

These burden and cost estimates have been updated since the proposed rule to reflect changes in the final rule. The Agency received only a few comments on the PRA section of the preamble for the proposed rule. Most commenters believed that the number of affected operations was underestimated. EPA revised its estimate of total AFO operations and its estimate of affected CAFO operations. The final rule requirements results in fewer CAFOs compared to the proposed rule estimates.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

### C. Regulatory Flexibility Act

#### 1. Background

The RFA generally requires an agency to prepare a regulatory flexibility analysis for 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.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) A small business based on annual revenue standards established by the Small Business Administration (SBA), with the

exception of one of the six industry sectors where an alternative definition to SBA's is used; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

For purposes of assessing the impacts of today's rule on small entities in the egg-laying sector, EPA considered small entities in this sector as an operation that generates less than \$1.5 million in annual revenue. A summary of EPA's rationale and supporting analyses pertaining to this alternative definition is provided in the record and in section 4 of the *Economic Analysis*. See discussion under "Use of Alternative Definition" later in this section. Because this definition of small business is not the definition established under the RFA, EPA proposed using this alternative definition in the **Federal Register** and sought public comment. See 66 FR 3099. EPA also consulted with SBA Chief Counsel for Advocacy on the use of this alternative definition.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations of representatives of affected small entities in accordance with section 609(b) of the RFA. See 66 FR 3121–3124; 3126–3128 (January 12, 2001). A detailed discussion of the SBAR Panel's advice and recommendations can be found in the *Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on National Pollutant Discharge Elimination System and Effluent Limitations Guideline Regulations for Concentrated Animal Feeding Operations*, April 7, 2000. This document is included in the public record (DCN 93001). The 2001 proposal provides a summary of the Panel's recommendations. (See 66 FR 3121–3124).

As required by section 604 of the RFA, EPA prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal for this rule. The FRFA is available for review in the docket and is summarized below.

#### 2. Summary of Final Regulatory Flexibility Analysis

As required by section 604 of the RFA, EPA also prepared a final regulatory flexibility analysis (FRFA) for today's rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket (in section 4 of the final *Economic Analysis*). A summary is provided below.

*a. Need for and objectives of the regulations.* A detailed discussion of the need for the regulations is presented in section IV of the 2001 preamble (66 FR 2972–2976). A summary is also provided in section 4 of the final *Economic Analysis*. In summary, EPA's rationale for revising the existing regulations include the following: address reports of continued discharge and runoff from livestock and poultry operations in spite of the existing requirements; update the existing regulations to reflect structural changes in these industries over the past few decades; and improve the effectiveness of the existing regulations. A detailed discussion of the objectives and legal basis for the rule is presented in sections I and III of the proposal preamble (66 FR 2959).

*b. Significant Comments on the IRFA.* The significant issues raised by public comments on the IRFA address exemptions for small businesses, disagreement with SBA definitions and guidance on how to define small businesses for these sectors, and general concerns about EPA's financial analysis and whether it adequately captures potential financial effects on small businesses.

Commenters generally recommend that EPA exempt all small businesses from regulation, arguing in some cases that regulating small businesses could affect competition in the marketplace, discourage innovation, restrict improvements in productivity, create entry barriers, and discourage potential entrepreneurs from introducing beneficial products and processes. Several commenters claimed that EPA had misrepresented the number of small businesses. In particular, several commenters objected to SBA's small business definition for dairy operations, claiming it understates the number of small businesses in this sector. One commenter claimed that EPA's estimate of the total number of operations is understated and therefore must understate the number of small businesses. Some commenters objected to the consideration of total farm-level revenue to determine the number of