

**Supporting Statement for the Information Collection Request for
NPDES Regulatory Revisions for
Concentrated Animal Feeding Operations
(Supplemental Notice of Proposed Rulemaking)**

March 2008

EPA ICR NO. 1989.05

U.S. Environmental Protection Agency
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TABLE OF CONTENTS

1.	IDENTIFICATION OF THE INFORMATION COLLECTION.....	1
1(a)	Title of the Information Collection.....	1
1(b)	Short Characterization/Abstract.....	1
1(c)	Relationship of NPDES CAFO Program ICRs.....	3
2.	NEED FOR AND USE OF THE COLLECTION.....	4
2(a)	Need and Authority for the Collection.....	4
2(b)	Practical Utility/Users of the Data.....	5
3.	NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA.....	5
3(a)	Nonduplication.....	5
3(b)	Public Notice Required Prior to ICR Submission to OMB.....	6
3(c)	Consultations.....	6
3(d)	Effects of Less Frequent Collection.....	7
3(e)	General Guidelines.....	7
3(f)	Confidentiality.....	7
3(g)	Sensitive Questions.....	7
4.	THE RESPONDENTS AND THE INFORMATION REQUESTED.....	8
4(a)	Respondents/SIC Codes.....	8
4(b)	Information Requested.....	12
5.	THE INFORMATION COLLECTED—AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT.....	15
5(a)	Agency Activities.....	15
5(b)	Collection Methodology and Management.....	16
5(c)	Small Entity Flexibility.....	16
5(d)	Collection Schedule.....	17
6.	ESTIMATING THE BURDEN AND COST OF THE COLLECTION.....	17
6(a)	Estimating Respondent Burden.....	17
6(b)	Estimating Respondent Costs.....	19
6(c)	Estimating Agency Burden and Cost.....	21
6(d)	Estimating the Respondent Universe and Total Burden and Costs.....	21
6(e)	Bottom Line Burden Hours and Costs Tables.....	23
6(f)	Reasons for Change in Burden.....	24
6(g)	Burden Statement.....	24
	REFERENCES.....	27
	APPENDIX A-Additional Certification Activities	
	APPENDIX B-CAFOs Burden and Cost	
	APPENDIX C-States Burden and Cost	

LIST OF TABLES

Table 4–1. CAFO Standard Industrial Classification codes and size thresholds.....	9
Table 4–2. CAFO universe and discharging CAFOs.....	11
Table 4–3. Discharging CAFOs that land apply and CAFOs that will use the narrative rate approach.....	11
Table 5–1. SBA and EPA Small Business thresholds for animal sectors.....	17
Table 6–1. Weighted average soil sampling burden.....	18
Table 6–2. Burden for certification for CAFOs and frequency of response.....	18
Table 6–3. Burden for annual reporting for CAFOs and frequency of response.....	18
Table 6–4. Wage rates used to value CAFO-related burdens.....	19
Table 6–5. Weighted average soil sampling O&M cost.....	20
Table 6–6. Annual average additional CAFO burden and cost–Narrative Rate Approach.....	21
Table 6–7. Annual average additional CAFO burden and cost–Certification.....	22
Table 6–8. Annual average additional CAFO burden and cost–Additional burden to prepare annual report.....	22
Table 6–9. CAFO net burden and cost increase from the SNPRM.....	23
Table 6–10. State net burden and cost change from the SNPRM.....	24
Table 6–11. Agency burden and cost decrease from the SNPRM.....	24
Table 6–12. Hour and burden increase for all respondents from SNPRM.....	25
Table 6–13. Summary of SNPRM annual average burden, respondents, responses, and costs for the ICR approval period.....	26

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title of the Information Collection

ICR: NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (Supplemental Notice of Proposed Rulemaking). EPA ICR: 1989.05
OMB Control Number: 2040-0250

1(b) Short Characterization/Abstract

On February 12, 2003, EPA promulgated a final rule that revised and updated regulations for the National Pollutant Discharge Elimination System (NPDES) and Effluent Limitations Guideline (ELG) requirements for concentrated animal feeding operations (CAFOs) (68 FR 7176; also see ICR 1989.04). Subsequently, on February 28, 2005, the United States Court of Appeals for the Second Circuit vacated certain provisions of the 2003 regulations and remanded others to EPA in its ruling in the *Waterkeeper* court case (*Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 [2nd Cir. 2005]). In June 2006, EPA proposed changes to its regulations to address the *Waterkeeper* decision (71 FR 37744; June 30, 2006), and is in the process of finalizing these changes.

This ICR supports a supplemental notice of proposed rulemaking (SNPRM) to EPA's 2006 proposed rulemaking. As explained in the SNPRM, EPA is:

“proposing a voluntary option for CAFOs to certify that the CAFO does not discharge or propose to discharge based on an objective assessment of the CAFO's design, construction, operation, and maintenance. The June 2006 proposal also discussed the terms of the nutrient management plan (NMP) that would need to be incorporated into NPDES permits. This SNPRM proposes a framework for identifying the terms of the NMP and three alternative approaches for addressing rates of application of manure, litter, and process wastewater when identifying terms of the NMP to be included in the permit. This supplemental proposal focuses solely on certification and terms of the NMP and is not opening any other provisions of the June 2006 proposal and existing NPDES regulations or Effluent Limitations Guidelines and Standards for public comment.”

The 2003 CAFO rule was accompanied by ICR No. 1989.02. That ICR was renewed by EPA as ICR No. 1989.04 on November 1, 2006. The 2006 proposed rule to revise the 2003 CAFO regulations was accompanied by ICR No. 1989.03. See Section 1(c) for further discussion.

This current ICR provides an estimate of the information collection hour and cost burden impacts associated specifically with the SNPRM. For purposes of the ICR, the SNPRM contains three principal changes to the regulations that affect the information collection burden:

1. Narrative Rate Approach: Under this proposed approach, CAFO operators develop rates of application that take into consideration a “real-time” evaluation of the crop-available

nutrients in the soil, as well as in the manure, litter, or process wastewater to be land-applied, without requiring a change to the terms of the NMP. The key cost impact to CAFOs of this new approach is the added cost of soil sampling. Although the 2003 rule ICR accounted for the revised rule's soil sampling requirements, the new narrative rate approach as outlined in the SNPRM would require soil testing on an annual basis. This approach also affects the burden to permit authorities by allowing changes to be made to the rates of application in the NMP without these changes necessitating a substantial modification of the permit.

2. Certification: The SNPRM proposes an option for CAFOs to certify to the permit authority that the operation does not discharge or propose to discharge pollutants. The burden to permit authorities is affected by this option in that there would be a burden and cost increase to permit authorities to log and file each certification/recertification.
3. Annual reporting: The three approaches identified in SNPRM for addressing rates of application for permitting contain annual reporting requirements that would increase the existing burden for annual reports as assessed in the 2003 rule and the 2006 proposed rule.

The burden assessment is calculated using a baseline of the information collection burden imposed under the 2003 CAFO rule, as modified and recalculated to reflect an updated industry universe, the effects of the proposed 2006 rule, and comments received after for the proposed 2006 rule. See Section 1(c) for further discussion.

The Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), prohibits the discharge of pollutants from a point source to waters of the United States except for discharges authorized and regulated by the NPDES permit program established by section 402(a). CAFOs are classified as point sources and, thus, may be subject to permit requirements at 40 CFR 122 and the feedlot ELG requirements at 40 CFR 412. NPDES permit requirements typically include permit applications, recordkeeping, reporting, and other information collection activities.

Section 402(b) provides that States (including U.S. Territories and Indian Tribes) may be authorized to administer NPDES programs once the Agency is assured that a State program meets minimum Federal requirements. As of the date this ICR was completed, 45 States and one Territory (U.S. Virgin Islands) had received approval from EPA to administer the NPDES base program, which includes the Federal requirements that are applicable to CAFOs. Of these, 44 are responsible for issuing NPDES permits to CAFOs (called "authorized States" hereafter).¹ EPA and authorized State permitting authorities typically receive, review, manage, and report information collected under the NPDES permitting program, including CAFO permits.

Information collected by the NPDES Program Director (of either an authorized State or EPA) about waste management facilities and operating procedures will be used to determine the applicability of permit coverage and to document that a permittee is in compliance with permit

¹ EPA retains authority for NPDES discharge permits for agricultural facilities in Oklahoma; thus, only 44 States are authorized to issue permits to CAFOs. EPA is not aware of any CAFOs in the U.S. Virgin Islands.

requirements. Information will be collected using permit application forms and annual reports and through compliance evaluation inspections. Permitting authorities enter data into the Permit Compliance System (PCS) or the Integrated Compliance Information System (ICIS), the Agency's old and modernized NPDES program databases, respectively.

The Agency estimates total labor burden to all respondents (both CAFOs and States) at nearly 3 million labor hours annually to meet all the information collection burden requirements under NPDES CAFO regulations. EPA estimates that the burden for information collection specifically for this SNPRM would result in an annual average net increase of 52,586 hours for these respondents, including an increase of 56,761 hours for CAFO respondents and a decrease of 4,175 hours for State respondents. Similarly, the total operation and maintenance (O&M) cost increase as a result of the SNPRM is estimated at \$412,469 annually, all of it from burden to CAFO respondents. This change in O&M cost compares to an estimated total capital and O&M costs under the CAFO regulations as a whole of nearly \$7.9 million annually. No additional capital costs are anticipated from the SNPRM.²

These estimates include the time required to review instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collected. The SNPRM would not change the number of respondents required to apply for permit coverage, but the analysis assumed that as many as one half of permitted CAFOs that land apply (approximately 6,300 facilities) will use the additional approach detailed in the SNPRM for expressing rates of application over the course of the 3-year period modeled for in this ICR. For costing purposes, the analysis projects that a total of 5,830 non-permitted facilities will certify that they do not discharge or propose to discharge over the 3-year period for this ICR. How this figure is derived is explained in Section 4.

1(c) Relationship of NPDES CAFO Program ICRs

The scope of this ICR (ICR No. 1989.05) is limited to the burden change associated with the SNPRM.

The 2003 CAFO rule ICR covered the information collection burden imposed under the 2003 rule for the period from June 2003 to June 2006 (ICR No. 1989.02). EPA renewed that ICR in 2006 to address implementation of the CAFO program through 2009 (ICR No. 1989.04). Subsequently, EPA published an ICR to address the changes in information collection burden that will be imposed under the revised NPDES CAFO regulations as a result of the February 2005 *Waterkeeper* decision (ICR No. 1989.03 accompanied the proposed rule for that action).

This ICR presents EPA's estimate of the burden differentials resulting specifically from the changes proposed in the SNPRM. In addition, the ICR also includes a series of refinements to the original ICR burden calculations presented with the 2006 proposed rule (ICR No. 1989.03). These updates concern four key aspects of the analysis:

² Calculations for this ICR were performed using linked MS Excel spreadsheets; therefore, calculations mentioned in the text may not match exactly due to individual rounding.

1. *Universe of Facilities.* EPA is updating the projections of number of CAFOs to account for moving the modeling period for the ICR calculations from 2006-2008 out to 2008-2010.
2. *Agricultural Stormwater Exemption.* During the public comment period for the 2006 proposed rule, commenters stated that the Agency should recognize that operators without permits will need to meet the burden of proof required to qualify for the agricultural stormwater exemption. In response to these commenters, EPA is revising the burden analysis to reflect more fully that even those facilities who do not seek permits will incur burden associated with implementing nutrient management practices. For costing purposes, EPA is assuming in this ICR that facilities that qualify for the agricultural stormwater exemption would also be the set of facilities that would submit certification.
3. *Substantial changes to NMPs that would trigger a permit modification.* For the 2006 proposed rule ICR, EPA assumed that each year one percent of NMPs would change enough to trigger a substantial modification of the permit. Based on subsequent consultations with USDA, EPA is revising this projection upwards to show that as many as 11 percent of permitted facilities might need permit modifications each year due to substantial changes to their NMPs. (This estimate was based on USDA estimates that such modifications would take place once per permit cycle for 45 percent of facilities, and twice for between 0 and 10 percent of facilities.)
4. *NMP Submission and Review.* For the 2006 proposed rule ICR, EPA accounted for the fact that certain states exceeded 2003 CAFO rule requirements with respect to NMP submissions. More specifically, EPA's review of State programs indicated that as many as 49 percent of CAFOs were already required to submit their NMPs to the permit authority, and that 24 percent of CAFOs in authorized States were already subject to comprehensive technical review of their NMP. Updated communications from EPA Regional staff have made clear that an even greater number of States already go beyond the 2003 rule requirements in that regard. As a consequence, EPA is updating its costing assumptions to reflect that 72 percent of CAFOs are already required to submit their NMPs to the permit authority and 42 percent of CAFOs in authorized States are subject to comprehensive technical review of their NMPs (USEPA, April 2007).

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need and Authority for the Collection

EPA has authority to undertake the information collection activities characterized in this document under Sections 308 and 402 of the CWA, and Title 33 Sections 1311, 1318, and 1342 [402 counterparts] of the United States Code (U.S.C.). CAFOs are defined as point sources for purposes of the NPDES program (33 U.S.C. Sec. 1362). Under 33 U.S.C. Section 1311 and Section 1342, a discharging CAFO must obtain an NPDES permit and comply with the terms of that permit, which may include appropriate conditions on data and information collection.

Furthermore, 33 U.S.C. Section 1318 provides authority for information collection (i.e., recordkeeping, reporting, monitoring, sampling, and other information as needed), which applies to point sources.

EPA needs to collect information from authorized States to ensure that their NPDES programs implement the final rule. Under 40 CFR 123, State NPDES programs must, at all times, be in compliance with Federal regulations. When new Federal requirements are enacted, States have one year to update their regulations to meet the new requirements or have two years if they must also update statutes.

2(b) Practical Utility/Users of the Data

EPA and authorized State permitting authorities use the information routinely collected through NPDES applications and compliance evaluations in the following ways:

- to issue NPDES permits with appropriate limitations and conditions that will protect human health and the environment;
- to allow for public participation in the permitting process;
- to update information in EPA's databases that permitting authorities use to determine permit conditions;
- to calculate national permit issuance, backlog, and compliance statistics;
- to evaluate national water quality;
- to assist EPA in program management and other activities that ensure national consistency in permitting;
- to assist EPA in prioritizing permit issuance activities;
- to assist EPA in policy development and budgeting; and
- to assist EPA in responding to Congressional and public inquiries.

Other users of the data include regulated CAFOs and the general public. CAFOs will use the data they collect to improve operation efficiency and evaluate facility maintenance needs. The general public can use information collected through the NPDES permit process to support efforts to protect local environmental quality and quality of life.

3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Nonduplication

The information collection pursuant to the regulatory changes is site-specific and therefore not available from existing sources of information.

As part of its overall CAFO initiative, EPA has undertaken efforts to identify existing sources of relevant information as well as to coordinate with other Federal agencies that collect information in the agricultural sector (e.g., United States Department of Agriculture [USDA], United States

Geological Survey [USGS], Food and Drug Administration [FDA], National Oceanic and Atmospheric Administration [NOAA], Centers for Disease Control and Prevention [CDC]) and States. To support development of the USDA/EPA Unified National Strategy for animal feeding operations (AFOs) and the 2003 regulatory changes, EPA formed and administered a data and analysis group that included 18 representatives from EPA, USDA, and USGS. This group worked to identify and access existing sources of CAFO data. Although some useful general data were identified, including EPA and USDA information (e.g., STORET, 305(b) and 303(d) information), no other Federal agency has the facility-specific data addressed under the CAFO regulations. In addition, EPA used publicly available information to a significant extent.

There are a few national databases maintained by the Federal government that store some information about CAFOs. A search for relevant databases identified the following:

- EPA's Permit Compliance System (PCS) and Integrated Compliance Information System-NPDES (ICIS-NPDES); and
- USDA Census of Agriculture.

EPA's PCS and ICIS-NPDES databases are used to store information about facilities that hold NPDES permits. They help EPA monitor the compliance status of permitted facilities. PCS and ICIS-NPDES hold only data items associated with existing NPDES permits, applications, inspections, and enforcement actions and focus on discharge requirements. This information collection is not duplicative of data already in PCS and ICIS-NPDES.

USDA's National Agricultural Statistics Service (NASS) is responsible for maintaining a large amount of information on agricultural operations, including AFOs, through the Census of Agriculture, which is administered every 5 years. Census of Agriculture data are subject to restrictions with regard to what type of data may be released, when, and to whom. Generally, facility-level data may not be released. Therefore, the information in the Census of Agriculture database cannot fulfill EPA's data needs for purposes of administering the NPDES program, and this information collection is not duplicative of the data available from NASS.

3(b) Public Notice Required Prior to ICR Submission to OMB

A summary of the ICR analysis will be published in the SNPRM in the Federal Register.

3(c) Consultations

The preamble to the 2003 CAFO regulation describes how EPA actively involved interested parties in the development of the final 2003 rule (68 FR 7188). EPA has worked extensively with EPA Regions and numerous States to develop the requirements and related burden/cost assumptions described in this ICR.

EPA proactively communicated with key stakeholders to inform them of general plans for rule revision and to seek input, where applicable. EPA received over 580 comment letters on the proposed June 2006 rule from CAFO industry, environmental, and State regulatory stakeholders.

EPA conducted six public outreach meetings across the country in addition to a nationally aired webcast so stakeholders would be better prepared to comment on the proposed rule. EPA also made presentations on the proposal at a variety of national conferences and meetings, including the Association of State and Interstate Water Pollution Control's CAFO Roundtable attended by State regulators and at meetings requested specifically to discuss these rule revisions by both industry and environmental group stakeholders.

EPA has also worked closely with USDA. The Agency held a series of staff-level work sessions with counterparts at the Natural Resources Conservation Service (NRCS) at USDA to ensure technical rigor in the approach proposed for all aspects of the SNPRM.

3(d) Effects of Less Frequent Collection

EPA has made every effort to establish NPDES permit and associated information collection requirements that minimize the burden on respondents while promoting the protection of water quality. NPDES permit applications are the primary form of information collection for regulated CAFOs, and these facilities must reapply for NPDES permits before their existing permits expire. Section 402(p) of the CWA requires that NPDES permits be issued for fixed terms with a maximum term of 5 years, thereby disallowing less frequent collection than anticipated by this ICR.

3(e) General Guidelines

This information collection complies with Paperwork Reduction Act guidelines (5 CFR 1320.5(d)(2)).

3(f) Confidentiality

Under the 2006 proposed rule responding to the *Waterkeeper* decision, permitted CAFOs would need to submit an NMP and keep records on-site. These plans can contain confidential business information (CBI). The SNPRM does not make any changes concerning CBI. When this is the case, the respondent can request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR Part 2 (40 CFR 2.201 et seq.), and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

Whenever possible, EPA encourages public involvement in the NPDES regulatory process. However, EPA also recognizes the legitimate concerns of operators regarding protection of CBI and potential delays in processing of permit applications and notices of intent (NOIs).

3(g) Sensitive Questions

This ICR does not ask AFO or CAFO operators sensitive questions concerning private matters (e.g., religious beliefs).

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

This ICR covers the information collection activities expected to occur over the 3-year period from 2008 through 2010. It has been prepared to support NPDES regulatory revisions for CAFOs as specified in the SNPRM as signed by the EPA Administrator on March 3, 2008.

4(a) Respondents/SIC Codes

The two categories of respondents affected by the 2003 final, 2006 proposed, and 2008 SNPRM CAFO rules are the owners or operators of CAFOs and NPDES permitting authorities. The SNPRM covered by this ICR would impose additional requirements on a subset of respondents only since not all of the SNPRM's new provisions would apply to all respondents.

EPA categorizes CAFOs on the basis of the primary type of animal produced by the operation. Table 4–1 lists the major categories along with their North American Industry Classification System (NAICS) codes and the corresponding four-digit Standard Industrial Classification (SIC) codes. Note that some industry classification codes may overlap more than one of the categories defined by EPA under the final regulations. For example, swine of any size have the same NAICS or SIC codes.

Table 4–1 also provides the applicable animal thresholds. EPA uses these thresholds to distinguish which AFOs are CAFOs. All Large AFOs are defined as CAFOs. An AFO in the medium size category is defined as a CAFO if it meets one of two discharge criteria:

- pollutants are discharged to U.S. waters through a man-made ditch, flushing system, or other similar man-made device; and
- pollutants are discharged directly into U.S. waters that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals.

An AFO in the smallest size category may become a CAFO through designation by the permit authority if the facility is a significant contributor of pollutants to waters of the U.S. Any designation must be preceded by an on-site inspection and facilities designated as CAFOs must meet the two discharge criteria noted above. A medium AFO that is not defined as a CAFO may be designated as a CAFO if it is a significant contributor of pollutants to waters of the U.S. Under the 2003 CAFO rule, all CAFOs had a duty to apply for an NPDES permit³ either by submitting an NOI to be covered by a general permit or by submitting an application for an individual permit. The 2006 proposed rulemaking narrowed this requirement such that only those CAFOs that discharge must apply for a permit.⁴ The 2008 SNPRM modifies the 2006 proposed changes to the duty to apply requirements by adding a voluntary certification process for facilities that do not discharge or propose to discharge.

³ CAFOs that received a “no potential to discharge” determination were not required to seek permit coverage.

⁴ This change took effect following the Second Circuit decision, but is being first codified under the 2006 proposed rule.

Table 4–1. CAFO Standard Industrial Classification codes and size thresholds

NAICS code (SIC code)	Animal type	Size thresholds		
		Large	Medium	Small
112111 (0212, 0241), 112112 (0211)	Beef cattle, heifers, calves or veal calves for either slaughter or replacement	> 1,000	300–1,000	< 300
112111, 112120 (0241)	Dairy cattle—mature dairy cattle (whether milked or dry cows) and heifer replacement	> 700	200–700	< 200
112210 (0213)	Swine—each weighing over 25 kilograms—or approximately 55 pounds	> 2,500	750–2,500	< 750
	Immature swine—each weighing less than 25 kilograms, or approximately 55 pounds	> 10,000	3,000–10,000	< 3,000
112310 (0252)	Chickens—laying hens, using liquid manure handling system	> 30,000	9,000–30,000	< 9,000
112310 (0252)	Chickens—laying hens, if other than liquid manure handling system	> 82,000	25,000–82,000	< 25,000
112320 (0251)	Chickens other than laying hens—broilers, fryers and roasters, if other than liquid manure handling system	> 125,000	37,500–125,000	< 37,500
112330 (0253)	Turkeys	> 55,000	16,500–55,000	< 16,500
112390 (0259)	Ducks, wet manure handling	> 5,000	1,500–5,000	< 1,500
	Ducks, dry manure handling	> 40,000	12,000–40,000	< 12,000
112410 (0214)	Sheep or lambs	> 10,000	3,000–10,000	< 3,000
112920 (0272)	Horses	> 500	150–500	< 150

Table 4-2 shows the estimates of total numbers of CAFOs used in developing the respondent universe for this ICR. In the interim period between when the 2003 CAFO rule ICR was prepared and the development of this ICR, the animal agricultural industry has continued to change. These changes have included further growth and consolidation, which has resulted in a greater number of AFOs that meet the size threshold for being defined as a Large CAFO. The projections also reflect more robust estimates from States and EPA regions on numbers of CAFOs in each State. It is important to consider changes to the industry that have been accounted for when comparing burdens assessed in the various CAFO program ICRs. See Section 1(c) for further discussion.

Table 4–2 in particular shows EPA’s estimate of the number of CAFOs that have operational characteristics associated with discharges to waters of the United States that could result in a need for an NPDES permit. The information presented in Table 4–2 was generated by EPA staff using data from the 1997 and 2002 Census of Agriculture, NASS bulletins, National Animal

Health Monitoring System (NAHMS) species reports, 2003 Demographics Report, and industry data sources and comments. According to this information, EPA estimates that, as of the time of this SNPRM, as many as 15,281 CAFOs could be discharging to waters of the United States. These figures include both facilities defined as CAFOs that have discharges or are designed, constructed, operated, or maintained such that a discharge will occur, as well as facilities designated as CAFOs because they are significant contributors of pollutants to waters of the United States. For purposes of costing burden impacts under the SNPRM, the ICR assumes that all facilities that do not seek a permit (i.e., those facilities assumed to have a limited chance of a discharge) will seek certification. Although this assumption does not represent a precise breakout of facilities that may chose to seek certification in lieu of permits, for costing purposes the assumption yields a credibly conservative estimate of burden impacts.

In order to project the universe of respondents experiencing cost impacts under the narrative rate approach, EPA used as a starting point the number of CAFOs that land apply manure, litter or process wastewater by animal type. The number of discharging CAFOs in each animal sector that land apply as shown in Table 4-3 is obtained by multiplying the number of discharging CAFOs from Table 4-2 by the percentage of facilities that land apply in each sector. As shown in Table 4-3, EPA then assumed that up to one half of discharging CAFOs that land apply would use the proposed narrative rate approach since it offers the most flexibility to operators.

Table 4–2. CAFO universe and discharging CAFOs

CAFO Category	2008			2009			2010		
	CAFO Universe	Discharging CAFOs	Non-permitted facilities	CAFO Universe	Discharging CAFOs	Non-permitted facilities	CAFO Universe	Discharging CAFOs	Non-permitted facilities
Beef	2,640	2,365	275	2,796	2,505	291	2,872	2,572	300
Veal	17	13	4	17	13	4	17	13	4
Heifer	366	315	51	383	330	53	399	343	56
Dairy	2,725	2,725	0	2,845	2,845	0	2,965	2,965	0
Swine	8,705	7,012	1,693	8,869	7,143	1,726	9,201	7,405	1,796
Layers(wet)	508	508	0	498	498	0	482	482	0
Layers(dry)	1,103	414	689	1,113	416	697	1,122	418	704
Broilers	3,556	1,333	2,223	3,731	1,396	2,335	3,906	1,455	2,451
Turkeys	674	253	421	706	264	442	746	278	468
Ducks	43	34	9	43	34	9	43	34	9
Horses	348	309	39	362	321	41	376	334	42
Total	20,685	15,281	5,404	21,363	15,765	5,598	22,129	16,299	5,830

Note: Projections are based on NAHMS species reports, 2003 Demographics Report, and 2002 Census of Agriculture changes from 1997 Census. The figures by sector include both facilities defined as CAFOs that have discharges as well as facilities designated as CAFOs due to discharges. Medium-sized CAFOs, because of how they are defined, will still need permits and are included.

Table 4–3. Discharging CAFOs that land apply and CAFOs that will use the narrative rate approach

CAFO Category	% Facilities that use land application ^a	2008		2009		2010	
		Discharging CAFOs that land apply	½ of discharging CAFOs that land apply	Discharging CAFOs that land apply	½ of discharging CAFOs that land apply	Discharging CAFOs that land apply	½ of discharging CAFOs that land apply
Beef	83%	1,963	982	2,079	1,040	2,135	1,068
Veal	100%	13	7	13	7	13	7
Heifer	100%	315	158	330	165	343	172
Dairy	78%	2,126	1,063	2,219	1,110	2,313	1,157
Swine	80%	5,610	2,805	5,714	2,857	5,924	2,962
Layers(wet)	47%	239	120	234	117	227	114
Layers(dry)	47%	195	98	196	98	196	98
Broilers	69%	920	460	963	482	1,004	502
Turkeys	61%	154	77	161	81	170	85
Ducks	100%	34	17	34	17	34	17
Horses	100%	309	155	321	161	334	167
Total	-	11,878	5,942	12,264	6,135	12,693	6,349

a. Estimates from EPA ICR 1989.04

4(b) Information Requested

4(b)(i) Data Items, Including Record-keeping Requirements

CAFO Data Items

Narrative Rate Approach

The following are actions not required in the 2003 or proposed 2006 rules, but would be available for CAFOs using the proposed narrative rate approach.

Annual Soil Testing. CAFOs that use this approach for expressing rates of application must recalculate rates of application at least once each year before land applying manure, litter, and process wastewater. In order to determine the actual amount of manure, litter, or process wastewater to be land applied, CAFOs using this approach must rely on the results of the most recent representative soil test. This recent test must have been taken within 12 months of the date of land application in order to determine the soil levels of nutrients in the field.

Certification

The following are actions not required in the 2003 or proposed 2006 rules, but would be required under the SNPRM for facilities using the voluntary certification option.

No Discharge Certification Option (122.23(h)). The owner or operator of a CAFO that meets the eligibility criteria in 122.23(h)(2) may certify to the Director that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge or propose to discharge is not required to seek coverage under an NPDES permit provided that the CAFO is designed, constructed, operated, and maintained in accordance with the documents and certification required by 122.23(h)(2)-(3), and subject to the limitations in 122.23(h)(4).

In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO does not discharge or propose to discharge, as follows:

- The CAFO's production area is designed, constructed, operated, and maintained so as not to discharge or propose to discharge. The CAFO must maintain documentation on site that demonstrates that:
 - any open surface manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i)-(vii);
 - any part of the CAFO's production area that is not addressed by 122.23 (h)(2)(i)(A) is designed, constructed, operated, and maintained such that there can be no discharge of manure, litter, or process wastewater; and

- o the CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b); and
- The CAFO maintains on site and implements an up-to-date nutrient management plan that addresses, at a minimum, the elements of section 122.42(e)(1)(i)-(ix) and 40 CFR 412.37(c), and that includes all land application areas under the control of the CAFO where the CAFO will land-apply manure, litter, or process wastewater, and that includes all operation and maintenance practices necessary to ensure that the CAFO will not discharge or propose to discharge.

As part of certification as outlined in the SNPRM, the CAFO owner or operator must complete and submit to the Director a certification that includes, at a minimum, the following information:

- The legal name, address and phone number of the CAFO owner or operator;
- The CAFO name and address, the county name and the latitude and longitude where the CAFO is located;
- A statement that describes the manner in which the CAFO satisfies the eligibility requirements identified in 122.23(h)(2);
- The following certification statement: “I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of 40 CFR 122.23(h). I have read and understand the eligibility requirements of 40 CFR 122.23(h)(2) for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by 40 CFR 122.23(h)(3). I also understand the conditions set forth in 40 CFR 122.23(h)(5) regarding loss of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”; and
- The certification must be signed in accordance with the signatory requirements of 40 CFR 122.22.

Annual Reporting

The SNPRM includes new annual reporting requirements for facilities regardless of the approach selected for converting rates of application into terms of the NMP for the permit.

State Data Items

Narrative Rate Approach

The SNPRM would not impose additional requirements to States.

Certification

In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the Director a certification. Directors must then log and file each certification/recertification.

Annual Reporting

The SNPRM would not impose additional recordkeeping requirements on States.

4(b)(ii) Respondent Activities

CAFO Activities

Narrative Rate Approach

For the items in the SNPRM related to the narrative rate approach, the only additional activity required for CAFOs is the annual collection of soil samples. CAFO owners or operators will also incur operating costs to collect information needed to document compliance. Recurring or O&M expenditures are the costs for the soil sample analysis. Some States already require CAFOs to collect and analyze soil samples annually. This ICR accounts for those requirements, and only reflects costs to CAFOs in States without such a preexisting requirement. EPA estimates for purposes of the analysis that the availability of the narrative rate approach will translate into a 50 percent reduction in permit modifications that need to be submitted to the permit authorities as a consequence reducing changes to the NMPs that would lead to substantial permit modifications.

Certification

In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO does not discharge or propose to discharge. Additional activities would include:

- (i) The CAFO's production area must be designed, constructed, operated, and maintained so as not to discharge or propose to discharge. The CAFO must maintain documentation on site: EPA estimates that this activity will require a simple engineering analysis consisting of a description of a non-discharging facility.
- (ii) The CAFO maintains on site and implements an up-to-date nutrient management plan that addresses, at a minimum, the elements of section 122.42(e)(1)(i)-(ix) and that includes all land application areas where the CAFO will land-apply manure. There are no added costs for CAFOs since all facilities are already assumed to incur nutrient planning costs under the both the 2003 final and 2006 proposed rules.
- (iii) The CAFO maintains on site and implements an operation and maintenance plan for all practices necessary to satisfy the requirements of paragraphs 122.23(h)(2)(i)-(ii) for the CAFO production area and land application areas. There are no added costs to CAFOs—this is presumed to be part of standard business operations.

As part of certifying that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit the certification to the permit authority.

Annual Reporting

The SNPRM includes additional annual reporting requirements for all approaches for incorporating terms of the NMP into the permit. For this ICR, the burden for annual reporting for permitted CAFOs was increased by one hour (from one hour in the 2003 final rule estimates).

State Activities

Narrative Rate Approach

EPA believes that the new narrative rate approach introduced in the SNPRM will translate into a 50 percent reduction in permit modifications that need to be processed by permit authorities as a consequence of allowing operators to make changes to the rates of application in the NMP without needing to process these changes as substantial modifications. This reduction in modification will also reduce the state burden to respond to public comments.

Certification

In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the Director a no discharge certification. Directors must log and file each certification/recertification.

Annual Reporting

The SNPRM would not impose additional requirements to States. The burden associated with making the reports available to the public was previously costed in the ICR accompanying the 2006 proposed rule.

5. THE INFORMATION COLLECTED—AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) Agency Activities

EPA has permitting responsibilities in the six States where it is the permitting authority for CAFOs. In those States, the Agency's permitting activities would be similar to the activities described for authorized States (see section 4(b) of this document). These activities are not included in the burden and cost estimates for this ICR in accordance with the 2005 EPA ICR Handbook.

5(b) Collection Methodology and Management

CAFO respondents will submit the requested information to their NPDES permitting authority. EPA will manage a portion of the information collected electronically. As under the existing NPDES program, respondent data pertaining to facilities permitted under the revised regulations would be catalogued in the automated PCS or ICIS-NPDES database. The PCS database is a national database that contains information on permit issuance, permit limits and monitoring, and other facility information. However, PCS does not include some of the data elements necessary for CAFO facilities. It is being replaced by a modernized system, ICIS-NPDES, which does include all of the CAFO-specific data elements. Appropriate information provided on permit application forms or NOI forms will be entered into PCS (or ICIS-NPDES) or an NOI database.

5(c) Small Entity Flexibility

The SNPRM does not make any changes concerning small entities. The current NPDES program distinguishes small CAFOs on the basis of the number or concentration of animals and their environmental impact. Small, Medium, and Large operations are defined in Table 4–1.

Whereas EPA establishes thresholds on the basis of the number of animals, the Small Business Administration (SBA) uses revenue-based thresholds to distinguish small agricultural operations from larger operations. Consequently, EPA developed a model to convert the SBA's revenue thresholds to the number of animals by sector. EPA used the SBA's revenue-based definitions (except for laying hens) and data from USDA and the industry for this effort. The SBA and EPA thresholds are shown for each sector in Table 5–1. A comparison of the SBA-based animal thresholds with EPA's animal thresholds indicates that most medium and small CAFOs are small entities and some Large CAFOs will be small entities as well.

As in the 2003 CAFO rule, EPA's premise continues to be that any regulatory burden should focus on those operations posing the greatest risk to water quality and public health. As section 6 shows, this SNPRM would result in a very small increase in burden on CAFO respondents. In addition, new estimates of burden on small entities described below are relatively small. The SNPRM does not alter the fact that the CAFO ELG requirements apply to Large CAFOs, and that permitting authorities, which are mainly State agencies, will establish technology-based requirements for small and medium CAFOs on the basis of best professional judgment (BPJ).

Table 5–1. SBA and EPA Small Business thresholds for animal sectors

NAICS code (SIC code)	Animal sector	SBA threshold (revenue in millions) ^a	Corresponding SBA animal threshold (number of animals)	CAFO Size Threshold (number of animals)
112112 (0211)	Beef cattle feedlots	\$1.5	1,400	Large > 1,000
112111, 112120 (0241)	Dairy farms and dairy heifer replacement production	\$0.75	300 ^b	Large > 700 Medium > 200
112210 (0213)	Hogs	\$0.75	2,100 ^c	Large > 2,500 Medium > 750
112310 (0252)	Chicken eggs	\$1.5 ^d	61,000	Large > 30,000
112320 (0251)	Broiler, fryer, roaster chickens	\$0.75	375,000	Large > 125,000
112330 (0253)	Turkeys and turkey eggs	\$0.75	37,500	Large > 55,000

a. SBA thresholds effective February 22, 2002. Classification is met if the operation has revenue equal to or less than the threshold cited.

b. Mature dairy cattle.

c. Each weighing over 25 kilograms.

d. EPA consulted with SBA on the use of this alternative definition; the original threshold is \$9.0 million.

Note: Certain animal sectors (e.g., sheep and lambs, horses, and ducks) are not subject to ELG requirements, and EPA has not developed corresponding small business animal thresholds for those sectors.

5(d) Collection Schedule

This ICR, when final, will cover the initial 3-year period following promulgation of the SNPRM. For this ICR, burden estimates are based on the 3-year period from January 1, 2008, through December 31, 2010.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

The summaries below provide brief descriptions of CAFO and State activities.

6(a) Estimating Respondent Burden

CAFO Burden

Narrative Rate Approach

CAFO owners or operators using the proposed approach to address rates for the NMP will be required to collect soil samples annually. EPA estimates that up to one half of CAFOs that land apply will use the proposed alternative presented in this ICR. (See Tables 4–2 and 4–3 for the analysis of how the numbers of CAFO respondents is calculated for the ICR.)

To determine the labor burden for the sampling activities, EPA first estimated the average hourly burden for sampling at each category of operation as shown in Table 6–1. EPA then weighted each of these sector-specific responses by the number of CAFOs in each sector to determine an average, weighted burden.

Table 6–1. Weighted average soil sampling burden

CAFO Category	Burden Per Facility (Hours per Year) ^a	2008 Respondents ^b	2009 Respondents ^b	2010 Respondents ^b
Beef	26.1	982	1,040	1,068
Veal	2.5	7	7	7
Heifer	3.5	158	165	172
Dairy	3.2	1,063	1,110	1,157
Swine	9.3	2,805	2,857	2,962
Layers (wet)	2.4	120	117	114
Layers (dry)	2.4	98	98	98
Broilers	1.6	460	482	502
Turkeys	6.8	77	81	85
Ducks	3.6	17	17	17
Horses	8.9	155	161	167
Weighted Averages (hours per year)		9.9	10.0	10.0

a. Estimates from EPA ICR 1989.04.

b. Numbers of respondents for each year computed as shown in Table 4-3.

EPA estimates based on its review of State requirements that 33.4 percent of CAFOs are currently required to collect soil samples annually. This number corresponds to the percent of CAFOs located in States that are currently already requiring annual soil testing based on information on State requirements posted on State government websites. Although EPA is counting facilities in these States that use the proposed option as respondents under this ICR, the burden for these respondents—2,052 CAFOs—is not included since there is no added cost to these facilities from the new regulation.

Certification

For purposes of calculating the burden and cost of voluntary certification, EPA assumed that the facilities that choose to certify will do so within the first two years of this option being available. The assumptions for the burden for the additional activities required for the certification are presented in Table 6–2. (For additional tables see Appendix A.)

Table 6–2. Burden for certification for CAFOs and frequency of response

CAFO Activities	Hours per Response	Frequency of Response
Eligibility Criteria		
Preparing the paperwork for the certification documentation	2.0	every 5 years
Engineering analysis	4.0	every 5 years
Submission to the Director	0.5	every 5 years

Annual Reporting

For this ICR, the burden for annual reporting for permitted CAFOs was increased by one hour from one hour in the 2003 final rule estimates. See Table 6–3.

Table 6–3. Burden for annual reporting for CAFOs and frequency of response

	Hours per	Frequency of
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CAFO Activities	Response	Response
Prepare annual report (additional burden from SNPRM)	1.0	Every year

State Burden

Narrative Rate Approach

No additional activities.

Certification

In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the Director a no discharge certification. EPA estimates one hour for States to log and file each certification/recertification. (For additional tables see Appendix A.)

Annual Reporting

No additional activities.

6(b) Estimating Respondent Costs

This section describes how EPA derived the cost per respondent for each of the activities described above. Costs for this ICR are presented in 2007 dollars to allow easy comparison to other cost estimates developed for the 2006 proposed rule and subsequent calculations that followed the proposed rule analysis.

6(b)(i) Estimating Labor Costs

CAFO Labor Costs

To obtain cost estimates at the CAFO level, EPA multiplied the burdens reported in Tables 6–1 to 6–3 by the appropriate labor rate in Table 6–4.

Table 6–4. Wage rates used to value CAFO-related burdens

Labor category	Original rate	Source	Conversion	Hourly rate (\$2007)
Farm Operator/Owner	\$18.50/hr	BLS: 45-1011 First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers	2004 to 2007 1.5 benefits multiplier	\$30.24
Farm Laborer	\$9.07/hr	BLS: 45-2093 Farmworkers, Farm and Ranch Animals	2004 to 2007 1.5 benefits multiplier	\$14.83
Agronomist	\$26.67	BLS: BLS: 19-1013 Soil and Plant Scientists	2004 to 2007 1.5 benefits multiplier	\$43.60

Note: Original rates are from the May 2004 National Industry-Specific Occupational Employment and Wage Estimates from the Bureau of Labor Statistics. EPA adjusted the wage to 2007 dollars using the Employment Costs Index for Private Workers values for the first quarter of 2004 (95.7) and the first quarter of 2007 (104.3) and a fringe rate of 50 percent.

State Labor Costs

EPA used a wage rate of \$40.38 to value State labor burden, which was based on the mean hourly wage rate of \$23.13 for Conservation Scientists (SOC 19-1031) from the May 2004 National Industry-Specific Occupational Employment and Wage Estimates for NAICS 999200—State Government (OES designation). EPA adjusted the wage to 2007 dollars using the Employment Costs Index for State and Local workers values for the first quarter of 2004 (95.5) and the first quarter of 2007 (104.2) and a fringe rate of 60 percent.

Agency Labor Costs

EPA used an hourly wage rate for a GS12, Step One Federal employee to estimate the cost of the Agency staff. The U.S. Office of Personnel Management 2007 General Schedule reported an hourly rate of \$26.98. Multiplying this rate by 1.6 to incorporate typical Federal benefits (OPM, 1999), EPA obtained a final hourly rate of \$43.17. However, as stated earlier, these costs are not included in the total burden estimate for the CAFO rule revisions.

6(b)(ii) Estimating Capital and Operation and Maintenance (O&M) Costs

CAFO Capital and O&M Costs

Narrative Rate Approach

A facility incurs O&M costs when it regularly uses services, materials, or supplies needed to comply with the rule's reporting and record keeping requirements that the facility will not use otherwise. Any cost for the operation and upkeep of capital equipment is considered O&M costs. For this SNPRM, O&M costs include laboratory analysis of soil samples. The soil sampling O&M cost is based on a weighted average of estimates derived by animal subcategory. The weighted costs for laboratory analysis of soil samples presented on Table 6–5 are based on the cost analysis for the 2003 final rule and are documented in EPA ICR No. 1989.04. There are no added capital costs incurred by facilities under this approach.

Table 6–5. Weighted average soil sampling O&M cost

CAFO Category	Cost per Response^a	2008 Respondents^b	2009 Respondents^b	2010 Respondents^b
Beef	\$326	982	1,040	1,068
Veal	\$31	7	7	7
Heifer	\$43	158	165	172
Dairy	\$39	1,063	1,110	1,157
Swine	\$116	2,805	2,857	2,962
Layers (wet)	\$30	120	117	114
Layers (dry)	\$30	98	98	98
Broilers	\$20	460	482	502
Turkeys	\$84	77	81	85
Ducks	\$45	17	17	17
Horses	\$111	155	161	167
Weighted Averages (cost per response)		\$123.69	\$124.43	\$124.14

a. Estimates from EPA ICR 1989.04.

b. Numbers of respondents for each year computed as shown in Table 4-3.

Certification

The SNPRM would not impose additional capital costs on CAFOs.

Annual Reporting

The SNPRM would not impose additional capital costs on CAFOs.

State O&M Costs

The SNPRM would not impose additional capital and O&M costs on States.

6(b)(iii) Capital Start-up vs. Operation and Maintenance (O&M) Costs

See 6(b)(ii), above.

6(b)(iv) Annualizing Capital Costs

See 6(b)(ii), above.

6(c) Estimating Agency Burden and Cost

EPA has the same burden as States for the six States where it is the NPDES permitting authority for CAFOs.

6(d) Estimating the Respondent Universe and Total Burden and Costs

Narrative Rate Approach

Table 6–6 presents the additional annual burden and costs for CAFO operators resulting from the increased soil sampling requirements in the SNPRM.

Table 6–6. Annual average additional CAFO burden and cost–Narrative Rate Approach

Collect and Send Soil Sample	
Burden per response (hours)	9.99
Labor rate (\$/hour)	\$14.83
Labor Cost per response	\$148.15
Capital and O&M Cost per Response	\$127.10
Total Cost per Response	\$275.25
<i>Responses (number)</i>	3,245
Total burden (hours)	32,420
Costs (labor)	\$480,788
Costs (capital)	\$0
Costs (O&M)	\$412,469
Total costs	\$893,257

Note: Totals may not match exactly due to individual rounding.

Certification

For purposes of the calculating the burden and cost of certification, EPA assumed that all existing facilities who choose to certify will do so within the first two years of this option being available. Table 6–7 presents the anticipated annual burden and costs for all facilities that choose to certify. (For additional tables see Appendix A.)

Table 6–7. Annual average additional CAFO burden and cost–Certification

Certification	
Burden per certification (hours)	6.5
Labor rate (\$/hour)	\$30.24
Labor Cost per certification	\$196.56
Capital and O&M Cost per certification	\$0.00
Total Cost per certification	\$196.56
Respondents (average per year)	1,943
<i>Certifications (average per year)</i>	1,943
Total burden (hours)	12,632
Costs (labor)	\$381,982
Costs (capital)	\$0
Costs (O&M)	\$0
Total costs	\$381,982

Note: Totals may not match exactly due to individual rounding.

Annual Reporting

For this ICR, the burden for annual reporting for permitted CAFOs was increased by one hour from one hour in the 2003 final rule estimates. Table 6–8 presents the additional annual burden and costs for all permitted CAFO operators resulting from the increased annual reporting requirements in the SNPRM.

Table 6–8. Annual average additional CAFO burden and cost–Additional burden to prepare annual report.

Prepare Annual Report (additional burden)	
Burden per response (hours)	1.0
Labor rate (\$/hour)	\$30.24
Labor Cost per response	\$30.24
Capital and O&M Cost per Response	\$0.00
Total Cost per Response	\$30.24
<i>Responses (number)</i>	15,782
Total burden (hours)	15,782
Costs (labor)	\$477,238
Costs (capital)	\$0
Costs (O&M)	\$0
Total costs	\$477,238

Note: Totals may not match exactly due to individual rounding.

6(e) Bottom Line Burden Hours and Costs Tables

Table 6–9 presents the net yearly burden and cost increase breakdown and 3-year ICR period summary for CAFOs subject to the new provisions in the SNPRM. This table accounts for the increase in sampling activities, the decrease in modifications to the NMP that need to be submitted to the permit authority, the additional burden for facilities that choose to certify, and the additional burden to prepare annual reports (see the Appendix B for a detailed breakdown). There will be a total of 22,129 (16,299 permitted and 5,830 non-permitted) CAFO respondents over the 3-year period with an average of 17,725 (15,782 permitted and 1,943 non-permitted) CAFO respondents for each year under this ICR.⁵ The number of respondents declines over the course of the three-year modeling period since the analysis assumes that the majority of respondents will submit certification in the first two years. (See Appendix A for additional details.) There will be a total of 72,543 (55,053 for permitted and 17,490 for non-permitted) additional CAFO responses over the 3-year period with an average of 24,181 (18,351 for permitted and 5,830 for non-permitted) additional CAFO responses for each year under this ICR. Total CAFO respondent costs over the 3-year period will be \$4,731,631 (\$3,585,686 for permitted and \$1,145,945 for non-permitted) with an average annualized total cost for all CAFO respondents of \$1,577,210 (\$1,195,229 for permitted and \$381,982 for non-permitted).

Table 6–9. CAFO net burden and cost increase from the SNPRM

Item	Year 1 2008	Year 2 2009	Year 3 2010	3-Year total	Annual average
Burden (hours)	59,903	63,052	47,330	170,285	56,761
Respondents (number) ^a	17,983	18,661	16,531	22,129	17,725
Responses (number)	25,864	27,017	19,662	72,543	24,181
Costs (labor)	\$1,283,342	\$1,353,193	\$857,687	\$3,494,224	\$1,164,741
Costs (capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$396,928	\$413,631	\$426,848	\$1,237,407	\$412,469
Total Costs	\$1,680,270	\$1,766,824	\$1,284,535	\$4,731,631	\$1,577,210

a. Respondents are not all new respondents not previously impacted by the CAFO regulations. “Respondents” refers to the number of discrete entities that undertake information collection activities under the ICR analysis, and “responses” refers to the number of individual actions associated with added information collection burden.
Note: Totals may not match exactly due to individual rounding.

Table 6–10 presents the net yearly burden and cost change breakdown and 3-year ICR period summary for the 44 States impacted by this SNPRM. This table accounts for the expected decrease in burden due to the decline in number of permit modifications that need to be processed by the permit authority due to the narrative rate approach and the increase in burden to log and file each certification/recertification (see Appendix A for a detailed breakdown). There will be a total of 2,577 additional State responses over the 3-year period with an average of 859 additional State responses for each year under this ICR. State respondents experience a total savings due to the reduction in permit modifications over the 3-year period of \$505,743 with an average annualized total savings for all State respondents of \$168,581.

⁵ “CAFO respondents” does not mean additional CAFOs. The SNPRM does not impact additional permitted facilities, but some facilities are required to perform additional activities as a result of this SNPRM.

Table 6–10. State net burden and cost change from the SNPRM

Item	Year 1 2008	Year 2 2009	Year 3 2010	3-Year total	Annual average
Burden (hours)	-3,229	-3,268	-6,028	-12,525	-4,175
Responses (number)	1,625	1,779	-827	2,577	859
Costs (labor)	(\$130,379)	(\$131,964)	(\$243,400)	(\$505,743)	(\$168,581)
Costs (O&M)	\$0	\$0	\$0	\$0	0
Total Costs	(\$130,379)	(\$131,964)	(\$243,400)	(\$505,743)	(\$168,581)

Note: Totals may not match exactly due to individual rounding.

Table 6–11 presents the net yearly burden and cost change breakdown and 3-year ICR period summary for EPA. This table accounts for the result of the decrease in modifications to the NMP that need to be processed and the increase in burden to log and file each certification/recertification where EPA is the permitting authority. There will be a total of 927 additional responses during the 3-year ICR period with an average of 31 additional responses for each year under this ICR. Total Agency savings over the 3-year period will be \$21,5047 with an average annualized total saving for all State respondents of \$7,168. The estimated agency burden for the baseline 2003 rule was approximately 8,150 hours and the average annual cost was \$326,000. Accounting for the changes discussed above, the total annual burden and cost to the Agency under the current proposal would be approximately 7,984 hours and \$318,832.

Table 6–11. Agency burden and cost decrease from the SNPRM

Item	Year 1 2008	Year 2 2009	Year 3 2010	3-Year total	Annual average
Burden (hours)	-148	-150	-200	-498	-166
Responses (number)	58	63	-29	92	31
Costs (labor)	(\$6,385)	(\$6,466)	(\$8,652)	(\$21,504)	(\$7,168)
Costs (O&M)	\$0	\$0	\$0	\$0	0
Total Costs	(\$6,385)	(\$6,466)	(\$8,652)	(\$21,504)	(\$7,168)

Note: Totals may not match exactly due to individual rounding.

6(f) Reasons for Change in Burden

This is a Supplemental Notice of Proposed Rulemaking ICR. It is not a renewal or modification of an existing ICR.

6(g) Burden Statement

Table 6–12 summarizes the total burden and cost differential associated with the SNPRM. These impacts represent the added burden and costs that respondents affected by the changes proposed in the SNPRM would incur in addition to the costs resulting from the requirements previously introduced in the 2006 proposed rulemaking.

The annual public reporting and recordkeeping burden increase associated with the SNPRM is estimated to average 52,586 hours for all respondents, including an increase of 56,761 for CAFO respondents and a decrease of 4,175 hours for State respondents. The SNPRM would not change the number of respondents required to apply for permit coverage, but it is expected that a total of 6,349 CAFOs will use the proposed narrative rate approach for determining terms of the NMP for their permits over the course of the 3-year period for this ICR. It is expected that a total of 5,830 non-permitted facilities will certify that they do not discharge or propose to discharge over the 3-year period for this ICR. The annual average number of additional responses is 25,040, including an increase of 24,181 for CAFO respondents and an increase of 859 for State respondents. The annual average additional burden per permitted CAFO is 2.8 hours (44,130 hours divided by 15,782, average number of permitted CAFOs) and 6.5 hours for non-permitted facilities (12,632 hours divided by 1,943, average number of non-permitted facilities.)⁶

Table 6–12. Hour and burden increase for all respondents from SNPRM

Item	3-year total	Annual average
Total respondent burden (hours)	157,760	52,586
Total respondents (number) ^a	22,129	17,725
Total responses (number)	75,120	25,040
Total respondent labor costs	\$2,988,481	\$996,160
Total respondent capital and O&M costs	\$1,237,407	\$412,469
Total respondent cost for all activities	\$4,225,888	\$1,408,629

a. Respondents are not all new respondents not previously impacted by the CAFO regulations.

Note: Totals may not match exactly due to individual rounding.

Table 6–13 summarizes the burden and cost differential for all respondents under the SNPRM for the years 2008-2010 and shows the total final burden faced by all respondents projected to result under the CAFO regulations once revised accordingly.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use 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 at 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of

⁶ Information for permitted CAFOs from tables B1, B2, and B4 in Appendix B. Information for non-permitted facilities from table B3 in Appendix B.

automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2005-0037, which is available for online viewing at www.regulations.gov, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for Water Docket is (202) 566-2426.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the docket ID number identified in this document.

Table 6-13. Summary of SNPRM annual average burden, respondents, responses, and costs for the ICR approval period

	Baseline (2003 rule) All CAFOs require permit	Expected to be Requested Under <i>Waterkeeper</i>	Changes due to SNPRM (Terms of NMP)	Changes due to SNPRM (Certification)	Changes due to SNPRM (Annual Report)	Annual Totals Under New SNPRM
Years Covered	2008-2010	2008-2010	2008-2010	2008-2010	2008-2010	2008-2010
All Respondents (CAFOs and States)						
Total Permitted CAFOs at the beginning of the ICR period	20,685	15,281				15,281
Total Non-permitted facilities at the beginning of the ICR period	0	5,404				5,404
Annual Number of Responses	168,321	157,688	1,551	7,707	15,782	182,728
Total Annual Hour Burden (hours)	3,024,117	2,979,374	22,296	14,509	15,782	3,031,960
Total Annual Capital/O&M Costs	\$8,268,955	\$7,780,523	\$412,469	\$0	\$0	\$8,192,992
Total Annual Labor Costs	\$62,228,381	\$62,695,149	\$61,148	\$457,775	\$477,238	\$63,691,310
Total Annual Costs	\$70,497,336	\$70,475,672	\$473,617	\$457,775	\$477,238	\$71,884,302
CAFOs						
Total Permitted CAFOs at the beginning of the ICR period	20,685	15,281				15,281
Total Non-permitted facilities at the beginning of the ICR period	0	5,404				5,404
Annual Number of Responses	134,290	125,159	2,569	5,830	15,782	149,340
Total Annual Hour Burden (hours)	2,667,599	2,589,173	28,348	12,632	15,782	2,645,934
Total Annual Capital/O&M Costs	\$6,211,515	\$6,211,515	\$412,469	\$0	\$0	\$6,623,984
Total Annual Labor Costs	\$47,832,169	\$46,938,808	\$305,522	\$381,982	\$477,238	\$48,103,549
Total Annual Costs	\$54,043,684	\$53,150,323	\$717,991	\$381,982	\$477,238	\$54,727,533
States						
Total Permitted CAFOs at the beginning of the ICR period	20,685	15,281				15,281
Total Non-permitted facilities at the beginning of the ICR period	0	5,404				5,404
Annual Number of Responses	34,031	32,529	-1,018	1,877	0	33,388
Total Annual Hour Burden (hours)	356,518	390,202	-6,052	1,877	0	386,027
Total Annual Capital/O&M Costs	\$2,057,440	\$1,569,008	\$0	\$0	\$0	\$1,569,008
Total Annual Labor Costs	\$14,396,213	\$15,756,342	(\$244,374)	\$75,793	\$0	\$15,587,761
Total Annual Costs	\$16,453,653	\$17,325,350	(\$244,374)	\$75,793	\$0	\$17,156,769
Note: Totals may not match exactly due to individual rounding.						

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APPENDIX A – Additional Certification Activities

For purposes of these calculations, EPA assumed that all facilities who certify will do so within the first two years of this option being available. The assumptions and resulting tables of the estimated additional cost of the certification option are presented in Tables A1 through A5 below.

Table A1. Burden for certification activities for each response and frequency of response

	Hours per Response	Frequency of Response
CAFO Activities		
Eligibility Criteria		
Preparing the paperwork for the certification documentation	2.0	every 5 years
Engineering analysis	4.0	every 5 years
Submission to the Director	0.5	every 5 years
State Activities		
State Certification Application Activities		
Log and file each certification/recertification	1.0	every 5 years

Table A2. Number of respondents for certification activities and annual averages

	Respondents per year				
	Year 1 2008	Year 2 2009	Year 3 2010	3 Year Total	Annual Average
CAFO Activities					
Eligibility Criteria					
Preparing the paperwork for the certification documentation	2,702	2,896	232	5,830	1,943
Engineering analysis	2,702	2,896	232	5,830	1,943
Submission to the Director	2,702	2,896	232	5,830	1,943
Total CAFO Respondents	2,702	2,896	232	5,830	1,943
States Activities					
State Certification Application Activities					
Log and file each certification/recertification	44	44	44	44	44
Total State Respondents	44	44	44	44	44
Total Respondents for New Items (Facilities and States)					
Facilities	2,702	2,896	232	5,830	1,943
States and Territories	44	44	44	44	44
Total Respondents	2,746	2,940	276	5,874	1,987

Table A3. Number of responses for certification activities and annual averages

	Responses per year				
	Year 1	Year 2	Year 3	3 Year	Annual
CAFO Activities	2008	2009	2010	Total	Average
Eligibility Criteria					
Preparing the paperwork for the certification documentation	2,702	2,896	232	5,830	1,943
Engineering analysis	2,702	2,896	232	5,830	1,943
Submission to the Director	2,702	2,896	232	5,830	1,943
Total CAFO Responses	8,106	8,688	696	17,490	5,830
States Activities					
State Certification Application Activities					
Log and file each certification/recertification	2,610	2,797	224	5,631	1,877
Total State Responses	2,610	2,797	224	5,631	1,877
Total Responses for New Items (Facilities and States)					
Facilities	8,106	8,688	696	17,490	5,830
States and Territories	2,610	2,797	224	5,631	1,877
Total Responses	10,716	11,485	920	23,121	7,707

Table A4. Burden for certification activities by year and annual averages

	Burden (hour per year)				
	Year 1	Year 2	Year 3	3 Year	Annual
CAFO Activities	2008	2009	2010	Total	Average
Eligibility Criteria					
Preparing the paperwork for the certification documentation	5,404	5,792	464	11,660	3,887
Engineering analysis	10,808	11,584	928	23,320	7,773
Submission to the Director	1,351	1,448	116	2,915	972
Total CAFO Burden	17,563	18,824	1,508	37,895	12,632
States Activities					
State Certification Application Activities					
Log and file each certification/recertification	2,610	2,797	224	5,631	1,877
Total State Burden	2,610	2,797	224	5,631	1,877
Total Burden for New Items (Facilities and States)					
Facilities	17,563	18,824	1,508	37,895	12,632
States and Territories	2,610	2,797	224	5,631	1,877
Yearly Total Burden	20,173	21,621	1,732	43,526	14,509

Table A5. Costs for certification activities by year and annual averages

	Cost (\$ per year)				
	Year 1	Year 2	Year 3	3 Year	Annual
CAFO Activities	2008	2009	2010	Total	Average
Eligibility Criteria					
Preparing the paperwork for the certification documentation	\$163,417	\$175,150	\$14,031	\$352,598	\$117,533
Engineering analysis	\$326,834	\$350,300	\$28,063	\$705,197	\$235,066
Submission to the Director	\$40,854	\$43,788	\$3,508	\$88,150	\$29,383
Total Cost	\$531,105	\$569,238	\$45,602	\$1,145,945	\$381,982
States Activities					
State Certification Application Activities					
Log and file each certification/recertification	\$105,383	\$112,949	\$9,048	\$227,380	\$75,793
Total Cost	\$105,383	\$112,949	\$9,048	\$227,380	\$75,793
Total Burden for New Items (Facilities and States)					
Facilities	\$531,105	\$569,238	\$45,602	\$1,145,945	\$381,982
States and Territories	\$105,383	\$112,949	\$9,048	\$227,380	\$75,793
Yearly Cost	\$636,488	\$682,187	\$54,650	\$1,373,325	\$457,775

APPENDIX B – CAFOS BURDEN AND COST

Summary of the Additional Burden, Respondents, Responses, and Costs for CAFOs respondents for the ICR Approval Period by Year and Annual Averages.

Table B1. CAFOs -- Increase due to soil sampling requirements--Narrative Rate Approach

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	30,998	32,535	33,727	97,260	32,420
Respondents (number) ^a	5,942	6,135	6,349	6,349	6,142
Responses (number)	3,131	3,240	3,365	9,736	3,245
Costs (labor)	\$459,701	\$482,488	\$500,173	\$1,442,363	\$480,788
Costs (Capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$396,928	\$413,631	\$426,848	\$1,237,407	\$412,469
Total Costs	\$856,629	\$896,119	\$927,021	\$2,679,770	\$893,257

a. Respondents are not all new respondents not previously impacted by the CAFO regulations but respondents using the narrative rate approach.

Note: Totals may not match exactly due to individual rounding.

Table B2. CAFOs -- Decrease due to decline in permit modifications--Narrative Rate Approach

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	-3,939	-4,072	-4,204	-12,215	-4,072
Respondents (number)	-327	-338	-349	-1014	-338
Responses (number)	-654	-676	-698	-2,028	-676
Costs (labor)	(\$169,562)	(\$175,266)	(\$180,970)	(\$525,797)	(\$175,266)
Costs (Capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	(\$169,562)	(\$175,266)	(\$180,970)	(\$525,797)	(\$175,266)

Note: Totals may not match exactly due to individual rounding.

Table B3. CAFOs -- Increase due to certification

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	17,563	18,824	1,508	37,895	12,632
Respondents (number)	2,702	2,896	232	5,830	1,943
Responses (number)	8,106	8,688	696	17,490	5,830
Costs (labor)	\$531,105	\$569,238	\$45,602	\$1,145,945	\$381,982
Costs (Capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$531,105	\$569,238	\$45,602	\$1,145,945	\$381,982

Note: Totals may not match exactly due to individual rounding.

Table B4. CAFOs -- Increase due to expanded annual reporting burden

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	15,281	15,765	16,299	47,345	15,782
Respondents (number)	15,281	15,765	16,299	16,299	15,782
Responses (number)	15,281	15,765	16,299	47,345	15,782
Costs (labor)	\$462,097	\$476,734	\$492,882	\$1,431,713	\$477,238
Costs (Capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$462,097	\$476,734	\$492,882	\$1,431,713	\$477,238

Note: Totals may not match exactly due to individual rounding.

Table B5. CAFOs -- Net Impact of SNPRM

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	59,903	63,052	47,330	170,285	56,761
Respondents (number) ^a	17,983	18,661	16,531	22,129	17,725
Responses (number)	25,864	27,017	19,662	72,543	24,181
Costs (labor)	\$1,283,342	\$1,353,193	\$857,687	\$3,494,224	\$1,164,741
Costs (Capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$396,928	\$413,631	\$426,848	\$1,237,407	\$412,469
Total Costs	\$1,680,270	\$1,766,824	\$1,284,535	\$4,731,631	\$1,577,210

a. Respondents are not all new respondents not previously impacted by the CAFO regulations. "Respondents" refers to the number of discrete entities that undertake information collection activities under the ICR analysis, and "responses" refers to the number of individual actions associated with added information collection burden.

Note: Totals may not match exactly due to individual rounding.

APPENDIX C – STATES BURDEN AND COST

Summary of the Additional Burden, Respondents, Responses, and Costs for State respondents for the ICR Approval Period by Year and Annual Averages Resulting from the SNPRM.

Table C1. States -- Decrease due to decline in permit modifications–Narrative Rate Approach

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	-5,839	-6,065	-6,252	-18,156	-6,052
Respondents (number)	-	-	-	-	-
Responses (number)	-985	-1,018	-1,051	-3,054	-1,018
Costs (labor)	-\$235,762	-\$244,913	-\$252,448	-\$733,123	-244,374
Costs (O&M)	\$0	\$0	\$0	\$0	0
Total Costs	-\$235,762	-\$244,913	-\$252,448	-\$733,123	-\$244,374

Note: Totals may not match exactly due to individual rounding.

Table C2. States -- Increase due to certification

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	2,610	2,797	224	5,631	1,877
Respondents (number)	-	-	-	-	-
Responses (number)	2,610	2,797	224	5,631	1,877
Costs (labor)	\$105,383	\$112,949	\$9,048	\$227,380	\$75,793
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$105,383	\$112,949	\$9,048	\$227,380	\$75,793

Note: Totals may not match exactly due to individual rounding.

Table C3. States -- Net impact of SNPRM

Item	2008	2009	2010	Three Year Total	Annual Average
Burden (hours)	-3,229	-3,268	-6,028	-12,525	-4,175
Respondents (number)	-	-	-	-	-
Responses (number)	1,625	1,779	-827	2,577	859
Costs (labor)	(\$130,379)	(\$131,964)	(\$243,400)	(\$505,743)	(\$168,581)
Costs (O&M)	\$0	\$0	\$0	\$0	0
Total Costs	(\$130,379)	(\$131,964)	(\$243,400)	(\$505,743)	(\$168,581)

Note: Totals may not match exactly due to individual rounding.