

conditions, with respect to NPDES permits issued to CAFOs.

*D. What Records and Reports Must Be Kept On-Site or Submitted?*

Today's rule specifies the types of records to be kept on-site at the CAFO in accordance with the recordkeeping requirements section of the permit. Today's rule also specifies the types of monitoring to be performed, the frequencies for collecting samples or data, and how to record, maintain, and transmit the data and information to the permitting authority in accordance with the monitoring and reporting section of the permit.

The specific recordkeeping, monitoring, and reporting requirements in today's rule balance the need for information documenting permit compliance and minimizing the burden on the permittee to collect and record data. State permit authorities have the option to include more stringent requirements if they find such an action necessary. The minimum recordkeeping, monitoring, and reporting requirements that must be included in each NPDES permit are as follows:

*Recordkeeping requirements.* All CAFO operators must maintain a copy of the site specific nutrient management plan on site, and records documenting the implementation of the best management practices and procedures identified in the nutrient management plan.

In addition, Large CAFOs must maintain operation and maintenance records that document (a) visual inspections, inspection findings, and preventive maintenance needed or undertaken in response to the findings; (b) the date, rate, location, and methods used to apply manure or litter and wastewater to land under the control of the CAFO operator; (c) the results of annual manure or litter and wastewater sampling and analysis to determine the nutrient content; and (d) the results of representative soil sampling and analyses conducted at least every five years to determine nutrient content.

Large CAFOs must also maintain records of manure transferred to other persons that demonstrate the amount of manure and/or wastewater that leaves the operation and record the date, name, and address of the recipient(s);

Today's rule requires all CAFOs to submit an annual report that includes the following information:

- Number and type of animals confined (open confinement and housed under roof).
- Estimated amount of total manure, litter, and process wastewater generated

by the CAFO in the previous 12 months (tons/gallons);

- Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- Total number of acres for land application covered by the nutrient management plan;
- Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
- Summary of all manure and wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

*What did EPA propose?* EPA proposed requirements to keep, maintain for five years, and make available to the Director or the Regional Administrator, records of inspections and manure sampling and analysis, records related to the development and implementation of a PNP, and records of off-site transfers of manure. EPA proposed that CAFO operators maintain records of off-site transfer and provide the recipient with a brochure on proper land application practices. EPA also proposed a small quantity exemption limit below which an operator would not have to keep records of manure transfers. EPA proposed operators submit a cover sheet and executive summary of their permit nutrient plans to the permitting authority. In addition, the Agency proposed to require operators to submit a written notification to the permitting authority, signed by a certified planner, that the PNP has been developed or amended and is being implemented. The proposal required annual review of the PNP and re-submission of the executive summary if there were any changes to the PNP.

Today's final rule changes the recordkeeping and reporting requirements that were proposed in the following ways: EPA is not requiring the CAFO owner or operator to provide the recipient of the manure with a brochure that describes the recipient's responsibilities for appropriate manure management, and EPA is not adopting the proposal to set a minimum quantity exemption, such that records of manure transfer would not be required below a certain quantity. In addition, EPA is no longer requiring CAFO operators to submit with the NOI a copy of the cover

sheet and executive summary of the CAFO operator's current Permit Nutrient Plan (PNP).

*What were the key comments?* EPA received a number of comments on the proposed recordkeeping, monitoring, and reporting requirements. The operators commented that monitoring and reporting programs are difficult to establish, expensive, and burdensome on the operator. They also claimed that these requirements would necessitate a significant amount of operator time and labor, and would provide opportunities for "technical" permit violations, with no benefit to water quality. Environmental groups and a majority of citizen commenters stated that these provisions are long overdue and any records submitted should be made available for public review.

The SBAR Panel recommended that EPA give careful consideration to all proposed recordkeeping requirements and explore options to streamline these requirements for small entities. Regarding the requirement to provide nutrient content information to manure recipients, the Panel believed that this would be minimally burdensome if analysis of this content is already required as part of the CNMP to ensure proper land application. The Panel suggested that EPA consider limiting any requirement to provide nutrient content analysis to situations where such analysis is required as part of the CNMP to ensure proper on-site land application, or possibly where the operator transfers manure to multiple recipients. Finally, the Panel noted that under the Paperwork Reduction Act and its implementing regulations, all reporting and recordkeeping requirements must be certified by the issuing agency to have practical utility and to reduce, to the extent practicable and appropriate, the burden on those required to comply, including small entities (5 CFR 1320.9).

*Rationale.* The recordkeeping, reporting, and monitoring requirements adopted today are necessary to demonstrate compliance with the requirements of today's rule and assure protection of water quality.

EPA is not requiring Small and Medium CAFOs to maintain records of the of the manure transferred off-site, or provide the recipient with an analysis of the nutrient content of the manure. As a result, these categories of CAFOs are relieved of the burden of keeping records of off-site transfer. EPA chose to provide regulatory relief for the Medium CAFOs by not requiring them to keep records of their manure transferred to third parties. EPA believes these CAFOs have more land and therefore ship less