

## 2008 FINAL FEDERAL CAFO RULE FREQUENTLY ASKED QUESTIONS

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### **Q #1: What is an “AFO”?**

**A #1:** The term “animal feeding operation” (AFO) is defined as a “lot or 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 crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” An operation must be defined as an AFO before it can be defined as a concentrated animal feeding operation (CAFO). Whether an AFO is a CAFO depends primarily whether there is a discharge of livestock waste to a river, lake or stream.

### **Q #2: What is a Large CAFO?**

**A #2:** An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

- 700 mature dairy cows, whether milked or dry;
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- 2,500 swine, each weighing 55 pounds or more;
- 10,000 swine, each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- 5,000 ducks (if the AFO uses a liquid manure handling system)

### **Q #3: What is a Medium CAFO?**

**A #3:** The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed below and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

1. The type and number of animals that it stables or confines falls within any of the following ranges:
  - 200 to 699 mature dairy cows, whether milked or dry;
  - 300 to 999 veal calves;
  - 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
  - 750 to 2,499 swine each weighing 55 pounds or more;
  - 3,000 to 9,999 swine each weighing less than 55 pounds;
  - 150 to 499 horses;
  - 3,000 to 9,999 sheep or lambs;
  - 16,500 to 54,999 turkeys;
  - 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
  - 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
  - 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
  - 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
  - 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system);

2. **AND** either one of the following conditions is met:
  - Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; **OR**
  - Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

**Q #4. Is there still a requirement for CAFOs to seek permit coverage?**

**A #4.** Yes. Under the final federal rule, effective December 20, 2008, CAFOs that discharge or propose to discharge have a duty to apply for NPDES permits. Existing CAFOs must apply on or before February 27, 2009.

**Q #5: How will CAFO owners/operators know whether or not they need to apply for an NPDES permit?**

**A #5:** Under this final federal rule, any CAFO that discharges or proposes to discharge is required to seek permit coverage from the Illinois EPA. U.S. EPA is clarifying that a CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. This means that the evaluation of whether the CAFO discharges or will discharge is based on a factual objective assessment. The CAFO's decision as to whether to apply for a permit involves an objective assessment of conditions at the operation. CAFOs should consider seeking advice from third-party professionals. Illinois EPA encourages CAFOs to consider the set of criteria (see the three criteria in Q #7, below, regarding certification) for no discharge certification when deciding whether to seek permit coverage.

**Q #6: What is meant by a voluntary no discharge certification?**

**A #6:** A no discharge certification documents the CAFO operator's basis for making an informed decision not to seek permit coverage because the CAFO does not discharge or propose to discharge. A CAFO that certifies in accordance with the requirements of the federal final rule is properly certified so long as the CAFO maintains its eligibility.

**Q #7: What are the eligibility requirements for certification?**

**A #7:** Eligibility for certification means meeting the following criteria at the time certification is established and continuing to meet the eligibility criteria throughout the period of certification as new information or situations arise. The three criteria are:

1. An objective evaluation which shows that the CAFO's production area is designed, constructed, operated, and maintained so as not to discharge;
2. Development and implementation of a nutrient management plan (NMP) to ensure no discharge (other than agricultural stormwater discharges) that addresses operation and maintenance practices for the production area and land application areas under the control of the CAFO; and
3. Maintenance of the documentation required for certification either on site or where it can be made readily available to the permitting authority upon request.

**Q #8: Is a no discharge certification subject to review by Illinois EPA or the public?**

**A #8:** A CAFO's no discharge certification is not subject to review by the Illinois EPA in order for it to become effective and the Illinois EPA is not required to make the certification available to the public for comment.

**Q #9: Can Medium CAFOs seek a no discharge certification?**

**A #9:** No. All Medium CAFOs, by definition "discharge or propose to discharge" by way of a man-made device or other means (see the definition of a Medium CAFO in Q #3, above) and are required to seek permit coverage.

**Q #10: Can Large CAFOs seek a no discharge certification?**

**A #10:** A Large CAFO’s decision as to whether to apply for a permit should be based on an objective assessment of conditions at that operation in order to meet the criteria. If the CAFO is designed, constructed, operated, or maintained in a manner such that it cannot or will not discharge, then the Large CAFO is not required to seek permit coverage and may want to submit a voluntary no discharge certification.

**Q #11: Why should an unpermitted CAFO certify if it is not going to discharge?**

**A #11:** By following the elements of the rigorous evaluation prescribed in the certification requirements and by conducting the necessary operation and maintenance to achieve no discharge, the operator will be able to demonstrate that the CAFO is designed, constructed, operated, and maintained such that a discharge will not occur. In the event of a discharge from a properly certified CAFO, the CAFO will not be liable for failure to seek permit coverage. The CAFO, however, remains liable for discharging without an NPDES permit.

**Q #12: What is the benefit to the CAFO owner/operator of having an NPDES permit?**

**A #12:** Compliance with the permit demonstrates compliance with the federal Clean Water Act, and therefore acts as a shield against federal or state enforcement for not having a permit if a discharge occurs, or against citizen suits under the federal Clean Water Act.

**Q #13: Will a CAFO whose only discharge is agricultural stormwater need to apply for an NPDES permit?**

**A #13:** No. However, the CAFO must implement site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients.

**Q #14: If a CAFO previously discharged and has permanently fixed the cause of the discharge, does it still need to apply for a permit?**

**A #14:** A CAFO that has had a discharge in the past but has taken the steps necessary to *permanently* fix the cause of the discharge and is designed, constructed, operated, and maintained such that a discharge will not occur is not required to apply for a permit.

**Q #15: If a properly certified CAFO has more than one discharge from the same cause, can it recertify?**

**A #15:** No. In the event that a certified CAFO does discharge, the rule limits the ability of that CAFO to recertify. Specifically, a certified CAFO that discharges twice from the same cause would not be able to recertify again. U.S. EPA, in writing the federal CAFO rule, believes the benefits of certifying should not be available to CAFOs with a recurring discharge.

**Q #16: Is the entire NMP incorporated into the permit?**

**A #16:** The Illinois EPA must incorporate the “terms” of the NMP into the permit, which are the information, protocols, best management practices (BMPs) and other conditions, in the NMP. When incorporating the terms, the Illinois EPA may attach the entire NMP to the permit or incorporate the terms of the NMP by reference.

**Q #17: With respect to land application, what are the two approaches in the final rule for expressing rates of application?**

**A #17:** A CAFO may use one of two approaches in its NMP to identify annual maximum rates of application of manure, litter, and process wastewater by field and crop for each year of permit coverage:

1. The “*linear approach*” expresses field-specific maximum rates of application in terms of the amount of nitrogen and phosphorus from manure, litter, and process wastewater allowed to be applied.
2. The “*narrative rate approach*” expresses the field-specific rate of application as a narrative rate prescribing how to calculate the amount of manure, litter, and process wastewater allowed to be applied.

**Q #18: Do either of the two approaches address the concern that operators often change their course of action within a 5-year permit term and do not want to have to revise their permits every time a need to change land application plans occurs?**

**A #18:** Yes. The narrative rate approach allows CAFO operators to change their crop rotation, form and source of manure, litter, and process wastewater, as well as the timing and method of application. The narrative rate approach allows the use of “real time” data for determining rates of application and provides the most flexible approach for farmers.

**Q #19: What happens if the CAFO operator wants to change its NMP after the permit has been issued?**

**A #19:** The CAFO operator is required to submit the revised NMP to the Illinois EPA. Not every change to the NMP is a change to a “term” of the NMP, so a permit modification may not be necessary. If the Illinois EPA determines that the changes to the NMP are changes to permit requirements, there is a two-tier process for modifying the permit:

1. Non-substantial changes will be made without the need for public review and comment and will later be reflected in the annual report submitted to the Illinois EPA and that is then available to the public.
2. Substantial changes will be subject to public notice and comment and an opportunity for public hearing before the permit is modified by the Illinois EPA.

**Q #20: What constitutes a “substantial change” to the NMP and requires a permit modification?**

**A #20:** The final federal rule includes a list of changes to the NMP that constitute a substantial change to the terms of a CAFO’s NMP. Examples of such substantial changes include (1) addition of new land application areas not previously included in the CAFO’s NMP, and (2) addition of any crop not included in the terms of the CAFO’s NMP and corresponding field-specific rates of application.

**Q #21: If a CAFO already has coverage under a permit, will the operator need to submit a new application by February 27, 2009?**

**A #21:** No. CAFOs that already have NPDES permit coverage must comply with the conditions of their existing permits so long as those permits remain in effect. Upon expiration of existing individual or general permits, U.S. EPA expects the Illinois EPA to issue new individual or general permits that will then need to reflect the requirements of this rule. Illinois EPA may request NMPs at any time based on the 2003 rule, and newly permitted CAFOs will need to submit an NMP when seeking permit coverage.

**Q #22: What are the compliance deadlines for newly defined CAFOs?**

**A #22:** The compliance deadline to apply for NPDES permits for operations that were newly defined as CAFOs by the 2003 rule is February 27, 2009.

**Q #23: How will NMPs be made available for public review and how will the Illinois EPA respond to comments?**

**A #23:** The final rule requires the Illinois EPA to make the NMP and the application publicly available for comment.

**Q #24: I do not have a CNMP, but I feel I need to either self-certify or apply for a permit? What information do I need to provide IEPA by February 27?**

**A #24:** If you have a facility that can or does have a discharge, then an application needs to be filed by February 27, 2009, the deadline in the federal CAFO rule. Anyone who does not have a facility that does or could result in a discharge due to the type of construction, operation and management, can voluntarily self-certify that they do not need an NPDES permit.

**Q #25: I have a CNMP in the works, but will not have it completed until May or June and I want to self-certify. What information does Illinois EPA need by February 27?**

**A #25:** Self-certification could happen at any time but sooner would be better given that Agency staff may want to review the justification for the “no discharge” presumption.

**Q #26: I have a CNMP in the works, but will not have it completed until May or June and I want to apply for a CAFO Permit. What information does Illinois EPA need by February 27?**

**Q #26:** All applications for new facilities must be submitted 180 days prior to starting operations. In the case of CAFOs, starting operations means the production, handling and storage of livestock waste. You need to apply ASAP.

**Q #27: Are there forms available for self-certification, or for permits?**

**Q #27:** There are no forms for self-certification, but the operator should follow the instructions for filing published in the federal CAFO rule. There are specific application forms for the CAFO NPDES permit (federal forms 1 General and 2B), as well as other documents that the Illinois EPA requires, e.g., NMPs, stormwater plans, and emergency plans.

**Q #28: Will I be inspected after I submit a self-certification declaration?**

**Q #28:** No decision has been made as to whether filing for self-certification will automatically result in an Illinois EPA inspection.

**Q #29: Will a CNMP provide all the information needed for self-certification or for a permit?**

**A #29:** No. As indicated above, there are specific requirements for both the permit application and the self-certification process.

**Q #30: Is Illinois EPA scheduling any meetings or training in respect to the new federal CAFO Rule?**

**A #30:** Illinois EPA will be providing information at the Illinois Farm Bureau's 2009 Government Affairs Leadership Conference in February and at the Illinois Livestock Manure Management Conference in March (two locations and dates). Ongoing Certified Livestock Managers Training courses offered by the Illinois Extension Service also contains information on the CAFO program.