

included many options that were not finally adopted in deference to these principles.

Because of the estimated impacts on small entities EPA is not certifying that this rule will not impose a significant impact on a substantial number of small entities. EPA has complied with all RFA provisions and conducted outreach to small businesses, convened a SBAR panel, prepared an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA), and also prepared an economic analysis. The Agency's actions include the following efforts to minimize impacts on small businesses:

- Retained structure of existing regulations, which allows EPA and states to focus on the largest producers;
- Retained applicability of effluent guidelines for Large CAFOs only;
- Retained existing designation criteria and process;
- Retained existing definition of an AFO;
- Retained conditions for being defined as a Medium CAFO;
- Eliminated the "mixed" animal calculation for operations with more than a single animal type for determining which AFOs are CAFOs;
- Raised the duck threshold for dry manure handling duck operations; and
- Adopted a dry-litter chicken threshold higher than proposed.

EPA went to some length to explore and analyze a variety of ELG regulatory alternatives to minimize impacts on small businesses. The record for today's rule includes extensive discussions of the alternatives, EPA's analysis of those alternatives, and the rationale for the Agency's decisions. In large part, the Agency incorporated most of the alternative considerations to reduce the burden to small businesses. By way of example, today's regulations will affect fewer small businesses at significantly reduced costs, as compared to the estimates of the number of small businesses and expected costs to those businesses based on the requirements set forth in the 2001 proposal. For more information on EPA's option selection rationale, see section IV of this preamble.

3. Compliance Guide

As required by section 212 of SBREFA, EPA is also preparing a small entity compliance guide to help small businesses comply with this rule. To request a copy, contact one of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble. EPA expects that the guide will be available in March 2003.

4. Use of Alternative Definition

The RFA defines small entities as including small businesses, small governmental jurisdictions, and small organizations. The statute provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

As stated above, EPA proposed defining "small entity" for purposes of its regulatory flexibility assessments under the RFA as an operation that generates less than \$1.5 million in annual revenue. The Agency also consulted with SBA Chief Counsel for Advocacy. See 66 FR 2959, (January 12, 2001).

EPA received two comments from the same commenter requesting that EPA not use the alternative definition for egg-laying operations but instead consider regional-specific conditions for determining the number of small businesses. The commenter expressed concern that SBA's revenue-based definition might not be applicable to operations in Hawaii since producers in that State generally face higher cost of production and also higher producer prices relative to revenue and cost conditions at farms in the contiguous 48 States. There are a number of reasons why EPA did not use a regional-specific definition of small business for egg operations. First, consistent with the RFA, EPA uses small business definitions as defined by the SBA except in cases where EPA consults with the SBA Chief Counsel for Advocacy. Since size standards set by the SBA do not vary by region, EPA follows SBA's lead. Second, the regulations set requirements by the number of animal units at a farm, not the revenues associated with those animal units. An 82,000 bird egg-laying operation in the Midwest will be subject to the same effluent limitations guidelines as a 82,000 bird egg-laying operation in Hawaii and the territories. Third, the economic analysis, uses a representative farm approach. Only the broadest regional information could be obtained through USDA and other sources. Although some small subregions or localities might face unique issues, without performing a Section 308 survey of all regulated entities EPA must rely on the

representative farm approach. (*See also* response to comment DCN CAFO201246–C–6 regarding EPA's use of a representative farm approach, which is consistent with longstanding practices at USDA and the land grant universities.) Note however, that although EPA uses a single definition of small business across all regions, EPA's representative farm analysis of small business impacts does account for some regional variation in costs and revenues. Fourth, very few impacts are seen in the egg-laying sector, regardless of size. Even if EPA had classified the majority of egg-laying operations with less than 1,000 AU as small businesses, this would not have changed the outcome of the Agency's small business analysis in any material way. Finally, even if EPA were to classify all operations as small businesses in areas outside the contiguous 48 States (including Hawaii and Alaska), this would only raise the total number of small business by less than 10 operations. See response to comment DCN CAFO NODA 600053–5 regarding EPA's consideration of regional-specific definition of small business for the regulated sectors.

Today, EPA is establishing this alternative definition of "small entity" for the egg-laying sector for purposes of the regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, established requirements for federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, Tribal and local governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative