

*What were the key comments?* EPA received a variety of comments regarding the size of operation to which the ELGs should apply. A number of comments favored retaining the framework of the 1974 ELGs, limiting the applicability of the ELGs to Large CAFOs and relying on the use of BPJ for Small and Medium CAFOs. Some commenters favored allowing even broader use of BPJ, with the permitting authority establishing BPJ-based permit limits for all CAFOs, regardless of size. Conversely, other commenters suggested applying the ELG requirements to all CAFOs, including Small and Medium CAFOs. In general, commenters expressing support for applying ELG requirements to Small and Medium CAFOs believe that basing permit requirements on BPJ will lead to a lack of uniformity in permit development. They believe the permit writers should not have an inappropriate amount of flexibility and there should be consistent effluent limitations for all CAFOs.

The SBAR Panel provided comments to EPA on this topic during the development of the proposed rule, suggesting that EPA consider less stringent ELGs for Medium CAFOs or allow permits for Medium CAFOs to be developed based on BPJ. The SBAR Panel stated that providing a mechanism for permitting authorities to establish less stringent guidelines for smaller facilities, based on consideration of economic achievability, could result in permit conditions that are more appropriately tailored to smaller operations and reduce the overall financial burden on the industry.

*Rationale.* The ELGs being promulgated in today's rule apply only to Large CAFOs, which is consistent with the approach used for the 1974 ELG regulation. EPA is not extending the ELG requirements being codified at 40 CFR Part 412 to Small or Medium CAFOs because setting the permit limitations for these facilities using BPJ allows for the establishment of permit conditions that are more appropriately tailored to and more directly address the site-specific conditions that led to the facility being defined or designated as a CAFO. This approach is consistent with the manner in which permit requirements for Small and Medium CAFOs have been established prior to today's rule.

The ELGs promulgated in today's rule mimic the fundamental structure embodied in the NPDES provisions. The NPDES provisions at Part 122 establish a threshold (in terms of numbers of animals) above which every AFO is defined as a CAFO (specifically, these

are defined as Large CAFOs). Similarly, EPA has determined that, because of the nature of these Large CAFOs and the potential risk discharges from these operations pose to the environment, the ELGs promulgated today should apply to Large CAFOs. However, for the reasons discussed below and consistent with the approach used in establishing the 1974 ELGs, EPA is not establishing ELGs for Small or Medium CAFOs. EPA's analyses, based on USDA data, show that small and medium AFOs are more likely than Large CAFOs to have a sufficient land base for utilizing manure nutrients at rates consistent with appropriate agricultural utilization of nutrients. Small and medium AFOs are defined or designated as CAFOs only when certain conditions that pose an environmental risk are present at the operation. Since these smaller operations become CAFOs only if certain conditions are present, and the highly site-specific conditions that trigger any particular operation being defined or designated as a Small or Medium CAFO will vary from facility to facility, discharges from Small and Medium CAFOs are more appropriately controlled through NPDES permit limitations on a BPJ basis. EPA expects that, by tailoring the permit requirements for Small and Medium CAFOs on a BPJ basis, these smaller facilities will be able to better and more efficiently target their more limited resources to reducing their environmental impacts. This increased flexibility for setting the permit requirements for Small and Medium CAFOs will reduce the overall financial burden on the industry. Consistent with the Unified National AFO Strategy, EPA is focusing today's ELGs on those larger operations that present the greatest potential risk to water quality.

EPA is extending the applicability of the ELGs to heifer operations and operations that confine immature swine (*i.e.*, swine weighing less than 55 pounds). Increasingly, swine operations may specialize in a production phase, such as a nursery that confines swine under 55 pounds. In the dairy sector, some operators prefer to obtain their dairy cattle from heifer-raising operations. These heifer operations specialize in raising immature dairy cattle until the cattle are ready for their first calving. These operations for immature animals are increasing in both size and number, and they operate similarly to other CAFOs. Therefore, EPA is today including immature swine under Subpart D (swine/poultry/veal) and heifer operations under Subpart C (beef/dairy/heifer) of the ELGs.

In addition, EPA is expanding the scope of the ELGs to address chicken operations with dry litter management systems to better address water quality impacts associated with both storage and land application of manure, litter, and process wastewaters. EPA believes that improper storage, as well as improper land application rates that exceed the appropriate agricultural utilization of nutrients, has contributed to water quality problems, especially in areas with large concentrations of poultry production. Nutrients from large poultry operations continue to contaminate surface waters because of rainfall coming in contact with dry manure that is stacked in exposed areas, accidental spills, etc. In addition, land application remains the primary management method for significant quantities of poultry litter (including manure generated from facilities using dry systems). Most poultry operations are located on smaller parcels of land in comparison to other livestock sectors, placing increased importance on the proper management of the potentially large amounts of manure, litter, and process wastewaters that they generate.

In the 1974 ELG regulations, EPA established requirements in a manner that placed CAFOs into one of two groups, or subcategories, based on the type of animals at the operation: One subcategory established requirements for ducks only; the second subcategory established identical ELG requirements for CAFOs with horses, sheep, slaughter steers and heifers (including veal calves), dairy cattle, chickens, turkeys, and swine.

Today's rule establishes ELGs based on segregating the animal sectors into four different subcategories. The ELG regulations at Part 412, Subpart A now apply only to Large CAFOs with horses and sheep, but the ELG requirements for these operations remain unchanged by today's rule. Part 412, Subpart B continues to apply only to CAFOs with at least 5,000 ducks and these requirements also remain unchanged by today's rule. Today's rule segregates the remaining animal types covered by the ELGs into two additional subcategories. Part 412, Subpart C applies to Large CAFOs with dairy or beef cattle other than veal (heifer operations are covered by this subpart), and Part 412, Subpart D applies to Large CAFOs with swine, veal, or poultry. EPA developed these subcategories to better reflect similarities in production and waste management practices among the operations grouped together.

The operations in Subpart C predominantly use production and waste management practices that differ