Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Dated: May 4, 2007.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. E7–9010 Filed 5–9–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[EPA–HQ–OW–2005–0036; FRL–8311–4]

RIN 2040–AE92

Proposed Revised Compliance Dates Under the National Pollutant Discharge Elimination System Permit Regulations and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend certain compliance dates in the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) while EPA works to complete rulemaking to respond to the decision of the Second Circuit Court of Appeals in *Waterkeeper Alliance et al.* v. *EPA*, 399 F.3d 486 (2nd Cir. 2005). The sole purpose of this proposed rule is to address timing issues associated with the Agency's response to the *Waterkeeper* decision.

This proposal would revise the dates established in the 2003 CAFO rule and later modified by a rule published in the **Federal Register** on February 10, 2006, by which facilities newly defined as CAFOs are required to seek permit coverage and by which all permitted CAFOs are required to develop and implement their nutrient management plans (NMPs). EPA is proposing to extend the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from July 31, 2007, to February 27, 2009. EPA is also proposing to amend the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from July 31, 2007, to February 27, 2009. Finally, EPA is proposing to extend the deadline by which permitted CAFOs are required to develop and implement NMPs, from July 31, 2007, to February 27, 2009.

DATES: Comments on this proposed action must be received on or before June 11, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2005–0036 by one of the following methods

(1) *www.regulations.gov*: Follow the on-line instructions for submitting comments.

(2) *E-mail*: *ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2005–0036.

(3) *Mail*: Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2005–0036.

(4) *Hand Delivery*: Deliver your comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2005–0036. Such deliveries are only accepted during the Docket'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–2005–0036. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

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 *www.regulations.gov* or e-mail. The *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 *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 docket are listed in the 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 www.regulations.gov or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal 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.

FOR FURTHER INFORMATION CONTACT: Rebecca Roose, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0758, e-mail address: *roose.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information
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B. Deadline for Nutrient Management Plans
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I. General Information

A. Does This Action Apply to Me?

This action applies to concentrated animal feeding operations (CAFOs) as defined in section 502(14) of the Clean Water Act and in the NPDES regulations at 40 CFR 122.23. The following table provides a list of standard industrial codes for operations covered under this revised rule.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
Federal, State, and Local Government:			
Industry	Operators of animal production operations that meet the definition of a CAFO:		
	Beef cattle feedlots (including veal)	112112	0211
	Beef cattle ranching and farming	112111	0212
	Hogs	11221	0213
	Sheep	11241, 11242	0214
	General livestock except dairy and poultry	11299	0219
	Dairy farms	11212	0241
	Broilers, fryers, and roaster chickens	11232	0251
	Chicken eggs	11231	0252
	Turkey and turkey eggs	11233	0253
	Poultry hatcheries	11234	0254
	Poultry and eggs	11239	0259
	Ducks	112390	0259
	Horses and other equines	11292	0272

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility may be regulated under this rulemaking, 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. *Submitting Confidential Business Information.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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.

2. *Tips for Preparing Your Comments.* It will be helpful if you follow these guidelines as you prepare your written comments:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. The Clean Water Act

Congress passed the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters.'' 33 U.S.C. 1251(a). Among its core provisions, the CWA established the NPDES permit program to authorize and regulate the discharge of pollutants from point sources to waters of the U.S. 33 U.S.C. 1342. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR Part 122. The Act also provided for the development of technology-based and water quality-based effluent limitations that are imposed through NPDES permits to control the discharge of pollutants from point sources. CWA Section 301(a) and (b).

B. History of Actions To Address CAFOs Under the NPDES Permitting Program

EPA's regulation of wastewater and manure from CAFOs dates from the 1970s. EPA initially issued national effluent limitations guidelines and standards for feedlots on February 14, 1974, (39 FR 5704) and NPDES CAFO regulations on March 18, 1976 (41 FR 11458).

In February 2003, EPA revised these regulations. 68 FR 7176 (the ''2003 CAFO rule''). The 2003 CAFO rule required owners or operators of all CAFOs[1] to seek coverage under an NPDES permit, unless they demonstrated no potential to discharge. CAFO industry organizations (American Farm Bureau Federation, National Pork Producers Council, National Chicken Council, and National Turkey Federation (NTF), although NTF later withdrew its petition) and environmental groups (*Waterkeeper* Alliance, Natural Resources Defense Council, Sierra Club, and American Littoral Society) filed petitions for judicial review of certain aspects of the 2003 CAFO rule. This case was brought before the U.S. Court of Appeals for the Second Circuit. On February 28, 2005, the court ruled on these petitions and upheld most provisions of the 2003 rule but vacated and/or remanded others. *Waterkeeper Alliance et al.* v. *EPA*, 399 F.3d 486 (2nd Cir. 2005) (hereafter referred to as *Waterkeeper*). Notably, the court vacated the requirement that all CAFOs apply for NPDES permit coverage unless a CAFO demonstrates no potential to discharge. The court also remanded the rule for failing to require incorporation of the terms of CAFOs' NMPs into their permits and for failing to prescribe public review and comment and permitting authority approval of the terms of the NMPs. Other provisions were remanded for further clarification and analysis.

C. Status of EPA's Response to the Waterkeeper Decision

On June 30, 2006, EPA published a proposed rule in response to the *Waterkeeper* decision. 71 FR 37744. EPA proposed to revise several aspects of the Agency's regulations governing discharges from CAFOs. In summary, EPA proposed to require only owners or operators of those CAFOs that discharge or propose to discharge to seek coverage under a permit. Second, EPA proposed to require CAFOs seeking coverage under a permit to submit their NMP with their application for an individual permit or, for general permit coverage, with their notice of intent to be authorized to discharge under a general permit. Permitting authorities would be required to review the NMP and provide the public with an opportunity for meaningful public review and comment. Permitting authorities would also be required to incorporate terms of the NMP as NPDES permit conditions. The proposed rule also addressed the remand of issues for further clarification and analysis. These issues concern the applicability of water-quality based effluent limitations (WQBELs); the record supporting new source performance standards for swine, poultry, and veal CAFOs; and the record support for ''best conventional technology'' effluent limitations guidelines for pathogens. The proposed rule reflected the dates for compliance as revised in February 2006; i.e., July 31, 2007, for permit application by newly defined CAFOs and NMP development and implementation by all permitted CAFOs. The public comment period for the June 2006 CAFO proposal closed on Aug. 29, 2006. EPA will respond to these comments when it takes final action on the June 30, 2006, proposed rule.

In this action, EPA is proposing, and accepting comment only on, a change to the date by which certain operations must seek coverage under an NPDES permit and the date by which all permitted CAFOs must develop and implement their NMPs.[2] In part because of extensive and widely divergent public comment on the array of issues raised by the court, EPA will not complete a final rule revising the 2003 CAFO rule before the current compliance dates of July 31, 2007, and is, therefore, proposing to revise this compliance date. Though EPA describes them here for context, the proposed provisions in the June 2006 proposed rule in response to *Waterkeeper* are beyond the scope of this current proposal, and EPA is not taking comment on these provisions.

D. History of CAFO Compliance Dates

The 2003 CAFO rule amended the definition of ''CAFO'' to add facilities that had not previously been defined as CAFOs (in the 1976 regulations). 40 CFR 122.23(b). Operations newly defined as CAFOs in the 2003 CAFO rule included veal operations, swine weighing less than 55 pounds, chicken and layer operations using other than liquid manure handling systems, and animal feeding operations (AFOs) that were

[1] To improve readability in this preamble, reference is made to ''CAFOs'' as well as ''owners and operators of CAFOs.'' No change in meaning is intended.

[2] Note that in response to the *Waterkeeper* decision, EPA proposed a variation to the ''develop and implement'' language of the June 2006 proposal which stated that a CAFO operator must submit an NMP with its permit application or NOI and that it must be implemented upon permit coverage. 71 FR 37744.

previously not defined as CAFOs because they discharged only in the event of a 25-year/24-hour storm. CAFOs in these categories that were in existence when the 2003 CAFO rule took effect (April 14, 2003) represent the group of CAFOs that were initially subject to a February 13, 2006, deadline for permit application. 68 FR 7267. In addition, other existing facilities that became defined as CAFOs under the revised CAFO definitions in the 2003 CAFO rule include so-called ''new dischargers'' that subsequent to the effective date of the 2003 CAFO rule became CAFOs due to changes in their operations, where such changes would not have made the operation a CAFO prior to April 14, 2003. This second group of facilities was initially required to seek permit coverage by April 13, 2006, or 90 days after becoming defined as a CAFO, whichever date is later. 68 FR 7268. Thus, each of these groups of CAFOs were allowed three years from the 2003 rule to seek permit coverage when EPA issued the 2003 CAFO rule.

EPA reasoned in the 2003 CAFO rule, and reiterated in the 2006 date change rule, that allowing newly regulated entities three years to come into compliance was consistent with Congressional intent, as expressed in the 1972 Clean Water Act with respect to newly established point sources. Moreover, the Agency stated that the three year timeframe was necessary for States authorized to administer the NPDES permit program to provide permit coverage for CAFOs that were not previously required to be permitted and to revise State regulatory programs. 68 FR 7204.

In addition to the requirements to seek permit coverage, the 2003 CAFO rule also required all permitted CAFOs to develop and implement NMPs by December 31, 2006. EPA believed that this date was reasonable given that operations would have had a little over three and a half years from the issuance of the 2003 rule to develop and implement an NMP. This timeframe allowed States to update their NPDES programs and issue permits to reflect the NMP requirements of the 2003 CAFO rule. It also provided flexibility for permitting authorities to establish permit schedules based on specific circumstances, including prioritization of nutrient management plan development and implementation based on site-specific water quality risks and the available infrastructure for development of NMPs.

These timing considerations were affected by the *Waterkeeper* decision. On February 10, 2006, prior to the Agency's proposed rule responding to the *Waterkeeper* decision, EPA promulgated a limited rule to revise each of the compliance dates in the 2003 CAFO rule that were affected by the decision (referred to as the ''2006 date rule''). 71 FR 6978. Specifically, EPA extended the dates for those newly defined CAFOs described above to seek NPDES permit coverage and the date by which all CAFOs must develop and implement NMPs. EPA revised these dates in order to: (1) Provide the Agency sufficient time to take final action on the regulatory revisions with respect to the *Waterkeeper* decision; and (2) require NMPs to be submitted at the time of the permit application, consistent with the court's decision. It was necessary for EPA to revise the dates separately from addressing the rest of the issues raised by the *Waterkeeper* decision because EPA had not completed the proposed rule responding to the *Waterkeeper* decision prior to the dates by which newly defined CAFOs were required to seek permit coverage.

III. This Proposed Rule

This notice proposes to amend the section detailing when operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek NPDES permit coverage, as well as the section detailing when, due to operational changes, operations that would not have become CAFOs under the prior rule become CAFOs under the 2003 rule. Second, EPA is proposing to extend the deadline by which permitted CAFOs are required to develop and implement NMPs. This proposed rule would not modify or otherwise affect any other existing regulatory provisions, nor does it reopen the comment period on the proposed rule to respond to the *Waterkeeper* decision published on June, 30, 2006. 71 FR 37744.

A. Application Deadline for Newly Defined CAFOs

EPA is proposing to extend the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from July 31, 2007, to February 27, 2009. EPA is also proposing to amend the date by which operations that became defined as CAFOs after April 14, 2003, or that will become CAFOs due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from July 31, 2007, to February 27, 2009.

This proposed rule would not affect the applicable time for seeking permit coverage for newly constructed CAFOs not subject to new source performance standards (NSPS) or for new source CAFOs subject to NSPS that discharge or propose to discharge, even those in categories that were added to the definition of a CAFO in the 2003 CAFO rule. These CAFOs that discharge or propose to discharge are required by 40 CFR 122.21(a) and 123.23(g)(3)(i) and (4) to seek NPDES permit coverage at least 180 days prior to the time that they commence operating, and these provisions were unaffected by the 2006 date rule.

This proposed rule would not supersede State requirements. States may choose to require CAFOs to obtain NPDES permits in advance of the dates set in the federal NPDES regulations, pursuant to the authority reserved to States under section 510 of the Clean Water Act to adopt requirements more stringent than those that apply under federal law. Further, CAFOs that are already permitted, e.g., CAFOs that existed prior to the effective date of the 2003 CAFO rule and as such have been required to seek NPDES permit coverage even before EPA issued the 2003 CAFO rule, continue to be required to maintain permit coverage pursuant to section 122.23(h).

EPA is also proposing to correct a typographical error that was created in the 2006 date rule. In that rule, 40 CFR 122.23(g)(1) as promulgated in the 2003 CAFO rule (which provides that existing operations defined as CAFOs prior to April 14, 2003, must seek permit coverage by the effective date of the 2003 rule) was inadvertently replaced with 40 CFR 122.23(g)(2) (which provides extended compliance dates for operations defined as CAFOs as of April 14, 2003, but were not defined as CAFOs prior to that date). Because the ''(2)'' was erroneously printed as ''(1)'', section 122.23(g)(1) was overwritten and section 122.23(g)(2) was incorrectly left unchanged. As a result, the current rule contains two provisions applicable to ''Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date'' with conflicting dates. EPA is proposing to restore the original section 122.23(g)(1) as promulgated in 2003, and to revise the date in section 122.23(g)(2) to reflect this proposal.

B. Deadline for Nutrient Management Plans

EPA is proposing to extend the deadline by which permitted CAFOs are required to develop and implement NMPs, from July 31, 2007, to February 27, 2009. This proposal would revise all references to the date by which CAFOs must develop and implement NMPs

currently in Parts 122 and 412. Thus, this proposal would revise the deadlines established in 40 CFR 122.21(i)(1)(x), 122.42(e)(1), 412.31(b)(3), and 412.43(b)(2).

This proposal would not supersede State requirements, nor would it affect CAFOs operating under existing permits so long as those permits remain in effect. If their existing permits require development and implementation of an NMP, currently permitted CAFOs must develop and implement their NMPs in accordance with the terms of their current permit, or their applicable state requirements. This proposed rule also would not affect the applicable land application limitations and requirements for all CAFOs subject to the new source performance standards under 40 CFR 412.35 and 40 CFR 412.46. Upon permit coverage, new sources must meet all relevant land application requirements.

IV. Rationale for This Action

At the time of the 2006 date rule, EPA believed that July 31, 2007, would allow sufficient time for the Agency to complete the rulemaking to address the *Waterkeeper* decision. EPA also reasoned that the basis for these revised dates was generally consistent with the approach taken by Congress in the 1972 Clean Water Act, as explained when setting the compliance dates in the 2003 CAFO rule. 68 FR 7204. EPA anticipated that the dates established in the 2006 date rule provided sufficient time to ensure compliance with the NPDES regulations within a reasonable timeframe consistent with the dates established in the 2003 CAFO rule. 71 FR 6980–81.

The amount of time needed to revise the rule in response to the *Waterkeeper* decision has been greater than EPA anticipated at the time it promulgated the 2006 date rule. At that time, EPA had not yet proposed revisions to the CAFO rule and could only surmise what the public response to the proposal would be. In light of comments received and after further consideration of the proposed rule, EPA is continuing to explore the best method of implementing the *Waterkeeper* decision. To avoid any potential conflict with existing deadlines that precede the publication of the final rule, it is appropriate to propose this rulemaking to change the dates at issue.

In comments on the proposed 2006 date rule, commenters asserted that the proposed deadlines would not offer CAFOs sufficient time to submit permit applications, including NMPs, that will comply with the regulatory revisions the Agency is planning to address in its response to the *Waterkeeper* decision. Other commenters expressed the view that EPA needed to take into consideration the time necessary for States to make conforming revisions to State programs following EPA's regulatory revisions. See docket ID EPA–HQ–OW–2005–0036. Commenters reiterated these concerns in comments on the 2006 proposed CAFO rule in response to *Waterkeeper*. See docket ID EPA–HQ–OW–2005–0037. This proposed rule balances the need to address the concerns raised by commenters with the interest of having the regulatory requirements implemented in a timely fashion. In EPA's view, this proposal would also provide sufficient time for newly defined facilities to review the revised duty to apply requirements to determine whether they need to seek permit coverage. Finally, it would provide time for permitting authorities to identify the necessary procedures for reviewing NMPs and incorporating them into general permits. Taking into account the time EPA needs to complete the rule in response to *Waterkeeper*, as well as the period of time after the final rule is promulgated to allow States, the regulated community, and other stakeholders the opportunity to adjust to the new regulatory requirements, EPA believes that extending the dates to February 27, 2009, is reasonable.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a ''significant regulatory action'' and is therefore not subject to review under the Executive Order. As discussed above, the purpose of this proposed rule is solely to address timing issues associated with the Agency's response to the *Waterkeeper* court ruling on petitions for review challenging portions of the 2003 CAFO rule. After considering the economic impacts of this proposed rule on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this action will not have a significant economic impact on a substantial number of small entities since the effect of the proposal, if implemented, is solely to extend certain deadlines related to NPDES CAFO permitting. Additionally, this proposed rule would not affect small governments, as the permitting authorities are state or federal agencies. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts. 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. In addition, this action does not significantly or uniquely affect small governments. Thus, this proposed rule is not subject to sections 202, 203, or 205 of the Unfunded Mandates Reform Act of 1999 (Pub. L. 104–4). In addition, this proposed rule does not have Tribal implications as specified in Executive Order 13175 (63 FR 67249, November 9, 2000) because it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This proposed rule will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. This proposed rule is not subject to Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) which establishes federal executive policy on environmental justice. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This proposed rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose any new information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR Parts 9, 122, 123, and 412 under

the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0250. The EPA ICR number for the original set of regulations is 1989.02.

List of Subjects

40 CFR Part 122

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

40 CFR Part 412

Environmental protection, Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

Dated: May 3, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 122 and 412 as follows:

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

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

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

§ 122.21 [Amended]

2. In § 122.21 paragraph (i)(1)(x), the date ''July 31, 2007'' is revised read ''February 27, 2009''.

3. Section 122.23 is amended by revising paragraphs (g)(1), (g)(2), and (g)(3)(iii) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

* * * * *

(g) * * *

(1) *Operations defined as CAFOs prior to April 14, 2003.* For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an NPDES permit as of April 14, 2003, and comply with all applicable NPDES requirements, including the duty to maintain permit coverage in accordance with paragraph (h) of this section.

(2) *Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date.* For all operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than February 27, 2009.

(3) * * *

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

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§ 122.42 [Amended]

4. In § 122.42 paragraph (e)(1), the two dates ''July 31, 2007'' are revised read ''February 27, 2009''.

PART 412—CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY

5. The authority citation for part 412 continues to read as follows:

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

§ 412.31 [Amended]

6. In § 412.31 paragraph (b)(3), the date ''July 31, 2007'' is revised to read ''February 27, 2009''.

§ 412.43 [Amended]

7. In § 412.43 paragraph (b)(2), the date ''July 31, 2007'' is revised to read ''February 27, 2009''.

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