

as a CAFO, regardless of animal type, the regulations apply to all of the manure, litter, and wastewater generated by the operation. In the event that waste streams from multiple livestock species are co-mingled, and the regulatory requirements for each species are not the same, the permit must include the more stringent requirements.

What did EPA propose? EPA proposed to eliminate the mixed animal calculation.

What were the key comments? A number of comments were received concerning the elimination of the mixed animal calculation. Commenters opposed to the elimination of the calculation believe it is more protective of the environment to count all of the animals at an operation, in order to address the cumulative quantities of manure through the CAFO permit. Some commenters also claimed that eliminating the mixed animal calculation would create an opportunity for larger operations to avoid permitting by maintaining slightly fewer than the regulatory thresholds for several types of animals. Comments supporting EPA's proposal agreed that this change simplifies the regulation, provides relief to small farms, and focuses the regulation on the larger, more specialized facilities that tend to be more industrialized.

Rationale. As described in the proposed rulemaking (66 FR 3005) EPA is eliminating the mixed animal calculation for several reasons. First, this action simplifies the regulations. In addition, EPA's analysis indicates that the mixed animal calculation would have caused only a small fraction of the smaller AFOs to have been defined as CAFOs, so the Agency believes that this action does not materially change the scope of coverage of this regulation. To the extent that coverage is changed at all, it appropriately would be shifted away from smaller operations that tend to have more sustainable practices and sufficient crop land for land application of their manure nutrients. Should an AFO with mixed animals types be found to be a significant contributor of pollutants to waters of the United States, it could still be designated a CAFO in accordance with the designation provisions of this final rule.

4. Is My AFO a CAFO If It Discharges Only During Large Storm Events?

Today's final rule defines an operation as a CAFO regardless of whether the operation discharges only in the event of a large storm. In other words, today's final rule eliminates the 25-year,

24-hour storm permitting exemption for defining a CAFO. EPA notes, however, that the 25-year, 24-hour storm design criterion in the ELGs for large CAFOs is not being changed, except for new sources in the swine, veal, and poultry sectors (see preamble section IV.C.2).

What did EPA propose? EPA proposed to eliminate the 25-year, 24-hour storm event exemption from the definition of a CAFO.

What were the key comments? Comments from the animal agriculture industry were generally opposed to eliminating the permit exemption. Their position was that facilities that discharge only as a result of a storm event that exceeds a 25-year, 24-hour storm should not be covered by an NPDES permit. Environmental organizations and others supported the elimination of the exemption based on the position that it was not being used appropriately by the industry. States were split on whether to eliminate the exemption, depending largely on their current regulatory policy. Many commenters confused the proposed elimination of this exemption with consideration of the appropriate design standard for permitted facilities.

The SBAR Panel agreed that removing the 25-year, 24-hour exemption was generally appropriate for Large CAFOs because of the significant potential for environmental harm from Large CAFOs when the manure is not properly managed. The Panel also recognized that, under the terms of the proposal, eliminating the exemption would mean that some facilities would need to apply for a permit even though they have sufficient manure management and containment in place or, for some other reason, do not discharge except in a 25-year, 24-hour storm.

The Panel recommended that EPA consider reduced application requirements for small operators affected by the removal of the exemption. In the proposed rule EPA requested comment on whether to retain this exemption for small facilities as well as how many animals would be considered "small" for this purpose. The Agency carefully analyzed these issues during the development of this final rule.

Rationale. For the reasons stated in the proposal (66 FR 3006), and based on EPA's analysis of comments and other information, the Agency continues to believe that the 25-year, 24-hour storm permit exemption has created confusion and ambiguity that undermines the ability of permitting authorities to implement the CAFO regulations effectively. Eliminating this provision will: (1) Ensure that all Large CAFOs are

appropriately permitted; (2) ensure through permitting that facilities are, in fact, properly designed, constructed, operated, and maintained to contain manure and the rainfall associated with a 25-year, 24-hour storm event or the revised standard for new sources in the swine, veal calf, and poultry sectors; (3) improve the ability of EPA and State permit authorities to monitor compliance; (4) ensure that facilities do not discharge pollutants from their production areas and that they land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, and process wastewater; and (5) achieve EPA's goals of simplifying the regulations, providing clarity to the regulated community, and improving the consistency of implementation.

The 25-year, 24-hour exemption was not applicable to operations that became CAFOs by designation. Since small AFOs can only become CAFOs by designation, the elimination of this exemption will not affect the universe of Small CAFOs (refer to section IV.A.7 for a discussion of designation).

Because EPA is not changing the criteria under which medium facilities are defined as CAFOs, the elimination of the 25-year, 24-hour storm permitting exemption is not expected to significantly affect the universe of Medium CAFOs either. EPA believes that at most medium facilities that meet the existing conditions for being defined as a CAFO, discharges would most likely occur not only in the 25-year, 24-hour storm but as a result of lesser storms as well. For example, a facility with a pipe or other man-made conveyance is likely to discharge to surface water in wet weather, or for that matter could potentially discharge even in dry weather. Similarly, a facility that has a stream or other water of the United States running through the production area meets the definition of a CAFO and is also likely to discharge in less than the 25-year, 24-hour storm. By using the existing criteria, the Agency does not believe that there will be a significant increase in the number of medium facilities defined as CAFOs. Medium facilities that meet these conditions are encouraged to take advantage of available technical support and eliminate the conditions that cause them to be defined as a CAFO.

Accordingly, EPA believes that the Agency has addressed the principal concerns raised by the SBAR Panel. In addition, the Agency has taken steps to reduce the amount of information