ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 122

[EPA–HQ–OW–2011–0188; FRL–9481–7]

RIN 2040–AF22

National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA co-proposes two options for obtaining basic information from CAFOs to support EPA in meeting its water quality protection responsibilities under the Clean Water Act (CWA). The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA. Under one co-proposed option, EPA would use the authority of CWA section 308 to obtain certain identifying information from all CAFOs. Under the other option, EPA could use the authority of CWA section 308 to obtain this information from CAFOs that fall within areas that have been identified as having water quality concerns likely associated with CAFOs (focus watersheds). However, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to obtain identifying information about CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. This information would allow EPA to achieve more efficiently and effectively the water quality protection goals and objectives of the CWA. EPA also requests comment on three alternative approaches to gather information about CAFOs, which could be used to achieve the objectives of this proposed action in protecting water quality.

DATES: Comments on this proposed action must be received on or before December 20, 2011. EPA plans to hold two Webinars in November, 2011 to provide an overview of, and answer questions about, the proposed rule requirements.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0188, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2011–0188.
- *Fax:* (202) 566–9744.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA–HQ–OW–2011–0188, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2011–0188. Such deliveries are accepted only during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Webinar: EPA plans to hold two Webinars in November, 2011 to provide an overview of, and answer questions about, the proposed rule requirements. Information about how to register and access the Webinar can be found on EPA's Web site at *http://cfpub.epa.gov/npdes/afo/aforule.cfm* no later than October 24, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact, Becky Mitschele, Water Permits Division, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6418; fax number (202) 564–6384; e-mail address: *mitschele.becky@epa.gov.*

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I. General Information

A. Does this action apply to me?

This proposed rulemaking would apply to concentrated animal feeding operations (CAFOs) as defined in the National Pollutant Discharge Elimination System (NPDES) regulations at 40 CFR 122.23(b)(2), pursuant to section 502(14) of the Clean Water Act (''CWA''). An animal feeding operation (AFO) is a CAFO if it meets the regulatory definition of a Large or Medium CAFO (40 CFR 122.23 (b)(4) or (6)) or has been designated as a CAFO (40 CFR 122.23 (c)) by the NPDES permitting authority or by EPA. The following table provides the size thresholds for Large, Medium and Small CAFOs in each animal sector.

TABLE 1—SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium [1]	Small [2]
Cattle or cow/calf pairs	1,000 or more	300–999	Less than 300.
Mature diary cattle	700 or more	200–699	Less than 200.
Veal calves	1,000 or more	300–999	Less than 300.
Swine (weighing over 55 pounds)	2,500 or more	750–2,499	Less than 750.
Swine (weighing less than 55 pounds)	10,000 or more	3,000–9,999	Less than 3,000.
Horses	500 or more	150–499	Less than 150.
Sheep or lambs	10,000 or more	3,000–9,999	Less than 3,000.
Turkeys	55,000 or more	16,500–54,999	Less than 16,500.
Laying hens or broilers (liquid manure handling system).	30,000 or more	9,000–29,999	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system).	125,000 or more	37,500–124,999	Less than 37,500.
Laying hens (other than a liquid manure handling system).	82,000 or more	25,000–81,999	Less than 25,000.
Ducks (other than a liquid manure handling system).	30,000 or more	10,000–29,999	Less than 10,000.
Ducks (liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500.

Notes:
[1] May be designated or must meet one of the following two criteria to be defined as a medium CAFO: (A) Discharges pollutants through a man-made device; or (B) directly discharges pollutants into waters of the United States which pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6).
[2] Not a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis. 40 CFR 122.23(b)(9).

That table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rulemaking. The table lists the types of entities that EPA is currently aware of that could be regulated by this action. Other types of entities not listed in the table could also be CAFOs. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

To determine whether your operation is a CAFO, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency might ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

2. Submitting Comments to EPA

Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

3. Submitting Confidential Business Information

Do not submit CBI information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part of or all the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Under what legal authority is this proposed action issued?

Today's proposed rulemaking is issued under the authority of sections 301, 304, 305, 308, 309, 402, 501, and 504 of the CWA, 33 U.S.C. 1311, 1314, 1315, 1318, 1319, 1342, and 1361.

II. Background

A. The Clean Water Act

Congress passed the Federal Water Pollution Control Act Amendments of 1972, (''Clean Water Act'' or ''CWA'') to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters'' 33 U.S.C. 1251(a). Section 301(a) of the CWA prohibits the ''discharge of any pollutant by any person'' except in compliance with the Act. 33 U.S.C. 1311(a). Among the core provisions, the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program to authorize and regulate the discharge of pollutants from point sources to waters of the United States. 33 U.S.C. 1342. Section 502(14) of the CWA includes the term ''CAFO'' in the definition of ''point source;'' specifically, the term ''point source'' is defined as ''any discernible, confined and discrete conveyance, including but not limited to any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged * * *'' 33 U.S.C. 1362(14). Section 501 authorizes the Administrator to promulgate rules to carry out the Administrator's functions under the CWA. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR parts 122–124.

Section 308 of the CWA authorizes EPA to collect information from the ''owner or operator of any point source'' for the following purpose:

> To carry out the objectives of [the CWA], *including but not limited* to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under [the CWA]; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under [§ 308 of the CWA]; or (4) carrying out [sections 305, 311, 402, 404 (relating to state permit programs), 405 and 504 of the CWA]. * * * 33 U.S.C. 1318(a).

Section 308(a)(3)(A) of the Act provides that, in furtherance of the stated objectives, EPA may require owners or operators of point sources to establish and maintain records; make reports; install, use, and maintain monitoring equipment; sample effluent; and provide such other information as EPA may reasonably require to carry out the objectives of the Act. 33 U.S.C. 1318(a). Section 309 of the CWA authorizes EPA to assess penalties for violations of section 308 of the CWA. 33 U.S.C. 1319.

B. Environmental and Human Health Impacts of CAFOs

Despite more than 35 years of regulating CAFOs, reports of water quality impacts from large animal feeding operations persist. At the time of the 2003 CAFO rulemaking, the Agency received estimates from USDA indicating that livestock operations where animals are confined produce more than 300 million tons of manure annually. 68 FR 7180. On the basis of that figure, EPA estimated that animals raised in confinement generate more than three times the amount of raw waste than the amount of waste that is generated by humans in the United States. *Id.* For the 2003 CAFO rulemaking, EPA estimated that CAFOs collectively produce 60 percent of all manure generated by farms that confine animals. *Id.*

Pollutants from manure, litter, and process wastewater can affect human health and the environment. Whether from poultry, cattle, or swine, the manure, litter and process wastewater contains substantial amounts of nutrients (nitrogen, phosphorus, and

potassium), pathogens, heavy metals, and smaller amounts of other elements and pharmaceuticals. This manure, litter, and process wastewater commonly is applied to crops associated with CAFO operations or transferred off site. Where over-applied or applied before precipitation events, excess nutrients can flow off of agricultural fields, causing harmful aquatic plant growth, commonly referred to as ''algal blooms,'' which can cause fish kills and contribute to ''dead zones.'' In addition, algal blooms often release toxins that are harmful to human health.

To improve the Agency's ability to estimate ecological and human risk for chemical and microbial contaminants that enter water resources, EPA is continuing research to evaluate the effect of CAFOs on surface and ground water quality. Effective control of pathogens originating in livestock manure or poultry litter could improve human and ecosystem health through reductions in waterborne disease organisms and chemicals. More than 40 diseases found in manure can be transferred to humans, including causative agents for Salmonellosis, Tuberculosis, Leptospirosis, infantile diarrheal disease, Q-Fever, Trichinosis, and Giardiasis. Exposure to waterborne pathogen contaminants can result from both recreational use of affected surface water (accidental ingestion of contaminated water and dermal contact during swimming) and from ingestion of drinking water derived from either contaminated surface water or groundwater. JoAnn Burkholder, *et al.,* Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality, 115 *Env't Health Perspectives* 310 (2007).

Heavy metals such as arsenic, cadmium, iron, lead, manganese, and nickel are commonly found in CAFO manure, litter, and process wastewater. Some heavy metals, such as copper and zinc, are essential nutrients for animal growth—especially for cattle, swine and poultry. However, farm animals excrete excess heavy metals in their manure, which in turn is spread as fertilizer, causing potential runoff problems. *U.S. EPA, Risk Assessment Evaluation for Concentrated Animal Feeding Operations,* EPA–600–R–04–042 (2004); and U.S. EPA, *Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operation,* EPA–821–R–032–001 (2002). EPA reported approximately 80 to 90 percent of the copper, zinc, and arsenic consumed is excreted. Possible adverse effects reported in the literature include the risk of phytotoxicity, groundwater contamination and deposition in river sediment that may eventually release to pollute the water. *U.S. EPA, Risk Assessment Evaluation for Concentrated Animal Feeding Operations,* EPA–600–R–04–042 (2004), pp. 43–46. Repeated application of manure above agronomic rates could result in exceedances of the cumulative metal loading rates established in EPA regulations at 40 CFR part 503, thereby potentially impacting human health and the environment. *U.S. EPA, Preliminary Data Summary Feedlots Point Source Category Study,* EPA–821–R–99–002 (1999), pp. 26–27. The health hazards that may result from chronic exposure to heavy metals at certain concentrations can include kidney problems from cadmium, Public Health Statement Cadmium (CAS #7440–43–9), available at *http://www.atsdr.cdc.gov/PHS/PHS.asp?id=46&tid=15;* nervous system disorders, and neurodevelopmental problems (IQ deficits) from lead, *Lead and Compounds (inorganic)* (CASRN 7439–92–1), available at *http://www.epa.gov/iris/subst/0277.htm;* and cardiovascular effects, diabetes, respiratory effects, nervous system problems, and reproductive effects and cancers from multiple tissues from arsenic, NRC *Arsenic in Drinking Water,* National Academy Press (2001), available at *http://www.nap.edu/openbook/0309076293/html/R1.html.*

To promote growth and to control the spread of disease, antibiotics, growth hormones and other pharmaceutical agents are often added to feed rations or water, directly injected into animals, or administered via ear implants or tags. The annual amount of antimicrobial drugs sold and distributed in 2009 for use in food animals was 13.3 million kilograms or 28.8 million pounds. *U.S. Food and Drug Administration, 2009 Summary Report on Antimicrobials Sold or Distributed for Use in Food-producing Animals* (2010). This was a significant increase in the annual use from 8.8 million kilograms or approximately 18 million pounds reported in 1995. *U.S. Congress, Office of Technology Assessment, Impacts of Antibiotic-Resistant Bacteria,* OTA–H–629 (1995).

Most antibiotics are not metabolized completely and are excreted from the treated animal shortly after medication. As much as 80–90 percent of some administered antibiotics occur as parent compounds in animal wastes. *Scott Bradford et al., Reuse of Concentrated Animal Feeding Operation Wastewater on Agricultural Lands,* 37 *J. Env't Quality* 97 (2008). Synthetic steroid hormones are extensively used as growth promoters for cattle in the United States. *Id.* Steroid hormones are of particular concern because there is laboratory evidence that very low concentrations of these chemicals can adversely affect the reproduction of fish and other aquatic species. *Id.* The dosing of livestock animals with antimicrobial agents for growth promotion and prophylaxis may promote antimicrobial resistance in pathogens, increasing the severity of disease and limiting treatment options for sickened individuals. *U.S. EPA, Detecting and Mitigating the Environmental Impact of Fecal Pathogens Originating from Confined Animal Feeding Operations: Review,* EPA600–R–06–021 (2005).

In the most recent National Water Quality Inventory, 29 states specifically identified animal feeding operations as contributing to water quality impairment. *U.S. EPA, National Water Quality Inventory: Report to Congress*—2004 Reporting Cycle, January 2009. EPA–841–R–08–001. The findings of this report are corroborated by numerous reports and studies conducted by government and independent researchers that identify the animal livestock industry as an important contributor of surface water pollution. For example, the GAO found in its 2008 Report to Congressional Requesters that since 2002, 68 studies had been completed that examined air and water quality issues associated with animal feeding operations. Fifteen of those have directly linked air and water pollutants from animal waste to specific health or environmental impacts. GAO–08–944 (2008). For further discussion of this Report, see the section *United States Government Accountability Office Report* of this preamble.

Water quality impacts from CAFOs may be due, in part, to inadequate compliance with existing regulations or to limitations in CAFO permitting programs. EPA believes that basic information about CAFOs would assist the Agency in addressing those problems. Complete and accurate information allows governments, regulated communities, interest groups and the public to make more informed decisions regarding ways to protect the environment.

C. United States Government Accountability Office Report

In September 2008, the United States Government Accountability Office (GAO) issued a report to congressional requesters, recommending that EPA ''should complete the Agency's effort to develop a national inventory of

permitted CAFOs and incorporate appropriate internal controls to ensure the quality of the data.'' *U.S. Gov't Accountability Office, Concentrated Animal Feeding Operations—EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality*, GAO–08–944 5 (2008), page 48. EPA officials stated that ''EPA does not have data on the number and location of CAFOs nationwide and the amount of discharges from these operations. Without this information and data on how pollutant concentrations vary by type of operation, it is difficult to estimate the actual discharges occurring and to assess the extent to which CAFOs may be contributing to water pollution.'', *Id.* page 31. The report also stated that ''despite its long-term regulation of CAFOs, * * * EPA has neither the information it needs to assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act.'' *Id.* page 48.

The GAO report contains a review of EPA's data on permitted CAFOs, and the GAO determined that data obtained from state agencies ''are inconsistent and inaccurate and do not provide EPA with the reliable data it needs to identify and inspect permitted CAFOs nationwide.'' *Id.* page 17. EPA had received its data from EPA Regional offices and from the states relating to permits issued to CAFOs between 2003 and 2008. GAO interviewed officials in 47 states to determine the accuracy and reliability of the data EPA collected. On the basis of that information, GAO determined that EPA's data was not reliable and could not be used to identify trends in permitted CAFOs over the five-year period. In addition to reviewing EPA's data on CAFOs, the GAO also reviewed data from other Federal agencies. GAO concluded that no Federal agency currently collects accurate and consistent data on the number, size, and location of CAFOs as defined by the CAFO regulations. *Id.* page 4. EPA responded to the draft GAO report stating that the Agency would develop a comprehensive national inventory of CAFOs. *Id.* page 76.

D. United States Office of Management and Budget Report

More recently, the Office of Management and Budget (OMB) issued a report to Congress that describes the value of data collection efforts that minimize burden on reporting entities and have practical utility. In this report, OMB identifies the benefits and costs of Federal regulations and unfunded mandates on states, local and tribal entities. *U.S. Office of Management and Budget, 2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2001). This report stressed the importance of ensuring that regulations are ''evidence-based and data-driven and hence based on the best available work in both science and social science.'' *Id.* page 5. Specifically, the report briefly outlines steps and best practices that are consistent with OMB's recent recommendations for ''flexible, empirically informed approaches; increased openness about costs and benefits; and the use of disclosure as a regulatory tool.'' *Id.* page 5. EPA believes that today's co-proposed rulemaking would be consistent with OMB's recommendations by promoting transparency and providing a comprehensive body of data that would serve as a basis for sound decision-making about EPA's CAFO program.

E. Litigation Regarding the 2008 Revised NPDES Permit Regulation and Effluent Limitations Guidelines for CAFOs in Response to the Waterkeeper Decision

EPA's regulation of discharges from CAFOs dates to the 1970s. EPA initially issued national effluent limitations guidelines and standards (ELGs) for feedlots, on February 14, 1974 and NPDES CAFO regulations on March 18, 1976. 39 FR 5704; 41 FR 11458. In February 2003, EPA issued revised CWA permitting requirements, ELGs and new source performance standards for CAFOs. 68 FR 7176. The 2003 CAFO rule required the owners or operators of all CAFOs to seek coverage under an NPDES permit, unless they demonstrated no potential to discharge. With implementation of the 2003 rule, EPA and state permitting authorities would have obtained information about the universe of CAFOs. However, both environmental groups and industry challenged the 2003 final rule, and in February 2005, the U.S. Court of Appeals for the Second Circuit issued its decision in *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2d Cir. 2005). Among other things, the court held that EPA does not have authority under the CWA to require CAFOs that have only a potential to discharge to obtain NPDES permits.

In 2008, EPA issued revised regulations in response to the *Waterkeeper* decision. Among other changes, the revised regulations required only those CAFOs that discharge or propose to discharge to obtain an NPDES permit. Subsequently, environmental groups and industry filed petitions for review of the 2008 rule, which were consolidated in the U.S. Court of Appeals for the Fifth Circuit. EPA signed a settlement agreement with the environmental petitioners in which EPA committed to propose a rule, pursuant to CWA section 308, that would require CAFOs to provide certain information to EPA. The settlement agreement provides the context and timeline for this proposed rulemaking.

The settlement agreement commits EPA to propose, by October 14, 2011, a rule under section 308 of the CWA, 33 U.S.C. 1318, to require all owners or operators of CAFOs, whether or not they have NPDES permits, to submit certain information to EPA. EPA agreed to propose a rule requiring CAFOs to submit the information listed below; or, if EPA decides not to include one of the items in the proposal, EPA would identify the item(s), explain why EPA chose not to propose requiring that information and request comment on the excluded items. EPA committed to take final action on the rule by July 13, 2012. The settlement agreement does not commit EPA to the substance of any final action. The settlement agreement expressly states that nothing in the agreement shall be construed to limit or modify the discretion accorded EPA by the CWA or by general principals of administrative law. Nor does the CWA require EPA to collect the information proposed in today's notice.

The items listed in the settlement agreement to be addressed in the proposal include the following:

1. Name and address of the owner and operator;
2. If contract operation, name and address of the integrator;
3. Location (longitude and latitude) of the operation;
4. Type of facility;
5. Number and type(s) of animals;
6. Type and capacity of manure storage;
7. Quantity of manure, process wastewater, and litter generated annually by the CAFO;
8. Whether the CAFO land-applies;
9. Available acreage for land application;
10. If the CAFO land-applies, whether it implements a nutrient management plan for land application;
11. If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e);
12. If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater;
13. Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure; and

14. Whether the CAFO has applied for an NPDES permit

On March 15, 2011, the Fifth Circuit Court of Appeals vacated the requirement in EPA's 2008 CAFO rule that CAFOs that ''propose'' to discharge obtain NPDES permits and held that CAFOs are not liable under the CWA for failing to apply for NPDES permits. *Nat'l Pork Producers Council (NPPC)* v. *EPA,* 635 F.3d 738 (5th Cir. 2011) (herein referred to as *NPCC*). The Fifth Circuit held that there must be an ''actual discharge to trigger the CWA requirement to obtain a permit.'' *NPPC,* 635 F.3d at 751. EPA's authority to collect information under section 308 from ''point sources'' is broader than EPA's authority to require and enforce a requirement to apply for an NPDES permit, as interpreted by *NPPC.* In particular, EPA is authorized under section 308 to collect information from any point source, and point sources are defined to include ''any discernible, confined and discrete conveyance, including * * * any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged.'' 33 U.S.C. 1362(14). Today's proposed rulemaking is therefore not affected by this ruling of the Fifth Circuit Court of Appeals.

In vacating the requirement that CAFOs that propose to discharge apply for an NPDES permit (the ''duty to apply'' provision), the court held that ''there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, EPA's authority is limited to the regulation of CAFOs that discharge.'' *NPPC,* 635 F.3d at 751. The court's holding that EPA may regulate only those CAFOs that discharge is limited to the specific type of regulation at issue before the court: the duty to apply for a permit. Today's notice proposes options for gathering basic information from CAFOs; it does not require them to obtain permits.

EPA proposes to gather information from CAFOs pursuant to its authority in CWA section 308 to collect information. This information-gathering authority is broader than EPA's authority to require permit coverage, which was at issue in *NPPC.* Section 308 authorizes information collection from ''point sources,'' which includes CAFOs that discharge or may discharge. 33 U.S.C 1318(a); 1362(14) (the term ''point source'' is defined as ''any discernible, confined, and discrete conveyance, including * * * any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged * * *''). The plain language of section 308 expressly authorizes information collection for a list of purposes including assistance in developing, implementing, and enforcing effluent limitations or standards, such as the prohibition against discharging without a permit. 33 U.S.C. 1318(a). The information EPA proposes to collect is limited to basic information about CAFOs and would enable EPA, states, and others to determine the number of CAFOs in the United States and where they are located and would assist EPA in developing, implementing, and enforcing the requirements of the Act.

III. This Proposed Action

A. Proposed Action Overview and Objectives

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

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

The six categories listed above represent key activities necessary to ensure that CAFOs are meeting their obligations under the CWA regarding protection of water quality from CAFO discharges and can be carried out most efficiently and effectively when EPA and states have access to facility contacts and other basic information about CAFOs. This information could be used to better protect public health and welfare of communities near CAFOs, including environmental justice for minority, indigenous or low-income communities.

In today's proposed rulemaking, EPA co-proposes two options by which the Agency may achieve today's rule objectives: Option 1 (*Section C.)* would apply to all CAFOs; Option 2 (Section D) would identify focus watersheds where CAFO discharges may be causing water quality concerns and EPA could use its section 308 authority to obtain information from CAFOs in these areas. However, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether requiring CAFOs to provide the information is necessary. Both of these options propose revisions to the NPDES regulations, which would allow EPA to obtain necessary information from CAFOs, including their contact information, location of the CAFO's production area, NPDES permitting status, number, and type of animals, and number of acres available for land application. *Section F. Alternative Approaches to Achieve Rule Objectives* discusses alternative approaches to a regulatory information request for CAFOs that may achieve similar outcomes (*i.e.,* ensuring that CAFOs are complying with their obligations under the CWA).

B. CWA Section 308 Data Collection and EPA's Approach Toward Collecting Facility-Specific Information From CAFOs Through Rulemaking

The proposed rulemaking utilizes EPA's authority under section 308 of the CWA, which authorizes EPA to collect information from point sources when necessary to carry out the objectives of the CWA. Since the 1970s, EPA routinely has used its authority under section 308 of the Act to collect information from large groups of point sources when developing and reviewing ELGs. An ELG survey typically will request industrial sources to provide information such as the type and amount of pollutants discharged, technologies available to treat waste streams, the performance capability of these technologies, and financial data. EPA uses this information to determine the appropriate control requirements and to assess the economic feasibility of such additional controls. As an

example, when reviewing the ELGs applicable to the steam electric industry, EPA determined that the data available at that time did not include all wastewater streams generated by the steam electric industry. To address this deficiency, EPA issued detailed questionnaires to the industry, which required the industry to respond to questions including contact information, facility address, pollutants in wastewater discharges, volume of discharges, and types and performance of technologies employed to treat the wastewater along with financial information. When developing ELGs for coal bed methane extractions, EPA conducted an industry survey to evaluate the volume of water produced from extraction; the management, storage, treatment and disposal options; and the environmental impacts of surface discharges. Information collection under the CWA, thus, has been a frequently used tool to develop appropriate and environmentally protective standards.

There is precedent for EPA using its section 308 authority to collect information from entities not currently required to obtain NPDES permits. Recently, EPA conducted surveys to gather information to help assess the impact of potential changes that the Agency is considering to its existing stormwater requirements. As part of this effort, EPA sent questionnaires to regulated Municipal Separate Storm Sewer System (MS4s), non-regulated MS4s, transportation MS4s, NPDES permitting authorities, and owners and operators of developed sites.

EPA can use a variety of methods to obtain data required by information collection requests under section 308. The most common method is to mail questionnaires directly to industry contacts. However, because EPA does not know the names and addresses of all CAFOs, mailing surveys to CAFOs is not possible; therefore, a rule is necessary to collect the information. The final **Federal Register** notice would contain the information collection request form (see the proposed form at the end of this preamble). Under Option 1, CAFOs would be required to respond to the request as issued in the **Federal Register** unless a state chooses to provide the information on behalf of a CAFO. Under Option 2, CAFOs in a focus watershed would be required to respond, but EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether requiring CAFOs to respond to a survey request is necessary. This request would be accomplished through a locally-applicable notice in the **Federal Register** along with other forms of local outreach. In the **Federal Register**, EPA also would include the description of the focus watershed and the reasons for its selection. To implement the rule effectively, EPA intends to conduct extensive outreach to the CAFO industry to ensure that all CAFOs know of the existence of this rule and any requirement to respond. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information under this proposed rulemaking.

The rulemaking process is an appropriate way to collect information from CAFOs because rulemaking is a transparent, equitable, and efficient method of collecting information from a large universe of entities. Moreover, allowing the states to submit the information required by this proposed action on behalf of a CAFO, included in the proposed option that would require all CAFOs to submit information, would allow states to collaborate with EPA in reducing the burden on some CAFOs to report the information to EPA. The proposed rule is a reasonable exercise of CWA section 308 authority because the information to be submitted would enable EPA to carry out and ensure compliance with the NPDES permitting program and other CWA requirements for CAFOs. *See, e.g. Natural Resources Def. Council, Inc.* v. *EPA,* 822 F.2d 104, 119 (DC Cir. 1987); *In re Simpson Paper Co. and Louisiana-Pacific Corp.,* 3 E.A.D. 541, 549 (1991).

EPA requests comment on obtaining the information through options in this co-proposed rulemaking or whether EPA should explore alternative approaches as described in the *Alternative Approaches to Achieve Rule Objectives* section of this preamble.

C. Option 1 Would Apply to All CAFOs

1. What information would EPA require as part of an information gathering survey for CAFOs and why is EPA proposing to require this information?

Proposed paragraph § 122.23(k)(2) specifies the information EPA would require respondents to provide to the Agency. Under this proposed option, EPA would require respondents to submit the following information:

(i) The legal name of the owner of the CAFO or an authorized representative, their mailing address, e-mail address (if available) and primary telephone number. An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO;

(ii) The location of the CAFO's production area identified by the latitude and longitude or by the street address.

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application.

Proposed paragraph § 122.23(k)(2)(i) would require CAFOs to provide a point of contact for the CAFO. EPA proposes to allow CAFOs to provide contact information for either the owner of the CAFO or an authorized representative. An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO. For example, an employee who manages the CAFO or an attorney employed by the CAFO could be an appropriate authorized representative. Respondents would be required to provide complete contact information, including name, telephone number, e-mail (if available), and mailing address. Owners or authorized representatives may provide a P.O. Box in lieu of a street address in the contact information section. All individuals who qualify under 40 CFR. 122.22 can serve as a CAFO's authorized representative, including the operator of a CAFO. EPA proposes to allow qualifying individuals to serve as a CAFO's point of contact to preserve the privacy of a CAFO owner

if desired. With this information, EPA would be able to communicate directly with CAFOs when necessary. EPA seeks comment on whether an authorized representative should be permitted to sign the survey form instead of the CAFO owner or operator.

In addition to providing contact information, proposed paragraph § 122.23(k)(2)(ii) would require CAFOs to provide the location of the CAFO's production area in either latitude and longitude or by the street address of the CAFO's production area. (Note that a P.O. Box would not substitute for a street address in the location information section, since it would not identify a CAFO's location). EPA believes that knowing the location of the CAFO's production area, as specified in proposed paragraph § 122.23(k)(2)(ii), is essential for determining sources of water quality impairments and potential mitigation measures. A CAFO's proximity to waterbodies also is relevant to whether it may cause water quality impacts. Comprehensive compliance assistance and education and outreach efforts, which are facilitated by knowing facility location and contact information, are tools a regulatory program can use in partnerships with industry to proactively protect and maintain water quality.

Information related to a CAFO's permit status (proposed paragraph § 122.23(k)(2)(iii)) would indicate whether additional information is publicly available, thus avoiding duplicative efforts to seek information from NPDES permitted CAFOs. Permitting status information also would show which CAFOs are operating without NPDES permit coverage. Even where a facility is not discharging and therefore is not required to be covered by a permit, knowing about the existence of these facilities gives EPA a basis for understanding how many facilities within each sector are actually able to completely prevent discharges. This information might be transferable to other facilities in that sector that currently discharge. EPA or states would be able to provide technical assistance, extend compliance assistance, or inspect such CAFOs where appropriate.

EPA proposes (as specified in proposed paragraph § 122.23(k)(2)(iv)) to collect data on the number and type (cattle, poultry, swine, *etc.*) of animals because the scale of the operation and the types of animals confined relate to the type and volume of manure generated and related environmental considerations, and also determine applicable CWA permitting requirements. Specifically, the number and type of animals provides an indication of the quantity and characteristics of the CAFOs' manure (*i.e.,* wet or dry and possible constituents), which then informs EPA as to the possible environmental effects of that manure. EPA also proposes to collect information about the amount of land available for application (proposed paragraph § 122.23(k)(2)(v)). A CAFO's available land application area is likely to affect the amount of manure that can be land applied for agronomic purposes and the potential amount of nutrients that could flow into surrounding waters of the United States. Combining information about manure quantity and characteristics with land available for application would indicate where issues might exist regarding excess manure.

Section 308(b)(1) of the CWA requires that information collected by the Agency shall be available to the public, except upon a satisfactory showing to the Administrator that any part of the information, report, or record is confidential business information. Under existing regulations, an owner or operator may assert a claim of confidential business information (CBI) with respect to specific information submitted to EPA. 40 CFR part 2, subpart B. Under section 2.208, business information is entitled to confidential treatment if, ''the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.'' A claim of confidentiality must be made at the time of submission and in accordance with the requirements of 40 CFR 2.203(b). *Id.* at § 2.203(c). EPA would follow all the requirements related to information submitted with a claim of confidentiality including the required notification to the submitter and rights of appeal available before releasing any information claimed to be confidential. EPA seeks comment on whether any information required by this proposed rule could reasonably be claimed as CBI and the reasons for making this claim.

EPA requests comment on the information that CAFOs would be required to submit as specified by proposed paragraph § 122.23(k)(2). Specifically, EPA is aware that providing latitude and longitude information might raise security or privacy concerns for CAFO owner/operators, many of whom are family farmers. EPA seeks comment on alternatives to submission of the latitude and longitude that would provide general information on a facility's location but not specific coordinates. For example, the survey could request the name of the nearest waterbody to the CAFO. Local knowledge, U.S. Geological Survey topographical maps or internet programs such as Google Maps could be used by the CAFO to make this determination of the nearest waterbody to the CAFO. This would allow EPA to identify the watershed in which a CAFO is located, and to potentially model discharges from the CAFO and their impacts on water quality, but without providing specific information that could be misused to target the CAFO for inappropriate or illegal purposes. EPA also seeks comment on using other systems such as the Public Land Survey System (PLSS) (*i.e.* township, range and county information) to identify the location of a CAFO's production area. The PLSS encompasses major portions of the land area of 30 southern and western United States. EPA seeks comment on other possible alternatives as well, such as requesting a business address and county where located, or some other general locational information. Commenters suggesting such alternative should discuss the advantages and limitations of such information both for protecting the security and privacy of CAFOs, and for fulfilling the CWA purposes for which EPA needs the data (discussed above). EPA also seeks comment on how this type of location information would compare with respect to operator burden, accuracy of location identification, and usefulness of the information to identify the production area location. EPA also seeks comment on whether CAFOs would know the operation's latitude and longitude.

Related to the concern discussed above is a concern that providing specific information on the type and number of animals at a CAFO might also raise potential security issues. EPA requests comment on allowing CAFOs to report numbers of animals confined in ranges, rather than providing specific numbers. One option would be to use ranges corresponding to the definitions of large, medium and small CAFOs. EPA also requests comment on collecting the information as specific numbers, but making it available to the public only as ranges.

Additionally, EPA requests comment on the most appropriate 12-month span of time for a CAFO to determine the number of animals at the CAFO (*i.e.* fiscal year or calendar year, or the previous 12 months prior to completing the survey).

EPA seeks comment on whether CAFOs would understand the questions asked and on the technical appropriateness of the questions. The

proposed survey form that EPA would use to collect the information is included as an appendix to this preamble.

The settlement agreement with the environmental petitioners specifies that EPA would release the information collected pursuant to this rule to the public, except where it is entitled to protection as confidential business information. This is required by section 308 of the CWA. However, neither the settlement agreement nor section 308 specify the venue or format in which the information is to be released. EPA is aware of both security and privacy concerns, referenced above, regarding the potential public release of the information to be collected by this rule. EPA requests comment on any such concerns, on appropriate ways to address those concerns (consistent with section 308), and on appropriate formats or venues to make it available to the public. EPA also requests comment on whether the requirement to make any information collected pursuant to section 308 available to the public (except confidential business information) should factor into its determination about what information, if any, to collect from CAFOs.

2. What information would EPA not require as part of the collection request survey for CAFOs?

In the settlement agreement with the environmental petitioners, arising out of litigation over the 2008 CAFO rule, EPA agreed to propose a rule that would require CAFOs to submit information on 14 items of information; or, if EPA decided not to include one of the items from the settlement agreement in the proposed rule, EPA would identify the item(s), explain why EPA chose not to propose requiring that information and request comment on the excluded items.

This proposed rulemaking requests information on only some of those 14 items because the Agency believes it can effectively obtain site-specific answers for the remaining questions directly from states, other Federal agencies, specific CAFOs, or other sources, when necessary. EPA also is striving to balance the need for information with the burden associated with providing the information to EPA.

EPA seeks comment on its proposal not to collect the following items specified in the settlement agreement:

- Name and address of owner/operator (if the name and address of an authorized representative is provided instead of the name and address of an owner or operator of the CAFO);
- The survey would allow the CAFO's a choice in providing location data of the production area either by the longitude and latitude or the street address of the production area, instead of requiring both;
- If contract operation, name and address of the integrator;
- Type and capacity of manure storage;
- Quantity of manure, process wastewater, and litter generated annually by the CAFO;
- If the CAFO land-applies, whether it implements a nutrient management plan for land application;
- If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e);
- If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater; and
- Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure.

3. Who would be required to submit the information?

Under this option, proposed paragraph § 122.23(k)(1) would require all owners or operators of CAFOs to submit the information specified in proposed paragraph 40 CFR 122.23(k)(2). However, an exception is provided by proposed paragraph § 122.23(k)(5), that would allow states with an authorized NPDES program to provide the information proposed to be collected to EPA for CAFOs in the state. The option for a state to submit the information specified by proposed paragraph § 122.23(k)(2) is voluntary. This proposed option would allow states to submit the information because states may have collected all of the information required to be submitted by this proposed rule. A state may have obtained this information through permit applications, annual reports, inspection documentation, or other means and may keep records of this information in a form that is readily transferable to EPA. EPA does not have a preference regarding whether individual CAFOs submit the information or whether states submit it for them. EPA expects that states that do not possess the CAFO information requested would not choose to participate. In other words, EPA does not anticipate that states would submit the data, if it would require them to undertake additional efforts to collect this information from CAFOs. Proposed paragraph § 122.23(k)(2) provides flexibility to states by allowing each state to determine if it can easily submit the information to EPA given the state's resources.

Under proposed paragraph § 122.23(k)(5), in order to submit the information on behalf of its CAFOs, a state would only be allowed to provide information on behalf of a CAFO if it submits all items of information as specified by proposed paragraph § 122.23(k)(2). States that choose to submit this information would be required to use the Agency's information management system to ensure reporting consistency among states choosing to provide the information to EPA. CAFOs for which a state submits all of the required information would be referred to as ''listed'' CAFOs. States may submit information for CAFOs with NPDES permit coverage or CAFOs without NPDES permit coverage, such as CAFOs with state permits only.

In the case of states for which EPA is the NPDES permit authority and where the NDPES CAFO general or individual permits have been updated in accordance with the 2008 CAFO rule, EPA would provide the information as if it were the state. EPA issues updated NPDES CAFO permits in the states of Idaho, New Mexico, Oklahoma, New Hampshire, and Massachusetts.

The voluntary state submission option does not preclude any CAFO that wishes to do so from submitting the information required by the proposed rule even where a state previously submitted the information for that CAFO. The next section of this preamble, *When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?,* identifies the time frames for submitting the information to EPA that would be required by proposed paragraph § 122.23(k)(2).

Under this proposed option, EPA seeks comment on whether to allow the state submission option as proposed by paragraph § 122.23(k)(5), or whether all CAFOs should be individually required to submit information to EPA. Specifically, EPA solicits comment from CAFO owners or operators as to their willingness to have the state permitting agency submit operation information to EPA on their behalf. EPA also solicits comment from states on the availability of the information as specified by proposed paragraph § 122.23(k)(2); whether states plan to provide all the required information on behalf of CAFOs; and alternatively, if given the opportunity, whether states would provide partial information on behalf of CAFOs. EPA also solicits comments on whether NPDES authorized states

should be required to provide the information for their permitted CAFOs.

4. When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?

Following the release of the Agency's information management system and the availability of the proposed survey form, the proposed rule would allow an owner or operator of a CAFO or states to submit the information to EPA any time during their respective reporting periods. EPA proposes the following submission deadlines:

- *Required Reporting Period for States Who Chose to Report:* As specified by proposed paragraph § 122.23(k)(5)(iii), states that choose to submit information would be required to submit the information in proposed paragraph § 122.23(k)(2) [within 90 days from the effective date of the rule].
- *Notification Period:* [Within 60 days after the end of the state reporting period], EPA plans to make publicly available a list of all CAFOs by name, permit number, if applicable, and state (''listed CAFOs'').
- *CAFO Reporting Period:* CAFOs that do not appear on the CAFO list would be required to submit the information on an individual facility basis to EPA within [90 days after the end of the notification period]. CAFOs that appear on the CAFO list may choose to review the information submitted by the state and override the state's submission by submitting its own information, but CAFOs must do so within [90 days after the end of the notification period].

Table 2 summarizes the timeframes for submitting the information as specified in proposed paragraph § 122.23(k)(2) to EPA.

TABLE 2—PROPOSED TIMELINES FOR SUBMITTING THE INFORMATION REQUIRED AS SPECIFIED BY PROPOSED PARAGRAPH § 122.23(k)(2)

Entity	Timeframe
States that choose to report	Must submit information within 90 days of the effective date of the rule.
EPA	Makes publicly available within 60 days of the end of the state reporting period a list of CAFOs for which the states have submitted data.
CAFOs not appearing on the CAFO list	Must submit information within 90 days of the end of the notification period.
CAFOs on the CAFO list that prefer to provide information themselves	May submit information within 90 days of the end of the notification period.

EPA requests comment on allowing 180 days rather than 90 days for states to submit information to EPA on behalf of CAFOs. This would allow additional time for unpermitted CAFOs wishing to be covered by NPDES permits to apply for permit coverage (*e.g.,* submit an NOI in the case of a general permit) such that states could submit the information for them.

To maintain an updated inventory, EPA proposes that CAFOs without NPDES permits submit the information specified by proposed paragraph § 122.23(k)(2) or update previously submitted information every ten years. EPA proposes a ten-year resubmission period for unpermitted CAFOs because the Agency does not expect the information to change significantly within this ten-year period. Specifically, proposed paragraph § 122.23(k)(4)(iii) would require CAFOs without NPDES permit coverage to submit or update the required information between [January 1 and June 1, 2022] and every tenth year thereafter between those dates. Operations that have NPDES permit coverage or obtain permits before the 2022 resubmission date, or that become CAFOs after [July 2012]—either newly defined, designated, or a new source—and obtain NPDES permit coverage would not be required to submit or update the required information. For example, a CAFO that does not have an NPDES permit as of [July 2012] but obtains NPDES permit coverage before January 1, 2022, would not be required to re-submit the information that today's rulemaking proposes to collect.

Under this proposed option, CAFOs with NPDES permits would not need to update their information every ten years because EPA believes it would be able to maintain an updated inventory for permitted CAFOs from their annual reports and permit applications when renewing permit coverage. EPA invites comments on the schedule for when states and CAFOs would be required to submit the information to EPA. EPA also seeks comment on the requirement for CAFOs without NPDES permit coverage to resubmit the information as specified in proposed paragraph § 122.23(k)(2) every ten years.

5. How would CAFOs submit the information to EPA?

Proposed paragraph § 122.23(k)(3) would require owners and operators of CAFOs to use an official survey form provided by EPA to submit, either electronically or by certified mail, the required information to EPA. EPA would not mail surveys to individual CAFOs to request information, as the locations of many CAFO operations are unknown. Rather, the survey form would be available on EPA's Web site or by requesting a hard copy from EPA Headquarters from the EPA contact information provided in the final rule. EPA would conduct extensive outreach with the regulated community, industry groups, environmental groups and states in its effort to notify all stakeholders about the requirements of the rule and how to submit the required information.

Proposed paragraph § 122.23(k)(3) would require the owner or operator of a CAFO to submit the survey form electronically using the Agency's information management system available on EPA's Web site. The Agency's Web-based information management system would be the most effective, inexpensive way to submit the information. The Web-based information management system would leverage components of the Central Data Exchange (CDX) on the Environmental Information Exchange Network. CDX provides a single and centralized point of access for states and CAFO owners or operators to submit information electronically to EPA. CDX is supported by the Cross-Media Electronic Reporting Regulation (CROMERR), which provides the legal framework for electronic reporting under EPA's regulations. CROMERR requires any entity that submits electronic documents directly to EPA to use CDX or an alternative system designated by the Administrator. CDX would ensure the legal dependability of electronically submitted documents and provide a secure environment for data exchange

that would also protect personally identifiable information (PII).

The supporting CAFO information management system would leverage Agency standards and enterprise technologies to perform logic checks on the data entered to ensure quality assurance and quality control. Logic checks would reduce the reporting errors and limit the time involved in investigating, checking and correcting submission errors at all levels. While not required, the CAFO owner or operator would be able to print a copy of the information submitted through the Agency's information management system to maintain on site or at a nearby location.

EPA proposes an option to waive the electronic submission requirement if the information management system is otherwise unavailable or the use of the Agency's information management system would cause undue burden or expense over the use of a paper survey form. A CAFO owner or operator would be allowed to request a waiver from this electronic reporting requirement at the time of submission and would not need to obtain approval from EPA before submitting a hard copy of the form. If submitting a hard copy of the survey form, the CAFO owner or operator would be required to check the electronic submission waiver box and explain why electronic submission causes an undue burden on page 1 of the proposed survey form. EPA requests comment on whether it should allow CAFOs to submit a hard copy of the form without requesting a waiver.

CAFOs completing a hard copy of the survey form would submit the information in proposed paragraph § 122.23(k)(2) to EPA via certified mail. The official paper survey form is attached as an appendix to this preamble. There are two ways that a CAFO owner or operator who cannot submit the information electronically would be able to access the official paper survey form and instruction sheet, which are included as Attachment A of this preamble. First, the owner or operator would be able to request a form and instructions from EPA. A form may be requested from EPA Headquarters from the EPA contact information provided in the final rule. Alternatively, the owner or operator would be able to download the form and instructions, which would be available at *http://www.epa.gov/npdes/afo/.* After receiving the official form, the CAFO owner or operator would complete and return the survey form to EPA using certified mail postmarked by the appropriate deadline specified by proposed paragraph § 122.23(k)(4).

EPA plans to coordinate with states, tribal governments, and interested stakeholders to notify CAFOs about the proposed official survey form and the availability of the Agency's information management system. EPA seeks comment on the data submission approach in proposed paragraph § 122.23(k)(3). EPA also seeks comment on the most effective ways to notify CAFOs, when the rule is finalized, that they must submit the information required as specified by proposed paragraph § 122.23(k)(2).

6. How would states submit the Information to EPA?

Only states with an authorized NPDES program would have the option to submit the information on behalf of CAFOs within their states. EPA requests comment on this limitation. In states where EPA is the permitting authority for CAFOs, EPA would submit the information. To participate in the voluntary submission option provided by proposed paragraph § 122.23(k)(5), states would electronically submit the information required by proposed paragraph § 122.23(k)(2) using the Agency's information management system. The electronic submission process for states is similar to the electronic submission process for CAFOs. The electronic submission process would entail submitting information via the information management system through CDX. Proposed paragraph § 122.23(k)(5)(ii) would limit states to providing only current data, including data obtain from the state's most recent application process or from a CAFO's most recent annual report. Because states choose whether to submit information on behalf of CAFOs, EPA anticipates that a state would submit the information only when electronic submission is not overly burdensome.

To clearly identify which CAFOs would not need to submit the information to EPA during the CAFO reporting period, EPA proposes to make available on the Agency's Web site (*http://www.epa.gov/npdes/*) a final list of CAFOs for which the states have submitted information on behalf of a CAFO. The CAFOs would be listed by name, location and permit number for NPDES permitted CAFOs, and by name and location for unpermitted CAFOs. EPA would also make available the information provided by the states for each CAFO [within 60 days after the end of the 90-day state submission timeframe]. As explained in the section, *When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?,* of this preamble, CAFOs that do not appear on the CAFO list would be required to submit the information [within 90 days of the list and responses being published]. CAFOs on the CAFO list would not be required to submit the information; however, they would be able review and change any information provided by a state.

States would be required to provide the electronic data files in an Extensible Markup Language (XML) format that is prescribed by EPA and compatible with Agency standards in support of regulatory data and information flows by the deadline specified in proposed paragraph § 122.23(k)(5)(iii). If states already store CAFO information within their respective databases, states would need to map their CAFO database elements to the prescribed XML CAFO schema for data exchange. States that do not store CAFO information electronically or maintain records in hardcopy would need to manually populate the CAFO survey using the Web-based submission form, thus using the same submission process as an individual CAFO owner or operator.

In contrast to implementing and enforcing the existing CAFO regulations in 40 CFR part 122, which is a required program element for authorized states, EPA emphasizes that the state submission option would be voluntary. This proposed option would not require that states divert resources from regulatory implementation and enforcement efforts to submit the information required by proposed paragraph § 122.23(k)(2) to EPA. EPA anticipates that states that choose to report on behalf of their state's CAFOs would already possess this information and therefore, would not need to undertake additional efforts to collect this information from CAFOs. EPA assumes the states that choose to provide the information to EPA would be the states for which this task would not be overly burdensome. This proposed option does not express a preference as to whether states or CAFOs submit the information. EPA plans to coordinate with states to help them prepare to submit the information if the state chooses to provide the information to EPA. EPA seeks comment on the proposed data collection approach regarding the way in which states would submit the information to EPA on behalf of CAFOs, and on whether NPDES authorized states should be required to submit the information on behalf of permitted CAFOs.

D. Option 2 Would Apply to CAFOs in a Focus Watershed

EPA also proposes an option that would first identify focus watersheds with water quality problems likely attributable to CAFOs, and then potentially identify CAFOs in a focus watershed to respond to a survey request. EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. This proposed rulemaking option would allow EPA to list the criteria used to define the focus watersheds, specify the methods to determine the geographic scope of the focus watersheds, survey groups of CAFOs in the selected focus watersheds if the necessary information was not available from other sources, and define the amount of time required for outreach so that CAFOs in these focus watersheds know if and when they are required to respond to a survey request.

Under this proposed option, EPA would focus on collecting information regarding CAFOs in focus watersheds where there are water quality concerns likely associated with CAFOs. EPA would use existing data sources to determine which geographic areas would be identified as a focus watershed for collecting information about CAFOs and to attempt to obtain the necessary data before using its 308 authority to collect it directly from CAFOs.

EPA could use existing data sources to identify areas of water quality concern that correspond with locations of CAFOs. For example, modeling estimates could be used to identify watersheds at an appropriate Hydrologic Unit Codes (HUCs) level with high nitrogen and phosphorus loadings likely originating from agricultural sources. Publicly available data could also be used to identify watersheds with high concentrations of CAFOs. Data from these sources could be further complemented by numerous other existing data from EPA, states, universities, research centers and other sources. EPA would collaborate with states, other Federal agencies, and interested stakeholders to identify other available sources of data pertaining to CAFOs and water quality, including but not limited to watershed characteristics, sources of water quality impairments, pollutant loadings from agriculture, CAFO locations, characteristics of CAFO operations, and CAFO manure management practices when selecting focus watersheds. EPA would make its methodology for identifying focus watersheds and the results of its assessments available to the public.

EPA, other Federal, state, and local agencies, and interested stakeholders could also use the collected information to target their outreach to CAFO owners and operators, target technical and financial assistance that helps CAFOs apply the most effective manure management practices, and implement monitoring and assessments of the effects of these practices. Leveraging stakeholder resources and more precisely focusing on areas of concern could yield strong results in a shorter period.

Identifying focus watersheds could produce additional benefits in addressing water quality impairments. In focus watersheds, Federal and state agencies could partner with industry groups and non-governmental organizations to increase outreach and education to CAFO owners and operators. Additionally, this option could assist EPA and other Federal and state agencies in working with agricultural producers in the focus watershed to develop and implement a coordinated program of manure management practices needed to attain water quality goals, including state water quality standards. EPA could also evaluate results from existing or future water quality monitoring and modeling and provide these results to the public periodically. Such education and outreach efforts could promote the implementation of best management practices. Interested stakeholders could use information collected by this proposed option to target delivery of its technical and financial assistance including conservation systems tailored to the water quality needs and resource profile of each livestock producer.

With this proposed rulemaking option, EPA would collect the information specified in proposed paragraph § 122.23(k)(3) only from CAFOs located in identified focus watersheds. EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. EPA seeks comment on this proposed option that would require CAFOs in focus watersheds to report the information specified in proposed paragraph § 122.23(k)(4) if it were not otherwise available.

1. How would EPA identify a focus watershed?

EPA would identify focus watersheds based on water quality concerns associated with CAFOs, including but not limited to nutrients (nitrogen and phosphorus), pathogens (bacteria, viruses, protozoa), total suspended solids (turbidity), and organic enrichment (low dissolved oxygen). EPA also recognizes that there is a variety of sources, including sewage treatment plants, and industrial discharges that are sources of nutrients and sediment related to water quality impairments. However, for purposes of this survey, this proposed option would require that a focus watershed be one associated with water quality concerns likely to be associated with CAFOs or land application of manure.

Under section 303(d) of the CWA, states are required to assess their waters and list as impaired those that do not meet water quality standards. The 303(d) impairment listings would be one source to consult in identifying a focus watershed based on water quality concerns. EPA's ATTAINS database, which includes listings of impaired waters reported to EPA by states, pursuant to CWA section 303(d), is available to help identify impacted watersheds.

However, relying on impaired waterbody information is limited because many waterbodies have not been assessed or the impairment cause has not been identified. Additionally, in these impaired waterbodies some states have not established water quality standards for all of the pollutants in these impaired waterbodies that might be associated with CAFO discharges. In particular, many states have not set standards for nutrients, which are a key indicator for animal agriculture's impact on water quality. To address this limitation, EPA also could use other data indicating water quality concerns relating to CAFOs, such as nutrient monitoring data from state or Federal agencies. EPA solicits comment on what sources of data could be used to determine where waterbodies are likely to be impacted due to CAFOs.

EPA also could rely on existing partnerships to identify waterbodies with impacts associated with CAFOs. For example, a March, 2011 memorandum reaffirmed EPA's commitment to partnering with states and collaborating with stakeholders to make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to the nation's waters. In addition, some states are working on strategies for reducing nitrogen and

phosphorus pollution. U.S. EPA Memorandum, Working Effectively in Partnership with States to Address Phosphorus and Nitrogen Pollution Through Use of a Framework for State Nutrient Reductions (2011), available at *http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf.* The information collected by today's proposed rulemaking could assist states as they identify areas with water quality concerns by providing data for their strategy development and implementation. EPA requests comments on sources of information that could be used to identify watersheds with a likelihood of water quality impacts associated with CAFOs.

In addition to being areas where water quality issues of concern are likely to exist due to CAFOs, a focus watershed would be identified based on one or more of the additional following proposed criteria:

a. High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supply, watersheds with high recreational value, or outstanding natural resources waters (Tier 3 waters);

b. Vulnerable soil types;

c. High density of animal agriculture; and/or

d. Other relevant information (such as an area with minority, indigenous, or low-income populations).

EPA solicits comment on whether minimum standards for selection of a focus watershed should be adopted and what such standards might be. EPA also solicits comment on whether the results of a focus watershed assessment, including decisions to focus or not to focus on an area, should be made available to the public. EPA also solicits comment on how frequently EPA should review and/or revise its identification of focus watersheds.

2. Considerations When Determining Whether a Focus Watershed Meets the Criteria for Water Quality Protection

a. High Priority Watershed Due to Other Factors (Such as Vulnerable Ecosystems, Drinking Water Supply Source, Watersheds With High Recreational Value or Outstanding National Resource Waters (Tier 3 Waters))

EPA could identify focus watersheds where waters require a greater degree of protection than other waters of the United States. These include waters with excellent water quality, including high quality waters, where water quality conditions must be maintained and protected in accordance with 40 CFR 131.12(a)(2) and outstanding national resource waters, where the waters have exceptional recreational, environmental or economic significance and must be protected in accordance with 40 CFR 131.12(a)(3). Areas near drinking water sources may also be areas identified for survey requests. EPA and its partners would work with CAFOs located within these watersheds in order to promote improved nutrient management practices and to ensure that the applicable CWA requirements are met. EPA would review state and tribal water quality standard data to locate these watersheds. EPA seeks comment on high priority watershed due to other factors as a criterion to identify a focus watershed.

b. Vulnerable Soil Types

Vulnerable soil types include soils with high nutrient levels. High nutrient soils in a watershed indicate that there may be more nutrients being land applied than being utilized by the crops. For example, there is an increased risk of phosphorus runoff in areas where phosphorus soil test levels are high, particularly in areas that are close to surface waters or have steep slopes. To evaluate and determine which watersheds have soils with high nutrient levels, EPA could review reports on nutrient levels such as the Mid-Atlantic Watershed Program's report of phosphorus; reports prepared for Congress, such as *Animal Waste Management and the Environment: Background for Current Issues and Animal Waste Pollution in America: An Emerging National Problem.* U.S. Congressional Research Service, CRS–98–451 (1998) available as of September 2011 at *http://www.cnie.org/nle/CRSreports/Agriculture/ag-48.cfm*; Tom Harkin, *Animal Waste Pollution in America: An Emerging National Problem,* Report Compiled by the Minority Staff of the United States Senate Committee on Agriculture, Nutrition, & Forestry for Senator Tom Harkin (Dec. 1997). Data compiled by state conservation districts and data from land grant universities that evaluate the nutrient levels of soils also could be sources of information to support identifying a focus watershed because of high nutrient levels in the soil. In addition to soil nutrient level, estimating areas where manure production is more than the surrounding crop lands can utilize may also be an indicator to focus information collection requests. For example, where the amount of manure generated greatly exceeds the capacity of available land for agronomic application of manure, it is more likely that CAFOs will apply manure in excess of crop nutrient requirements or experience issues associated with inadequate storage capacity. EPA seeks comment on vulnerable soil types as a criterion to identify a focus watershed.

c. High Density of Animal Agriculture

EPA could target outreach and information collection efforts to those geographic regions where Ag Census data, which is publicly available aggregate data, shows a high density of animals or reports a high number of operations that meet the CAFO animal size thresholds as specified by paragraph 40 CFR 122.23(b). EPA could review the aggregate data from the Ag Census to determine counties, geographic regions or sub-regions that have a high density of CAFOs. This type of census data is accessible to both EPA and the public through USDA's existing on-line report generating function and other sources. EPA seeks comment on using high densities of CAFOs as a criterion to identify a focus watershed.

d. Other Relevant Information

EPA anticipates cases in which a need to collect information from CAFOs could arise because of factors other than the three criteria described above. For example, CAFOs often are located in minority, low-income, and indigenous communities that are or may be disproportionately impacted by environmental pollution. Supporting this statement is a report from The Lawyers' Committee for Civil Rights Under Law stated that ''there are 19 times more CAFOs in North Carolina's poorest communities than in wealthier communities and five times more in nonwhite neighborhoods than in white neighborhoods.'' (Daria E Neal *et al. Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities*, page 56 (2010) available as of July 2011 at *http://www.lawyerscommittee.org/admin/site/documents/files/Final-Environmental-Justice-Report-6–9–10.pdf).* Working with CAFOs in those communities to address water quality problems would help fulfill the Agency's environmental justice goals. EPA seeks comment on the factors listed above and seeks suggestions of other factors the Agency could use as a criteria to identify a focus watershed. EPA would consider other factors suggested for inclusion in taking final action on this proposal.

3. How would EPA identify CAFOs from which additional information is needed?

After establishing an area with a water quality impairment or water quality concerns likely associated with CAFOs, or otherwise identified as a focus watershed based on the factors identified above, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. However, where EPA was unable to obtain the necessary basic information from such sources, EPA would require CAFOs in the focus watershed to provide the necessary information. EPA requests comment on alternative sources of information that could be used to gather the necessary information.

4. What information would EPA require as part of an information gathering survey for CAFOs in a focus watershed?

Under this proposed option, EPA would seek to collect the same information as under the proposed option for using section 308 to collect information from all CAFOs, outlined in section III.(C)(2). Specifically, EPA might require CAFOs in a focus watershed to submit the following information as specified by proposed paragraph § 122.23(k)(4), if the information were not available from other sources:

(i) The legal name of the owner of the CAFO or an authorized representative,[1] their mailing address, e-mail address (if available) and primary telephone number;

(ii) The location of the CAFO's production area identified by the latitude and longitude or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application.

Under this proposed option as well as the other proposed option, CAFOs in a targeted area would be able to assert a claim of confidential business information with respect to specific information submitted to EPA. 40 CFR part 2, subpart B. A claim of confidentiality must be made at the time of submission and in accordance with the requirements of 40 CFR 2.203(b). For further discussion of CBI, see section, *What information would EPA require as part of an information gathering survey for CAFOs and why is EPA proposing to require this information?,* of this preamble.

5. How would EPA geographically define a focus watershed?

If EPA did ultimately need to use section 308 to focus on CAFOs in a specific geographic area, that area must be defined in some way so that CAFOs would know if their operation is located within the area, and thus, would be required to respond to the survey request. EPA proposes to define the targeted areas geographically by either Zip Codes, counties, HUC codes, or watersheds. EPA solicits comment on the most effective way to define a focus watershed so that CAFOs would know of their need to respond to EPA.

6. How would EPA inform CAFOs of their responsibility if they were required to respond to an information request?

Where certain areas or groups of CAFOs are required to respond to an information collection request, EPA would conduct a variety of informational outreach efforts. First, EPA would publish in the **Federal Register** a notice describing the boundaries of the targeted area(s) and the information submission requirements for CAFOs within those areas at least [30] days before the beginning of any information submission period. EPA would also conduct extensive outreach with the regulated community and interested stakeholders to notify CAFOs in the focus watershed of their responsibility to provide information. EPA would work with the state and local authorities in providing this outreach. For example, EPA might hold public meetings in the area, place notices in newspapers, and use other available local media. EPA notes that the owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO would not be required to submit information as specified in proposed paragraph § 122.23(k)(4) to EPA.

Under proposed paragraph § 122.23(k)(3), EPA would conduct outreach to CAFOs in the targeted area for at least [30 days] prior to the start of any reporting period to notify operations that they are required to report the information specified in proposed paragraph § 122.23(k)(4) to EPA. EPA seeks comment on ways to inform and reach CAFOs in targeted areas if they are required to provide information. EPA also seeks comment on the timeframe provided for outreach to CAFOs in targeted areas.

7. When would CAFOs in a focus watershed be required to submit the information to EPA?

If EPA needed to use 308 authority to collect information from CAFOs, after the end of EPA's outreach period for CAFOs in the targeted area, CAFOs would have [90 days] to submit the information to EPA. EPA would identify the specific deadline for submitting the information during EPA's outreach period as well as by publishing the deadline in the **Federal Register** notice, which is required at least [30] days before the beginning of any information submission period.

EPA seeks comment on the amount of time a CAFO in a targeted area would need to submit the information to EPA.

8. How would CAFOs in a focus watershed submit information to EPA?

If EPA needed to use 308 authority to collect information from CAFOs, CAFOs in focus watersheds would submit the information in the same manner as specified in proposed option 1 for collecting information from all CAFOs. Specifically, proposed paragraph § 122.23(k)(5) would require the owner or operator of a CAFO to submit the official survey form electronically using the Agency's information management system available on EPA's Web site. EPA proposes to waive the electronic submission requirement if the information management system is otherwise unavailable or the use of the Agency's information management system would cause undue burden or expense over the use of a paper survey form. See section *How would CAFOs*

[1] An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA or the state about the CAFO.

submit the information to EPA of this preamble for a detailed discussion. EPA seeks comment on the data submission approach in proposed paragraph § 122.23(k)(5).

E. Failure To Provide the Information as Required by This Proposed Rulemaking

Under Option 1, and under Option 2 in cases where EPA used its section 308 authority to collect information from CAFOs in focus watersheds, CAFO owners or operators that failed to submit the information in accordance with the requirements specified in proposed paragraph § 122.23(k) would be in violation of the CWA. Section 309 of the CWA provides for administrative, civil and criminal penalties for violations of section 308 of the Act. 33 U.S.C. 1319. EPA assesses monetary penalties associated with civil noncompliance using a national approach as outlined by the Agency's general penalty policy. More information on the amounts and calculations of civil penalties is available at *http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/*. Additional information on criminal noncompliance, is available at *http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/*.

F. Alternative Approaches To Achieve Rule Objectives

The objective of this proposed action is to improve and protect water quality impacted by CAFOs. However, EPA recognizes that there may be other ways to achieve this objective, and the Agency solicits comment on alternative approaches to meet the objectives of this proposed rule. Such alternative approaches may require rulemaking. EPA would consider any such suggested alternative approaches in developing the final rule.

EPA describes three such alternative approaches in this section and seeks public comment on these approaches. EPA seeks public comment on alternative approaches to a data collection request for CAFOs including: (1) An approach that would obtain data from existing data sources, (2) an approach that would expand EPA's network of compliance assistance and outreach tools and (3) an approach requiring NPDES authorized states to submit the information as specified by proposed paragraph § 122.23(k)(2) to EPA, which would require rulemaking. EPA also seeks comment on other alternative approaches besides the three discussed herein that could achieve the same objectives. Any one of these three alternative approaches could be enhanced by stewardship and recognition programs, education or assistance programs or incentive based programs, carried out in coordination with other partners such as states, industry or USDA, and could result in improvements in industry practices more quickly than a data collection effort. EPA solicits comment on programs such as these that could be employed to ensure that CAFOs are implementing measures to protect water quality.

1. Use of Existing Data Sources

One alternative approach to the proposed rule would be to rely on the use of available existing sources of data on CAFOs, such as information from USDA, states, environmental organizations and other interested stakeholder groups. The discussion below describes the sources of information that currently exist, identifies some of the limitations EPA faces in using these sources and seeks comment on ways in which EPA could leverage these sources collectively to address impacts from CAFOs.

a. U.S. Department of Agriculture Data

The U.S. Department of Agriculture is a leading source of national, publicly aggregated agricultural data. Federal law prohibits USDA from disclosing or using data collected unless the information has been converted into a statistical or aggregate form that does not allow the identification of the person who supplied particular information 7 U.S.C. 2276(a); *see also* 7 U.S.C. 8791(b)(2)(A); Confidential Information Protection and Statistical Efficiency Act, 44 U.S.C. 3501(2002). Accordingly, USDA withholds any county-level data if that information would identify individual producers. In counties where no data are available, the USDA indicates where data is omitted because of disclosure limitations or because no CAFOs are in operation.

EPA currently uses the publicly available aggregate data from USDA categorized by animal size thresholds defined by the CAFO rule to refine estimates of the CAFO universe, assess animal densities by counties, and identify the number of operations in those counties. EPA also can determine from the USDA aggregate data the cumulative number of acres that are available for land application at CAFOs, as the total number of acres by county but not by facility. To obtain facility-specific data, EPA is considering ways in which the Agency could combine the publicly available, aggregated data from USDA with other data sources to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

b. State Permitting Programs

State NPDES permitting programs should have data on permitted CAFOs, which could provide answers to the proposed survey questions in today's notice. EPA estimates that approximately 8,000 CAFOs out of a total universe of 20,000 CAFOs have obtained permit coverage under the NPDES program. Authorized states have information from permit applications and annual reports for CAFOs with permit coverage. Although not all states have made this information electronically accessible, some states have online databases or maps that display CAFO data. For example, Missouri requires permit coverage for all CAFOs as well as a subset of operations with less than 1,000 animal units and displays a map of these operations in relation to waters of the state (*http://www.dnr.mo.gov/env/wpp/afo.htm*). Missouri Department of Natural Resources uses this information to link permitted operations with specific classified stream segments in order to facilitate water quality based planning, total maximum daily load (TMDL) development and reports required under section 305(b) of the CWA. Similarly, in North Carolina all animal feeding operations with a permit, whether under the NPDES program or under other state permitting programs, are listed in a spreadsheet that can be downloaded (*http://portal.ncdenr.org/web/wq/aps/afo/perm*). The spreadsheet contains information on the number of animals at the operation, type of permit issued to an operation and latitude and longitude information for 2,711 operations.

While those two states are examples of comprehensive sources of information that are electronically available, other states maintain CAFO records in paper copy, which may not be complete or readily available. In addition, information on unpermitted CAFOs generally is not available via state records. Currently, EPA provides registered users, such as states, the ability to track permit issuance, permit limits and monitoring data through the Integrated Compliance Information System (ICIS) or through the Online Tracking Information System (OTIS), which integrates ICIS data with information from other databases such as EPA's Permit Compliance System (PCS). EPA estimates that only 15 to 20 percent of CAFO permit data is stored in one of these two systems because many states use separate databases to manage and implement permitting programs. A further challenge in

aggregating state permitting data is that the information collected is not based on a national standardized reporting scheme. Reporting inconsistencies across jurisdictions would prevent EPA from compiling a consistent national summary of CAFO information. Thus, a national inventory based solely on state data would not be comprehensive.

EPA solicits comment on ways in which data from state permitting authorities could be used in conjunction with other sources of information, such as the publicly available aggregate data from USDA, to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

c. State Registration or Licensing Programs

Permitting programs administered by the state are not the sole source of state information on CAFOs. Many state agriculture departments have registration or licensing programs that collect information from livestock farms separately from environmental permitting requirements. Such sources could be used as a source of information for the unpermitted universe. However, EPA's investigation of those data sources indicates that registration or licensing programs typically provide only contact information.

Despite the limited information available from registration and licensing programs, these sources may nevertheless provide a comprehensive list of facilities in a particular sector, which EPA could use to supplement information available from a state permitting program. For example, in Arkansas, state law requires poultry operations confining 2,500 or more birds on any given day to register with the county conservation districts. Information that could be obtained from this registration list includes: Number and kind of poultry housed; location of the operation; litter management system used and its capacity; acreage controlled by the operation; litter land applied during the last year; amount and destination of litter transferred; amount of litter utilized by the producer and the type of utilization; and the name of the poultry operation's processor.

Similarly, dairy licensing programs contain site-specific information, which may be publicly available. For example, the Ohio Department of Agriculture requires milk producers of grade A and manufactured milk to obtain a license prior to operation. As part of this process, a milk producer must provide evidence of a safe water supply and submit prepared plans for the milkhouses, milking barns, stables and parlors at the operation. Ohio Department of Agriculture provides a list by county of the number of active dairy farms in the state (*http://www.agri.ohio.gov/apps/DairyFarmsReport/FarmsReportPage.aspx*). This information could be used in conjunction with the USDA's publicly available aggregate data to determine CAFO locations by county in Ohio.

EPA seeks comment on the availability of registration and licensing lists and whether information obtained from such programs could be shared with EPA. If so, such data could also be used as part of a comprehensive effort to address CAFO impact on water quality. EPA seeks input on ways in which data from these lists could be used in conjunction with other sources of information, such as USDA's publicly available aggregated data, to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

d. Satellite Imagery and Aerial Photographs

EPA, states, and academic institutions have used satellite imagery to locate and map CAFOs. For example, through a cooperative agreement with EPA, Jacksonville State University and Friends of Rural Alabama (JSU and FRA) created the American Environmental Geographic Information System (*http://www.aegis.jsu.edu/*) to assist in watershed analyses and planning. This system provides maps and environmental data for a variety of industries, including animal feeding operations, in a select number of eastern states. JSU and FRA visually scanned satellite images for structures commonly used to confine animals. Clusters of long, white buildings were identified as poultry operations or as swine operations, when an open-air pit or lagoon system was visible.

EPA also has used aerial flyovers to obtain real time aerial photography for a variety of purposes, including identifying and updating the universe of CAFOs, identifying potential illegal discharges from CAFOs to waters of the United States. and prioritizing follow-up site inspections. While resource intensive, flyovers can be used to cover specific geographic areas and/or areas with difficult terrain.

These methodologies present certain limitations as a source of data on CAFOs. While satellite imagery and aerial photographs may identify location information for some animal feeding operations, a user may not be able to determine whether structures actually contained animals, whether an operation met the regulatory definition of a CAFO or had NPDES permit coverage. Therefore, this information source is most useful when supplemented by on-the-ground efforts to confirm site-specific information. For example, location information from aerial photography or satellite images may be combined with state and county Web sites that provide tax parcel information, building histories and permit histories, so as to identify animal feeding operations that may meet the CAFO requirements for obtaining a permit. EPA solicits comment on other ways to augment information from satellite images and aerial photography location information to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

e. Reporting Requirements Under Other Programs

EPA's Assessment, TMDL Tracking and Implementation System (ATTAINS) database (*http://www.epa.gov/waters/ir*) displays water quality findings reported by the states under section 305(b) and section 303(d) of the Clean Water Act. These findings represent state decisions as to whether assessed waters are meeting their water quality standards. Assessment decisions are made by the states based primarily on monitoring targeted to areas known or suspected to be impaired and may not fully represent all conditions within a state. While not all waters are assessed, the database identifies which watersheds are impaired. The findings are updated in the database as new state Integrated Reports (305b and 303d) are received, reviewed and posted and may reflect 2010, 2008, or 2006 data from states, depending on their latest submission. EPA seeks comment on ways in which impairment information from this source can be compared to CAFO data, such as animal density or number of operations, to inform efforts to address water quality impacts from CAFOs.

Although on a separate track from this proposed rule, EPA is currently in the process of developing a rulemaking to amend reporting requirements for livestock operations on air emissions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103 and (Emergency Planning & Community Right-to-Know Act) EPCRA section 304. This information collection effort may offer an alternative means of collecting data on livestock operations that would meet the Agency's Clean Water Act needs. As the Agency moves forward with the CERCLA/EPCRA reporting requirements

proposed rulemaking, there is an opportunity to explore how to leverage reporting to EPA from livestock operations to meet information needs under CERCLA/EPCRA and the CWA simultaneously. EPA solicits comment on ways in which this could be achieved to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

f. Other Sources of Data

Nongovernmental entities have published reports on CAFOs, such as the Food & Water Watch Report—*Factory Farm Nation: How American Turned Its Livestock Farms into Factories* and the Pew Commission report—*Putting Meat on the Table: Industrial Farm Animal Production in America.* These reports provide helpful background information and case studies. EPA currently uses the results of these studies to identify research needs but solicits comments on how such reports could enhance additional EPA efforts to reduce water quality impairments from CAFOs.

Extension agents and conservation programs also have information on CAFOs. EPA solicits comment on how the Agency could work with state cooperative extension programs, land grant universities and other conservation programs to gather information on CAFOs and to coordinate efforts to protect water quality. In general, these sources only release aggregated data and may not specifically focus on operations that meet EPA's definition of a CAFO.

In summary, through this alternative approach, EPA could combine a variety of existing data sources to determine where CAFOs are located and overlay this information with existing data on impaired waterbodies to determine where regulatory activities should be focused. While existing data sources are not consistent and are not comprehensive nationwide, the Agency seeks comment on how these sources, as well as additional sources not described herein, could be used collectively to protect water quality from CAFO discharges rather than promulgating a survey requirement for all CAFOs to provide information.

2. Alternative Mechanisms for Promoting Environmental Stewardship and Compliance

Under this alternative approach, EPA would expand its network of compliance assistance, outreach tools and partnerships with industry to assist in addressing the most significant water quality problems. Comprehensive compliance assistance and outreach efforts are tools a regulatory program can use in partnerships with industry to proactively protect and maintain water quality.

EPA recognizes that stewardship and recognition programs, education or technical assistance programs and incentive based programs, often carried out in coordination with other partners such as states, industry, or USDA, could result in improvements in industry practices more quickly than a data collection effort. Two current examples of such programs are: (1) The Ag Center, (*http://www.epa.gov/agriculture*), which provides compliance and environmental stewardship information related to animal feeding operations and partners with USDA and state land grant universities to promote environmental stewardship and improve manure and nutrient management practices; and (2) EPA's partnership with USDA's extension program, offering a wide range of compliance and environmental stewardship information for livestock operators through the Livestock and Poultry Environmental Learning Center available at *http://www.extension.org/animal_manure_management.* EPA solicits comment on how best to use alternative mechanisms such as these to ensure CAFOs are implementing measures to protect water quality. This approach would not require a rulemaking; rather it would focus on the use of activities that already are authorized under existing regulations. The success of such efforts would depend in large part on coordination with EPA's state partners and the cooperation and assistance of industry and environmental groups.

3. Require Authorized States To Submit CAFO Information From Their CAFO Regulatory Programs and Only Collect Information From CAFOs if a State Does Not Report

This alternative regulatory approach, is a variation of the proposed approach and would require NPDES authorized state regulatory agencies to submit the information proposed by paragraph § 122.23(k)(2). Many states may know the universe of CAFOs in their state to ensure proper implementation and enforcement of the CWA's permitting requirements and to protect water quality.

Although EPA recognizes that states may not have information on all CAFOs in their state, this alternative approach would require states to provide information for CAFOs for which they do have information as part of their CAFO regulatory programs. As a result, the data EPA would collect would not necessarily be comprehensive. Under this approach, EPA would only require information from CAFOs where a state failed to provide the required information to EPA.

It is likely that a number of states already have the information that would be required by proposed paragraph § 122.23(k)(2) for NPDES permitted CAFOs. Some states require CAFOs that have not sought coverage under an NPDES permit to obtain a separate state permit. For example, Maryland requires CAFOs that discharge to obtain NPDES CAFO permits and CAFOs that do not discharge to obtain state Maryland Animal Feeding Operation (MAFO) permits. Other states may have access to other data sources for CAFOs that could be used to provide the information.

Under this alternative approach, each state would be required to report the information to EPA. States would be required to submit the information within a given timeframe, and EPA would compile that information into a database. CAFOs would be required to provide whatever information a state fails to provide.

EPA seeks comment on whether authorized states should be required to provide information from their CAFO regulatory programs on behalf of the CAFOs within their boundaries. EPA also seeks comment on whether it should allow states to submit data from CAFO from sources other than a state regulatory program. EPA also seeks comment on, if it selects this alternative, whether EPA should allow or require CAFOs to review the information in the database.

IV. Impact Analysis

A. Benefits and Costs Overview

When EPA issued the revised CAFO regulations on February 12, 2003, it estimated annual pollutant reductions due to the revisions at 56 million pounds of phosphorus, 110 million pounds of nitrogen and two billion pounds of sediment. This proposed rulemaking would not alter the benefits calculated in the 2003 rule. The effect of the proposed rule would be to enable full attainment of the benefits calculated in the 2003 rule by furnishing EPA with information on the universe of CAFOs. To date, EPA estimates that approximately 58 percent of CAFOs do not have NPDES permits. The information collected under this proposal would help ensure that CAFOs that discharge have NPDES permit coverage necessary to achieve these environmental benefits.

The proposed rulemaking would not alter any permitting requirements or the

technical requirements under the Effluent Limitations Guidelines and Standards (ELGs), so CAFOs would not incur any compliance costs associated with modifications to structures or operational practices. The only cost associated with this rule to affected entities is the reporting burden to provide the required information to EPA as specified in this proposal.

B. Administrative Burden Impacts

Since there is no change in technical requirements, cost impacts to CAFOs are exclusively due to changes in the information collection burden. To determine the administrative burden for the Paperwork Reduction Act (PRA) analysis, the Agency projected the burden that CAFOs would incur because of the new requirements.

To complete this projection, the Agency started with its current estimate of the total number of CAFOs in the U.S. and then examined the administrative burden that would be incurred by these operations. It is important to note that while EPA's estimates of CAFOs are adequate for purposes of completing the impact analyses required under statute and executive order, the data are insufficiently detailed for purposes of identifying precise locations of specific CAFOs or clusters of CAFOs, understanding their operational practices and assessing their potential environmental impacts.

EPA's most recent information on the number of CAFOs in the U.S. shows that as of 2010 there were approximately 20,000 CAFOs, both permitted and unpermitted. To estimate the reporting burden faced by these CAFOs under the proposed rule requirements, EPA examined its prior PRA analyses. These analyses had assumed that CAFOs applying for NPDES permit coverage would incur a nine hour administrative burden to complete and file NPDES permit applications or notices of intent. Based on comparing the reporting items for permit applications to the reporting items in the proposed rulemaking, EPA estimated that a CAFO would need one hour to gather and submit the information on the proposed survey form to EPA as indicated in the proposed rulemaking. This burden estimate reflects both the time to understand the reporting requirements as well as time to complete the survey form electronically or by paper, when necessary.

EPA's PRA analysis combines the updated estimates of numbers of CAFOs and the estimates of the reporting burden to project that CAFO operators would collectively experience an increase in total annual administrative burden of approximately $0.2 million under the first proposed option where all CAFOs would submit their information to EPA. The costs associated with the option to collect information only from CAFOs in focus watersheds would be a subset of these costs.

Under the requirements as laid out in proposed paragraph § 122.23(k)(5) for the first proposed option, state permitting authorities would not incur any administrative burden arising out of the rulemaking since CAFOs would report their information directly to EPA. States would have the option of submitting information on their CAFOs electronically; however, EPA anticipates that the states that would choose this option are those for whom this type of batch reporting would not impose an undue burden.

This **Federal Register** notice also includes an alternative approach that would require states to provide information on CAFOs in their state. EPA costed this alternative approach separately in the proposed rule supporting analysis. Under this approach, the reporting burden would shift from CAFOs to states since states would be responsible for reporting the data proposed to be collected to EPA. To complete a cost estimate for this approach, EPA estimated a cumulative incremental cost based on an assumption that all states would submit their CAFO records as paper files to the Agency. For purposes of costing this scenario, EPA estimated that it would take states one hour to prepare and submit records for 20 facilities. This labor burden combined with photocopying costs yielded a total state respondent average incremental annual cost of $16,391. EPA solicits comment on the burden analysis regarding the requirement for states to submit CAFO information from their regulatory programs.

The documentation in the public record on the PRA analysis for this proposed rulemaking discusses more fully the assumptions used to project the associated administrative burden, including the burden faced by CAFOs that subsequently may need to update any information submitted previously.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51,735; October 4, 1993), this proposed action is a ''significant regulatory action.'' Accordingly, EPA submitted this proposed action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this proposed action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this proposed action. This analysis is summarized in Section IV of this preamble above, entitled *Impact Analysis.* A copy of the supporting analysis is available in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA was assigned EPA ICR No. 1989.08.

The proposed rule would require CAFOs to provide EPA with basic facility information. This action would provide EPA with the information on the universe of CAFOs it needs to ensure compliance with the CWA. EPA projects that the proposed rule would cause CAFO operators to experience an increase in annual administrative burden of 6,960 labor hours annually, which translates into an increased annual administrative cost of $0.2 million. The increase in administrative costs is based on projecting submission costs for all CAFOs, and is derived exclusively from the recordkeeping and reporting requirements associated with submitting the required information to EPA as detailed in the proposed rule. EPA assumed for purposes of the PRA analysis that a CAFO would incur a labor burden of one hour for filing the required information. The proposed action would not impose any new capital costs on affected entities. The burden for the initial reporting is averaged over three years for purposes of calculating burden under the PRA. EPA requests comment on its estimate of burden and costs for CAFOs to comply with the reporting requirements in the two co-proposed rule options.

Under the proposed rule, states would have the option of providing EPA with datasets on their CAFOs with existing NPDES permits. However, the effort to generate these datasets is not costed as part of the ICR since EPA assumes that the states that choose to provide the datasets to EPA would be the ones for whom this task would not be overly

burdensome, and the burden the states would incur would be in lieu of a comparable burden avoided by CAFOs that the states reported for.

Additional details on the assumptions and parameters of the PRA analysis are available in the ICR document referenced above, which is available in the docket supporting this proposed rulemaking. Burden is defined at 5 CFR 1320.3(b).

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes the ICR, under Docket ID number EPA–HQ–OW–2011–0188. Please submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 21, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by November 21, 2011. The final rule would respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires a Federal agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed rule does not change any of the substantive requirements for CAFO operators. While it does increase the net paperwork burden faced by facilities compared to the burden imposed under the 2003 CAFO rule, these incremental costs are small compared to the existing paperwork burden faced by CAFOs and represent an increase in annualized compliance costs that is significantly less than one percent of estimated annual sales for any of the affected entities. To reach this determination, EPA examined sales figures reported in USDA's publicly available aggregated data and concluded that it is unlikely that the estimated upper-bound burden impact of one hour per CAFO would exceed one percent of the average annual sales of any of the livestock operations for whom sales figures were reported.

Additionally, this proposed rule would not affect small governments, as the permitting authorities are state or Federal agencies and the information would be submitted directly to EPA.

EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. The proposed rule also presents an alternative approach that would require states to submit information on CAFOs. EPA determined that this alternative approach, which principally would involve photocopying, would also not result in a burden above the threshold. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule would contain no regulatory requirements that might significantly or uniquely affect small governments. There are no local or tribal governments authorized to implement the NPDES permit program and the Agency is unaware of any local or tribal governments who are owners or operators of CAFOs. Thus, this rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. Since the reporting under the proposed rule would require CAFOs to submit their information directly to EPA, it would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would offer states the option of submitting information on behalf of the state's CAFOs. However, the proposed rule would not require states to adopt

this option; therefore, EPA does not consider this proposed rule to have a substantial impact on states. Thus, Executive Order 13132 does not apply to this proposed action.

EPA is requesting comment on alternative approaches for gathering CAFO information. One of these approaches would require States to submit information on their CAFOs. EPA examined costs associated with this alterative and concluded based on a conservative estimate of burden impacts that the alternative would not trigger federalism concerns.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because there are currently no tribal governments authorized for the NPDES program. In addition, EPA is not aware of any Indian tribal governments that own CAFOs that would be subject to the proposed reporting requirements. Thus, Executive Order 13175 does not apply to this action.

This proposed rulemaking could have the effect of providing increased opportunities for the tribal governments to obtain information on all CAFOs within their governmental boundaries and, as such, may facilitate their interactions with entities of possible concern.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA would also distribute information on the outcome of the rulemaking process once the rulemaking action is finalized.

EPA solicits comment on the Agency's approach to meeting its obligations under E.O. 13175 for the proposed action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19,885; April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The benefits analysis performed for the 2003 CAFO rule determined that the rule would result in certain significant benefits to children's health. (Please refer to the *Benefits Analysis* in the record for the 2003 CAFO final rule.) This proposed action does not affect the environmental benefits of the 2003 CAFO rule.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects since CAFOs in general do not figure significantly in the energy market, and the regulatory revisions finalized in this rule are not likely to change existing energy generation or consumption profiles for CAFOs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus 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 standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve the use of technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that the information collected by this rule could benefit minority and low-income populations by providing information on nearby CAFOs with potential effects on neighboring communities. In addition, the Agency anticipates that the information to be collected under the rulemaking would aid EPA's consideration of environmental justice concerns as the Agency moves forward with implementation of the NPDES CAFO program.

As part of EPA's continued effort to meet its obligations under E.O. 12898, the Agency has completed an analysis to identify those portions of the country where there are both large numbers of CAFOs as well as concentrations of minority and low-income populations. These regions include parts of the Carolina lowlands, central California and the Delmarva Peninsula on the Chesapeake Bay.

EPA solicits comment on the ability of the questions as proposed to support consideration of environmental justice (EJ) concerns related to future design and implementation of the NPDES CAFO program. EPA seeks comment on what other questions beyond those proposed would support EJ concerns and be valuable to EJ communities. EPA welcomes suggestions for EJ groups who could help shape the Agency's outreach to EJ communities. EPA also seeks comment on its analysis supporting E.O. 12898, which shows where large numbers of CAFOs and EJ communities co-exist. The supporting analysis is contained in the docket for the proposed rulemaking.

United States Environmental Protection Agency
Washington, DC 20460 Form Approved

OMB No. 2040-0250

INFORMATION GATHERING SURVEY FORM FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

EPA ICR No. 1989.08

SUBMISSION INFORMATION

Electronic Submission Waiver

☐ I hereby acknowledge a waiver from the use of EPA's electronic information management system because the use of such system will incur undue burden or expense over my use of this paper survey form. Briefly describe the reason why use of the electronic system causes undue burden or expense.

_____.

Please check the appropriate box. Check only one checkbox.

☐ First Submission
☐ Resubmission with changes to the information supplied previously
☐ Resubmission with no change to the information supplied previously
☐ Operation no longer a concentrated animal feeding operation (CAFO)

QUESTION 1. CONTACT INFORMATION

Provide contact information by completing the table below.

OWNER/OPERATOR INFORMATION or AUTHORIZED REPRESENTATIVE INFORMATION	
Name of the Owner/Operator OR Authorized Representative	
Primary Telephone for Owner/Operator or Authorized Representative	Email Address (if available)
Mailing Address	
Street/P.O. Box	City
State	Zip Code

QUESTION 2. LOCATION INFORMATION

Please provide the location of the production area either by 1) latitude and longitude (in decimal degrees); or by the street address of the CAFO's production area.

Geographic Latitude and Longitude of the Production Area	
Latitude:	Longitude:

OR

Address of the CAFO's Production Area	
Street Address	City
State	Zip Code

QUESTION 3. NPDES PERMIT INFORMATION

Does the CAFO have a current NPDES permit?

☐ No: Proceed to *Section 4. Type and Number of Animals* .

☐ Yes: Provide NPDES permit number and the date of issuance:

NPDES Permit No./Tracking No./ID:_____

Date of issuance: Month:_____Day:_____Year:_____

☐ Pending: Provide the date that the NOI or permit application was submitted for coverage under an NPDES permit:

Month:_____Day:_____Year:_____

QUESTION 4. TYPE AND NUMBER OF ANIMALS

Use the table to indicate the maximum number of animals for each animal type held either in open confinement including partially covered or housed totally under roof at the CAFO for a total of 45 days or more in the previous 12 months. The 45 days do not have to be consecutive.

4.1.1 ANIMAL TYPE	4.1.2 MAXIMUM NUMBER OF ANIMALS
❑ Mature Dairy Cows (milked or dry)	
❑ Veal Calves	
Cattle (not dairy or veal calves) ❑ Heifers ❑ Steers ❑ Bulls ❑ Cow/calf pairs	
❑ Swine (55 lbs. or over)	
❑ Swine (under 55 lbs.)	
❑ Horses	
❑ Sheep or Lambs	
❑ Turkeys	
❑ Chickens (Broilers)	
❑ Chickens (Layers)	
❑ Ducks	
❑ Other: Please Specify	

QUESTION 5. LAND APPLICATION

Where the CAFO land applies manure, litter, or process wastewater:

a. In the previous 12-months, how many acres of land under the control of the CAFO were available for applying the CAFO's manure, litter, and/or process wastewater? (Please include land owned by the CAFO, land that is rented or leased **from others,** and any land that is owned by the CAFO that is rented or leased **to others in which the owner or authorized representative of the CAFO retains nutrient management decisions)**. _____-_____acres

SIGNATURE REQUIREMENTS

All submissions provided pursuant to this information gathering survey form must be signed and dated by a responsible party in accordance with 40 CFR 122.22 for following certification statement:

I certify under penalty of law that I am the responsible party for a concentrated animal feeding operation (CAFO), identified as [Name of CAFO]. Based on my inquiry of the person or persons directly responsible for gathering the information, I certify that the information contained in or accompanying this submission, to the best of my knowledge and belief, is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature_____ Printed Name_____
Title_____
Date_____

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

Defined Terms

Terms in italics below are specifically defined in the Survey Form Definitions section of these instructions. Refer to this section for specific meaning of these terms.

Purpose of Form

Owners of concentrated animal feeding operations (CAFOs) must use this survey form to submit the information required by 40 CFR 122.23(k).

Who Must File

Owners of CAFOs are required to submit the information specified at 40 CFR 122.23(k) regardless of whether the CAFO is required to seek NPDES permit coverage. For the purposes of this survey, a CAFO means an animal feeding operation (AFO) that is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23(b), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Further definitions for the purpose of this form are in the section, Survey Form Definitions. The owners of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

Where to Submit

Send the completed and signed survey form to:

U.S. EPA, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

When to Submit

Under proposed option 1, owners of CAFOs must submit the survey form to EPA [within 90 days after EPA makes available a list of CAFOs for which a state has provided the information] and under proposed option 2, owners of CAFOs must submit the survey form by [the deadline specified in a separate Federal Register Notice]. NPDES authorized states that choose to submit the information on behalf of a CAFO would be required to submit the information to EPA [within 90 days after the effective date of the rule]. Subsequently, under proposed option 1, owners of CAFOs not authorized by an NPDES permit must resubmit the survey form between [January 1 and June 1, 2022] and every subsequent tenth year thereafter between [January 1 and June 1]. The survey form provides a checkbox that indicates such resubmissions.

Entering Responses

CAFOs must provide the information on this survey form electronically except where electronic submission would cause an undue burden or expense. Electronic submissions may be made via the Agency's information management system. Please go to *www.epa.gov/npdes/afo* for more information on how to submit.

However, EPA is making paper filing available in recognition that not everyone has internet access. If using a hardcopy of the form to submit the information, use blue or black ink only to complete a hardcopy of the survey form. Mark the electronic submission waiver box and provide a reason why the respondent is providing the information by completing and submitting a hard copy of this survey form.

Please print clearly. Mark all applicable checkboxes with an ''X''.

Changes at the operation after the owner submits this information are not required to be reported, except that CAFOs not authorized by an NPDES permit must resubmit the survey form every 10 years as specified above.

Confidential Business Information

Regulations governing the confidentiality of business information are contained in the Code of Federal Regulations (CFR) at Title 40 Part 2, Subpart B. Under sections 2.208, business information is entitled to confidential treatment if, ''the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. You may assert a business confidentiality claim covering part or all of the information you submit, as described in 40 CFR 2.203(b):

''(b) Method and time of asserting business confidentiality claim. A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice complying language such as 'trade secret', 'proprietary,' or 'company confidential.' Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified by the business, and may be submitted separately to facility identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state''

If you claim any response as CBI, you must specify the portion of the response or document for which you assert a claim of confidentiality by reference to page numbers, paragraphs, and lines, or specify the entire response or document. This information must be provided as part of the submission of the completed survey form. Note that EPA will review the information submitted and may request your cooperation in providing information to identify and justify the basis of your CBI claim. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentially claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the Clean Water Act.

SURVEY FORM INSTRUCTIONS

Submission Information

Please check the appropriate box to indicate whether the CAFO is supplying information for the first time or resubmitting the survey form. A CAFO may also voluntarily update their information if the operation is no longer a CAFO.

Section 1. Contact Information

Use legal names. Provide the mailing address for the owner of the CAFO or authorized representative. The address may be a business address, a post office box, or the address of the CAFO owner or authorized representative. A county road number may indicate the operation's street address.

Section 2. Location Information

Provide location of the production area either by the latitude and longitude for the production area or by the street address of the CAFO's production area. Please provide latitude or longitude in degree decimals. For CAFOs that have multiple production areas, such as facilities under common ownership, that either adjoin each other or use a common area or system for waste disposal, the entrance to the production area for the largest portion of the CAFO should be provided.

For the purposes of this form, the entrance to the production area may be a road leading to the confinement houses or the central point of access to the operation. This information is commonly included in a nutrient management plan or, alternatively, the respondent may determine the latitude and longitude for the entrance to the production area by using interactive maps available on the internet. Latitude or longitude information can be obtained at the following websites: *http://www.satsig.net/maps/lat-long-finder.htm, http://earth.google.com/,* and *http://www.census.gov/geo/landview/*. If the units for the CAFO's latitude or longitude is in minutes/seconds, this information can be readily converted through a variety of free internet applications.

The respondent need only provide either the CAFO's latitude and longitude or the street address of the CAFO's production area.

Section 3. NPDES Permit Information

Use the appropriate checkbox to indicate whether the CAFO has a current NPDES permit. A current NPDES permit would provide coverage to the CAFO as of the date the report is submitted. If you have an NPDES permit, check the ''Yes'' box and provide the NPDES permit number and the date of issuance for NPDES permit coverage. NPDES permit coverage may have been issued to the CAFO after submitting an individual NPDES permit application or a Notice of Intent (NOI) for coverage under a general NPDES permit. CAFOs should find their NPDES permit number on the copy of the permit for an individual permit or on the written notification from the permitting authority acknowledging receipt of the NOI. States may refer to the NPDES permit number as a tracking number, operating permit number, or state identification number. For example, Maryland identifies its general NPDES permit as ''MDG01,'' whereas, Missouri's general operating permit number ''MO–G010000.''

If you do not have an NPDES permit, check the ''No'' box and go to Section 4. Type and Number of Animals. If you applied for an NPDES permit but have not received any notice of coverage, please check the ''Pending'' box and provide the date that the NOI or NPDES permit application was submitted.

Section 4. Type and Number of Animals

Use the table to indicate the maximum number of animals for each animal type held either in open confinement including partially covered or housed totally under roof held at the CAFO for a total of 45 days or more in the previous 12 months.

CAFOs with multiple production cycles should provide the maximum number of animals confined for any given production cycle. Multiple production cycles are common at poultry and swine operations. CAFOs under common ownership should report the cumulative number of animals confined for 45 days or more.

It is important to note that the 45 days do not have to be consecutive, and the 12-month period does not have to correspond to the calendar year. The 12-month does not have to correspond to the calendar year. If an animal is confined at an operation for any portion of a day, it is considered to be confined for a full day. Please see definition of an animal feeding operation of these instructions.

EXAMPLE: A calf/cow operation that has the capacity to hold 2,000 head of cattle. The facility operates year-round and never confines less than 1,000 head of cattle at any one time. The facility has both pasture and partially opened barns. The operation meets the definition of a CAFO because: 1) it confines the required animal numbers to meet the Large CAFO threshold, 2) confines the animals for more than 45 days, and 3) the confinement area does not sustain vegetation. For the last 12-month period, the cow/calf operation split its calving between fall and spring. During the fall, the operation confined 1,500 head of cattle for 45 days or more and during the spring, the operation confined 1,000 head of cattle. This operation should report in the table under calf/cow pairs and list 1,500 under the column for ''Open Confinement (include partially covered)''.

Section 5. Land Application

Provide the amount of acres available for land application. Report in whole acres, rounding up to the nearest whole number if necessary. Include land associated with the CAFO, whether in production or not. Include all land that the owner or operator owned or rented during the previous 12-month period, even if only for part of the year, and any land that is owned by or rented or leased to others in which the owner or operator of the CAFO retains nutrient management decisions. This may also include situations where a farmer releases control over the land application area, and the CAFO determines when and how much manure is applied to fields not otherwise owned, rented, or leased by the CAFO. Exclude residential or other land not used for agricultural purposes.

Section 6. Signature Requirements

A responsible official in accordance with 40 CFR 122.22 must sign the certification statement provided on the form. Print the name of the signatory. Provide the date of signature and title of the signatory.

SURVEY FORM DEFINITIONS

The definitions provided below are for the purposes of this information gathering survey form. All terms not defined below shall have their ordinary meaning, unless such terms are defined in the Clean Water Act, 33 U.S.C. § 1362, or its implementing regulations found at 40 CFR parts 122 and 412 respectively, in which case the statutory or regulatory definitions apply.

1. ''Animal feeding operation'' means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be, stabled, 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. (40 CFR 122.23(b)(1)). Two or more AFOs under common ownership are considered to be a single AFO for purposes of determining the number of animals at an operation, if they adjoin each other, are next to, sharing property lines or if they use a common area or system for manure management or the disposal of wastes. (40 CFR 122.23(b)(2)).

2. ''Authorized representative'' means an individual who is involved with the management or representation of the CAFO. An authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO.

3. ''Concentrated animal feeding operation'' (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

4. ''Large concentrated animal feeding operation'' means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cows, whether milked or dry; (ii) 1,000 veal calves; (iii) 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; (iv) 2,500 swine each weighing 55 pounds or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

5. ''Manure'' includes manure, or bedding or bedding material, hay, compost, and raw material or other materials commingled with manure that is to be land applied or set aside for disposal.

6. ''Medium concentrated animal feeding operation'' means any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if: (i) The type and number of animals that it stables or confines falls within any of the following ranges: (A) 200 to 699 mature dairy cows, whether milked or dry; (B) 300 to 999 veal calves; (C) 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; (D) 750 to 2,499 swine each weighing 55 pounds or more; (E) 3,000 to 9,999 swine each weighing less than 55 pounds; (F) 150 to 499 horses; (G) 3,000 to 9,999 sheep or lambs; (H) 16,500 to 54,999 turkeys; (I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and (ii) Either one of the following conditions are met: (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) 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.

7. ''Owner or operator'' means the property owner or any person who owns, leases, operates, controls, or supervises the operations at the CAFO. Any person who operates an AFO subject to regulation under the NPDES program may be involved with making day-to-day decisions about, or doing, such things as planting, harvesting, feeding, waste management, and/or marketing. The operator can include, but is not limited to, the owner, a member of the owner's household, a hired manager, a tenant, a renter, or a sharecropper.

8. ''NPDES Permit'' means an authorization, license, or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of the CWA NPDES permitting program and implementing regulations at 40 CFR parts 122, 123, and 124.

9. ''Process wastewater'' means water directly or indirectly used in the operation of the AFO including but not limited to: spillage or overflow from animal or poultry watering systems; washing; cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproduct including, manure, litter, feed, milk, eggs, or bedding.

10. ''Producer'' means any grower, breeder, or person who otherwise raises animals for production.

11. ''Production area'' means that part of an AFO 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, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, 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 storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

12. ''Storage pond'' means an earthen impoundment used to retain manure, bedding, process wastewater (such as parlor water) and runoff liquid.

13. ''Waste'' and/or ''wastes'' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, including but not limited to manure, litter, and/or process wastewater, discharged into water.

Federal regulations require the certification to be signed as follows:

A. For a corporation, by a principal executive officer of at least the level of vice president.

B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

Paper Reduction Act Notice

The public reporting and recordkeeping burden for this collection of information is estimated to average one hour per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Include the OMB control number in any correspondence. Do not send the completed survey form to this address.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 14, 2011.

Lisa P. Jackson,

Administrator.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding an entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * *	
122.23(k)	2040–0250
* * * * *	

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

3. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 122.23 is amended by adding paragraph (k) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to state NPDES programs, see § 1223.25)

* * * * *

Option 1 for Paragraph (k)

(k) *Information Gathering Survey for CAFOs.* (1) *All CAFOs must submit information to EPA.* The owner(s) or operator(s) of a CAFO, as defined in 40 CFR 122.23(b), must provide the information specified in paragraph (k)(2) of this section to the Administrator, except in cases where a state voluntarily fulfills this requirement on behalf of the owner(s) or operator(s) of CAFOs located within that state, according to the procedures specified in paragraph (k)(5) of this section.

(2) *Information to be submitted to the Administrator.* The owner or operator of a CAFO or a state must provide the following information to the Administrator:

(i) The legal name of the owner of the CAFO or an authorized representative, and their mailing address, e-mail address (if available) and primary telephone number. (An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO);

(ii) The location of the CAFO's production area identified by the latitude and longitude; or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the NPDES permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered areas, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter and process wastewater, the total number of acres under the control of the owner or operator available for land application.

(3) *Submission process for CAFOs.* The owner or operator of a CAFO must submit the information specified in paragraph (k)(2) of this section using the survey form provided by the Administrator. The owner or operator of a CAFO must submit the survey form to the Administrator, either by certified mail, or electronically, through the Agency's electronic information management system by the deadline specified in (k)(4) of this section. If submitting the survey form by certified mail, the owner or operator of a CAFO must indicate on the survey form that an electronic submission waiver applies and provide justification as to why

electronic submission would cause an undue burden or expense.

(4) *Deadline for submissions by owners or operators of CAFOs. (i) An operation defined or designated as a CAFO as of [the effective date of the final rule], where a state did not provide the required information to EPA in accordance with paragraph (k)(5) of this section.* Where a state does not provide the information required by paragraph (k)(2) of this section in accordance with paragraph (k)(5) of this section, a CAFO must submit the information required by paragraph (k)(2) in accordance with paragraph (k)(3) [within 90 days] after EPA makes available a list of CAFOs for which a state has provided the information.

(ii) *CAFOs for which a state has provided the required information to EPA in accordance with paragraph (k)(5) of this section.* CAFOs for which a state submitted the information required by paragraph (k)(2) of this section in accordance with paragraph (k)(5) of this section, may, but are not required to, provide information to EPA [within 90 days] after EPA makes available a list of CAFOs for which a state has provided the information.

(iii) *Resubmission requirement for CAFOs not authorized by an NPDES permit.* CAFOs not authorized by an NPDES permit must submit the information specified in paragraph (k)(2) of this section or update information previously submitted, pursuant to the procedures specified by paragraph (k)(3) of this section, between January 1 and June 1 every ten years following 2012 (*e.g.,* 2022, 2032, *etc.*). The periodic submission requirement applies to all CAFOs not authorized by an NPDES permit at the time of these dates, whether or not CAFOs at one point had permit coverage at any time prior to these dates. CAFOs established after the first 2012 information submission period that do not have NPDES permits are subject to this ten-year resubmission requirement.

(5) *Elements of state voluntary submissions.* In order to fulfill the requirements of paragraphs (k)(1) and (k)(2) of this section on behalf of CAFOs, a state must:

(i) Use the Agency's electronic information management system to submit the information.

(ii) Submit information from the state's most recent application process, from a CAFO's most recent annual report, or from another current information source,

(iii) Submit the information [within 90 days after the effective date of the rule].

Option 2 for Paragraph (k)

(k) *Information Gathering Survey for CAFOs in Focus Watersheds. (1) CAFOs in focus watersheds must submit information to EPA.* The owner(s) or operator(s) of a CAFO, as defined in 40 CFR 122.23(b), located in a focus watershed as identified by EPA as provided in paragraph (k)(2) of this section, must, if so notified as provided in paragraph (k)(3), provide the information specified in paragraph (k)(4) of this section to the Administrator according to the procedures specified in paragraph (k)(5) of this section by the deadline specified in (k)(6) of this section.

(2) *How will EPA identify a focus watershed*? To identify a focus watershed, EPA shall:

(i) Determine that the area has water quality concerns associated with CAFOs, including but not limited to nutrients (nitrogen and phosphorus), pathogens (bacteria, viruses, protozoa), total suspended solids (turbidity) and organic enrichment (low dissolved oxygen), and consider one or more of the following criteria;

(A) High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supplies, watersheds with high recreational value, or watersheds that are outstanding natural resource waters (Tier 3 waters);

(B) Vulnerable soil type;

(C) High density of animal agriculture; and/or

(D) Other relevant information; and

(ii) Define the geographical location and extent of the focus watershed using Zip Codes, counties, hydrologic unit codes (HUCs), or other relevant information that would define the geographical location and extent of an area.

(3) *How will EPA notify CAFOs in a focus watershed if they have an obligation to provide information?* If EPA is unable, after reasonable effort, to obtain the information in paragraph (k)(4) of this section from all CAFOs in a focus watershed, EPA will:

(i) Conduct outreach in the focus watershed regarding the need for CAFOs to submit the information specified in paragraph (k)(4) of this section for a minimum of [30] days.

(ii) Provide notice to the CAFOs of the need to submit information and the timing for such request by notice in the **Federal Register** and other appropriate means in the focus watershed.

(4) *Information to be submitted to the Administrator.* The owner or operator of a CAFO located in a focus watershed identified by EPA as provided in paragraph (k)(2) of this section must provide the following information to the Administrator, if so notified in accordance with paragraph (k)(3) of this section:

(i) The legal name of the owner of the CAFO or an authorized representative, and their mailing address, e-mail address (if available) and primary telephone number. (An authorized representative must be an individual who in involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO);

(ii) The location of the CAFO's production area identified by the latitude and longitude; or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the NPDES permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered areas, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter and process wastewater, the total number of acres under the control of the owner or operator available for land application.

(5) *Submission process for CAFOs in focus watersheds.* The owner or operator of a CAFO located in a final focus watershed, if so notified by EPA, must submit the information specified in paragraph (k)(4) of this section using the survey form provided by the Administrator. The owner or operator of a CAFO located in a focus watershed and so notified must submit the survey form to the Administrator, either by certified mail, or electronically, through the Agency's electronic information management system by the deadline specified in paragraph (k)(5) of this section. If submitting the survey form by certified mail, the owner or operator of a CAFO located in a focus watershed must indicate on the survey form that an electronic submission waiver applies and provide justification as to why

electronic submission would cause an undue burden or expense.

(6) *Deadline for submissions by owners or operators of CAFOs in focus watersheds.* The owner or operator of a CAFO located in a focus watershed and so notified must submit the information required by paragraph(k)(4) of this section in accordance with paragraph (k)(5) of this section [within 90 days] after EPA notifies CAFOs of such obligation in accordance with paragraph (k)(3).

[FR Doc. 2011–27189 Filed 10–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0937–201118; FRL–9480–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 27, 2011, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division of Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana (hereafter referred to the ''Tri-state Cincinnati-Hamilton Area'') fine particulate matter ($PM_{2.5}$) nonattainment area to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the Tri-state Cincinnati-Hamilton Area. The Tri-state Cincinnati-Hamilton Area is comprised of Boone, Campbell, and Kenton Counties in Kentucky (hereafter referred to as the ''Northern Kentucky Area'' or ''Area''); Butler, Clermont, Hamilton, and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. EPA is proposing to approve the redesignation request for Boone, Campbell, and Kenton Counties, along with the related SIP revision, including the Commonwealth's plan for maintaining attainment of the $PM_{2.5}$ standard in the Northern Kentucky Area. EPA is also proposing to approve Kentucky's nitrogen oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Northern Kentucky Area. On December 9, 2010, and January 25, 2011, respectively, Ohio and Indiana submitted requests to redesignate their portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 $PM_{2.5}$ NAAQS. EPA is taking action on the requests from Ohio and Indiana in an action separate from these proposed actions.

DATES: Comments must be received on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0937, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0937, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0937. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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