

information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

*Estimated No. of Potential Annual Respondents:* 13,521.

*Frequency of Collection:* On occasion.

*Estimated No. of Potential Annual Responses:* 6,897.

*Estimated average number of responses for each respondent:* 0.43.

*Estimated Total Annual Burden on Respondents:* 23,536 hours.

*Estimated Total Annual Costs:* \$1,486,311.

*Changes in Burden Estimates:* There is a decrease of 1,012 hours (from 24,548 hours to 23,536 hours) in the total estimated annual respondent burden compared with that currently in the OMB inventory. This decrease primarily reflects EPA's current estimate of the number of employees in affected respondent companies. Because the allegation rate is based on the number of employees, the decrease in the estimated number of employees results in a decrease in total allegations, and thus a reduction in burden. This change is an adjustment.

Dated: January 13, 2009.

**John Moses,**

*Acting Director, Collection Strategies Division.*

[FR Doc. E9-1144 Filed 1-16-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8765-3]

### Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Horse, Cattle and Dairy Concentrated Animal Feeding Operations (CAFOs) in New Mexico (Except Indian Country)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed permit issuance.

**SUMMARY:** EPA Region 6 Water Quality Protection Division, today is proposing

for public comment the issuance of a National Pollutant Discharge Elimination System general permit for discharges from eligible owners/operators of existing concentrated animal feeding operations (CAFOs), in New Mexico, except those discharges on Indian Country. All currently operating animal feeding operations that are defined as CAFOs or designated as CAFOs by the permitting authority (See Part VII Definitions, "CAFOs") and that are subject to 40 CFR Part 412, Subparts A (Horses) and C (Dairy Cows and Cattle Other than Veal Calves) are eligible for coverage under this permit. Hereinafter, this NPDES general permit will be referred to as "permit" or "CAFO permit" or "CAFO general permit." Eligible CAFOs may apply for authorization under the terms and conditions of this permit, by submitting a notice of intent (NOI) to be covered by this permit.

This permit covers the types of animal feeding operations listed above which meet the definition of a CAFO and discharge or propose to discharge pollutants to waters of the United States. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

**DATES:** Comments must be submitted in writing to EPA on or before February 20, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. NMG010000 by one of the following methods:

- *E-mail:* [smith.diane@epa.gov](mailto:smith.diane@epa.gov).
- *Mail:* Ms. Diane Smith,

Environmental Protection Agency, Water Quality Protection Division (6WQ-NP), 1445 Ross Ave., Suite 1200, Dallas, TX 75202.

- *Hand Delivery:* EPA Region 6, 7th Floor Reception Desk, 1445 Ross Ave., Suite 1200, Dallas, TX 75202. Such deliveries are only accepted during normal business hours.

*Instructions:* Direct your comments to Docket ID No. NMG010000. EPA's policy is that all comments received will be included in the public docket without change and may be made available online, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through e-mail. If you send an e-mail comment directly to EPA your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and may be made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically or in hard copy from Ms. Diane Smith at the address above. The Docket may also be viewed at the EPA Region 6 Offices from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. For more information on scheduling a time to view the Docket or to obtain copies of available documents, please contact Ms. Diane Smith at 214-665-2145 or [smith.diane@epa.gov](mailto:smith.diane@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Scott Stine, NPDES Permits and TMDL Branch (6WQ-PP), Environmental Protection Agency, 1445 Ross Ave., Suite 1200, Dallas, TX 75202; telephone number: (214) 665-7182; fax number: (214) 665-2191; e-mail address: [stine.scott@epa.gov](mailto:stine.scott@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does This Action Apply to Me?

Today's CAFO general permit would potentially apply to the following activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) codes
Industry .....	Operators of concentrated animal feeding operations subject to the following national effluent limitation guidelines:	
	Horses and Sheep (40 CFR Part 412, Subpart A .....	.....
	Dairy Cows and Cattle Other than Veal Calves (40 CFR Part 412, Subpart C) .....	1121

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of “concentrated animal feeding operation” in existing EPA regulations at 40 CFR 122.23. (also found in Part VII of the draft permit). If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Do I Obtain a Copy of the Proposed Permit?*

The proposed general permit and fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the proposed general permit, may both be obtained via the Internet at <http://www.epa.gov/region6/water/npdes/cafo/index.htm>. To obtain hard copies of these documents or any other information in the administrative record, please contact Ms. Diane Smith using the contact information provided above.

*C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through via e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*D. Public Hearings*

EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

*E. Permit Issuance*

After the close of the public comment period, EPA will develop a response to comments document and issue a permit. This permit will not be issued until after all public comments have been considered and appropriate changes made to the permit. EPA’s response to public comments received will be included in the docket as part of the permit decisions. Once the permit becomes effective, operators may seek authorization to discharge by filing a Notice of Intent (NOI) to be covered under the new CAFO permit in accordance with the terms and conditions of the permit.

**II. Background of Permit Proposal**

*A. Statutory and Regulatory History*

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife.” 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control the discharges through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), prohibits the discharge of pollutants to waters of the U.S. in the absence of authorizing permits, including NPDES permits. The CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing such discharges on condition that they in part will comply with requirements implementing CWA sections 301, 304, and 401 [33 U.S.C. 1311, 1314, and 1341].

In February 2003, EPA issued revised Clean Water Act (CWA) permitting requirements and effluent limitations for CAFOs. The revised regulations expanded the number of CAFOs required to seek NPDES permit coverage and added requirements applicable to land application of manure by CAFOs. In February 2005, the Second Circuit Court of Appeals issued its decision in *Waterkeeper Alliance et al. v. EPA* regarding legal challenges to the 2003

rule. Among other things, the court directed EPA to remove the requirement for all CAFOs to apply for NPDES permits, and to add requirements for Nutrient Management Plans (NMPs) to be submitted by CAFOs with their permit applications, reviewed by permitting authorities and the public, and the NMP terms incorporated into permits. EPA published a final regulation in the **Federal Register** on November 20, 2008, revising national effluent limitation guidelines for discharges from CAFOs. See 73 FR 70,418. Today's proposed permit reflects these revised guidelines and other applicable NPDES permitting requirements at 40 CFR parts 122 and 125.

#### B. Summary of Permit Proposal

EPA Region 6 is proposing to reissue General NPDES Permit No. NMG010000 for discharges from concentrated animal feeding operations (CAFOs) in New Mexico (except Indian Country). This permit was originally issued in the **Federal Register** at 58 FR 7610 with an effective date of March 10, 1993, and an expiration date of March 10, 1998. Applicable requirements from that 1993 permit are continued in the proposed permit.

The proposed permit adds additional requirements contained in revised CAFO regulations at 40 CFR 122 and 412 which were published in the **Federal Register** at 73 FR 70,418 (November 20, 2008.)

#### C. Significant Changes From Previous CAFO General Permit

This proposed permit implements revised regulatory requirements from the 2003 and 2008 revisions to the regulations. The permit adds new requirements relating to NMPs for permitted CAFOs. CAFO operators were permitted to develop and implement NMPs under the 2003 rule; the 2008 rule requires CAFOs to submit the NMPs along with their notice of intent (NOI). EPA Region 6 as the permitting authority will review the NMPs submitted along with the NOIs and will also establish the terms of the NMP that are enforceable elements of the permit. The region will provide the public with an opportunity for meaningful review and comment on the NMPs and the terms of the NMPs will be incorporated into the permit.

Under the CWA, the Permitting Authority may issue general permits to regulate numerous facilities which have similar discharges and are subject to the same conditions and limitations within a specified geographic area (*i.e.*, state or watershed) [40 CFR 122.28]. Using

general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for the regulated community.

#### D. Geographic Coverage

The proposed permit would authorize discharges in the state of New Mexico, except those discharges that occur on Indian Country. CAFOs discharging on Indian Country would be required to apply for an individual permit.

### III. Compliance With the Regulatory Flexibility Act

#### A. EPA's Approach to Compliance With the Regulatory Flexibility Act for General Permits

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a "rule" or as an "adjudication" under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a "rule" and therefore that the issuance of that general permit needed to comply with the applicable legal requirements for the issuance of a "rule." *National Ass'n of Home Builders v. U.S. Army Corps of Engineers*, 417 F.3d 1272, 1284–85 (DC Cir. 2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; "Each NWP [nationwide permit] easily fits within the APA's definition 'rule'. \* \* \* As such, each NWP constitutes a rule \* \* \*").

As EPA stated in 1998, "the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit." 63 FR 36489, 36497 (July 6, 1998). At that time, EPA "reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere," and stated that "[t]his

review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits." *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency "concluded, as set forth in the proposal, that NPDES general permits are permits [*i.e.*, adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA." *Id.* Accordingly, the Agency stated that "the APA's rulemaking requirements are inapplicable to issuance of such permits," and thus "NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law \* \* \* [and] it is not subject to the RFA." *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: "[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities." *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that "the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied." *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications rather than rules, as noted above, the DC Circuit recently held that nationwide general permits under section 404 are "rules" rather than "adjudications." Thus, this legal question remains "a difficult one" (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (*e.g.*, small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether

a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act. Accordingly, EPA has committed to operating in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as "rules" that are subject to the RFA).

*B. Application of RFA Framework to Proposed Issuance of CAFO General Permit for New Mexico (Except Indian Country)*

EPA has determined, consistent with the discussion in section IV.B above, that the proposed issuance of today's proposed permit would not affect a substantial number of small entities. Although general permits are considered to be adjudications and not rules and therefore not legally subject to the regulatory flexibility act, the Agency as a matter of policy is evaluating on an individual basis whether or not a specific general permit would have a significant economic impact on a substantial number of small entities. Upon considering EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, EPA concludes that since this general permit affects less than 100 small entities at any one time, EPA believes that it does not have a significant economic impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 13, 2009.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, EPA Region 6.*

[FR Doc. E9-1200 Filed 1-16-09; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-ORD-2008-0943; FRL-8763-6]

**Board of Scientific Counselors (BOSC), Executive Committee Meeting—February 9-10, 2009**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

**DATES:** The meeting will be held on February 9, 2009, from 2 p.m. to 5:15 p.m. EDT and continued on February 10, 2009, from 8:30 a.m. to 3 p.m. EDT. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

**ADDRESSES:** The meeting will be held at the Marriott Courtyard Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202. Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2008-0943, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* Send comments by electronic mail (e-mail) to: [ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov), Attention Docket ID No. EPA-HQ-ORD-2008-0943.

- *Fax:* Fax comments to: (202) 566-0224, Attention Docket ID No. EPA-HQ-ORD-2008-0943.

- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), Executive Committee Meeting—2008 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-ORD-2008-0943.

- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA-HQ-ORD-2008-0943. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-ORD-2008-0943. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Board of Scientific Counselors (BOSC), Executive Committee Meeting—February 9-10, 2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: