

manure off-site. EPA's goal is to track the majority of the manure that is transferred to third parties. This information kept by the large operations is sufficient for EPA needs.

EPA decided not to include a small quantity exemption for off-site transfer of manure in the final rule. The reason for the proposed exemption was to provide record keeping relief to small operators. However, EPA determined that effective implementation of the small-quantity exemption would itself have required considerable recordkeeping by the operator. Practically, then, including this exemption would not have significantly reduced the record keeping burden to small operators.

The annual report, which includes seven elements that are readily available to the CAFO owner/operator in the nutrient management plan, is being required in today's rule rather than the proposed PNP written notification, cover sheet and executive summary. The annual report gives the permitting authority information on the number of overflows occurring in a year (in order to verify compliance with the production area design requirements), the amount of manure generated, the amount of manure transferred off-site, and the number of acres available for land application. The annual report also provides information, such as the degree to which CAFOs are expanding and accounting for increased manure production, which is important to evaluate changes that might be needed to comply with permitting requirements. The final rule requires the permittee to indicate whether its plan was either written or reviewed by a certified CNMP planner. EPA is not requiring that a certified planner be used to develop or review the plan required under this rule. However, EPA believes that certified planners provide a valuable service in plan development such as consistency and improved plan quality. Knowledge of which plans were developed by a certified planner will help EPA focus its compliance assistance efforts and help States determine level of permit review needed for each facility. EPA has concluded that the annual report is a more effective method for ensuring permitting authorities and EPA have basic information documenting CAFO performance relative to permit requirements.

EPA disagrees with the public comments suggesting that the monitoring and reporting requirements do not provide any benefit to water quality. Monitoring and reporting provide the basis for CAFO operators

and permitting authorities to evaluate compliance with the requirements of today's rule and the associated environmental implications. Monitoring provides valuable benchmark information and subsequent data that a permittee can use to adjust its activities, better comply with the requirements of the permit, and thereby better control its runoff or potential runoff. Monitoring also provides documentation of the operation's activities, which is essential to determine whether regulatory requirements are being implemented effectively and the success of those activities in protecting water quality. Monitoring allows the permittee and the permitting authority to know what, if any, contribution the permittee is making to the degradation of water quality. Such information is also helpful in determining the improvements in water quality as a result of permit compliance activities.

In this final rule, EPA has made great efforts to reduce burden beyond what is noted above. EPA has eliminated all certifications that were proposed, which include middle category certification that a facility is not a CAFO, certification of off-site manure recipients, and the use of certified CNMP planners. In addition, EPA is not including a national requirement for operators to document that there is no direct hydrological connection from groundwater beneath their production area to surface waters (or add controls where there is such a connection).

V. States' Roles and Responsibilities

A. What Are the Key Roles of the States?

State regulatory agencies with authorized NPDES programs are principally responsible for implementing and enforcing today's rule. This final rule obligates NPDES permit authorities to revise their NPDES programs expeditiously and to issue new or revised NPDES permits to include the revised effluent guidelines and other permit requirements adopted today. In authorized States, their role would also include determinations for no potential to discharge (*see* section IV.B.2 of this preamble) and CAFO designation (*see* section IV.A.7 of this preamble) of AFOs as CAFOs.

Various State organizations, such as environmental agencies, agricultural agencies, conservation districts, play a central role in implementing voluntary and other programs (*e.g.*, technical assistance, funding, public involvement, legal access to information, and setting protocols) that support the goal of protecting water quality through proper management of animal manure. EPA

fully expects and promotes effective cooperation between voluntary and regulatory programs to achieve this goal. In designing this final rule, EPA has placed the principal emphasis on Large CAFOs which are part of the base NPDES program. With this in mind, EPA is promoting and encouraging States to use the full range of voluntary and regulatory tools to address medium and small operations.

B. Who Will Implement These New Regulations?

The requirements of today's rule will be implemented by issuing NPDES permits. Today's rule will be implemented by States with authorized NPDES permit programs for CAFOs. As of the date of this final rule, there are 45 States and 1 Territory with authorized NPDES permit programs for CAFOs. In States without an authorized NPDES program for CAFOs and in Indian Country, EPA will implement the rule.

C. When and How Must a State Revise Its NPDES Permit Program?

NPDES regulations require State NPDES permitting programs to be revised to reflect today's changes within one year of the date of promulgation of final changes to the Federal CAFO regulations (*see* 40 CFR 123.62(e)). In cases where a State must amend or enact a statute to conform with the revised CAFO requirements, such revisions must take place within two years of promulgation of today's regulations. States that do not have an existing authorized NPDES permitting program but who seek NPDES authorization after these CAFO regulatory provisions are promulgated must have authorities that meet or exceed the revised federal CAFO regulations at the time authorization is requested.

Today's regulation requires States to have technical standards for nutrient management consistent with 40 CFR 412.4(c)(3). If the State already has nutrient management standards in place, it is sufficient to provide those to EPA along with the State's submission of regulatory revisions to conform to today's changes. If the State has not already established technical standards for nutrient management, the Director shall establish such standards by the date specified in § 123.62(e) and provide those to EPA along with the State's submission of regulatory revisions.

The NPDES program modification process is described at 40 CFR 123.62. Opportunities for public input into the process of review and approval of State program revisions and approvals is