

Unified National Strategy for Animal Feeding Operations (66 FR 2965). The discussion below briefly summarizes the key events that have been part of the process of preparing today's final rule.

A. Small Business Advocacy Review (SBAR) Panel

To address small business concerns, EPA's Small Business Advocacy Chairperson convened a Small Business Advocacy Review (SBAR) Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Participants included representatives of EPA, the Small Business Administration (SBA) and the Office of Management and Budget (OMB). "Small Entity Representatives" (SERs), who advised the Panel, included small business livestock and poultry producers as well as representatives of the major commodity and agricultural trade associations. Information on the Panel's proceedings and recommendations is in the April 7, 2000, *Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on National Pollutant Discharge Elimination System (NPDES) and Effluent Limitations Guideline (Effluent Guidelines) Regulations for Concentrated Animal Feeding Operations* (hereinafter called the "Panel Report"), along with other supporting documentation included as part of the Panel process. The *Panel Report* details the process that EPA followed, provides meeting summaries, and offers other information, including the composition of both the panel and the SERs.

The report also includes the Panel's recommendations on specific issues concerning the NPDES CAFO regulation and ELGs. Key panel recommendations were to: streamline reporting requirements; minimize burden of any required certifications and testing requirements; and carefully weigh the costs and benefits of removing the 25-year, 24-hour storm exemption for operations with less than 1,000 animal units and of modifying the specific criteria for defining medium-sized AFOs as CAFOs. The entire SBAR report is available in the administrative record for this rulemaking, which is available for public review.

B. Proposed Rule

On January 12, 2001, EPA published a proposal to revise and update two regulations to ensure that manure, wastewater, and other process waters generated by CAFOs do not impair water quality (66 FR 2959). These two

regulations were (1) the NPDES provisions that define which operations are CAFOs and establish permit requirements and (2) the ELGs, or effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs. Key proposed changes that would affect the CAFO definition included options for establishing either two or three size categories of CAFOs, the thresholds for different size operations defined as CAFOs, criteria applicable to medium operations, inclusion of dry chicken operations that meet specified size thresholds, and potential revisions to the designation criteria and process. In addition, the proposed rule also presented options for co-permitting entities that exercise substantial operational control over a CAFO, ensuring appropriate public participation in permitting, and encouraging proper management of excess manure that is transferred off-site. Key proposed changes to the ELGs for feedlots included updating the guidelines based on current practices and technologies, the increased use of BMPs, and application of technology options to both the CAFO production area and the land application area (including nutrient management planning).

C. 2001 Notice of Data Availability

On November 21, 2001, EPA published a Notice of Data Availability (hereinafter referred to as the "2001 Notice") that presented a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received from USDA (66 FR 58556). The notice had four main components: (1) Discussion of new data and changes EPA was considering to refine its cost and economics model; (2) discussion of new data and changes EPA was considering to refine its nutrient loading and benefits analysis; (3) new data and changes EPA was considering to the proposed NPDES permit program regulations; and (4) new data and changes EPA was considering to the proposed ELG regulations. EPA's 2001 Notice also discussed options that the Agency was considering to enhance flexibility for the use of State NPDES and non-NPDES CAFO programs, including implementation of environmental management systems (EMS).

D. 2002 Notice of Data Availability

On July 23, 2002, EPA published a second Notice of Data Availability (hereinafter referred to as the "2002

Notice") that presented a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received after publication of the 2001 Notice. The 2002 Notice had three main components: (1) A discussion of alternative regulatory thresholds for chicken operations using dry litter management practices; (2) the potential creation of alternative performance standards to encourage CAFOs to implement new technologies; and (3) financial data and changes EPA was considering to refine its economic analysis models. The 2002 Notice made these data and potential changes available for public review and comment.

E. Public Comments

A general summary of public comments is included in the discussions of the various issues addressed in this preamble. EPA has prepared a *Comment Response Document* that includes responses to comments submitted for the proposed rule and both notices. All of the comments including supporting documents submitted on today's action are available for public review in the administrative record for this final rule which is filed under docket number W-00-27.

The proposed regulations were published in the **Federal Register** on January 12, 2001 (66 FR 2959), and the comment period closed on July 30, 2001. EPA received approximately 11,000 comments in total on the proposed rule. EPA received comments from a multitude of sources, including private citizens, facility owners and operators, environmental groups, local and State agencies, members of the academic community, banks and insurance companies, congressional representatives, and representatives (including trade associations) from each of the animal sectors (beef, dairy, swine, poultry, horses, ducks, turkey, and others). The comments are addressed in the *Comment Response Document* prepared by EPA in support of today's final rule.

The comment period for the 2001 Notice was from November 21, 2001, through January 15, 2002 (66 FR 58556). Approximately 300 comments were received on the 2001 Notice. Responses to each of these comments are also included in the *Comment Response Document*.

EPA prepared and published in the **Federal Register** a second notice (2002 Notice) during the development of today's final rule. The comment period