



Oregon Department of Agriculture and Department of Environmental Quality

Frequently Asked Questions: Senate Bill 85 and ODA CAFO Rule Changes Information for Oregon's CAFO Operators

Introduction

Following a series of educational events for CAFO permittees across the state, ODA and DEQ jointly created this FAQ document to clarify information related to SB 85 and other recent ODA CAFO rule changes.

Senate Bill 85 Basics

What is Senate Bill 85?

The “CAFO Bill” signed by Governor Kotek on 7/27/23 amends Water Quality (ORS 468B) and Water Use (ORS 537.545) statutes and prompted rulemaking for ODA under OAR 603-074.

Who is involved in implementing SB 85?

The Oregon Department of Agriculture (ODA), Oregon Department of Environmental Quality (DEQ), and Oregon Water Resources Department (OWRD).

What is the timeline and process for implementing SB 85?

<u>Timeframe</u>	<u>Activity</u>
2023 Legislative Session	SB 85 was written
July 2023	Signed by Gov Kotek
April – May 2024	RAC Meetings
September 2024	ODA Rules published
November 2024 – January 2025	Educational meetings
Summer - Fall 2025	Incorporate into NPDES General Permit
Fall - Winter 2025	Incorporate into WPCF General Permit
Winter 2026 (subject to change)	Develop Nutrient Application Permit

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Confined animal feeding operation (CAFO) Definitions and Permit Designations

What defines a CAFO?

Operation meets confinement and animal number parameters; or has a wastewater control facility and generates 100g/day or more of liquid wastes; or discharges wastes into waters of the state; or meets the federal requirements under 40 CFR 122.23. See full definition under OAR 603-074-0010.

What are the different CAFO permit designations?

See Permit Designation table under OAR 603-074-0011.

Construction Requirements

What are the changes to the construction requirements rule (OAR 603-074-0018)?

A construction approval package must be submitted prior to permitting action. This includes a Construction Approval Request (CAR), site maps, an updated Nutrient Management Plan (NMP), and Operation and Maintenance documents. Technical specifications of pre-fabricated structures are acceptable in lieu of engineering specifications.

This applies to all permittees including new and expanding CAFOs and existing CAFOs that renew on or after 7/1/25.

Pre-Population Inspections

What are pre-population inspections?

A specific type of inspection that the permittee requests after construction is completed and before animals can be brought to newly constructed facilities. This inspection ensures that the newly constructed facility is constructed as designed prior to its operation.

This applies to all permittees including new and expanding CAFOs and existing CAFOs that renew on or after 7/1/25.

Pre-Application Preliminary Consultation

What is the pre-application preliminary consultation?

A potential applicant must request and attend an informational meeting before submitting an application or permit modification request. This informational meeting will include ODA, DEQ, OWRD, and any other relevant agencies to share agency-specific requirements. ODA will follow department policy relating to tribal government relations and consultations.

This applies to all new large CAFOs and expanding large CAFOs.

Neighbor Notice

What is the neighbor notice?

Applicants will notify neighbors within a ½-mile radius of the proposed production area parcel of the public notice period. Notification will be made by mail.

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This applies to new large CAFOs.

Groundwater Management Areas

What is a GWMA and how were the boundaries determined?

DEQ has designated three Groundwater Management Areas, or GWMAs, because of elevated nitrate concentrations in groundwater determined by hydrogeologic assessments and groundwater sampling. These include the Lower Umatilla Basin GWMA, the Northern Malheur County GWMA, and the Southern Willamette Valley GWMA. The GWMAs were established through legislation and the boundaries have remained the same since original designation. Visit the DEQ website for more information:

<https://www.oregon.gov/deq/wq/programs/pages/gwp-management-areas.aspx>.

What changes apply within a GWMA?

If you qualify as a new large CAFO that is located within a GWMA and you are land applying, then you must apply for an individual permit.

What is the nutrient application permit?

The nutrient application permit (NAP) is a unique permit for applicators who are land applying CAFO nutrients within a GWMA but do not hold a CAFO permit.

How does the NAP impact CAFO permittees?

If a CAFO permittee is exporting nutrients, they will need to include the NAP number of each of the receivers of the nutrients who are land applying in a GWMA on their export records.

Is there a threshold for tonnage that needs to be accounted for or a lower limit (de minimus clause) for nutrient application that will require NAP coverage?

The NAP has not yet been developed and any permit conditions will be determined in the permit development process. There will be a public notice period when the permit is completed as well and the agencies invite public participation in the process.

If a small non-permitted facility is land applying their own animal nutrients, do they need an NAP? i.e. do "CAFO nutrients" include nutrients from non-permitted CAFOs?

If an operation meets the definition of a CAFO, they require a CAFO permit (OAR 603-074-0010). A person applying CAFO nutrients within a GWMA requires an NAP, unless the person is authorized under an NPDES or WPCF permit (ORS 468B.219). If the nutrients do not come from a permitted CAFO then an NAP is not required to apply them.

How will ODA handle importing nutrients from non-permitted CAFOs in other states?

The NAP has not yet been developed and any permit conditions will be determined in the permit development process. There will be a public notice period when the permit is completed as well and the agencies invite public participation in the process.

If someone is hauling and composting CAFO nutrients from a permitted CAFO but not land applying, do they need an NAP?

No, SB 85 states that the NAP is for the land application of nutrients from a CAFO.

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Who is liable regarding an NAP? Will it fall back on the producer if a land applier within a GWMA doesn't obtain the required NAP?

The receiver (land applier) of CAFO nutrients is primarily responsible for obtaining and complying with a NAP. CAFO permittees are required to keep records of all exports including the receiver and their NAP number if one is required.

Water Supply Plan

What is the purpose of the water supply plan?

ODA requires a completed Water Supply Plan (WSP), as part of the CAFO permit application. The WSP allows ODA and OWRD to ensure that legal water sources are adequately available for the proposed or existing CAFO to utilize in compliance with permit conditions and state water law. This applies to all new and expanding CAFOs immediately, and to all existing CAFOs renewing permits on or after July 1st, 2025.

What are the three components included in the water supply plan?

1. Irrigation water: Irrigation water requires a water right. Irrigation water may be required for your operation to grow target crop yields so that land applied nutrients are utilized and a proper nutrient balance is maintained. If your operation's NMP requires irrigation water to achieve target crop yields, you need to make sure that it is accounted for in your WSP.
2. Agricultural Commercial/Industrial Water: Water rights are required for many agricultural processes such as cooling livestock buildings, washing/sanitizing livestock buildings/facilities, and sanitizing milking and other processing systems for water usage in excess of the 5,000g/day exemption.
3. Stockwater: Livestock drinking water can be authorized as an exempt use, included in a water right, or a combination of the two. When estimating your livestock water needs, you will use the Livestock Water Consumption Table in OAR 603-074-0019. This table was included in rule and is provided in the WSP as a non-regulatory guide to help you estimate stockwater needs.

Note: You need to ensure that any water needed for the operation based on your plan matches what is available through your water rights and that this is accounted for in the WSP.

Note: Any new CAFO requires a water right for stockwater use above 12,000g/day per operation.

What are the best methods for estimating water usage and needs?

- Irrigation water: Refer to your designated water right to determine standard flow rates to help estimate your daily irrigation water usage.
- Agricultural commercial/industrial water: If you need assistance estimating usage in this category, refer to your NMP and reach out to your ODA CAFO inspector and regional OWRD watermaster.
- Stockwater: Refer to the ODA Livestock Water Consumption Table in OAR 603-074-0019 using your permitted animal numbers to estimate stockwater usage.

What is the water supply plan process?

Submit your WSP to ODA as part of the application/renewal package or modification request. ODA will send

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this to OWRD and OWRD will review and either confirm or deny the WSP within 45 days. OWRD may recommend ODA condition a permit to include water metering or water use data, or limit CAFO stockwater expansion in a Critical Groundwater Area (CGWA). ODA will issue a final permit decision based in part on OWRD review and recommendations. OWRD recommends identifying any potential gaps in your water rights and needs and reaching out for assistance early.

What is ODA's administrative process based on OWRD's determination?

If OWRD does not approve a WSP due to insufficient water, ODA will work with the producer. This may look like reducing permitted animal numbers or revising the NMP to match available water. Ultimately, ODA may approve a permit for whatever scale of operation your water rights can cover.

Where can I find the water supply plan forms?

All forms related to the WSP can be found on the ODA website:

- [WSP instructions](#)
- [WSP FAQ](#)
- [OWRD watermaster contact information](#)

How was the livestock water consumption table devised?

ODA conducted a literature review to develop the livestock water consumption table with animal welfare in mind. This table is established in rule and went through the public noticing process. It is not regulatory and is designed to be a guideline for providing base estimates for stockwater usage.

What changes apply to CAFOs within Critical Groundwater Areas?

OWRD may recommend prohibiting an expanding CAFO within a CGWA from increasing its stockwater use by more than 12,000g/day. If you're in a CGWA and proposing an expansion, OWRD **may** approve transferring a water right from an existing right to a stockwater right as long as it doesn't enlarge the original water right or injure a water right. If a transfer is made from irrigation to stockwater, that transferred right cannot be used outside the designated irrigation season. Irrigation season varies by basin, so check with your local watermaster to verify the timeframe.

Is there a way to supplement water needs beyond the stockwater exemption for existing CAFOs if current water rights do not cover water needs?

Following OWRD processes, it is possible to transfer water rights between uses (i.e. irrigation, industrial/commercial, stockwater) as long as it does not enlarge the original water right or injure a water right. It is not possible to transfer between exemptions (i.e. commercial/industrial exemption and stockwater exemption), but you may use multiple exemptions as outlined in ORS 537.545. A transfer can be complicated and must be reviewed in real time. For questions about water rights and uses, please contact your local watermaster.

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What is the expected timeline for obtaining a new water right for stockwater use at a new CAFO?

Ensuring appropriate water rights is important for succession planning and the process can take a long time. If OWRD is able to issue a new water right for stockwater use, the process is estimated to take a year and a half. Generally, an applicant will know within six months what the odds are of getting a new water right or if OWRD is unable to issue a new water right in a specific area. We recommend reaching out early to your local watermaster to estimate and plan for your needs.

How do we administratively address water recycling?

A water right is defined by the first use of the water. If water is being recycled, it no longer falls under the exemption.

Air Quality

What is the EPA NAEMS study and how does it relate to AFOs?

A 2002 report by the National Academy of Sciences called on EPA to develop scientifically credible methodologies for estimating emissions from animal feeding operations. The resulting National Air Emissions Monitoring Study was funded by the AFO industry as part of a 2005 voluntary air compliance agreement with EPA, and gathered data on emissions of ammonia, hydrogen sulfide, particulate matter, and volatile organic compounds from operations including raising pigs, broiler chickens, egg-laying, and dairies. Visit the EPA website for more information: <https://www.epa.gov/afos-air/national-air-emissions-monitoring-study>.

What changes did SB 85 make regarding air quality?

Not more than 180 days after the U.S. EPA finalizes the National Air Emissions Monitoring Study, DEQ shall report to the Legislative Assembly related to agriculture on findings from the study that relate to animal feeding operations.

Land Use

What changes did SB 85 make regarding land use?

A local land use authority can require a setback or buffer on new large CAFO production areas if it is adjacent to residential structures.

Miscellaneous

What are the first steps for someone who wants to apply for a new CAFO permit?

If you are a new large CAFO, first request a pre-application preliminary consultation. Permit application materials can be found on the [ODA CAFO website](#). A complete application package consists of an Application to Register, Application Fee, Nutrient Management Plan, Land Use Compatibility Statement, Water Supply Plan, and if relevant, a Declaration of consultation and construction package. We recommend reaching out to your local land use authority, ODA CAFO inspector, and OWRD watermaster early to ensure you are meeting agency and area requirements. Additional resources for support include the Natural Resources Conservation Service (NRCS) which has NMP writers and possible funding opportunities.

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