

7. What Is EPA's Position Regarding Environmental Management Systems?

The Agency supports the voluntary adoption of environmental management systems (EMSs) by CAFOs. On May 15, 2002, the Administrator announced the Agency's Position Statement on Environmental Management Systems. This statement outlines the policy and principles by which the Agency will work with industry to promote the use of EMSs to improve environmental protection. EPA promotes the widespread use of EMSs across a range of organizations and settings, with particular emphasis on adoption of EMSs to achieve improved environmental performance and compliance, and pollution prevention through source reduction. The Agency encourages organizations to implement EMSs based on the plan-do-check-act framework, with the goal of continual improvement. An organization's EMS should address its entire environmental footprint (everywhere it interacts with the environment both negatively and positively), including both regulated and unregulated impacts, such as energy and water consumption, dust, noise, and odor. EPA supports EMSs that are appropriate to the needs and characteristics of specific sectors and facilities.

An operation could choose to implement an EMS that could include a CNMP, but would also include policies and practices designed to address other significant environmental problems. EPA, as part of its overall policy on EMSs, supports adoption of these systems in a variety of sectors, including agriculture. EPA has worked with specific agricultural producer groups like the United Egg Producers to develop a voluntary EMS program. USDA is also funding a major effort through the University of Wisconsin called *Partnerships for Livestock Environmental Assessment Management Systems*. This project is designed to provide information and other guidance on ways to use EMSs effectively in a variety of agricultural settings. EPA serves on the Advisory Committee for this effort, along with USDA and other federal agencies.

In the 2001 Notice, EPA outlined options for how an EMS program may be incorporated into the rule. These options were based on ISO 14000 criteria, an international standard. EPA received a number of comments on these options. Industry was split in support of EMS: some groups thought that use of EMSs in the proposal exceeded authorities provided under the Clean Water Act, whereas others

welcomed EMSs as an alternative to co-permitting. Environmental groups were concerned that reliance on EMS constituted a roll-back of rule requirements.

EPA is not including an EMS as an option in this final rule. EPA recognizes, based on comments, that offering an EMS alternative made the rule more complex and was not entirely consistent with the Agency's goal to keep the rule simple, easy to understand and easy to implement. However, EPA supports the use of EMS by States, as appropriate. In today's rule, EPA is requiring that CAFOs develop and implement nutrient management plans that can help CAFOs manage manure and protect water quality. CAFOs may want to consider implementation of nutrient management plans as part of a broader EMS to manage the specific impacts of excess nutrients. The CAFO's EMS would be broader than just a nutrient management plan, however, and would cover all media and both regulated and unregulated aspects.

More information on EPA's EMS policy, along with sector-specific EMS templates and guidance is provided at www.epa.gov/ems.

B. How Is EPA Coordinating With Other Federal Agencies?

EPA and USDA are committed to working together to provide coordinated assistance to animal agriculture for the betterment of animal agriculture and the environment. The agencies are working together to educate farmers, suppliers, USDA field representatives, consultants, and others on these new regulations. Both EPA and USDA believe in the importance of providing education, training and technical assistance to all involved in animal agriculture that can play a role in helping farmers understand the new requirements and how they can meet them. EPA and USDA have different roles and different constituencies. EPA sets the requirements, works toward compliance by industry, and enforces against noncompliance. USDA provides technical assistance, education, and training to farmers, growers, and allied industries. This education, training, and technical assistance will be vitally important to CAFO operators as they work to come into compliance with the new regulations. The Natural Resource Conservation Service and the Cooperative State Research, Education, and Extension Service are the key USDA agencies that will work with farmers to educate them on the requirements of the EPA CAFO rule. USDA will continue to educate EPA personnel on the intricacies of animal agriculture so that

the Agency can improve its communication with this vital sector.

There was significant comment on the proposed rule on how EPA and USDA should work together with farmers to implement this rule. Some thought the implementation should be left to USDA NRCS and CSREES. Others thought EPA and USDA should work together in the field in a coordinated effort to educate, regulate and assist AFOs and CAFOs. One commenter suggested that EPA monitor water quality and NRCS provide technical assistance. A few comments asked that EPA join other federal agencies and conduct a comprehensive examination of the problems generated by CAFOs.

EPA and USDA believe that only by working in close partnership will the federal government provide the best service to farmers and the rest of the American public. It is EPA's intent and commitment to communicate and coordinate effectively across Agencies and Departments. Animal agriculture is important to this country, as is a sound, healthy environment. EPA and USDA believe these two goals can be jointly achieved.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866. As such, this action was submitted to OMB for review. Changes