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**Supporting Statement for the Information Collection Request for
NPDES and ELG Regulatory Revisions for
Concentrated Animal Feeding Operations
(Final Rule)**

July 2008

EPA ICR NO. 1989.06

U.S. Environmental Protection Agency
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1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title of the Information Collection

ICR: NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (Final Rule)

EPA ICR: 1989.06

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). 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 response to the decision of the Second Circuit Court, referred to in this ICR as the *Waterkeeper* decision, EPA is revising the original 2003 CAFO regulations. The final rule that revises the 2003 CAFO regulations is based on proposed regulations published June 30, 2006 (71 FR 37,744), a supplemental notice of proposed rulemaking (SNPRM) published on March 7, 2008 (72 FR 12,321), and on comments received relating to the proposals. This ICR estimates the information collection burden effects associated specifically with the revisions to the CAFO rules in response to the *Waterkeeper* decision.

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 was accompanied by a draft ICR, ICR No. 1989.03, and the SNPRM was accompanied by draft ICR No. 1989.05.

During the public comment periods for the 2006 proposed rule and 2008 SNPRM, EPA received a limited number of comments on the impacts analysis presented with the proposed rules. For the 2006 proposed rule, commenters stated that the Agency should recognize that operators without permits will continue to incur costs under the regulation in order to meet the burden of proof required to qualify for the agricultural stormwater exemption. In response to these commenters, EPA revised the burden analysis as presented in this ICR to reflect more fully that the absence of a permit does not excuse a facility from needing to implement nutrient management practices. As a consequence, the burden for CAFOs in this ICR includes \$12.2 million annually that was not included in the earlier ICR. EPA received very limited comment on the impacts analysis presented with the SNPRM.

As stated above, this ICR provides an estimate of the information collection hour and cost burden impacts associated specifically with the final revisions to the 2003 CAFO regulations

resulting from the *Waterkeeper* decision in 2005. In particular, this ICR includes the burden and cost changes expected to result from the court's mandate to EPA to:

- Remove the unilateral Duty to Apply for permits for all CAFOs.
- Add requirements for Nutrient Management Plans (NMPs) to be submitted with permit applications, reviewed by permit authorities and the public, and incorporated into permits.

The ICR also presents the burden impacts from the new voluntary option for CAFOs to certify that their facility does not discharge.

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 for 2008. 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 *Code of Federal Regulations* (CFR) Part 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 facilities and operating procedures is used to develop permit conditions and to document that a permittee is in compliance with permit requirements. Information is 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 NPDES Integrated Compliance Information System (NPDES-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 the

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.

revised, final NPDES CAFO regulations. EPA estimates that the changes to the burden for information collection specifically resulting from the revisions is an annual average net decrease of 25,514 hours for the respondents, including a decrease of 54,084 hours annually for CAFO respondents and an increase of 28,570 hours annually for State respondents. The total operation and maintenance (O&M) cost decrease as a result of the revisions is estimated at \$488,432 annually, all of it from reduced burden to State respondents due to a reduced number of public notices for individual and general permit applications and public hearings. This decrease in O&M cost compares to an estimated total capital and O&M costs under the CAFO regulations as a whole of nearly \$7.8 million annually. No change in capital costs is anticipated from this action.²

For costing purposes, the analysis assumes that all CAFOs either apply for a permit or submit the voluntary “no discharge” certification, and that the facilities that do apply for permits are those facilities in animal sectors with operational and design characteristics historically associated with discharges. Because the certification option is voluntary and EPA did not have information to determine how many “no discharge” CAFOs might seek this alternative, the Agency elected to assume that all “nondischargers” apply for certification. The Agency believes this is a conservative burden estimate for the ICR. Accordingly, the ICR estimates that by the end of the 2010, as many as 16,299 CAFOs out of a total 22,129 CAFOs may need permit coverage due to discharges. The CAFOs that are presumed to seek certification are the portion of the CAFO universe assumed not to discharge—a total of 5,830 facilities by the end of 2010. How these figures are derived is explained in Section 4.

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.

1(c) Relationship of NPDES CAFO Program ICRs

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 the paperwork collection burden from implementation of the CAFO program through 2009 (ICR No. 1989.04). The scope of this current ICR (ICR No. 1989.06) is limited to 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.

The analysis of net burden estimates presented in this ICR controls for an adjusted calculation of baseline impacts. EPA made this adjustment to reflect improved projections of industry size for the modeling period used in this ICR compared to the industry projections available at the time of the 2006 ICR renewal.

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.

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 and authorized States need the information generated by the regulatory revisions that pertain to CAFOs to respond to the Second Circuit Court of Appeal's decision in *Waterkeeper Alliance v. EPA* and to implement CWA requirements effectively. This rule revises the final 2003 CAFO rule, which updated EPA's original Effluent Limitations Guidelines (ELGs) (40 CFR Part 412) and NPDES (40 CFR Part 122) regulations for CAFOs promulgated in the mid-1970s.

Permit authorities incur the changes in information collection burden as part of ensuring that their NPDES programs implement the final rule. Under 40 CFR Part 123, State NPDES programs must, at all times, be in compliance with Federal regulations.

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 rule notice in the Federal Register. The notice will summarize comments on the content and impact of the rule received in response to the impacts analysis presented with the 2006 proposed rule and 2008 SNPRM, and EPA's responses.

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 2006 proposed rule and 107 on the SNPRM from CAFO industry, environmental, and State regulatory stakeholders. EPA conducted six public outreach meetings across the country in addition to nationally aired webcasts so stakeholders would be better prepared to comment on the rule. EPA also made presentations on the proposals 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 rule.

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 rule, permitted CAFOs must submit an NMP and keep a record on-site (or readily available). These plans can contain confidential business information (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 applications for individual permits and Notice of Intent (NOIs) for general permits.

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 analysis estimates the 3-year information collection burden based on the universe of respondents projected to exist for the period spanning January 2008 through December 2010.

Although some of the compliance dates for the new requirements occur in 2009, certain facilities will need to comply with the new requirements as soon as the final rule becomes effective. For example, the July 2007 date change rule extended dates for newly defined CAFOs to seek permit coverage out to February 27, 2009. However, the date change rule did not affect the applicable date for seeking permit coverage for existing facilities defined as CAFOs prior to the 2003 CAFO rule, nor does it apply to newly constructed CAFOs not subject to new source performance standards (NSPS) or to new source CAFOs subject to NSPS that discharge or propose to discharge. In addition, the Agency did not prepare growth projections for the industry out to 2011 due to the uncertainties associated with animal agriculture growth arising from market volatility. To allow the Agency to submit a calendar year-based information collection request to OMB and to restrict uncertainties associated with out-year projections, the Agency has based the ICR estimates on a modeling period spanning January 2008 to December 2010.

4(a) Respondents/SIC Codes

The two categories of respondents are the owners or operators of CAFOs and the 44 authorized States that issue permits to CAFOs. Among CAFO respondents, those that discharge or propose to discharge must apply for a permit, and facilities that do not discharge are all assumed to submit "no discharge" certifications and continue to incur on-going costs of nutrient management planning.

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.

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

NAICS code (SIC code)	Animal type	Size thresholds		
		Large	Medium	Small

*Modeling of burden impacts in this ICR does not include an industry category for broilers, fryers or roaster operations with liquid manure operations since operations in this animal sector are typically designed for dry manure handling.

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 also 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. This final rulemaking narrows this requirement such that only those CAFOs that discharge or propose to discharge must apply for a permit⁴ and establishes a voluntary certification process for facilities that do not discharge or propose to discharge.

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 account for changes to the industry when comparing burdens assessed in the various CAFO program ICRs. See Section 1(c) for further discussion. In addition, the analysis of net burden estimates presented in this ICR controls for an adjusted calculation of baseline impacts. EPA made this adjustment to reflect improved projections of industry size for the modeling period used in this ICR compared to the industry projections available at the time of the 2006 ICR renewal.

Table 4–2 shows EPA’s estimate of the number of CAFOs that have operational or design characteristics historically associated with discharges. 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 2008 as many as 15,281 CAFOs could be discharging to waters of the U.S. These figures include both facilities defined as CAFOs that have discharges or proposed to discharge, as well as facilities designated as CAFOs because they are significant contributors of pollutants to waters of the U.S.

In order to project the universe of respondents experiencing cost impacts under the different approaches for developing rates of application, EPA used as a starting point the number of CAFOs that land apply manure, litter or process wastewater by animal type. The number of

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 2008 final rule.

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. For costing purposes, EPA assumed that one half of discharging CAFOs that land apply would use the narrative rate approach which offers the most flexibility to operators. The other half is assumed to use the linear approach. (See table 4–3.)

For purposes of costing burden impacts of certification, the ICR assumes that all facilities that do not seek a permit (i.e., those facilities assumed to have no discharge) will seek certification. This assumption does not represent a precise breakout of facilities because there are no information sources that can help EPA determine which facilities will seek the “no discharge” certification.

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 large and medium CAFOs as well as other facilities designated as CAFOs due to discharges.

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

The following actions were not required under the 2003 rule and are new under the revised rule:

Submittal of Nutrient Management Plan (NMP). (40 CFR 122.21(i)(1)(x)) An NMP must be submitted as part of an NPDES permit application. In addition, the submission of an NOI to obtain coverage under a general permit must include an NMP. The 2003 CAFO rule required facilities to develop an NMP and to maintain the NMP on-site and make it available to the permit authority upon request. The 2003 rule did not require the NMP to be submitted to the permit authority for review prior to permit coverage. The 2003 rule specifies the content of the NMP, which has not changed under this rule.

Changes to an NMP. (40 CFR 122.42(e)(6)) When changes are made to an NMP, the CAFO must provide a copy of the revised NMP to the Director. Certain changes need not be provided where such changes are consistent with specified land application rates; however, a current copy of the NMP must be maintained on site, or be readily available.

Annual Reporting. (122.42(e)(4)(viii)) The final rule 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.

No Discharge Certification Option. (122.23(i)) The owner or operator of a CAFO that meets the eligibility criteria in 122.23(i)(2) may certify to the Director that the CAFO does not discharge or propose to discharge. As part of the certification, 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. Documentation for the certification must demonstrate that:

- 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(i)(2)(i)(A) is designed, constructed, operated, and maintained such that there can be no discharge of manure, litter, or process wastewater;
 - 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.

The final rule states under 122.23(i)(3) that the CAFO owner or operator who chooses to certify 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(i)(2);
- The certification statement as specified in 122.23(i)(3)(iv); and
- Signatures in accordance with the signatory requirements of 40 CFR 122.22.

State Data Items

State NPDES Program Modification. Authorized State NPDES programs must comply with the final Federal rule, and States may need to modify their existing State NPDES regulations in order to achieve full compliance. Federal regulations specifying program revision are found in 40 CFR 123.62.

Submittal of NMP. (40 CFR 122.21(i)(1)(x)) Authorized States receive the NMPs as part of each NPDES permit application or NOI to obtain coverage under an NPDES general permit.

Public Notice/Comment. (40 CFR 122.21(i)(1)(x) and 122.42(e)(5)) Authorized States must provide notice and opportunity for comment on draft NMPs and NMP terms to be incorporated into permits. (Existing NPDES regulations require notice and comment on draft NPDES permits—see 40 CFR 124.10, and ICRs 0168.08, 0226.17, 1427.07, and 0029.08.)

Public Hearing. (40 CFR 122.21(i)(1)(x)) Authorized States must provide opportunity for a public hearing when there is significant public interest in the NMP provisions of a draft NPDES CAFO permit. (Existing NPDES regulations provide for the opportunity for a public hearing for a draft NPDES permit—see 40 CFR 124.11, and ICRs 0168.08, 0226.17, 1427.07, and 0029.08.)

Changes to an NMP. (40 CFR 122.42(e)(6)) When changes are made to an NMP, the Director must review the changes and determine whether changes to the terms of the NMP included in the permit are required and whether such changes are substantial and a warrant a change to the permit as well as public notice.

No Discharge Certification Option. (122.23(i)) 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.

4(b)(ii) Respondent Activities

CAFO Activities

Submittal of NMP. (40 CFR 122.21(i)(1)(x) and 122.28(b)(2)(vii) and (h)) All CAFOs that discharge or propose to discharge must submit an NMP as part their NPDES permit application. In addition, NOIs submitted to obtain coverage under an NPDES general permit must include an NMP. For purposes of comparison, the 2003 CAFO rule required that facilities develop and implement an NMP so this is not a new requirement. The NMP also had to be maintained on-site and made available to the permit authority upon request.

Changes to an NMP. (40 CFR 122.42(e)(6)) When changes are made to an NMP, the CAFO must provide a copy of the revised NMP to the Director. Certain changes need not be provided where such changes are consistent with specified land application rates; however, a current copy of the NMP must be maintained on site. 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.

No Discharge Certification Option. (122.23(i)) If an owner or operator wishes to certify that a CAFO does not discharge or propose to discharge, they 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 or be made readily available: EPA estimates that this activity will require a simple engineering analysis consisting of a description of a non-discharging facility.
- (ii) The CAFO develops 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.
- (iii) The CAFO implements operation and maintenance 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. (122.42(e)(4)(viii)) The final rule 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 to two hours per CAFO from the 2003 final rule estimates (only the additional one hour is included in this ICR).

State Activities

State NPDES Program Modification. Subsequent to making program revisions to implement the final rule, States will need to compile the information listed in 4b(i) of this Supporting Statement and submit a request for program modification to EPA.

Review of NMP. (40 CFR 122.21(i)(1)(x) and 122.42(e)(5)) Authorized States must review the NMP, as part of the permit application or NOI, for compliance with applicable NPDES CAFO regulations. In addition, authorized States must determine the terms of the NMP that are to be incorporated into the permit. (Existing regulations require the review of application information, the use of application information in developing permit requirements, and the drafting of permit conditions on the basis for the permit record. See, 40 CFR sections 124.3, 124.6 and 124.9, as well as 123.25. Also see ICRs 0168.08, 0226.17, 1427.07, and 0029.08.)

Public Notice/Comment. (40 CFR 122.21(i)(1)(x) and 122.42(e)(5)) Authorized States must provide public notice and an opportunity for comment on the NMP and the NMP terms for the permit. (Existing NPDES regulations require notice and comment on draft NPDES permits—see 40 CFR 124.10, and ICRs 0168.08, 0226.17, 1427.07, and 0029.08). All significant public comments must be addressed by the permitting authority.

Public Hearing. (40 CFR 122.21(i)(1)(x)) Authorized States must conduct a public hearing when there is significant public interest in the NMP provisions of a draft NPDES CAFO permit. (See existing 40 CFR 124.11 through 13).

Changes to an NMP. (40 CFR 122.42(e)(6)) When changes are made to an NMP, the Director must review the changes and determine whether changes to the terms of the NMP are required and whether such changes are substantial. EPA believes that the new narrative rate approach introduced in the final rule 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.

No Discharge Certification Option. 122.23(i) 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. (122.42(e)(4)(viii)) The final rule would not impose additional requirements to States.

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.

The original CAFO NPDES ICR (OMB NO: 2040-0250, EPA ICR: 1989.02) accounted for the EPA burden to evaluate the requests for program modifications submitted by authorized States to implement the final rule. Under OMB and EPA ICR guidance, EPA burden is not included as part of respondent burden.

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 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.

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.

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—especially operations with large numbers of animals. As section 6 shows, this rule would result in a net reduction in burden on CAFO respondents, including small entities, due to the reduced number of operations that would be required to obtain a permit. In addition, new estimates of burden on small entities described below are relatively small. The rule 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).

5(d) Collection Schedule

This ICR, when final, will cover the initial 3-year period following promulgation of the final rule. For this ICR, annual burden estimates are based on universe of respondents estimated to exist in the 3-year period spanning January 2008 through December 2010.

Under the rule to address the Second Circuit Court decision, an NMP must be submitted as part of the permit application or NOI submission for coverage under a general permit. This ICR assumes that one-fifth of existing permitted CAFOs would renew their permits in each year covered by the ICR (based on the 5-year NPDES permit term). In addition, a specific number of new and designated CAFOs were assumed to seek permits in each of these years.

Before EPA considered the narrative rate approach presented in the final rule, it estimated that 11 percent of permitted facilities would need permit modifications each year due to substantial changes to their NMPs. 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 revised this projection upwards to 11 percent.

(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.) EPA estimates for purposes of the analysis that CAFOs choosing the narrative approach (one half of discharging CAFOs that land apply) to express rates of application will experience a 50 percent reduction in permit modifications. This is because the narrative approach results in fewer changes to the NMPs that would later necessitate substantial permit modifications.

Note: This is a significant increase in the frequency the Agency uses for significant modifications in other industries, which is typically 1 percent of permits. This is because of the dynamic nature of NMPs and the resulting need for more frequent changes to the portions of permits relating to NMPs.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

The summaries below provide brief descriptions of CAFO and State activities, and Tables 6–6 through 6–8 summarize the results.

Exhibits A through F in the Appendix provide additional information regarding the burden and cost assumptions. Because none of the technical requirements were affected by the court’s decision, no separate Economic Analysis was conducted to support these requirements. Therefore, the impacts in this ICR are only associated with reporting and review burden by the industry and authorized States in response specifically to the *Waterkeeper* decision.

6(a) Estimating Respondent Burden

CAFO Burden

Table 6–1 specifies the burden hours per response for each new activity required of CAFOs under this rule. All other burdens associated with the 2003 CAFO rule are addressed in the existing EPA ICR No.1989.04.

New activity under the final rule includes a requirement that all permitted CAFOs must submit an NMP as part their NPDES permit application (40 CFR 122.21(i)(1)(x)). In addition, NOIs to obtain coverage under an NPDES general permit must include an NMP. For purposes of comparison, the 2003 CAFO rule already required that facilities that had to develop an NMP had to maintain the NMP on-site and make it available to the permit authority upon request. EPA estimates that new requirement for submittal of an NMP will require 0.5 hours every 5 years.

EPA also estimates that any permit modifications required by permitting authorities following NMP review may necessitate changes to NMPs that will result in an added burden to CAFOs of 11.5 hours per response. To determine the added burden to CAFOs for NMP modifications as directed by permit authorities, EPA estimates that the burden to modify and update an NMP would be 20 percent of the original NMP development burden. EPA calculated average plan development burden for an average discharging CAFO using the same burden estimate for NMP development as in the active CAFO NPDES ICR (OMB No: 2040–0250, EPA ICR: 1989.04).

The result is an average plan development burden of approximately 57.7 hours. Because NMPs are still required, the amount of time required to prepare them is not revisited in this ICR.

In addition, when a permitted CAFO changes its NMP, the CAFO must provide a copy of the current (i.e., changed) NMP to the Director (certain changes need not be provided where such changes are consistent with specified land application rates). For purposes of this ICR, EPA’s burden estimate for submitting any revised plans is 30 minutes.

Table 6–1. Burden for NMP-related activities for CAFOs and frequency of response

Activities	Hours per response	Frequency of response
Nutrient Management Plan		
Submit Nutrient Management Plan	0.5	every 5 years
Modify Nutrient Management Plan ^{a,b}	11.5	every year
Submit NMP updates and modifications	0.5	every year

- a. EPA assumed that every year, 11 percent of NMPs would require substantial changes as a result of permit modifications, except for CAFOs using the narrative approach to express rates of application which will experience a 50 percent reduction in permit modifications that need to be submitted to the permit authorities . See Section 5(d).
- b. The burden estimate is 20 percent of the burden to develop an NMP. See active CAFOS NPDES ICR (OMB NO: 2040-0250, EPA ICR: 1989.04).

Under the rule to address the Second Circuit Court decision, the original provision in the 2003 CAFO rule that required that all CAFOs had a duty to apply for an NPDES permit, either by submitting an NOI to be covered by a general permit, or by submitting an application for an individual permit was narrowed, such that *only* those CAFOs that discharge or propose to discharge must apply for a permit.

For the purposes of this analysis, CAFOs that do not have a duty to apply for an NPDES permit will incur certain costs as part of qualifying for the agricultural stormwater exemption. These costs are carried forward for nonpermitted facilities as a subset of the original costs accounted for in the 2003 rule ICR and include start up costs, costs to develop, update, and document nutrient management planning, costs to perform activities related to inspection and sampling (costed as the same burden as costs for permitted facilities), and capital and O&M costs. (The capital and O&M cost that non-permitted facilities would have incurred under the 2003 rule are equivalent to the capital and O&M costs incurred in the qualification for an agricultural stormwater exemption.)

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

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

For this ICR, the burden for annual reporting for permitted CAFOs as shown in Table 6-3 was increased by one hour from one hour in the 2003 final rule estimates. This change is warranted due to the increase in burden as a result of the additional annual reporting requirements in the final rule.

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

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

State Burden

States will realize a reduction in burden due to the reduction in number of CAFOs needing permits. However, States will experience an increase in burden due to additional efforts to process NMPs for those CAFOs that do receive NPDES permits and to log and file no-discharge certifications. Additionally, authorized States will need to modify their NPDES programs to incorporate the new requirements contained in the final rule. Rule modification is a one-time activity. Following rule modification, the authorized States will need to request EPA approval for the modifications made to their NPDES programs in response to the final rule.

In particular, under the rule to address the Second Circuit Court decision, authorized States will incur burden associated with reviewing NMPs, determining terms of the permit, and providing public notice of the NMP portion of each permit or NOI, opportunity to comment and, potentially, public hearings. All other categories of burden associated with the 2003 CAFO rule are addressed in the existing EPA ICR No.1989.04. States will also incur burden to develop their program modifications to reflect the final rule. Table 6–4 specifies the burden hours per response for each permit authority under this rule.

Authorized States must review the NMP as part of the permit application or NOI to determine compliance with applicable NPDES CAFO regulations. In addition, authorized States must determine the terms of the NMP that are to be incorporated into the permit.

Authorized States must provide public notice and an opportunity for comment on the NMP and the terms of the NMP included in a draft NPDES CAFO permit or NOI. In addition, authorized States must conduct public hearings when warranted due to significant public interest. To estimate the burden associated with general permits and NOIs as shown in Table 6-4, EPA has assumed that 12 percent of the NOIs submitted would result in a public hearing related to the general permit; and that the labor burden associated with the hearing, should one be called for, would be 200 hours. The magnitude of the public hearing burden for the general permit is assumed to be the same as the burden in the active ICR for public hearings for individual CAFO NPDES permits (OMB No. 2040–0250, EPA ICR No. 1989.04). EPA has also assumed that for individual permits, the inclusion of the NMP with the permit application would not lead to a significant increase in public hearings. (Individual permits are already required to be public

noticed under existing NPDES requirements for individual permits; hence, the associated labor burden was already accounted for in the active ICR for the CAFO NPDES program.)

Authorized States must review any subsequent changes to NMPs and determine whether changes warrant a substantial modification to the permit. They also must provide an opportunity for public comment when changes are substantial.

Table 6–4. Burden for NMP-related activities for States and frequency of response

Activities	Hours per response	Frequency of response
Program Modification	80.0	One time
State General NPDES Permit and NOI Activities ^a		
Review NMP (administrative) and determine NMP Terms	20.0	every 5 years
Public hearings resulting from NMPs submitted with NOIs ^b	200.0	every 5 years
State Individual Permit Application Activities		
Review NMP (administrative) and determine NMP Terms	20.0	every 5 years
State General NPDES Permit and NOI Activities Due to Significant NMP Modifications ^c		
Review and approve NOIs/recordkeeping	4.0	every year
Public hearings	40.0	every year
Review NMP (administrative) and determine NMP Terms	4.0	every year
Notify public, respond to comments	1.0	every year
State Individual Permit Application Activities Due to Significant NMP Modifications ^c		
Review and approve permits/recordkeeping	20.0	every year
Public hearings	40.0	every year
Review NMP (administrative) and determine NMP Terms	4.0	every year
Notify public, respond to comments	1.0	every year

a. Time for public notification and response to comments for NOIs was already accounted for in the active ICR covering the CAFO NPDES program (OMB No. 2040–0250, EPA ICR No. 1989.04).

b. EPA has assumed that 12 percent of NOIs submitted would result in a public hearing. This assumption was carried forward from the assumption in the active ICR for the labor burden associated with public hearings for CAFO NPDES (OMB No. 2040–0250, EPA ICR No. 1989.04).

c. EPA assumed that every year, 11 percent of NMPs would require substantial changes as a result of permit modifications, except for CAFOs using the narrative approach to express rates of application which will experience a 50 percent reduction in permit modifications that need to be submitted to the permit authorities. See Section 5(d).

For the active CAFOS NPDES ICR (OMB No. 2040–0250, EPA ICR No. 1989.04), EPA assumed that 30 percent of CAFOs apply for an individual NPDES permit and 70 percent submit an NOI for coverage under a general permit. This ICR retains this ratio.

Note that all other burden associated with the 2003 CAFO rule is addressed in the existing EPA ICR No.1989.04. Table 6–4 specifies the burden hours per response under this rule. For the State burden estimate, most of the assumptions regarding level of effort and frequency of response were carried forward from the 2003 CAFO Rule CAFOS NPDES ICR (OMB No: 2040-0250, EPA ICR: 1989.04). New assumptions for this ICR are:

- For the 2003 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). See Exhibit H in the Appendix.

- Nonauthorized States have 3.4 percent of CAFOs (Kellogg et al., 2000). This number is used for purposes of estimating the number of CAFOs where EPA is the permitting authority. Although this ICR only covers the regulatory authority related burden to authorized States, EPA’s burden and costs are calculated and presented for informational purposes.

If a CAFO owner or operator wishes to certify that a CAFO does not discharge or propose to discharge, they must complete and submit to the Director a no discharge certification. As shown on Table 6–5, EPA estimates 30 minutes for States to log and file each certification. (For additional tables see the Appendix.)

Table 6–5. Burden for voluntary certification for States and frequency of response

State Activities	Hours per Response	Frequency of Response
Log and file each certification	0.5	Every 5 years

6(b) Estimating Respondent Costs

This section describes how EPA derived the cost to respondents 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 6–6.

Table 6–6. 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

The rule to respond to the Second Circuit Court decision would not impose additional capital and O&M costs on CAFOs.

State O&M Costs

The rule to respond to the Second Circuit Court decision would not impose additional O&M costs on States. (Compared to the O&M burden under the 2003 rule, the 2008 final rule will result in a net reduction in O&M burden to States due to the reduction in number of permits processed.)

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 categories of burden as States for the six States where it is the NPDES permitting authority for CAFOs. For unauthorized States, EPA will incur burden associated with reviewing NMPs, providing public notice, opportunity to comment, and potential hearings. EPA must also log and file no-discharge certifications.

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

Tables 6–7 to 6–9 presents the annual burden and costs for all CAFO operators and authorized State regulatory authorities to address the Second Circuit Court decision. In Table 6–10 annual Federal government cost and burden is presented. Detailed information used to populate these tables in presented in the Appendix to this document.

Table 6–7. Annual average respondent burden and cost – CAFOs

	Baseline (2003 rule) All CAFOs require permit	Baseline (2003 rule) requirements applied to discharging CAFOs ^a	Burden Increment due to NMP-related activities	Burden increment due to nutrient mgmt planning at nonpermitted facilities	Burden increment due to voluntary certification	Annual Totals Under Final Rule	Net Change—Baseline to Final Rule
Total Permitted CAFOs at the beginning of the ICR period (2008)	20,685	15,281				15,281	-5,404
Total Non-permitted CAFOs at the beginning of the ICR period (2008)	0	5,404				5,404	5,404
Annual Number of Responses (See Exhibit D)	134,290	97,702	19,560	23,003	5,830	146,095	11,805
Total Annual Hour Burden (hours)	2,667,599	1,964,538	33,114	603,231	12,632	2,613,514	-54,084
Total Annual Capital/O&M Costs	\$6,211,515	\$4,223,009	\$0	\$1,988,507	\$0	\$6,211,515	\$0
Total Annual Labor Costs	\$47,832,169	\$35,801,930	\$1,217,011	\$10,221,839	\$381,982	\$47,622,761	(\$209,407)
Total Annual Costs	\$54,043,684	\$40,024,938	\$1,217,011	\$12,210,346	\$381,982	\$53,834,277	(\$209,407)

a. Refer to Exhibit G in the Appendix concerning net reductions from the Court’s decision to require NPDES permits only from dischargers.

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

Table 6–8. Annual average respondent burden and cost – States

	Baseline (2003 rule) All CAFOs require permit	Baseline (2003 rule) requirements applied to discharging CAFOs ^a	Burden Increment due to NMP-related activities	Burden increment due to nutrient mgmt planning at nonpermitted facilities	Burden increment due to voluntary certification	Annual Totals Under Final Rule	Net Change—Baseline to Final Rule
Annual Number of Responses (See Exhibit D)	34,031	25,084	6,427	0	1,877	33,388	-642
Total Annual Hour Burden (hours)	356,518	263,476	120,673	0	939	385,088	28,570
Total Annual Capital/O&M Costs	\$2,057,440	\$1,569,009	\$0	\$0	\$0	\$1,569,009	(\$488,432)
Total Annual Labor Costs	\$14,396,213	\$10,639,176	\$4,872,791	\$0	\$37,897	\$15,549,864	\$1,153,651
Total Annual Costs	\$16,453,653	\$12,208,185	\$4,872,791	\$0	\$37,897	\$17,118,872	\$665,220

a. Refer to Exhibit G in the Appendix concerning net reductions from the Court’s decision to require NPDES permits only from dischargers.

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

Table 6–9. Annual average respondent burden and cost – CAFOs and States

	Baseline (2003 rule) All CAFOs require permit	Baseline (2003 rule) requirements applied to discharging CAFOs ^a	Burden Increment due to NMP-related activities	Burden increment due to nutrient mgmt planning at nonpermitted facilities	Burden increment due to voluntary certification	Annual Totals Under Final Rule	Net Change—Baseline to Final Rule
Annual Number of Responses (See Exhibit D)	168,321	122,786	25,987	23,003	7,707	179,483	11,162
Total Annual Hour Burden (hours)	3,024,117	2,228,014	153,787	603,231	13,570	2,998,603	-25,514
Total Annual Capital/O&M Costs	\$8,268,955	\$5,792,017	\$0	\$1,988,507	\$0	\$7,780,524	(\$488,432)
Total Annual Labor Costs	\$62,228,381	\$46,441,106	\$6,089,802	\$10,221,839	\$419,878	\$63,172,625	\$944,244
Total Annual Costs	\$70,497,337	\$52,233,123	\$6,089,802	\$12,210,346	\$419,878	\$70,953,149	\$455,812

a. Refer to Exhibit G in the Appendix concerning net reductions from the Court’s decision to require NPDES permits only from dischargers.
Note: Totals may not match exactly due to individual rounding.

Table 6–10. Annual average Federal government burden and cost

	Baseline (2003 rule) All CAFOs require permit	Baseline (2003 rule) requirements applied to discharging CAFOs ^a	Burden Increment due to NMP-related activities	Burden increment due to nutrient mgmt planning at nonpermitted facilities	Burden increment due to voluntary certification	Annual Totals Under Final Rule	Net Change—Baseline to Final Rule
Annual Number of Responses (See Exhibit D)	1,203	887	277	0	66	1,230	27
Total Annual Hour Burden (hours)	12,931	9,549	5,253	0	33	14,836	1,905
Total Annual Capital/O&M Costs	\$166,038	\$130,091	\$0	\$0	\$0	\$130,091	(\$35,947)
Total Annual Labor Costs	\$558,217	\$412,231	\$226,787	\$0	\$1,432	\$640,450	\$82,233
Total Annual Costs	\$724,255	\$542,323	\$226,787	\$0	\$1,432	\$770,542	\$46,286

a. Refer to Exhibit G in the Appendix concerning net reductions from the Court’s decision to require NPDES permits only from dischargers.
Note: Totals may not match exactly due to individual rounding.

6(e) Bottom Line Burden Hours and Costs Tables

Table 6–11 presents a yearly cost increase breakdown and 3-year ICR period summary for CAFOs subject to the new provisions in the final rule. There will be a total of 76,171 CAFO responses over the 3-year period with an average of 25,390 CAFO responses for each year under this ICR (See Exhibit D in the Appendix for details).⁵ Total CAFO respondent costs over the 3-year period will be \$4,796,978 with an average annual total cost for all CAFO respondents of \$1,598,993.

CAFO respondents for each year represent the facilities that will incur additional information collection activities as a result of the new provisions. These are either new facilities or facilities due to renew their permits, or facilities that amend their NMPs. Although the ICR final burden totals do account for the costs to nonpermitted facilities of performing the nutrient management planning necessary to qualify for the agricultural stormwater exemption, that portion of the respondent burden is not presented in the table below since that burden is retained from the cost impacts to CAFO respondents presented in the existing, approved CAFO NPDES ICR.

Table 6–11. CAFO burden and cost increase from new provisions

	Year 1	Year 2	Year 3	3-Year total	Annual average
Item	2008	2009	2010		
Burden (hours)	49,637	51,898	35,701	137,236	45,745
Respondents (number) ^a	17,983	18,661	16,531	22,129	17,725
Responses (number)	27,059	28,230	20,882	76,171	25,390
Costs (labor)	\$1,709,878	\$1,784,743	\$1,302,357	\$4,796,978	\$1,598,993
Costs (capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$1,709,878	\$1,784,743	\$1,302,357	\$4,796,978	\$1,598,993

a. Respondents are not new respondents not previously impacted by the CAFO regulations but respondents required to perform additional activities as a result of this rule.

Table 6–12 presents a yearly cost increase breakdown and 3-year ICR period summary for the 44 authorized States. These numbers reflect only burden and cost associated with the new provisions in the regulatory changes to the NPDES CAFO regulations that address the February 2005 Second Circuit Court of Appeals decision. There will be a total of 24,911 responses during the 3-year ICR period with an average of 8,304 responses for each year under this ICR (See Exhibit D in the Appendix for details).⁶ Total State burden over the 3-year period is 364,836 hours with an average annual average State burden of 121,612 hours. State cost increases will total \$14,732,063 for the 3-year ICR period with an average annual cost increase of \$4,910,688.

⁵ CAFO responses do not mean number of CAFOs. The revised regulation does not impact additional facilities, but some facilities are required to perform additional activities as a result of this rule.

⁶ State responses do not mean number of CAFOs. The revised regulation does not impact additional facilities, but some facilities are required to perform additional activities as a result of this rule.

Table 6–12. State burden and cost increase from new provisions

	Year 1	Year 2	Year 3	3-Year total	Annual average
Item	2008	2009	2010		
Burden (hours)	119,837	122,925	122,074	364,836	121,612
Respondents (number) ^a	44	44	44	44	44
Responses (number)	8,868	9,231	6,812	24,911	8,304
Costs (labor)	\$4,839,003	\$4,963,699	\$4,929,361	\$14,732,063	\$4,910,688
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$4,839,003	\$4,963,699	\$4,929,361	\$14,732,063	\$4,910,688

a. Respondents are not new respondents not previously impacted by the CAFO regulations but respondents required to perform additional activities as a result of this rule.

Table 6–13 presents a yearly cost increase and 3-year ICR period summary for EPA. EPA is responsible for the implementation of the NPDES CAFO permit program where no State agency has been authorized to do so. These numbers reflect only burden and cost associated with the new provisions in the regulatory changes to the NPDES CAFO regulations that address the February 2005 Second Circuit Court of Appeals decision. There will be a total of 1,030 responses during the 3-year ICR period with an average of 343 responses for each year under this ICR. Total agency burden increase is 15,860 hours for the 3-year period with an average annual increase of 5,287 hours. Agency costs will increase \$684,657 for the 3-year ICR period with an average annual cost increase of \$228,219.

Table 6–13. Agency burden and cost increase from new provisions

	Year 1	Year 2	Year 3	3-year total	Annual average
Item	2008	2009	2010		
Burden (hours)	5,233	5,308	5,319	15,860	5,287
Responses (number)	362	376	292	1,030	343
Costs (labor)	\$225,918	\$229,126	\$229,612	\$684,657	\$228,219
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$225,918	\$229,126	\$229,612	\$684,657	\$228,219

Table 6–14 presents a yearly breakdown and 3-year ICR period summary for the burden and cost reduction expected to be experienced by CAFOs as a result of the court's decision in 2005 to require NPDES permits only from dischargers. There will be an estimated 3,727 fewer CAFO respondents applying for permits over the 3-year ICR compared with what would have been required under the provisions of the 2003 CAFO rule for permitting all CAFOs. Nevertheless, all CAFOs not applying for a permit would still need to make sure they qualify for the agricultural stormwater exemption. Total CAFO respondent costs will be \$5,425,200 less than it would have been under the 2003 CAFO rule, with an average annual total cost of reduction to CAFOs of \$1,808,400.

Table 6–14. CAFO burden and cost reductions summary

	Year 1	Year 2	Year 3	3-Year total	Annual average
Item	2008	2009	2010		
Burden (hours)	96,156	99,662	103,670	299,488	99,829
Respondents (number) ^a	0	0	0	0	0
Responses (number)	13,086	13,562	14,110	40,758	13,586
Costs (labor)	\$1,741,905	\$1,806,078	\$1,877,217	\$5,425,200	\$1,808,400
Costs (capital)	\$0	\$0	\$0	\$0	\$0
Costs (O&M)	\$0	\$0	\$0	\$0	\$0
Total Costs	\$1,741,905	\$1,806,078	\$1,877,217	\$5,425,200	\$1,808,400

a. There will be a total of 3,727 fewer CAFO respondents applying for permits over the 3-year ICR compared with what would have been required under the 2003 CAFO rule. Nevertheless, all CAFOs not applying for a permit would still need to qualify for agricultural stormwater exemptions, so the ICR does not present a net reduction in CAFO respondents due to the new provisions.

Table 6–15 presents a yearly breakdown and 3-year ICR period summary for the 44 States that have been authorized to implement the NPDES CAFO permit program. These numbers reflect only burden and cost reduction expected to result from the court’s decision in 2005 to require NPDES permits only from dischargers. There will be a total of 26,839 fewer responses during the 3-year ICR period with an average of 8,946 responses for each year under this ICR. Total State burden reduction is 279,126 hours with an average annual average reduction of 93,042 hours. State total costs will be reduced by \$12,736,404 for the 3-year ICR period with an average annual cost reduction of \$4,245,468.

Table 6–15. State burden and cost reduction summary

	Year 1	Year 2	Year 3	3-Year total	Annual average
Item	2008	2009	2010		
Burden (hours)	89,483	93,221	96,422	279,126	93,042
Respondents (number)	0	0	0	0	0
Responses (number)	8,617	8,939	9,283	26,839	8,946
Costs (labor)	\$3,613,325	\$3,764,269	\$3,893,516	\$11,271,110	\$3,757,037
Costs (O&M)	\$469,698	\$490,526	\$505,071	\$1,465,295	\$488,432
Total Costs	\$4,083,022	\$4,254,795	\$4,398,587	\$12,736,404	\$4,245,468

In summary, Table 6-15 reflects a net reduction in both burden and O&M costs for authorized States driven by a decrease in the number of permits as a result of the revised rule. Exhibit G in the Appendix provides additional information documenting the reduction in both burden and costs for authorized States as a result of the Court’s decision to require NPDES permits only from dischargers.

Table 6–16 presents a yearly breakdown and 3-year ICR period summary for the burden and cost reductions to EPA. EPA is responsible for the implementation of the NPDES CAFO permit program where no other agency has been authorized to do so. These numbers reflect only burden and cost reduction expected to result from the court’s decision in 2005 to require NPDES permits only from CAFOs that discharge or propose to discharge. There will be a total of 950 fewer responses over the 3-year ICR compared with what would have been required under the 2003 CAFO rule period as a result of the Second Circuit decision, with an average of 317 fewer responses for each year under this ICR. Total agency burden reduction is 10,145 hours with an average annual reduction of 3,382 hours. Agency total costs will be \$545,797 less for the 3-year ICR period with an average annual cost reduction of \$181,932.

Table 6–16. Agency burden and cost reduction summary

	Year 1	Year 2	Year 3	3-year total	Annual average
Item	2008	2009	2010		
Burden (hours)	3,272	3,383	3,489	10,145	3,382
Responses (number)	305	316	328	950	317
Costs (labor)	\$141,268	\$146,056	\$150,633	\$437,958	\$145,986
Costs (O&M)	\$34,635	\$36,053	\$37,152	\$107,840	\$35,947
Total Costs	\$175,903	\$182,108	\$187,786	\$545,797	\$181,932

In summary, Table 6-16 reflects a net reduction in both burden and O&M cost to EPA due to the decrease in the number of permits. Please refer to Exhibit G in the Appendix for additional information documenting the reduction in both burden and costs for EPA as a result of the Court’s decision to require NPDES permits only from CAFOs that discharge or propose to discharge.

6(f) Reasons for Change in Burden

This ICR presents the burden impacts of EPA's response to Second Circuit Court decision. The analysis of net burden impacts from the *Waterkeeper*-related revisions presented in this ICR controls for an adjusted calculation of baseline impacts compared to baseline impacts originally presented in the 2006 ICR renewal (EPA ICR No. 1989.04):

- Impacts presented in this current ICR are based on the three-year period spanning 2008-2010, whereas the 2006 ICR renewal modeled impacts for the three years spanning 2006-2008.
- This current ICR reflects improved projections of industry size for the modeling period used in this ICR compared to the industry projections available at the time of the 2006 ICR renewal. (See section 4 for details on industry projections used in this ICR.)

The improved industry size estimates used for this ICR project fewer CAFOs for the modeling period 2008-2010 than the industry size extrapolations presented with the 2006 ICR renewal. This reduction is the result of improved, more detailed projections that take into account the cyclical nature of animal agriculture.

In the burden adjustment calculations shown in the Agency's official information collection request to the Office of Management and Budget (transmitted electronically), the figures presented as "Change due to adjustment in Agency estimate" show a reduction in impacts as an artifact of these improved, but smaller, estimates of future industry size. This adjustment—exogenous to any impacts relating to regulatory revisions—allows for more meaningful “before” and “after” comparisons and allows the Agency to isolate the impacts due exclusively to the *Waterkeeper*-related changes as shown in Table 6–19 later in this section.

6(g) Burden Statement

Table 6–17 summarizes the total increased burden and cost of changes to CAFOs and States associated with the new requirements in the rule to address the *Waterkeeper* decision.

The annual public reporting and recordkeeping burden increase associated with the new provisions from the regulatory changes is estimated to average 167,357 hours (121,612 hours for State respondents and 45,745 hours for CAFO respondents). The annual average estimate of 17,769 respondents includes 44 States and 17,725 CAFO respondents. The annual average number of responses is 33,694 (8,304 State responses and 25,390 CAFO responses).

Table 6–17. Hour and burden increase for all respondents from new provisions

Item	3-year total	Annual average
Total respondent burden (hours)	502,072	167,357
Total respondents (number) ^a	22,173	17,769
Total responses (number)	101,082	33,694
Total respondent labor costs	\$19,529,041	\$6,509,680
Total respondent capital and O&M costs	\$0	\$0
Total respondent cost for all activities	\$19,529,041	\$6,509,680

a. Respondents are not new respondents not previously impacted by the CAFO regulations but rather respondents required to perform additional activities as a result of this rule. Respondent totals do not reflect nonpermitted facilities undertaking nutrient management planning since that burden is transferred from the cost analysis for permitted facilities under the 2003 rule.

Table 6–18 summarizes the total net change in labor burden and cost from the rule to address the *Waterkeeper* decision. These calculations reflect both the burden increase due to the added NMP provisions as well as the burden reduction resulting from the court’s decision to require NPDES permits only from dischargers. This information is broken down by category of respondent in Tables 6–7 and 6–8.

Table 6–18. Net hour and burden change for all respondents

Item	3-year total	Annual average
Total respondent burden (hours)	-76,542	-25,514
Total respondents (number) ^a	0	0
Total responses (number)	33,486	11,162
Total respondent labor costs	\$2,832,731	\$944,244
Total respondent capital and O&M costs ^b	(\$1,465,295)	(\$488,432)
Total respondent cost for all activities	\$1,367,437	\$455,812

a. There will be a total of 3,727 fewer CAFO respondents applying for permits over the 3-year ICR compared with what would have been required under the 2003 CAFO rule. Nevertheless, all CAFOs not applying for a permit would still need to qualify for agricultural stormwater exemptions.

b. Reductions in capital and O&M costs are the result of O&M cost reductions to States as shown on Table 6-15.

Table 6–19 summarizes the total burden and cost for all respondents under the revised CAFO rule for the years 2008-2010 assessed in this ICR. The numbers in this table were calculated by updating the baseline 2003 Rule ICR burden impacts to reflect industry size in the years 2008 through the end of 2010 and then accounting for the impacts of the revisions resulting from the *Waterkeeper* decision.

Table 6–19. Paperwork Reduction Act (PRA) Analysis

					Net Change in Paperwork Burden (2003 Rule Compared to Final Rule)
			Total Baseline PRA Burden: Based on 2003 CAFO Rule Requirements ^a	Total Amended PRA Burden: Based on Final Rule Requirements	

CAFOs needing permits (2008) ^b			20,685	15,281		
CAFOs seeking agricultural stormwater exemption only (2008)			n/a	5,404		
Total CAFOs (2008)			20,685	20,685		
Annualized costs ^c (in \$millions)	CAFOS	Base NPDES Permit	\$54.0	\$40.0	(\$14.02)	
		New NMP Provisions	n/a	\$1.2	\$1.22	
		Agricultural Stormwater Exemption	n/a	\$12.2	\$12.21	
		Certification	n/a	\$0.4	\$0.38	
		Total CAFO Burden	\$54.0	\$53.8	(\$0.21)	
		Permitting Authorities	Base NPDES Permit	\$16.5	\$12.2	(\$4.25)
	New NMP Provisions		n/a	\$4.9	\$4.87	
	Certification		n/a	\$0.04	\$0.04	
	Total Permit Authority Burden		\$16.5	\$17.1	\$0.67	
	All Respondents		\$70.5	\$71.0	\$0.46	
	<p>a. 2003 baseline impacts adjusted to reflect current labor rates and growth in facilities.</p> <p>b. Facility totals are annualized over 5 years in burden calculations presented below to reflect CWA requirements for NPDES permit renewal every 5 years.</p> <p>c. Annualized costs represent labor, capital and O&M.</p>					

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.

In summary, using these updated estimates of the CAFO universe, EPA's analysis for the Paperwork Reduction Act (PRA) projects (as shown in Table 6–19) that CAFO operators and permitting authorities will together experience an increase in total annual administrative burden of approximately \$0.46 million as a result of the EPA regulations to address the court decision. More specifically, CAFO operators will experience a \$0.21 million reduction in annual administrative burden, and permitting authorities will experience a \$0.67 million increase in annual administrative burden. The reduction in burden for CAFOs is driven principally by the decrease in the number of facilities likely to need permits. For permitting authorities, the decrease in burden due to the smaller number of facilities seeking permits is offset by a concomitant increase in administrative burden arising from the new costs to address the NMP-related review requirements arising from the court's decision.

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APPENDIX

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