

TABLE 1.1.—REGULATORY SUMMARY—Continued

Topic	Regulatory cite (40 CFR)
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).	412.45
Subpart D—Swine, Poultry, and Veal New source performance standards (NSPS)	412.46
Subparts C and D—Required Land Application Best Management Practices	412.4(c)
Subparts C and D—Inspection and Record Keeping Requirements	412.37 and 412.47
Additional NPDES CAFO permit requirements:	
Nutrient management plan development and Implementation	122.42(e)(1)
Record-keeping	122.42(e)(2)
Transfer of manure	122.42(e)(3)
Annual reporting requirement	122.42(e)(4)

TABLE 1.2.—CONSOLIDATED TIME LINE FOR IMPLEMENTING TODAY'S RULEMAKING

	Time Frame
Milestone:	
Effective date of regulation	April 14, 2003.
Effective date of Effluent Guideline requirements for the production area applicable to Large CAFOs.	June 12, 2003.
Effective date of Effluent Guideline requirements for the land application area applicable to Large CAFOs.	By December 31, 2006.
Effective date for all CAFOs to develop and implement nutrient management plans.	By December 31, 2006, except for Large CAFOs that are new sources, by date of commencing operations.
Duty to Apply:	
Operations defined as CAFOs prior to April 14, 2003	Must have applied by the date required in 40 CFR 122.21(c).
Operations defined as CAFOs as of April 14, 2003, and that were not defined as CAFOs prior to that date.	As specified by the permitting authority, but no later than April 13, 2006.
Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.	(a) Newly constructed operations: 180 days prior to the time the CAFO commences operation. (b) Other operations (e.g., increase in number of animals): As soon as possible but no later than 90 days after becoming defined as a CAFO, except that, if the operational change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO prior to April 13, 2003, the operation must apply no later than April 13, 2006 or 90 days after becoming defined as a CAFO, whichever is later.
New sources	180 days prior to the time the CAFO commences operation.
Designated CAFOs	90 days after receiving notice of designation.
State Program Revision:	
No statutory changes needed to revise NPDES Program	April 12, 2004.
Statutory changes needed to revise NPDES Program	April 13, 2005.

II. What Events Have Led to This Rule?

The revisions to the National Pollutant Discharge Elimination System (NPDES) and Effluent Limitation Guidelines Programs specified in this final rule are focused on those livestock and poultry operations that are defined or designated as CAFOs. CAFOs are defined as point sources under the Clean Water Act. Following is a brief historical context of key regulatory, legal, and policy actions which have collectively led to today's action.

A. The Clean Water Act

Congress passed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. 1251(a)). The Clean Water Act establishes a comprehensive program for protecting and restoring our Nation's waters. Among its core provisions, the Clean Water Act prohibits the discharge of

pollutants from a point source to waters of the United States except as authorized by an NPDES permit. The Clean Water Act establishes the NPDES permit program to authorize and regulate the discharges of pollutants to waters of the United States. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR part 122. The Clean Water Act also provides for the development of technology-based and water quality-based effluent limitations that are implemented through NPDES permits to control discharges of pollutants.

1. The National Pollutant Discharge Elimination System (NPDES) Permit Program

Under the NPDES permit program, all point sources that discharge pollutants to waters of the United States must apply for an NPDES permit and may discharge pollutants only in compliance

with the terms of that permit. Such permits must include any nationally established, technology-based effluent discharge limitations (effluent guidelines—discussed below, in subsection II.A.2). In the absence of an applicable national effluent guideline, NPDES permit writers may establish technology-based requirements as determined by the permitting authority on a case-by-case basis, based on their "best professional judgment" (BPJ). Water quality-based effluent requirements are also included in permits where technology-based requirements are not sufficient to ensure compliance with State water quality standards or where required to implement a Total Maximum Daily Load (TMDL). For information on TMDLs see section IX.A.2 of this preamble.

Technology- and water quality-based requirements may be in the form of