

FREQUENTLY ASKED QUESTIONS

Introduction

This document is intended to provide more information that will help livestock auction operators to interpret and better utilize the compliance assistance tool entitled “Identifying and eliminating unauthorized discharges from livestock auctions” (Document No. EPA 906-F-22-001).

1. How do I count the animals confined at my facility?

In order to determine how your facility is defined on the AFO/CAFO spectrum, you must count the number of days in a 12-month period that your facility confined animals at or above the threshold numbers at 40 CFR 122.23 (b)(4,6). To start, we recommend that you look at the sale-day records for the past twelve months. From there, you can look at each sale day and tally any day that is above the animal threshold for that animal type. If your facility auctions multiple animal types (cattle, dairy cows, swine, etc.), you will need to do this exercise for each animal type. In addition to counting the animals confined on sale day, it is important to consider other days in which animals might be confined/fed at your facility. For example, if animals are dropped off on the day prior to sale day and picked up the day after sale day, these days also contribute to the number of days your facility confines/feeds animals at or above the threshold numbers. After counting the animals at your facility over this twelve-month period, you can use this information to determine whether your facility meets the definition of a Large CAFO, Medium CAFO or small CAFO as described later in this document. In order to best understand normal conditions at your facility, it may be valuable for you to examine more than one twelve-month period initially.

2. What is a discharge of pollutants to Waters of the United States?

The National Pollutant Discharge Elimination System (NPDES) is a program that regulates the discharge of pollutants from point sources, which may include livestock auction AFOs and CAFOs, to waters of the United States. The term “waters of the United States” is defined at 40 CFR 120.2¹. This compliance tool does not expand or change the definition of “waters of the United States” at 40 CFR 120.2. Many discharges of pollutants to surface water can be considered discharges to waters of the United States. The discharge does not have to be directly to a large lake or major interstate river. Wetlands and tributaries of interstate waters may also be waters of the United States².

Examples of discharges may include: 1) the discharge through man-made conveyances, such as man-made ditches, flushing systems or other man-made devices or through a natural channel or gully that transports wastes to surface water, 2) discharge from a retention structure to nearby surface waters or 3) flows from the animal enclosure, into naturally occurring channels (e.g., surface depressions) to surface water. Any time wastewater from a CAFO flows to waters of the United States, the result is a discharge that is subject to the NPDES program.

3. How do I know if my facility is an AFO?

Meeting the definition of an AFO is a two-part test. To meet the first part of the regulatory definition of an AFO, animals must be kept on the lot or facility for a minimum of 45 days in a 12-month period. If an

¹ The full text of 40 CFR 120.2 can be found online here: <https://www.ecfr.gov>

² An EPA fact sheet on the Navigable Waters Protection Rule can be found online here: https://www.epa.gov/sites/production/files/2020-01/documents/nwpr_fact_sheet_-_overview.pdf

animal is confined for any portion of a day, it is considered to be on the facility for a full day. For example, dairy cows that are brought in from pasture for less than an hour to be milked are counted as being confined (i.e., on the lot or facility) for the day. In addition, the same animals are not required to remain on the lot for 45 days or more for the operation to be defined as an AFO. Rather, the first part of the regulatory definition is met if some animals are fed or maintained on the lot or facility for 45 days out of any 12-month period. The 45 days do not have to be consecutive, and the 12-month period does not have to correspond to the calendar year. For example, June 1 to the following May 31 would constitute a 12-month period. Therefore, animal operations such as stockyards, fairgrounds, and auction houses where animals may not be fed, but are confined temporarily, may be AFOs.

If a facility maintains animals in an area without vegetation, such as dirt lots, the facility meets the second part of the AFO definition. This does not mean that any vegetation at all in a confinement area would keep an operation from being defined as an AFO. For example, a confinement area like a pen or feedlot that has only “incidental vegetation” (as defined by your permitting authority) would still be an AFO as long as the animals are confined for at least 45 days in any 12-month period.

4. How do I know if my facility is a Large CAFO?

An AFO is a Large CAFO if it meets the regulatory definition (threshold numbers) of a Large CAFO at 40 CFR 122.23 (b)(4). The CAFO regulations define a Large CAFO on the basis of the number of animals confined. The animal types with specific threshold numbers for the Large CAFOs identified in the regulations are cattle, dairy cows, veal calves, swine, chickens, turkeys, ducks, horses, and sheep. An operation confining any animal type (e.g., geese, emus, ostriches, bison, mink, alligators) not explicitly mentioned in the NPDES regulations and for which there are no effluent limitation guidelines (ELGs) is subject to NPDES permitting requirements for CAFOs if (1) it meets the definition of an AFO, and (2) if the permitting authority designates it as a CAFO. An AFO is a Large CAFO if it stables or confines equal to or more than the number of animals specified in Table 1 below for 45 days or more in a 12-month period.

Table 1 – Large CAFOs

Number of animals	Type of animals
700	Mature dairy cows, whether milked or dry
1,000	Veal calves
1,000	Cattle, other than mature dairy cows or veal calves (Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.)
2,500	Swine, each weighing 55 pounds or more
10,000	Swine, each weighing less than 55 pounds
500	Horses
10,000	Sheep or lambs
55,000	Turkeys
30,000	Laying hens or broilers, if the AFO uses a liquid-manure handling system
125,000	Chickens (other than laying hens), if the AFO uses other than a liquid-manure handling system
82,000	Laying hens, if the AFO uses other than a liquid-manure handling system
30,000	Ducks, if the AFO uses other than a liquid-manure handling system
5,000	Ducks, if the AFO uses a liquid-manure handling system

5. How do I know if my facility is a Medium CAFO?

An AFO is a Medium CAFO if it meets both parts of a two-part definition. The first part addresses the number of animals confined, and the second part includes specific discharge criteria. In addition, a medium-sized AFO can be designated as a CAFO by the permitting authority or EPA. If an AFO confines the number of animals listed in Table 2 below for 45 days or more in a 12-month period, it meets the first part of the definition of a Medium CAFO. An AFO meets the discharge criteria for the second part of the Medium CAFO definition if pollutants are discharged to waters of the US in one of the following ways:

1. Through a man-made ditch, flushing system, or other similar man-made device.
2. Directly into waters of the U.S. that originate outside the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals.

In summary, if an AFO confines the number of animals listed in Table 2 below for 45 days or more in a 12-month period, but does not meet one of the two discharge criteria above, the facility is a Medium AFO unless it is designated as a Medium CAFO by its permitting authority or the EPA.

Table 2 – Medium CAFOs

Number of animals	Type of animal
200 - 699	Mature dairy cows, whether milked or dry
300 - 999	Veal calves
300 - 999	Cattle, other than mature dairy cows or veal calves (Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.)
750 - 2,499	Swine, each weighing 55 pounds or more
3,000 - 9,999	Swine, each weighing less than 55 pounds
150 - 499	Horses
3,000 – 9,999	Sheep or lambs
16,500 – 54,999	Turkeys
9,000 – 29,999	Laying hens or broilers, if the AFO uses a liquid-manure handling system
37,5000 – 124,999	Chickens (other than laying hens), if the AFO uses other than a liquid-manure handling system
25,000 – 81,999	Laying hens, if the AFO uses other than a liquid-manure handling system
10,000 – 29,000	Ducks, if the AFO uses other than a liquid-manure handling system
1,500 – 4,999	Ducks, if the AFO uses a liquid-manure handling system

6. How do I know if my facility is a Small CAFO?

A small AFO is an AFO with fewer numbers of animals than shown in Table 2 above. A small AFO that meets one of the discharge criteria previously described above and is also determined to be a significant contributor of pollutants to waters of the US may be designated as a Small CAFO by the permitting authority.

EPA and the United States Department of Agriculture (USDA) promote efforts by states to help medium and small AFOs avoid having conditions that would result in those facilities’ being defined or designated as CAFOs.

7. How are operations with multiple animal types regulated?

Under the CAFO regulations, multiple types of animals are not counted together to determine the type and size of a CAFO. However, once an operation is defined as a CAFO on the basis of a single animal type, all the manure generated by all animals confined at the operation are subject to NPDES requirements. If waste streams from multiple livestock species subject to different regulatory requirements are commingled at a CAFO, any NPDES permit for the facility must include the more stringent ELG requirements. 2003 CAFO Rule, 68 FR 7176, 7,195. In situations where immature animals (e.g., heifers and swine weighing less than 55 lbs) are confined along with mature animals, the determination of whether the operation is defined as a CAFO depends on whether the mature or immature animals separately meet the applicable threshold. Operations that specialize in raising only immature animals have specific thresholds under the regulations. However, once an AFO is defined as a CAFO, manure generated by all the animals in confinement would be addressed by the CAFO's NPDES permit if it is a permitted CAFO. An operation that confines multiple animal types, where no one type meets the Large or Medium CAFO threshold, can be designated as a CAFO if it is found to be a significant contributor of pollutants to waters of the U.S.

8. Who is my permitting authority?

In most of the country, the NPDES permitting program has been delegated by EPA to respective state agencies³. Within Region 6, New Mexico is the only non-delegated state, meaning that EPA Region 6 is the permitting authority for all CAFOs in New Mexico. The CAFO permitting authorities⁴ for all Region 6 states are listed below:

Arkansas: Arkansas Department of Environmental Quality, <https://www.adeq.state.ar.us/>

Louisiana: Louisiana Department of Environmental Quality, <https://www.deq.louisiana.gov/>

New Mexico: EPA Region 6 / Water Quality Division, <https://www.epa.gov/npdes>

Oklahoma: Oklahoma Department of Agriculture Food and Forestry, <https://ag.ok.gov/>

Texas: Texas Commission on Environmental Quality, <https://www.tceq.texas.gov/>

³ EPA issues all NPDES water quality permits in Massachusetts, New Hampshire, New Mexico, District of Columbia, U.S. territories, and on federal and tribal lands.

⁴ You can also look up your permitting authority by state here: <https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosState>