-176	§122.21(i)(1)(iv) §122.28(b) (2)(ii) §122.23(j)(3) §412.31(b)
Amending the PNP	Review the PNP annually and amend if practices change either at the production area or at the land application area, and submit notification of amendment to the permit authority. All PNPs must be renewed every 5 years.	Page 3037	Chapter 7, Section E.3 Pages 180-181	§122.23(i) §412.31(b)(1)(iii)
Public availability of the PNP	Require the CAFO operator to make the PNP cover sheet and executive summary available to the public for review upon request. Are there elements of these that might appropriately be claimed as confidential business information? Should a CAFO be able to make a CBI claim for the remaining information in the PNP? Alternatively, should the regulations require all information in the PNP, not just the cover sheet and executive summary, to be publically available? Should the PNP be part of the public notice and comment process for individual permits?	Pages 3035-3036	Chapter 7, Section E.1.c, Pages 176-179	§122.23(k)

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Cover Sheet and Executive Summary	<p>Cover sheet contains the name and location of the operation, name and title of the owner or operator, name and title of the person who prepared the plan, and date the plan was developed and amended.</p> <p>The Executive Summary briefly describes the operation:</p> <ul style="list-style-type: none"> • Herd or flock size and total animal waste produced annually. • Crop identity for the full 5 year period, expected crop rotation, and realistic yield goal. • Field conditions for each field unit resulting from the phosphorus method used, animal waste application rates, the total number of acres that will receive manure, nutrient content of manure, and amount of manure that will be transferred off-site. • Manure collection, handling, storage, and treatment practices • Watershed(s) in which the fields receiving manure are located or the nearest surface water body. 	Pages 3034 - 3035	Chapter 7, Section E.1.b and c	§412.37(b)
Content of a PNP	<p>The content of a PNP must address:</p> <ul style="list-style-type: none"> • Animal Waste Production • Animal Waste Handling, Collection, Storage, and Treatment • Land Application Sites • Land Application • Other Uses/Off-site Transfer • Voluntary Measures 	Pages 3065-3066	Chapter 8, Section 6, Pages 241-244	§412.31(b) and 412.37(b)
OFF-SITE TRANSFER OF MANURE				
OPTION 1: CAFO owner or operator must obtain certification from recipient.	<p>CAFO owner or operator must:</p> <ul style="list-style-type: none"> • obtain a certification from the recipient of CAFO-generated manure that they will manage manure in appropriate manner (however, the CAFO operator is not responsible or liable for recipients' handling of the manure); • Maintain records of manure and/or wastewater that leaves the operation; • Provide the recipient(s) with information on the nutrient content of the manure; and • Provide the recipient with a brochure describing proper management of the manure. 	Pages 3037-3038	Chapter 7, Section E.4 Pages 182-186	§122.23(j) (4), (5)
OPTION 1: Exemption for small quantity transfers.	<p>CAFO owners are not required to obtain certifications from recipients that receive less than twelve tons of manure per year from the CAFO.</p> <p>Certification requirement will be waived if the recipient is complying with the requirements of an equivalent State program for excess manure.</p>	Page 3038	Chapter 7, Section E.4 Pages 183-184	§122.23(j) (4), (5)
OPTION 2: No certification required for off-site transfer	<p>CAFO owner or operator must only:</p> <ul style="list-style-type: none"> • Maintain records showing the manure and/or wastewater that leaves the operation; • Provide the recipient(s) with information on the nutrient content of the manure; and • Provide the recipient with a brochure describing proper management of the manure. 	Pages 3037-3039, 3041	Chapter 7, Section E.4, E.5.c Pages 182-186, 191	§122.23(i)(5) §122.23(j) (4), (5) and §412.13(b)

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DISCHARGES TO GROUND WATER				
Ground Water with Direct Hydrological Connection to Surface Water (See also proposed revisions to the Effluent Guideline for New Swine, Veal and Poultry, and for New and Existing Beef and Dairy)	For CAFOs not subject to effluent guidelines containing ground water controls, if the permit writer determines that the facility is in an area with topographical characteristics that indicate the presence of ground water that is likely to have a direct hydrologic connection to surface water and the pollutants may be discharged at a level which may cause or contribute to an excursion above a State water quality standard, the permit would include special conditions to address potential discharges via ground water. The permittee may provide a hydrologist's report to rebut the presumption that there is likely to be a discharge to surface waters via ground water with a direct hydrologic connection.	Pages 3015-3020 and 3040-3041	Chapter 7, Section C.2.j and E.5.d Pages 130-142, 189-191	§122.23(e) 122.23(j)(6) §122.23(k) (5)
PERMIT SPECIAL CONDITIONS				
NRCS Standard 590	The permit authority must include in the NPDES permit the method to be used for determining the allowable manure application rate for land applying manure.	Page 3039	Chapter 7, Section E.5.a Pages 187	§122.23(j)(1)
Timing and methods of land application.	The permit authority should consider whether it is appropriate to include special conditions to prohibit land application of manure practices that do not serve an agricultural purpose, such as applying to frozen, snow covered, or saturated ground.	Pages 3039-3040	Chapter 7, Section E.5.b Pages 187-188	§122.23(k)
Erosion Control	What is the suitability of requiring erosion control as a special condition of an NPDES permit to protect water quality from sediment eroding from fields where CAFO manure is applied to crops? Which method would be the most cost-efficient? What are some costs and benefits of controlling erosion? Should erosion control be a required component of PNPs? Submit data on the costs and benefits of controlling erosion and whether erosion control practices should be a required component of PNPs.	Page 3041	Chapter 7 Section E.5.f Page 192	
"Chronic Rainfall."	Is additional regulatory language needed to clarify when a discharge is considered to be caused by "chronic rainfall?"	Pages 3041-3042	Chapter 7 Section E.5.g Pages 192-194	§412.13(a) (2) §412.37(a)
GENERAL VERSUS INDIVIDUAL PERMITS				
Individual vs. General Permits	Require States to conduct a process to determine whether to adopt certain criteria for requiring individual permits.	Pages 3043-3044	Chapter 7 Section F.2 Pages 196-198	§122.28(b) (3)(i)(G)
Individual Permits	Should a size threshold be established above which individual permits would be required? Should individual permits be required for all new facilities? Should individual permits be required for facilities that meet specific criteria established by State Permitting Authorities? Are the procedures to ensure public participation adequate?	Pages 3043-3044	Chapter 7 Section F.2 Pages 196-198	§122.28(b) (3)(i)(G)

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NPDES PERMIT APPLICATION; PUBLIC NOTIFICATION				
NOI	Amend the information required in the Notice of Intent for coverage under a general permit.	Pages 3042 - 3043	Chapter 7 Section F.1 Pages 194 - 196	§122.28
NPDES Permit Application Form 2B	Amend the individual permit application form 2B for CAFOs and Aquatic Animal Production Facilities in order to reflect the proposed revisions.	Pages 3045-3050	Chapter 7 Section F.4 Pages 201-206	§122.21(i)(1)
PNP Notification and Fact Sheet	CAFO operator must submit notice to permit authority that their Permit Nutrient Plans have been developed or amended	Page 3037	Chapter 7 Section E.3 Pages 180-181	§122.23(j)(3)
Quarterly Public Notices	Permit authority must issue quarterly public notices of receipts of: <ul style="list-style-type: none"> • Notices of Intent received for coverage under general NPDES permits • PNP Notifications and Fact Sheets 	Pages 3042 - 3043	Chapter 7 Section F.1 Pages 194 - 196	§122.23(l)(1) & (2)
APPLICABILITY OF EFFLUENT GUIDELINE				
General Applicability of Revised Effluent Guidelines (See also “Defining AFOs and CAFOs” for Two-tier Structure and Three-tier Structure)	Applies to any operations in the beef, dairy, swine, veal, and poultry subcategories that are defined as a CAFO under either the two-tier or three-tier structure. Applies to heifer operations and swine nurseries. Not revising the effluent guidelines or their applicability for the horse, duck, sheep, and lamb subcategories; the existing ELG requirements still apply to these subcategories, applicability will remain at: horses: 500. ducks: 5,000. Sheep and lambs: 10,000.	Pages 3050-3051	Chapter 8, Section B.1, Page 206-209	§412.30 §412.40 §412.10 §412.20
EFFLUENT GUIDELINE PERFORMANCE STANDARDS				
ELEMENTS OF ALL TECHNOLOGY OPTIONS CONSIDERED				
Inspection, Sampling and Record-keeping Requirements	Test and calibrate all manure application equipment annually; sample manure and have it analyzed for nutrient content at least once annually; sample soils and analyze for phosphorus once every three years Weekly inspections to ensure that any storm water diversions at the animal confinement and manure storage areas are free from debris and weekly inspections of manure storage structures or treatment facilities to ensure structural integrity. Depth markers are required for liquid impoundments (e.g., lagoons, ponds, and tanks). Depth of liquid must be recorded during each week’s inspection. The permit authority must be notified when the depth of manure and wastewater exceeds the maximum depth and informed of the action that will be taken to address the exceedance. Daily inspections of the automated systems providing water to the animals to ensure they are not leaking or spilling.	Pages 3053-3058; 3037	Chapter 8, Section C.3, Pages 214-226 Chapter 7, Section E.3 Pages 180-181	§412.31; §412.33(c); §412.37; §412.41

Description of Issue	Summary of Proposed Change / Specific Information, Data, and Comments EPA is Requesting	Preamble Reference		Proposed Rule Reference(s)
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Land Application Requirements	All CAFOs are required to develop and implement a PNP (see details of PNP above) Prohibition of manure and wastewater application within 100 feet of surface waters, tile drain inlets, sinkholes, and agricultural drainage wells. Does not require CAFOs to take this crop land out of production.	Pages 3053-3058, 3065, 3066 (Also 3032-3036)	Chapter 8, Section C.3, Pages 214-226 Chapter 7, Section E.1 Pages 170 - 179	§412.31; §412.37; §412.41 §122.23(j)
TECHNOLOGY OPTIONS CONSIDERED		Pages 3053-3061	Chapter 8, Sections 3-5, Pages 214-232	§412.31-33; §412.41-43
<p>Option 1: “Nitrogen Based Option”</p> <ul style="list-style-type: none"> Retain current requirement for zero discharge except for overflow due to rain events from a facility designed, constructed, and operated to contain all process generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event. PNP Requirements <ul style="list-style-type: none"> Manure application Rate Determination Nitrogen requirement of the crop to be grown is based on the agricultural extension or land grant university recommendation for the soil type and crop. Land application, inspection and recordkeeping requirements as described above (see Elements of All Options) with the exception of the soil sampling <p>Option 2: “Phosphorus Based Option”</p> <ul style="list-style-type: none"> Retain current requirement for zero discharge except for overflow due to rain events from a facility designed, constructed, and operated to contain all process generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event. Permit Nutrient Plan (PNP) Requirements: Same as Option 1 with the following additional requirement: <ul style="list-style-type: none"> Soil samples must be collected and analyzed at least once every 3 years from all fields that receive manure. PNP Manure Application Rate Determination: <ul style="list-style-type: none"> Manure application rate for phosphorus determined using Phosphorus Index, Soil Phosphorus Threshold Level, or Soil Test Phosphorus Level as specified by the State, such that application does not exceed the crop and soil requirements for nutrients. Each authorized state permit authority must adopt one of the three methods for determining the manure application rate in consultation with the State Conservationist. CAFOs are required to develop their PNP based on the state’s method for establishing the application rate. Manure application must be based on the crop removal rate for phosphorus in locations where soil concentrations alone or in combination with other factors indicate that there is an increased likelihood that phosphorus will leave the field and contribute pollutants to nearby surface water and groundwater. When concentrations for a given threshold of phosphorus is exceeded, manure application is prohibited. <p>Option 3: “Groundwater Option” (PROPOSED FOR NEW AND EXISTING BEEF AND DAIRY OPERATIONS; AND FOR NEW SWINE, POULTRY AND VEAL FACILITIES (IN COMBINATION WITH OPTION 5))</p> <ul style="list-style-type: none"> Includes all the requirements for Option 2 Requires that all operations perform an assessment to determine whether the ground water beneath the feedlot and manure storage area has a direct hydrological connection to surface water. If a link is established, the facility must monitor ground water up gradient and down gradient of the production area at a minimum frequency of twice per year to ensure that they are achieving zero discharge to ground water. 				

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<p>Option 4: "Surface Water Monitoring Option"</p> <ul style="list-style-type: none"> Includes all the requirements for Option 3 Requires sampling of surface waters adjacent to feedlots and/or land under control of the feedlot to which manure is applied. CAFOs must sample surface water both upstream and downstream from the feedlot and land application areas following a one half inch rain fall (not to exceed 12 sample events per year). Analyze the samples for concentrations of nitrogen, phosphorus and total suspended solids (TSS). <p>Option 5: "Zero Discharge Option" (PROPOSED FOR NEW AND EXISTING SWINE, VEAL, AND POULTRY FACILITIES (IN COMBINATION WITH OPTION 3, FOR NEW FACILITIES))</p> <ul style="list-style-type: none"> Includes the requirements established by Option 2 Establishes a zero discharge requirement from the production area that does not allow for an overflow under any circumstances. <p>Option 6 "Digester Option"</p> <ul style="list-style-type: none"> Includes the requirements of Option 2, and requires that large hog (>5,000 pigs weighing over 55 pounds and >20,000 pigs weighing less than 55 pounds) and dairy operations (with >1,400 mature dairy cows) install and implement enclosed anaerobic digestion to treat their manure and use the captured methane gas for energy or heat generation. <p>Option 7: "Frozen Ground Option"</p> <ul style="list-style-type: none"> Includes the requirements of Option 2 Prohibits manure application to frozen, snow covered, or saturated ground. CAFOs must have adequate storage to hold manure for the period of time during which the ground is frozen or saturated. The necessary period of storage ranges from 45 to 270 days depending on the region. 				
<p>Other Options Considered:</p> <p>Pathogens, antibiotics, hormones</p>	<p>No specific requirements for the control of pathogens has been proposed. The proposed options are expected to reduce pathogens to surface waters through the implementation of the zero discharge requirements at the production area, and through the implementation of the PNP at the land application area.</p> <p>What are some approaches to controlling pathogens in manure? EPA specifically requests data relating to pathogen treatment and reductions that are demonstrated to be effective on CAFO waste. EPA also solicits data on management practices applicable to the land application of manure, which may reduce pathogens in runoff</p> <p>What are the direct effects of antibiotic residues and antimicrobial resistance? How does manure management contribute to the problem of antibiotics reaching the environment and contributing to pathogen resistance? EPA also solicits data and information on effective treatment or practices that may be implemented by CAFOs to reduce these releases.</p>			

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New and Existing Beef and Dairy	<p>Option 3 Groundwater Option (see section above for details).</p> <p>Retain current requirement for zero discharge except for overflow due to rain events from a facility designed, constructed, and operated to contain all process generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event.</p> <p>Operations located in areas with ground water that has a direct hydrological connection to surface water are required to achieve achieve zero discharge of pollutants from the production areas to groundwater, such as by installing synthetic material or compacted clay liners or both beneath any liquid manure storage and constructing impervious pads for any dry manure storage areas. This requirement would not apply to the land application areas.</p> <p>The CAFO would not need to install liners or monitor ground water if it demonstrates that there is no direct hydrologic link between the ground water and any surface waters</p> <p>The operator would be required to collect and analyze ground water samples twice per year for total dissolved solids, chlorides, nitrate, ammonia, total coliforms and fecal coliform.</p> <p>EPA is requesting comment on the economic analysis of how many facilities would experience financial stress and on the determination that Option 3 is economically achievable for the beef and dairy sectors.</p> <p>If limitations were set for pathogens, composting technology would likely become a basis for achieving limits. Please comment on composting and its application to dry beef and dairy manure.</p>	<p>Pages 3058, 3061-3065</p> <p>Pages 3066-3070</p>	<p>Chapter 8, Section C.6, Pages 233-237</p> <p>Chapter 8, Section C.7, Pages 244- 252</p>	<p>§412.33</p> <p>§412.35</p>
	New and Existing Immature Dairy Cows (Heifers)	<p>The effluent guidelines would apply to operations with heifers that are confined apart from the dairy, at either stand alone heifer operations or at cattle feedlots.</p> <p>Applicability threshold under three-tier structure would be 1,000 heifers (1,000 AU) and /300 heifers (300 AU); under two-tier structure at 500 AU the threshold would be 500 heifers.</p> <p>Proposing same effluent guideline as for Beef and Dairy (Option 3: Groundwater Option)</p>	<p>Page 3051</p>	<p>Chapter 8, Section B.1, Page 209</p>

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PROPOSED REQUIREMENTS FOR BEEF AND DAIRY				
New Sources	<p>Please comment on:</p> <ul style="list-style-type: none"> the approach used to estimate the costs for new dairies to comply with a zero discharge requirement (Option 8), and on aspects such as: converting from flush systems to underpit manure storage; types of housing for calves and heifers; and whether the potential for uncontrollable amounts of precipitation runoff have been sufficiently eliminated (including from silage). a regulatory scenario that would establish a zero discharge requirement for manure and process wastewater from barns (housing either mature or immature dairy cattle) and the milking parlor, but would maintain the current allowance for overflow of runoff from dry lot areas. the usefulness of applying stabilization or treatment standards to liquid and slurry manures prior to land application. Appropriate measurement parameters (such as volatile solids, BOD, COD, and indicator organism reduction(s)) to establish stability or treatment levels. the technical feasibility of confining mature and/or immature dairy cattle in barns at all times. 			
PROPOSED REQUIREMENTS FOR THE SWINE, VEAL, AND POULTRY				
Existing Swine, Veal, and Poultry	<p>Proposed Option 5: zero discharge from the production area with no allowance for overflow in the event of a 25-year, 24-hour storm (see above for details)</p> <p>Please comment on whether or not to retain the 25-year, 24-hour storm overflow allowance as a design standard (Option 2) for the swine, veal and poultry subcategories.</p> <p>Please comment on the potential use of remote liquid level monitoring at swine or veal operations, which could provide advanced notification that liquid levels are reaching a critical point, and corrective actions could then be taken as an alternate method for achieving the zero discharge standard.</p>	<p>Pages 3063-3065</p> <p>Pages 3066-3069</p>	<p>Chapter 8, Section C.6, Pages 237-241</p> <p>Chapter 8, Section C.7, Pages 244- 250</p>	<p>§412.43</p> <p>§412.45</p>
New Swine, Veal and Poultry	<p>Option 3 (Groundwater Option) plus Option 5 (Zero Discharge Option)</p> <p>Facility must have zero discharge from the production area with no allowance for overflow in the event of a 25-year, 24-hour storm.</p> <p>Operations located in areas with groundwater that have a direct hydrological connection to surface water must achieve zero discharge from the production areas to groundwater, such as by installing synthetic material or compacted clay liners or both beneath any liquid manure storage areas and constructing impervious pads for any dry manure storage areas. This requirement would not apply to land application.</p> <p>The CAFO would not need to install liners or monitor ground water if it demonstrates that there is no direct hydrologic link between the ground water and any surface waters.</p> <p>The operator would be required to collect and analyze ground water samples twice per year for total dissolved solids, chlorides, nitrate, ammonia, total coliforms and fecal coliform.</p>	<p>Pages 3066-3069</p>	<p>Chapter 8, Section C.7, Pages 244- 250</p>	<p>§412.45</p>

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Include all poultry operations (see also NPDES Newly Affected Sectors)	The effluent guidelines would apply to poultry operations regardless of the type of watering system or manure handling system used.	Pages 3010-3012; 3051	Chapter 7, Section C.2.f, Pages 120-124 Chapter 8, Section B.1 Pages 208-209	§122.23(a)(3); and §412.40
Swine Nurseries (See also NPDES Newly Affected Sectors)	Proposing that the effluent guidelines apply to: <ul style="list-style-type: none"> • Under the two-tier structure: operations that confine at least 5,000 immature pigs (pigs weighing 55 pounds or less) • Under the three-tier structure: operations that confine between 3,000 and 10,000 immature pigs that meet the conditions which define them as CAFOs, and all operations with more than 10,000 immature pigs. 	Pages 3012-3013; 3051	Chapter 7, Section C.2.g, Pages 124-126 Chapter 8, Section B.1 Page 209	§122.23(a)(3); and §412.40
NEW SOURCE PERFORMANCE STANDARDS (NSPS)		Pages 3066-3069	Chapter 8, Section C.7, Pages 244-250	§412.35 and §412.45
Definition of New Sources (New Facilities)	A source would be a new source if it commences construction after the effective date of the final rule. An operation is considered a new source if any of the following three criteria apply: <ul style="list-style-type: none"> • Facility constructed at a site at which no other source is located. • New construction at the facility “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.” • The source constructs a production area that is substantially independent of an existing source at the same site. 			
Facility Expansion	Facility expansion, measured as an increase in animal production, would not be a separate basis for causing an operation to be defined as a new source. However, an expanding facility would be a new source if it otherwise meets any of the criteria in 412.1(g) (see previous box)			
Ten-year Protection Period	Following promulgation of the final rule that revises Part 412, the 1974 NSPS would continue to apply for a limited period of time to certain new sources and new dischargers.			