

small businesses since this understates the number of small businesses (despite SBA guidance, which bases its definitions on total entity revenue for purposes of defining a small business). However, other commenters claimed that EPA's approach to its small business analysis does not only capture operations that are, in fact, small businesses but also larger corporate operations. Another commenter recommended that EPA simply consider any operation with fewer than 1,000 animal units a small business. EPA also received comments requesting that EPA consider use of regional-specific definitions of small business because of concerns that the revenue-based SBA definition might not be applicable to operations in Hawaii since producers in that State generally face higher cost of production and also higher producer prices relative to revenue and cost conditions at farms in the contiguous 48 States. Comments from SBA recommended that EPA adopt the Panel's recommendation not to consider changing the designation criteria for operations with fewer than 300 animal units as a means to provide relief to small businesses. SBA also recommended that EPA adopt the SBAR Panel's approach and allow permitting authorities to focus resources where there is greatest need. Finally, some commenters generally questioned the results of EPA's financial analysis, giving similarly stated concerns about EPA's financial data and models used for its main analysis.

In response, EPA notes that the projected impacts of today's final regulations on small businesses are lower than the projected impacts of the proposed rule. For example, the final rule does not extend the effluent guideline regulations to Medium CAFOs, as was proposed in the 2001 proposal. Instead, EPA is retaining the existing regulatory threshold, applying the effluent guideline to Large CAFOs only. Requirements for Medium CAFOs will continue to be subject to the BPJ requirements as determined by the permitting authority, thus requiring that fewer small businesses adopt the effluent guideline standards. More information on this topic is available in section IV of this preamble. Section IV discusses other regulatory changes since the 2001 proposal, indicating greater alignment with SBAR Panel recommendations. Refer to section IV of this preamble for more information on the comments and EPA's responses to those comments, as well as EPA's justification for final decisions on these options.

Regarding EPA's estimate of the number of small businesses, the Agency continues to follow SBA guidance and SBA definitions on how to define small businesses for these sectors. However, EPA has made substantial changes to the financial data and models used for its main analysis, which is also used to evaluate financial effects on small businesses. Both the 2001 Notice (66 FR 58556) and the 2002 Notice (67 FR 48099) describe the public comments received by EPA on the baseline financial data and the methodological approach developed by EPA to evaluate financial effects. These comments and how EPA has addressed them are discussed more fully in section 4 of the final *Economic Analysis*. EPA's detailed responses to comments, and the comments themselves, are contained in the *Comment Response Document* in response categories SBREFA and Small Business.

*c. Description and estimation of number of small entities to which the regulations will apply.* The small entities subject to this rule are small businesses. No nonprofit organizations or small governmental operations operate CAFOs. As discussed in section VIII.B.1(c) of this preamble, to estimate the number of small businesses affected by this final rule, EPA relied on the SBA size standards for these sectors, with the exception of size definitions for the egg sector. SBA defines a "small business" in these sectors as an operation with average annual revenues of less than \$0.75 million for dairy, hog, broiler, and turkey operations; \$1.5 million in revenue for beef feedlots; and \$9.0 million for egg operations. The definitions of small business for the livestock and poultry industries are in SBA's regulations at 13 CFR 121.201. For this rule, EPA proposed and solicited public comment on and is using an alternative definition for small business for egg-laying operations. EPA defines a "small" egg laying operation for purposes of its regulatory flexibility assessments as an operation that generates less than \$1.5 million in annual revenue. EPA consulted with SBA on the use of this alternative definition, as documented in the rulemaking record for the 2001 proposal. Given these definitions, EPA evaluates "small business" for this rule as an operation that houses or confines fewer than 1,400 fed beef cattle (includes fed beef, veal, and heifers); 300 mature dairy cattle; 2,100 market hogs; 37,500 turkeys; 61,000 layers; or 375,000 broilers. The approach used to derive these estimates is described in

the *Economic Analysis* and in the record.

Using these definitions and available data from USDA and industry, EPA estimates that 6,200 of affected CAFOs across all size categories are small businesses. Among Large CAFOs, EPA estimates that about 2,330 operations are small businesses. Among Medium CAFOs, EPA estimates that about 3,870 operations are small businesses. Table 8.3 in section VIII of this preamble shows EPA's estimates of the number of regulated small businesses across all industry sectors. Section VIII.B.1(c) provides more detail on the estimated financial effects on small businesses under the final rule.

*d. Description of the reporting, record-keeping, and other compliance requirements.* Today's rule would require all AFOs that meet the CAFO definition to apply for a permit, develop and implement a nutrient management plan, collect and maintain records required by applicable technology-based effluent discharge standards, and submit an annual report to the responsible NPDES permitting authority. (No nonprofit organizations or small governmental operations operate CAFOs.) All CAFOs would also be required to maintain records of off-site transfers of manure. Record-keeping and reporting burdens include the time to record and report animal inventories, manure generation, field application of manure (amount, method, date, weather conditions), manure and soil analysis results, crop yield goals, findings from visual inspections of feedlot areas, and corrective measures. Records may include manure spreader calibration worksheets, manure application worksheets, maintenance logs, and soil and manure test results. EPA believes the owner/operator has the skills necessary to keep these records and make reports to the permitting authority.

Section X.B further summarizes the expected reporting and record-keeping requirements under the final regulations based on information compiled as part of the ICR for the Final NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (EPA ICR No. 1989.01) prepared by EPA.

*e. Steps taken to minimize significant impacts on small entities.* In today's final rulemaking, EPA has adopted an approach for a regulatory program that mitigates impacts on small business, recognizes and promotes effective non-NPDES State programs, and works in partnership with USDA to promote environmental stewardship through voluntary programs, and financial and technical assistance. EPA's proposal