

enter into a safety zone, the designated representative may be contacted on VHF channel 16.

(2) Between scheduled events, the Coast Guard Patrol Commander may permit traffic to resume normal operations for a limited time.

(3) A succession of not fewer than 5 short whistle or horn blasts from a Coast Guard patrol vessel will be the signal for any and all vessels within the safety zone defined in paragraph (a) to take immediate steps to avoid collision.

(d) *Enforcement Period.* This temporary safety zone will be enforced between the hours of 7 p.m. to 11 p.m. on the following days: June 30, July 28, and August 25, 2007.

(e) *Effective Dates.* This rule is effective from 7 p.m. on June 30, 2007 until 11 p.m. on August 25, 2007.

Dated: June 27, 2007.

**K.L. Schultz,**

*Captain, U.S. Coast Guard, Captain of the Port Miami, FL.*

[FR Doc. E7-14265 Filed 7-23-07; 8:45 am]

**BILLING CODE 4910-15-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 122 and 412**

[EPA-HQ-OW-2005-0036; FRL-8444-8]

**RIN 2040-AE92**

**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:** Final rule.

**SUMMARY:** This rule extends 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 U.S. Court of Appeals for the Second Circuit in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). The sole purpose of this rule is to address timing issues associated with the Agency's response to the *Waterkeeper* decision.

This final rule revises 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 extending 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 amending 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 extending the deadline by which permitted CAFOs are required to develop and implement NMPs, from July 31, 2007, to February 27, 2009.

**EFFECTIVE DATE:** This rule is effective as of July 24, 2007.

**ADDRESSES:** EPA established a docket for this action under Docket ID No. EPA-OW-2005-0036. This is where you can obtain a copy of all materials related to this rulemaking, including the comment response document and the rule. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically at [www.regulations.gov](http://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](mailto:roose.rebecca@epa.gov).

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**I. General Information**

*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

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE—Continued

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
	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.

**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 parts 122–124. 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<sup>1</sup> 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 several 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) (hereinafter *Waterkeeper*). Notably, the court vacated the requirement that all CAFOs apply for an NPDES permit unless a CAFO demonstrates no potential to discharge. The court also remanded the rule for failing to require incorporation of the terms of CAFOs’ nutrient management plans (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 to revise several aspects

<sup>1</sup>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.

of the Agency’s regulations governing discharges from CAFOs in response to the *Waterkeeper* decision. 71 FR 37744. EPA is briefly describing the proposed revisions to the 2003 CAFO here for context only. The proposed provisions in response to the *Waterkeeper* decision are beyond the scope of this final rule, and EPA is not addressing those provisions in this final rule.

In summary, EPA proposed to require only owners or operators of those CAFOs that discharge or propose to discharge to seek authorization to discharge under a permit. Second, EPA proposed to require CAFOs seeking authorization to discharge under individual permits to submit their NMPs with their permit applications or, under general permits, with their notices of intent. 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 clarifications regarding the applicability of water quality-based effluent limitations (WQBELs); new source performance standards for swine, poultry, and veal CAFOs; and “best conventional technology” effluent limitations guidelines for fecal coliform. The June 2006 proposed rule reflected the dates for compliance as revised on February 10, 2006 (71 FR 6978), *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 proposed rule closed on August 29, 2006. EPA will respond to the comments received when it takes final action on the June 30, 2006, proposed rule. See docket EPA–HQ–OW–2005–0037.

#### 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 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 to apply for an NPDES permit. 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, have become 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 authorization to discharge under an NPDES permit when EPA issued the 2003 CAFO rule.

EPA reasoned in the 2003 CAFO rule, and reiterated in the February 2006 date change rule, that allowing newly regulated entities three years to come into compliance was consistent with Congressional intent, as expressed in the 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 CAFOs 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 time frame 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, such as prioritization of nutrient management plan development and implementation based on site-specific water quality risks and the available infrastructure for development of NMPs.

The timing of these compliance deadlines was affected by EPA's need to revise the CAFO rule as a result of the Second Circuit's decision in the *Waterkeeper* case. On February 10, 2006, prior to the Agency's June 2006 proposed rule responding to the *Waterkeeper* decision, EPA promulgated a rule to revise each of the compliance dates in the 2003 CAFO rule that were affected by the decision (hereinafter "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 final rule responding to the *Waterkeeper* decision prior to the dates by which newly defined CAFOs were required to seek permit coverage under the 2003 rule.

#### E. Proposed Rule

On May 10, 2007, EPA proposed to further extend only the date by which certain operations must seek authorization to discharge under an NPDES permit and the date by which all permitted CAFOs must develop and implement their NMPs.<sup>2</sup> EPA proposed to revise these compliance dates because EPA would not complete a final rule revising the 2003 CAFO rule before the July 31, 2007, deadlines. The public comment period closed on June 11, 2007. EPA received a total of 17 comments on the May 10, 2007, proposed rule.

<sup>2</sup> 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.

### III. This Final Rule

#### A. New Deadlines for Permit Applications and for Permitted CAFOs To Develop and Implement Nutrient Management Plans

This final rule extends certain dates for compliance specified in the 2003 CAFO rule and amended by the 2006 date rule. Because EPA will not have completed the rulemaking responding to the *Waterkeeper* decision prior to the dates by which newly defined CAFOs must seek permit coverage, the Agency is revising these dates to a time that is subsequent to the forthcoming CAFO rule revision.

This rule amends the section detailing when operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, and operations that become CAFOs after that date due to operational changes that would not have made then a CAFO prior to April 14, 2003, and that are not new sources must seek NPDES permit coverage. Second, EPA is amending the deadline by which permitted CAFOs are required to develop and implement NMPs. This final rule does not modify or otherwise affect any other existing regulatory provisions, nor does it promulgate any regulatory provisions associated with the proposed rule in response to the *Waterkeeper* decision, published on June 30, 2006. 71 FR 37744.

#### 1. Application Deadline for Newly Defined CAFOs

EPA is extending 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. This deadline, found at 40 CFR 122.23(g)(2), applies to "dry" chicken operations, stand-alone immature swine, heifer and calf operations, and those animal feeding operations (AFOs) that were entitled to the permitting exemption for discharging only in the event of a 25-year, 24-hour storm. EPA is also amending 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. An example of an operation affected by this deadline, which is found at 40 CFR 122.23(g)(3)(iii), is an AFO that increases the number of animals in confinement to a level that would result in the operation becoming defined as a CAFO.

This final rule does 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. Those CAFOs are required by 40 CFR 122.21(a) and 123.23(g)(3)(i) and (g)(4) to seek NPDES permit coverage at least 180 days prior to the time that they commence operating.

This final rule does 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. Further, CAFOs that are already permitted, *e.g.*, CAFOs that existed prior to the effective date of the 2003 CAFO rule and 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 § 122.23(h).

EPA is also correcting 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, which were not defined as CAFOs prior to that date). Because the “(2)” was erroneously printed as “(1)”, § 122.23(g)(1) was overwritten and § 122.23(g)(2) was incorrectly left unchanged. As a result, the rule following the February 2006 date extension contained 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 restoring the original § 122.23(g)(1), as promulgated in 2003, and revising the date in § 122.23(g)(2) to reflect the date extension finalized by this rule.

## 2. Deadline for Nutrient Management Plans

EPA is extending the deadline by which permitted CAFOs are required to develop and implement NMPs, from July 31, 2007, to February 27, 2009. This action revises all references to the date by which CAFOs must develop and implement NMPs currently in 40 CFR parts 122 and 412. Thus, this rule revises the deadlines found in 40 CFR 122.21(i)(1)(x), 122.42(e)(1), 412.31(b)(3), and 412.43(b)(2).

This final rule does not supersede State requirements, nor does 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 rule also does not affect the existing 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.

### B. Rationale for This Action

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 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 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. However, 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 revise the CAFO compliance dates effected by this final rule.

Some commenters on the proposed rule raised concerns about the proposed further delay and expressed interest in having the regulatory requirements implemented in a timely fashion. In EPA's view, the deadlines established by this rule are appropriate. Newly defined facilities that are required to apply for an NPDES permit will need sufficient time to develop their permit applications or notices of intent for general permit authorization once EPA has finalized the revised rules in response to the *Waterkeeper* decision. The revised deadlines are also appropriate because permitting authorities will need time following promulgation of the CAFO regulatory

revisions 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* and the comments submitted on that proposed rule, 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.

Several commenters indicated that as a result of the Second Circuit's decision vacating the duty to apply provision for CAFOs established in the 2003 rule, the deadlines for CAFOs to seek coverage, also initially established in that rule, are now unnecessary. These commenters suggested that EPA should eliminate the deadlines for CAFOs to seek coverage in 40 CFR 122.23(g)(2)–(3), such that only CAFOs that discharge or propose to discharge would be required to seek coverage in accordance with the timing requirements for all NPDES sources in 40 CFR 122.21(c). Several other commenters sought clarity of the duty to apply provision following the *Waterkeeper* decision. These comments are beyond the scope of this rulemaking. EPA reiterates that it will address the various aspects of the court's *Waterkeeper* decision, including the ruling on the “duty to apply” issue, in the final rule in response to *Waterkeeper*.

There were a few commenters who requested that EPA provide greater clarity regarding the applicability of the deadline extensions to various classifications of CAFOs. As described above, the February 27, 2009, permit application deadlines revised in this rule do not apply to CAFOs that were defined as CAFOs prior to the 2003 rule, nor do the deadlines affect new sources subject to new source performance standards. The deadlines revised by this rule for developing and implementing NMPs apply to all permitted CAFOs, except that new sources subject to new source performance standards must develop and implement an NMP upon permit coverage.

Several 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 and, accordingly, extend the deadlines to a date two to three years after EPA intends to publish the final rule in response to *Waterkeeper*. While EPA agrees that some States may need additional time to modify their programs once EPA has

finalized its regulatory revisions in response to the *Waterkeeper* decision, the Agency does not agree that these concerns justify further extension of the compliance dates in this rule. EPA is committed to collaborating with States and other interested parties to work through the procedural challenges and resolve any difficulties that may arise in the implementation of the regulatory revisions. In addition, EPA notes that most of the technical provisions of the 2003 CAFO rule (e.g., the substantive NMP requirements) were unaffected by the *Waterkeeper* decision, and therefore CAFOs already have the information they need to develop NMPs, and do not need to wait for further EPA action before doing so.

Several commenters were opposed to the proposed extension of the compliance dates and expressed concern that such an extension would reward discharging CAFOs that have not yet complied with permitting requirements and that by proposing the extension, EPA is exhibiting a lack of urgency to ensure that discharging CAFOs obtain NPDES permit coverage. In response, EPA notes that the deadline extension applies only to a specific subset of CAFOs, and moreover, nothing in today's rule precludes a CAFO from applying for a permit or seeking authorization to discharge under a general permit (if available) before the February 27, 2009 date. As stated above, this final rule affects only certain compliance dates associated with the timing of EPA's final rule revisions in response to the *Waterkeeper* decision. EPA is working to promulgate those revisions as expeditiously as possible, while giving due attention to the comments received on the June 2006 proposal. EPA is committed to finalizing the rulemaking process and to working with States and agricultural partners to ensure timely development of permit applications and NMPs where necessary. Moreover, many States are actively implementing the CAFO program and issuing permits, and the provisions of this final rule do not supersede existing State requirements.

One comment expressed the view that EPA had made an incorrect statement in the preamble to the May 10, 2007, proposed rule regarding the ability of authorized States to require CAFOs to seek NPDES permit coverage in advance of the dates set in the federal regulations. EPA disagrees. The federal regulations establish the outermost limit by which certain CAFOs subject to permitting requirements must seek permit coverage, leaving open all dates preceding the deadline of February 27, 2009. If, for example, a State with an

approved program were to continue to require newly defined CAFOs to seek permit coverage by July 31, 2007, such a requirement would be consistent with the federal requirement for newly defined CAFOs to seek permit coverage no later than February 27, 2009.

#### IV. Effective Date of These Actions

EPA is making this rule immediately effective upon the date of publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

EPA finds that there is good cause to make the rule effective immediately. The compliance deadlines being revised by this final rule require some CAFOs to seek NPDES permit coverage and prepare and implement nutrient management plans by July 31, 2007, before EPA regulations will be in place to respond to the *Waterkeeper* decision. Making this rule immediately effective is consistent with the purpose of the good cause exemption which is to provide reasonable time for affected parties to comply. A delayed effective date is not necessary because affected parties do not have to take any action to comply with this rule which simply extends deadlines for seeking NPDES permit coverage and developing and implementing nutrient management plans. In addition, consistent with section 553(d)(3), an immediate effective date is justified because this rule relieves certain CAFOs of obligations which would otherwise apply to them, to seek NPDES permit coverage and develop and implement nutrient management plans by July 31, 2007.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 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 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 adverse impact on a substantial number of small entities since the effect of the final rule is solely to extend certain deadlines related to NPDES CAFO permitting. Additionally, this rule does not affect small governments, as the permitting authorities are State or Federal agencies.

EPA has determined that this 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 final 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 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 final rule does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it does 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 final rule is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 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 final rule is not subject to Executive Order 12898 (59 FR 7629 (February 16, 1994)), which establishes federal executive policy on environmental justice. EPA has determined that this 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 final 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 final 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 final rule does not impose any new information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 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.

The Congressional Review Act, 5 U.S.C 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and will be effective on July 24, 2007.

#### 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: July 18, 2007.

**Stephen L. Johnson,**  
Administrator.

■ For the reasons stated in the preamble, the Environmental Protection Agency amends 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 to 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.

\* \* \* \* \*

#### **§ 122.42 [Amended]**

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

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

■ 1. 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]**

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

#### **§ 412.43 [Amended]**

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

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Part 390**

#### **Regulatory Guidance for Recording of Commercial Motor Vehicle Accidents Involving Fires**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Regulatory guidance.

**SUMMARY:** The FMCSA announces regulatory guidance concerning its definition of "accident." The regulatory guidance is presented in a question-and-answer form. The guidance is generally applicable to drivers, commercial motor vehicles, and motor carrier operations subject to the Federal Motor Carrier Safety Regulations. All prior interpretations and regulatory guidance concerning the term "accident" issued previously in the **Federal Register**, as well as memoranda and letters, may no longer be relied upon as authoritative if they are inconsistent with the guidance published today. This guidance will provide the motor carrier industry and Federal, State, and local law enforcement officials with uniform information for use in determining whether certain vehicle fires must be recorded on the motor carrier's accident register and considered in applying the Agency's safety fitness procedures.

**EFFECTIVE DATE:** This regulatory guidance is effective on July 24, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### **SUPPLEMENTARY INFORMATION:**

##### **Legal Basis**

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3)