

considered in a subsequent Notice of Data Availability (66 FR 58556, November 21, 2001) two alternative options for revising the horse thresholds. One option would retain the existing regulatory threshold in a two-tier structure. For example, if the regulatory threshold was dropped to 500 AU, EPA would retain 500 horses as the 500 AU equivalent, and those with fewer than 500 horses would be CAFOs only if so designated on a case-by-case basis. EPA suggested this option because the Agency agreed with commenters that there was no need to increase regulation of this sector; by maintaining the status quo EPA would be neither increasing nor decreasing the regulated universe. In the second option, EPA would have set one horse equal to one beef cow thereby establish regulatory thresholds similar to those for beef operations. As a result, in a three-tier structure, Large horse CAFOs would have 1,000 animals or more, and Medium horse CAFOs would have 300–999 horses. EPA presented the second option after examining data submitted by industry that suggested that a 1,000 pound horse may generate similar manure as a 1,000 pound beef cow. However, because that data did not differentiate thoroughbred race horses (typically on high-energy feed which might alter manure composition) from other horses, EPA requested more definitive data to justify the second approach.

*What were the key comments?* A number of comments were submitted by horse industry associations and individual horse operations requesting that EPA not lower the threshold for horses, as the existing regulation was adequate. They further suggested that this rulemaking would be an opportunity to revisit the basis for the existing threshold, and requested that EPA change it to one horse being equal to one beef cattle, asserting that there is no scientific basis for making one horse equal to two beef cattle (which is how the existing regulation defines horse CAFOs). Industry representatives provided data on manure content to support their position, although they did not provide manure data specific to racehorses. The commenters also explained that the horse industry is fundamentally different in how it is organized and operated from the other sectors that focus on food production, and that this sector has not seen the kinds of changes (e.g., expansion and consolidation) that EPA is seeking to address in today's rule. Further, they point out that most large racetracks are in urban areas and are currently subject

to a variety of EPA-initiated and State-administered programs related to water pollution and storm water runoff control.

Some commenters requested that EPA not reduce the regulatory thresholds, and asked EPA to retain the ability of permit writers to use BPJ to establish site-specific BMPs. Industry representatives also asked the Agency to clarify that confinement pertains to stalls or similar structures in buildings and not to fenced areas, and that it does not include short visits to stalls for shoeing, veterinary evaluation, or related activities.

*Rationale.* It should be noted that the thresholds for the CAFO definition refer only to horse operations where animals are confined for 45 days (non-consecutive) over a 12 month period. Thus, to be considered a Large CAFO, the operation would need to confine 500 horses at one time for 45 days or longer in a 12-month period, and to be a Medium CAFO at least 150 horses would need to be confined for 45 days or longer in a 12-month period. The areas associated with confinement at horse facilities would constitute the production area, and would not include pastures and other unconfined areas. EPA notes the 1974 ELG for horses assumed the majority of horse CAFOs were racetracks. Although race tracks accounted for less than 0.1 percent of all horse operations today, race tracks still account for more than 96% of all horse operations with 500 horses or more. Boarding/training stables comprise the remaining few operations with 500 horses or more. Such operations would not be considered CAFOs unless all of the horses were kept in confinement (as opposed to pasture). Data suggests most horse operations confine their animals for short-term stabling or visits to stalls for shoeing, veterinary evaluation, or related activities. However, according to consultations with the American Horse Council, it is unlikely that these visits would involve a number of horses large enough to define the operation as a CAFO. For example, a ranch maintaining over 500 horses would typically have fewer than 100 stalls or stables (i.e. confinement areas). Therefore, those operations that confine enough horses for a long enough period to be defined as CAFOs are generally racetracks.

In the 1970s regulations, the Agency considered racetracks when originally determining the size of an operation that must comply with the effluent guidelines, and the records indicate the size of operation was based on the manure generated by thoroughbred racehorses. Based on some comments

that EPA should re-evaluate the classification of horses by bodyweight or manure content, EPA collected more current manure characteristics data from ASAE, USDA, and based on this data presented alternative thresholds for horses in the 2001 NODA (see 66 FR 225, page 58595). After reviewing the data, EPA generally agrees that the phosphorus content of horse manure is similar to that of a beef cow. However, as described above, the majority of horse CAFOs are racetracks, and the more general data on recreational and work horses is not comparable. The Agency also reviewed the data submitted by horse industry representatives and determined that this data also did not distinguish manure generated by racehorses with that of a recreational or farm horse, and thus EPA does not believe the record is sufficient to justify a change to the existing regulatory thresholds.

The effluent guideline, which is not being changed in today's final rulemaking, continues to be applicable to those horse operations confining 500 horses or more, including stables such as at racetrack operations. Other horse operations that may be defined or designated as CAFOs would continue to follow permit requirements based on the BPJ of the permitting authority.

*d. Ducks.* Today's final rulemaking revises the thresholds for defining whether a duck operation is a CAFO. The following thresholds apply to duck operations where the AFO uses other than a liquid manure handling system ("dry systems"): 30,000 or more ducks for a Large CAFO and 10,000 to 29,999 ducks for a Medium CAFO. For small operations with fewer than 10,000 ducks, EPA or the State permitting authority may designate them as a CAFO. For operations where the AFO uses a liquid manure handling system ("wet systems"), EPA is retaining the existing thresholds. That is, those with 5,000 or more ducks are considered Large CAFOs; those with 1,500 to 4,999 ducks may be Medium CAFOs (if the other conditions are met); and small operations with fewer than 1,500 ducks would become CAFOs only if designated in accordance with § 122.23(c).

*What did EPA propose?* In the January, 2001 proposed rule, EPA did not consider changing the existing animal unit equivalents for ducks. As a result of comments received on the proposal, EPA considered in a subsequent 2001 Notice of Data Availability (NODA) (66 FR 58566, November 21, 2001) two alternative options for establishing thresholds for duck operations. One option would treat