



GAO

Accountability \* Integrity \* Reliability

United States General Accounting Office  
Washington, DC 20548

---

B-291808

February 25, 2003

The Honorable James M. Inhofe  
Chairman  
The Honorable James M. Jeffords  
Ranking Minority Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Don Young  
Chairman  
The Honorable James L. Oberstar  
Ranking Minority Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Environmental Protection Agency: National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled “National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)” (RIN: 2040-AD19). We received the rule on December 19, 2002. It was published in the Federal Register as a final rule on February 12, 2003. 68 Fed. Reg. 7176.

The final rule revises and clarifies EPA’s regulatory requirements for concentrated animal feeding operations under the Clean Water Act.

Enclosed is our assessment of the EPA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson,

Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Stephanie Daigle  
Acting Principal Deputy  
Associate Administrator  
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"NATIONAL POLLUTANT DISCHARGE ELMINIATION SYSTEM PERMIT  
REGULATION AND EFFLUENT LIMITATION GUIDELINES AND STANDARDS FOR  
CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS)"  
(RIN: 2040-AD19)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis of the final rule and estimates that the total social costs are \$335 million annually with industry costs of \$326 million per year and administrative costs to federal and state governments of \$9 million per year. The monetized benefits of the final rule range from \$204 million to \$355 million per year.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA prepared an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis in conjunction with the proposed rule and final rule, respectively. The analyses comply with the information requirements of the Regulatory Flexibility Act, including the need for the rule, a description of and an estimate of the small entities to which the final rule applies, and the options considered to reduce the impact on small entities.

In the preamble to the final rule, EPA discusses the steps taken to reduce the burden on small entities and notes that the final rule affects fewer small entities at significantly reduced costs compared to the proposed rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule contains a private sector mandate, as defined in title II, of more than \$100 million in any one year. Therefore, EPA has prepared the written statement required by the Act and it is summarized in the preamble to the final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. On January 12, 2001, EPA published a Notice of Proposed Rulemaking

in the Federal Register. 66 Fed. Reg. 2959. In response to the notice, EPA received over 11,000 comments, which are summarized and discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the collections and assigned OMB Control No. 2040-0250.

Statutory authorization for the rule

The final rule was issued under the authority contained sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

EPA has reviewed the final rule and found that it does not have federalism implications and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of governments.