

TABLE 4.2.—TIME FOR SEEKING COVERAGE UNDER AN NPDES PERMIT—Continued

CAFO status	Time frame to seek coverage under an NPDES permit	Examples
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 14, 2003, the operation must apply no later than April 13, 2006 or 90 days after becoming defined as a CAFO, whichever is later.	For example, an AFO that increases the number of animals in confinement to a level that would result in the operation becoming defined as a CAFO.
New sources	180 days prior to the time the CAFO commences operation.	For example, a new Large CAFO that commences construction after April 14, 2003.
Designated CAFOs	90 days after receiving notice of designation.	

What did EPA propose? The Agency proposed to delay the effective date of the revised definition of a CAFO until three years from the date of publication of the final rule, and thereby delay the date by which permits would be required for newly defined CAFOs until three years after the date of the final rule. During that three-year interim period, the Agency proposed that the existing CAFO definition would remain in effect. For example, prior to the effective date of the revised CAFO definition, the revised new source and new discharger provisions would apply only to those facilities meeting the definition of a CAFO under the existing regulatory definition. For designated CAFOs, EPA proposed that the CAFO must apply for a permit within 90 days of being designated.

What were the key comments? Some commenters felt that extending the time for compliance allowed too much time for implementation of the new regulations, and would only result in further delays in addressing the problems associated with discharges from CAFOs. Other commenters took the view that three years is too little time for States or industry to meet the new requirements, from either a technical or economic standpoint. Most of those who commented on this issue sought clarity in setting the effective dates for the regulations.

Rationale. In today's rule, EPA is establishing time frames for seeking coverage under a permit that are appropriate to the various categories of CAFOs, depending upon their status with respect to the effective date of the rule.

For the reasons discussed in Section IX of the preamble to the proposed rule, the Agency does not believe that it would be reasonable to require permit

coverage for all CAFOs immediately on the effective date of this rule. Following issuance of today's rule, 40 CFR 123.62 provides authorized States with time to revise their State NPDES programs (one year or two years if statutory changes are needed). Further, most States will need approximately an additional year to develop a general permit, publish a draft of the general permit for public comment, and issue a final general permit for the many CAFOs that EPA expects to be covered under a general permit. EPA believes that a three-year time frame for newly defined CAFOs to obtain permit coverage is reasonable and justified based on the requirements of 40 CFR 123.62, together with the need to develop and issue general permits, and for the reasons stated below.

Today's rule is likely to result in fewer facilities being defined as CAFOs than anticipated at the time of proposal. Because States will not need to address concerns associated with identifying, permitting, and ensuring compliance by the large number of medium-size facilities anticipated as potential CAFOs at the time of proposal, EPA does not believe that concerns that States would need more than three years to meet the new requirements are justified.

The Agency is, however, changing its approach to achieve the proposed time frame for requiring CAFOs to seek coverage under a permit. Rather than delaying the effective date for the definition of a CAFO, as was proposed, EPA is simply establishing a three-year time frame for when newly defined CAFOs must seek coverage under a permit.

Today's approach is consistent with Congressional intent in the 1972 Clean Water Act. Today's rule marks the first time in many years, except in the case

of storm water sources, that the Agency is revising the scope of the term point source to include additional facilities under the definition. In the 1972 Clean Water Act, Congress provided more than two years for point sources to obtain coverage under a permit (§ 402(k)). Similarly, in this instance, EPA believes that Congress would have intended for the Agency to provide additional time for these newly covered sources to obtain permit coverage. This additional time is necessary for States to revise their regulations and to develop and issue permits, and it provides facilities some time to take the necessary steps to comply with these new requirements.

Moreover, EPA believes that there will be other advantages as a result of the approach taken in today's rule. The first is to avoid the confusion that would be associated with having different and conflicting definitions of a CAFO present simultaneously in the Code of Federal Regulations, which would be the case if EPA were to promulgate a revised definition of CAFO but delay the effective date of the definition for three years. The second is to encourage States to issue new permits and cover newly defined CAFOs as soon as possible within the time period specified. CAFOs are encouraged to seek coverage under a permit once general permits addressing those facilities are available. A third reason is that this approach is consistent with EPA's approach when the Agency promulgated the storm water phase II regulations, although those regulations were based on a somewhat different statutory foundation.

For all of the reasons stated above, the Agency is exercising its discretion to define these newly regulated facilities as point sources, while delaying their duty