

PANEL REPORT

Of the

Small Business Advocacy Review Panel on

EPA's Planned Proposed

Meat and Poultry Products Effluent Limitations Guidelines Rulemaking

September 19, 2023

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1. INTRODUCTION

This report is presented by the Small Business Advocacy Review Panel (SBAR Panel or Panel) that the U.S. Environmental Protection Agency (EPA) convened to review the planned proposed rulemaking on the Meat and Poultry Products Effluent Limitations Guidelines. Section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires EPA to convene a Panel prior to publication of the initial regulatory flexibility analysis (IRFA) that EPA may be required to prepare under the RFA. In addition to EPA's Small Business Advocacy Chairperson, the Panel members are the Director of the Engineering and Analysis Division of the EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

This report includes the following:

- Background information on the proposed rule being developed;
- Information on the types of small entities that may be subject to the proposed rule;
- A description of efforts made to obtain the advice and recommendations of representatives of those small entities; and
- A summary of the comments that have been received to date from those representatives.

Section 609(b) of the RFA directs the Panel to consult with and report on the comments of small entity representatives (SERs) and make findings on issues related to elements of an IRFA under section 603 of the RFA. Those elements of an IRFA are:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. This analysis shall discuss any significant alternatives such as:
 - the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

- the use of performance rather than design standards; and
- an exemption from coverage of the rule, or any part thereof, for such small entities.

Once completed, the Panel Report is provided to the agency issuing the proposed rule and is included in the rulemaking record. The agency is to consider the Panel's findings when completing the draft of the proposed rule. In light of the Panel Report, and where appropriate, the agency is also to consider whether changes are needed to the IRFA for the proposed rule or the decision on whether an IRFA is required.

The Panel's findings and discussion will be based on the information available at the time the final Panel Report is drafted. EPA will continue to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process.

Any options identified by the Panel for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Clean Water Act and its amendments.

2. BACKGROUND AND DESCRIPTION OF THE RULEMAKING

2.1 Regulatory History of the Meat and Poultry Products Effluent Limitations Guidelines Rulemaking

The Clean Water Act (CWA) directs EPA to promulgate technology-based Effluent Limitations Guidelines (ELGs) that reflect pollutant reductions achievable in categories of industrial point sources through implementation of treatment technologies (33 U.S.C. 1311(b) and 1314(b)). EPA develops ELGs based on the Best Available Technology Economically Achievable (BAT) for toxic and nonconventional pollutants. BAT represents the best available economically achievable performance of plants in an industrial subcategory or category.

The Meat and Poultry Products (MPP) ELGs were promulgated in 1974. EPA's most recent update to the effluent guidelines for this point source category was promulgated in 2004 (See 69 Fed. Reg. 54541; Sept. 8, 2004).

In 2019, as part of ELG Preliminary Plan 14, EPA published results of its cross-cutting review of nutrients in industrial wastewater. This showed MPP direct discharge effluent contained the highest phosphorus loads and the fifth highest nitrogen loads of all the industrial point source categories. In 2020, EPA announced a detailed study of the MPP industry. The results of the detailed study found that the MPP industry discharges high amounts of nutrients, wastewater from indirect dischargers can interfere or passthrough publicly owned treatment works (POTWs), and that there are potentially available and economically achievable technologies that can reduce pollutant discharges from the MPP industry. In 2021, in the ELG Preliminary Plan 15, EPA announced a rulemaking to revise the existing discharge standards for the MPP industry.

2.2 Description and Scope of Existing Rule

The MPP ELGs apply to a subset of facilities "engaged in the slaughtering, dressing, and packing of meat and poultry products for human consumption and/or animal food and feeds. Meat and poultry products

for human consumption include meat and poultry from cattle, hogs, sheep, chickens, turkeys, ducks, and other fowl as well as sausages, luncheon meats and cured, smoked or canned or other prepared meat and poultry products from purchased carcasses and other materials. Meat and poultry products for animal food and feeds include animal oils, meat meal and facilities that render grease and tallow from animal fat, bones and meat scraps” (See 40 CFR 432.1). In short, the MPP industry includes facilities that engage in meat and/or poultry slaughter, further processing, and/or rendering. The MPP industry includes approximately 5,000 facilities across the country.

The current regulations cover wastewater directly discharged by meat and poultry slaughterhouses and further processors as well as independent renderers that meet certain production thresholds. The current regulations do not cover indirect dischargers. The majority of MPP facilities are indirect dischargers. Thus, the current MPP ELG regulations only apply to about 140 MPP facilities.

The MPP industry discharges high amounts of nutrients. Excess nutrients are an issue as they contribute to harmful algal blooms and areas of low oxygen, also known as “dead zones.” Nitrates contaminate waters used as sources for drinking water and recreation while negatively impacting farming and ranching uses, aquatic life, and ecosystem health. In the US, 43% of the nation’s rivers and streams and 46% of the nation’s lakes have excess levels of nitrogen. Additionally, 58% of the nation’s rivers and streams and 45% of the nation’s lakes have excess levels of phosphorus. There are available and economically achievable technologies that can remove nitrogen and phosphorus, in addition to other pollutants, from MPP waste streams.

Currently, the ELG includes nitrogen limits for some of the direct dischargers but does not include phosphorus limits for any of the facilities. The current MPP ELGs do not include pretreatment standards, so indirect dischargers are not generally required to remove nitrogen or phosphorus before sending their wastewater to a POTW. The majority of POTWs are not required to remove nitrogen or phosphorus, meaning nutrients from indirect dischargers are largely untreated and pass into the environment.

Although indirect discharging MPP facilities are not currently regulated by ELGs, indirect dischargers must adhere to national pretreatment standards. Indirect dischargers are prohibited from discharging any pollutants to a POTW that can cause a POTW to violate its NPDES permit, for example, by causing pass through, interference, or other issues listed in 40 CFR 403.5. Federally, POTWs are generally required to treat for biological oxygen demand (BOD) and total suspended solids (TSS) (40 CFR 133.1). Some POTWs may have limits for additional pollutants in their NPDES permits, but the majority do not have limits for nitrogen or phosphorus. To ensure a POTW meets its limits, a POTW may require its users to treat wastewater before sending it to the POTW, through local limits.

2.3 Overview of Revisions under Consideration

Through the detailed study of the MPP industry, which included discussions with trade associations, facilities, and environmental stakeholders, a broad range of program improvements have been suggested. From these, EPA identified those which could only be addressed through regulation change, and then further limited consideration to those which would be achievable and available consistent with EPA’s statutory authority under the effluent guidelines program.

Considerations for direct discharging MPP facilities include lower discharge limits on total nitrogen (TN), new limits on phosphorus, chlorides, and E. Coli, and changes to the current rule to cover more facilities.

Technologies under consideration include nitrification with full denitrification (complete conversion of nitrogen compounds to gaseous forms of nitrogen), phosphorus removal, and chlorides removal.

Considerations for pretreatment standards for indirect discharging facilities include requirements for screening, oil and grease removal, and/or flow equalization. Additional considerations for pretreatment standards include removal of nitrogen, phosphorus, and chlorides, and possible allowances for conditional limits based on POTW removals. Technologies under consideration include pretreatment for some facilities as well as nitrification, denitrification, phosphorus removal, and chlorides removal.

Additional changes to the ELG for direct and indirect dischargers may be considered. The following is a discussion of regulatory revisions currently being considered and evaluated by EPA and is not final at this time.

- **Nutrients:** The MPP industry discharges high amounts of nitrogen and phosphorus to US surface waters ([ELG Preliminary Plan 15](#)). The MPP ELG currently has total nitrogen (TN) limits that apply to approximately 140 large facilities. The current regulations do not include effluent limits for phosphorus for any facility. Current available technologies can remove nitrogen and phosphorus to lower levels than the current rule requires. EPA is continuing to analyze available data and has not yet determined proposed nutrient limits for the revised ELG.
- **Conventional and other pollutants:** The MPP industry discharges conventional pollutants, which include biochemical oxygen demand (BOD), total suspended solids (TSS), fecal coliform, pH, and oil and grease. MPP facilities also discharge E. coli, ammonia, metals, and chlorides. Revisions could include pollutant limits for a broader set of facilities.
 - The current ELG has limits for fecal coliform, but not E. coli. E. coli. is considered a better indicator of pathogens, therefore, ELG revisions may include adding limits for E. coli. for direct dischargers, and facilities would need to change their testing protocols to account for E. coli limits.
 - Chlorides limits are under consideration for specific processing streams that are high in salts and would not apply to the entire industry.
- **Pretreatment Standards:** The current MPP ELG does not include any pretreatment standards. Discharge data indicates there are pollutant passthrough and interference problems caused by MPP facilities for some POTWs. Additionally, MPP facilities discharge high amounts of nutrients, which many POTWs are not required to remove. Considerations for indirect limits include solids and oil and grease removal, and flow equalization, to protect POTWs from slug discharges. Additional considerations include requiring removal of nitrogen, phosphorus, chlorides, and other pollutants. EPA recognizes that some POTWs have advanced treatment that removes nutrients and other pollutants. EPA is considering allowances for conditional limits based on POTW removals.
- **Sub-category revision/expansion:** The current ELG has 12 subcategories and excludes facilities under certain production thresholds. Due to decreases in treatment costs and increased production efficiencies, the subcategories may need to be revised. Taking into account the economics of facility size, it is possible that additional subcategories based on size thresholds may be necessary to allow for different pollutant limits depending on facility size. Other

considerations include merging, removing, or adding subcategories to address industry changes and to simplify regulation.

2.4 Related Federal Rules

The U.S. Department of Agriculture (USDA) has regulations on sanitation and other processes at MPP facilities. USDA Food Safety and Inspection Service has regulations that affect the amount of water used and what types of water may be reused at facilities.

The Biden-Harris Administration Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain dedicated \$1 billion from the American Rescue Plan for the expansion of independent processing capacity. USDA has various grants that facilities in the MPP industry can apply for to increase their production capacity.

From the EPA, 40 CFR Part 425 Leather Tanning and Finishing ELG regulates industrial discharges from facilities that convert animal hides or skins into leather. Production of hides is covered under the MPP ELG, whereas processing the hides into leather is covered under the Leather Tanning and Finishing ELG.

40 CFR 412 Concentrated Animal Feeding Operations (CAFOs) ELGs regulates wastewater discharges from CAFOs. CAFOs may be near or at the same facility as an MPP industry. The wastewater from the CAFO and MPP facility have separate ELGs.

3. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSED REGULATION

The Regulatory Flexibility Act (RFA) defines small entities as including “small businesses,” “small governments,” and “small organizations” (5 USC 601). The regulatory revisions being considered by EPA for this rulemaking could affect a variety of small businesses but would not be expected to directly affect any small governments or small organizations. The RFA references the definition of “small business” found in the Small Business Act, which authorizes the Small Business Administration to further define “small business” by regulation. The SBA definitions of small business by size standards using the North American Industry Classification System (NAICS) can be found at 13 CFR 121.201 (<https://www.ecfr.gov/current/title-13/chapter-I/part-121>).

Table 1 is a detailed listing of SBA definitions of small business for affected industries or sectors, by NAICS code, current as of August 2023. The estimated number of small firms within each NAICS code is shown.

Table 1: Industry Sectors, Definitions & Number of Small Entities Potentially Affected by EPA’s Planned Action

NAICS	Industry Description	SBA Size Standard for Small Business (# of Full Time Employees)	Number of Small Firms with in-scope facilities
311611	Animal (except Poultry) Slaughtering	1,150	260
311612	Meat Processed from Carcasses	1,000	322

NAICS	Industry Description	SBA Size Standard for Small Business (# of Full Time Employees)	Number of Small Firms with in-scope facilities
311613	Rendering and Meat Byproduct Processing	750	19
311615	Poultry Processing	1,250	121
	Total		722

4. LIST OF SMALL ENTITY REPRESENTATIVES

EPA consulted with SBA’s Office of Advocacy to develop the list of small entity representatives (SERs) in Table 2. EPA issued a press release inviting self-nominations by affected small entities to serve as potential SERs. The press release directed interested small entities to a web page where they could indicate their interest in serving as a SER. EPA launched the website January 19, 2023, and accepted self-nominations until February 1, 2023. In February 2023, EPA called industry trade groups (North American Meat Institute and US Poultry and Egg Association) to notify them of the SER self-nomination process and to request participation from their members. SBA also reached out to its contacts. Several potential SERs self-nominated as a result of these efforts. EPA sent Advocacy a Formal Notification with the suggested list of potential SERs on February 14, 2023, and Advocacy responded on March 6, 2023.

Table 2: List of Small Entity Representatives to the Small Business Advocacy Review Panel on EPA’s MPP ELG Rulemaking

Entity	Contact Name
American Association of Meat Processors (PA)	Christopher (Chris) Young, Executive Director
Blue Grass Quality Meats (KY)	Dan Rice, Owner
Bob’s Processing	Scott Filbrandt, Owner
Boone’s Butcher Shop (KY)	Allison Boone-Porteus, Vice President (also represents KY Assoc. of Meat Processors)
F.B. Purnell Sausage Co., Inc (KY)	Todd Purnell, President
Missouri Association of Meat Processors (MO)	Niki Mahan-Cloud, Executive Secretary
NC Choices Program – North Carolina University (NC)	Lee Menius, Technical Specialist
Pro8eins Newman Processing Facility, LLC (CA)	John Zwart, Economic Development
Puget Sound Processing (WA)	Jon Transue, Director of Operations (also of Heritage Meats)
Southern Beef, Inc. (FL)	Clay Lee, Owner and Chief Executive Officer
U.S. Poultry and Egg Association (GA)	Paul Bredwell, Executive Vice President – Regulatory Programs
Woodruff and Howe Environmental Engineering (GA) (<i>SER helper to US Poultry</i>)	Steven Woodruff, President and CEO

5. SUMMARY OF PRE-PANEL SMALL ENTITY OUTREACH

In September 2022, EPA presented information on the ongoing rulemaking to the US Poultry & Egg Association trade association environmental committee. At this event, EPA answered questions and requested feedback about the rulemaking.

In January 2023, EPA presented information on the ongoing rulemaking to the Joint Poultry Environmental Committee during the International Production and Processing Expo, in Atlanta, Georgia.

EPA conducted a meeting/teleconference with potential SERs on May 2, 2023. To help them prepare for the meeting/teleconference on May 2, 2023, EPA sent materials to each of the potential SERs discussed in Section 4 via email. A list of the materials shared with the potential SERs during the pre-Panel outreach meeting is contained in Appendix A. For the May 2, 2023, pre-Panel outreach meeting with the potential SERs, EPA also invited representatives from the Office of Advocacy of the Small Business Administration and the Office of Information and Regulatory Affairs within the Office of Management and Budget. A total of 8 potential SERs participated in the meeting.¹ EPA presented an overview of the SBAR process, an explanation of the planned rulemaking, and technical background.

This outreach meeting was held to solicit input from the potential SERs on their suggestions for the upcoming rulemaking. EPA asked the potential SERs to provide written comments by May 16, 2023. Comments raised during the May 2, 2023, outreach meeting and written comments submitted by the potential SERs are summarized in section 6 of this document.

6. SUMMARY OF COMMENTS FROM POTENTIAL SMALL ENTITY REPRESENTATIVES

This section summarizes SER comments from the Pre-Panel Outreach meeting, as well as the written comments submitted after the meeting. The SERs' written comments are included in their entirety in Appendix B.

6.1 Number and Types of Entities Affected

The SERs spoke about the types of facilities they work at or own, the facilities they represent, and the facilities they are aware of due to proximity or contractual work. Many SERs commented about the wide range of types of facilities, size of facilities, and processes that take place at the facilities. Mr. Woodruff mentioned some small facilities are indirect dischargers and some dispose to land, and some are direct dischargers. Mr. Bredwell pointed out that wastewater from "further processing" facilities is varied due to a wide variety of processes used across the sector. Ms. Mahan-Cloud spoke about facilities with between 2 and 100 employees. Ms. Porteus noted she is aware of some small facilities that did not receive the MPP questionnaire and wants to ensure EPA has accurate data that reflects the industry.

Several SERs commented that MPP facilities face various challenges. Ms. Porteus commented that some facilities do not have access to additional land for additional wastewater treatment units that may be

¹ SERs in Attendance: Niki Mahan-Cloud (MAMP); Lee Menius (NC Choices); Steven Woodruff (Woodruff and Howe Environmental Engineering); Craig Lee (Florida Beef); Paul Bredwell (US Poultry); Dan Rice (Blue Grass Quality Meats); Allison Boone-Porteus (Boone's Butcher Shop); Phil Hendershot (Representing F.B. Purnell Sausage)

needed under the proposed rule. Ms. Porteus also noted that facilities with lower production are not well represented by the example costs presented in the pre-panel meeting (\$1 million+). Mr. Woodruff stated that some states do not allow for deep well injection, it is difficult for small facilities to find renderers to receive their products, and hauling can also be complicated. Mr. Lee mentioned small facilities often need to temporarily hire engineers to help with new process designs as they do not generally have staff knowledgeable of the production and wastewater processes. Ms. Mahan-Cloud recommended that EPA reevaluate costs as the pre-panel costs would likely cause many small businesses to close.

6.2 Potential Reporting, Recordkeeping, and Compliance Requirements

Many of the SERs own or represent small facilities that are not regulated by the current MPP ELG. Some of the SERs discharge to a POTW, but rarely if at all, interact with the POTW. Many of these SERs expressed they were unfamiliar with any wastewater regulations. These facilities will need guidance and instruction to understand ELGs, permits, and how to comply with pollution control requirements proposed for regulation. Ms. Porteus recommended EPA provide education and vocational training for small processors. Ms. Mahan-Cloud, Mr. Bredwell, and Mr. Woodruff also recommend EPA to provide technical support to small facilities.

Mr. Woodruff mentioned it is difficult, especially for small facilities, to hire high level operators that are needed to operate complex treatment technologies. Mr. Bredwell also mentioned there seems to be a shortage of wastewater treatment operators.

Regarding reporting and recordkeeping, Ms. Porteus commented that many small processors don't collect information included in the EPA's MPP questionnaire and would not be able to report this type of detailed information reliably.

6.3 Related Federal Rules

The SERs spoke about federal rules and government goals. Mr. Woodruff noted water softeners are common to enable facilities to meet food safety regulations. Mr. Bredwell mentioned the "Goal of the Administration's Action Plan for Expanding Small Meat & Poultry Processors," in which the administration is encouraging small MPP facilities to expand. Ms. Porteus also mentioned this goal in her written comments.

Mr. Bredwell mentioned additional federal regulatory initiatives will cause rising prices for wastewater treatment.

6.4 Regulatory Flexibility Alternatives

The SERs recommended a variety of regulatory flexibility alternatives. Ms. Porteus asked if regulations could depend on the number of employees at a facility in order to reduce the burden on small facilities. Ms. Mahan-Cloud recommends EPA provide flexibility in the implementation timeline of the potential revised ELG. Mr. Rice requested EPA avoid financially burdening small/very small firms in the MPP industry with future regulations.

Some SERs mentioned using mass balances to determine if select pollutants in wastewater from smaller facilities are causing an environmental impact or are causing passthrough or interference at POTWs. Mr.

Woodruff asked if a mass balance on chlorides could be used to determine if a facility's chloride levels would cause a water quality issue. Mr. Bredwell mentioned mass balances for other pollutants should be completed to allow additional flexibilities for small MPP facilities and POTWs.

Mr. Menius recommended EPA consider what cost-share programs may be available to facilities in the industry. Mr. Menius also recommended EPA consider the ability of a facility to adapt to changing regulations.

7. SUMMARY OF PANEL OUTREACH WITH SMALL ENTITY REPRESENTATIVES

The Panel conducted a meeting/teleconference with SERs on July 17, 2023. To help SERs prepare for the meeting/teleconference, the Panel sent materials to each of the SERs via email on July 3, 2023. The materials shared with SERs during the Panel outreach meeting are included in Appendix A. A total of 9 SERs participated in the meeting.²

EPA presented an explanation of the types of regulatory provisions EPA was considering proposing in the rulemaking, updates since the pre-panel meeting, and technical background. In the ensuing discussion, EPA asked for advice and recommendations from the individual SERs about the potential impacts of regulatory provisions included in a forthcoming proposed rule, related Federal rules, and any significant alternatives or approaches that could minimize any significant impacts on small entities while accomplishing the stated objectives of the CWA. EPA asked the SERs to provide written comments by July 31, 2023.

Comments raised during the July 17, 2023 Panel outreach meeting and written comments submitted by the potential SERs are summarized in section 8 of this document. The SERs' written comments are included in their entirety in Appendix B.

8. SUMMARY OF COMMENTS FROM SMALL ENTITY REPRESENTATIVES

8.1 Number and Types of Entities Affected

The SERs spoke about the types of facilities they work at or own, the facilities they represent, and the facilities they are aware of due to proximity or contractual work. Ms. Mahan-Cloud spoke about facilities with between 2 and 100 employees. Mr. Young represented poultry processors, most of which are "family-owned and operated" with less than 200 employees. Mr. Filbrandt, with the Michigan Meat Association, represented facilities that generally have fewer than 100 employees.

The SERs commented about the wide range of types of facilities, size of facilities, and processes that take place at the facilities. Mr. Woodruff mentioned some small facilities are indirect dischargers, some dispose to land, and some are direct dischargers. Mr. Young pointed out that wastewater from small facilities is often varied due to a wide variety of processes used amongst small facilities. Mr. Filbrandt

² SERs in Attendance: Niki Mahan-Cloud (MAMP); Lee Menius (NC Choices); Steven Woodruff (Woodruff and Howe Environmental Engineering); Paul Bredwell (US Poultry); Dan Rice (Blue Grass Quality Meats); Allison Boone-Porteus (Boone's Butcher Shop); Phil Hendershot (Representing F.B. Purnell Sausage); Scott Filbrandt (Bob's Processing); Chris Young (AAMP)

questioned if the wastewater from small facilities is indeed similar to the wastewater of large facilities, and if the nutrients discharged are actually an issue for small facilities compared to farms.

Mr. Young discussed how the COVID-19 pandemic affected the financial status of the facilities he represented. For example, consumers went to small butcher shops to buy food instead of grocery stores and tended to buy meat in larger amounts. Consumers also may have received government assistance which allowed them to increase spending on food. Some small plants processed animals from farmers that normally send their livestock to large facilities, as the large facilities were closed. Mr. Young is concerned that the data from 2021 is not accurate for small facilities in the MPP industry.

8.2 Potential Reporting, Recordkeeping, and Compliance Requirements

The SERs mentioned concerns meeting estimated costs. Ms. Mahan-Cloud and Mr. Young mentioned some facilities may decide to close due to the costs. Other SERs mentioned some facilities have just expanded or are in the process of expanding production using grants provided under the Biden Administration. These facilities may not be able to take out additional loans in order to meet new wastewater regulations. Additional SERs mentioned smaller companies do not have the same financial abilities as larger companies.

Several SERs discussed their concerns regarding physical space availability for wastewater treatment systems. SERs were specifically concerned about the land requirements that would be necessary for a lagoon system. Some facilities are “land-locked” in cities and would be unable to install a lagoon treatment system. Facilities are not required to use the treatment systems costed/modelled by EPA, but some facilities may not have space for any wastewater treatment systems, even those that are more compact.

Ms. Porteus, Ms. Mahan-Cloud, Mr. Bredwell, and Mr. Woodruff mentioned EPA will need to provide technical support, education, and training to small facilities that are likely unfamiliar with regulations and wastewater treatment. Ms. Mahan-Cloud suggested best management practices need to provide “clean, specific instructions and expectations” so processors will know exactly what is needed in order to comply. Ms. Porteus also requested EPA provide details on what exactly small processors would need to do to meet regulations.

Regarding reporting and recordkeeping, Ms. Porteus and Mr. Young commented that many small processors don’t collect information requested by the MPP questionnaire and would not be able to report this type of detailed information reliably. Mr. Young specifically mentioned small processors are not required to track how many pounds are produced at their facilities.

Some SERs mentioned the possibility of using the facilities’ water bill to determine how much water the facility is using, instead of relying on production information. Mr. Filbrandt noted that this would be a disadvantage to further processors that may use water for purposes that don’t result in contaminated water, such as thawing vacuum sealed frozen products in a hot water bath. The bath water does not contact any meat or poultry product material and is clean. This would affect the water usage.

8.3 Related Federal Rules

Ms. Mahan-Cloud mentioned EPA needs to be aware of USDA and local/state health department regulations to ensure the rule doesn’t interfere with existing regulations. Additionally, Ms. Mahan-Cloud

requested EPA ensure USDA and health departments understand any relevant changes to the rule, especially if changes would affect facility or product inspections.

Several SERs mentioned the “Goal of the Administration’s Action Plan for Expanding Small Meat & Poultry Processors,” in which the administration is encouraging small MPP facilities to expand. Ms. Porteus, Mr. Filbrandt, and Mr. Young also mentioned this goal in their written comments.

8.4 Regulatory Flexibility Alternatives

The SERs recommended a variety of regulatory flexibility alternatives. Mr. Young and Mr. Filbrandt recommended the regulatory structure not have any numeric effluents on facilities producing less than 2 million pounds of product per year. Mr. Filbrandt mentioned that increasing the production thresholds above those presented in the examples would exempt many of the small and very small facilities. Mr. Young mentioned AAMP would like small and very small facilities to be exempted.

Several SERs mentioned the wastewater from small facilities may not be an issue for POTWs or surface water quality, and wondered if the facilities need to be regulated. Mr. Filbrandt questioned if the wastewater from small facilities is indeed similar to the wastewater of large facilities, and if the nutrients discharged are actually an issue for small facilities compared to farms.

Ms. Mahan-Cloud recommends EPA provide flexibility in the implementation timeline of the potential revised ELG. Ms. Mahan-Cloud elaborated that purchasing land may be necessary which can take time. Additionally, construction projects may take longer than expected.

9. PANEL FINDINGS AND DISCUSSION

9.1 Number and Types of Entities Affected

The Panel recognizes that small entities could be included in the scope of the proposed MPP ELG. EPA currently estimates 1,732 of the 1,863 firms meet the SBA definitions for small entities for applicable NAICS codes listed in Section 3. These MPP facilities include direct and indirect dischargers across the country. The small entities conduct a variety of processes, such as meat and poultry slaughter, further processing, and rendering. During the Pre-Panel and formal Panel Outreach discussions, the SERs also mentioned and clarified that any new regulatory requirements would affect direct and indirect dischargers, facilities with a wide range of processes, and facilities of very different sizes. Due to mechanical processes, facilities with similar production levels may not have similar numbers of employees. The SERs noted many small facilities may not have any knowledge of wastewater regulations or technologies, and may be located in areas with no land available for treatment technologies. Thus, the regulated universe will include a wide range of facilities, that differ in terms of MPP processes, production, wastewater, number of staff, location, and knowledge, amongst other attributes.

9.2 Potential Reporting, Recordkeeping, and Compliance

The proposed MPP ELG would necessarily consider new reporting and recordkeeping requirements for a number of MPP facilities. Some small entities are already required to monitor and report data to their permitting authority, and any new requirements such as monitoring for additional pollutants would be in addition to existing requirements. For small entities potentially covered by new regulations that don’t

have existing requirements related to wastewater, or don't often interact with their control authority, facilities may be required to monitor and report data to their permitting authority. Many of the SERs expressed that they were unfamiliar with wastewater regulations. These facilities may need guidance to identify and contact their control authority. Many of the smaller facilities will likely need instruction to understand how to comply with any proposed regulations.

The regulatory requirements in the current MPP ELG found at 40 CFR Part 432 are based on production thresholds. Some SERs mentioned small processors may not have detailed production information to enable them to determine if current or new requirements based on production thresholds apply to them. EPA and the SERs mentioned the possibility of including example wastewater flows that correlate various production thresholds to help facilities understand the applicability of the regulations. The SERs discussed using water bills to determine water usage. Some facilities may not have a water bill (e.g. using well water as source water). These facilities could install a water meter at the point(s) of discharge. One SER noted using water bills to determine water usage would put small processors at a further disadvantage by penalizing water usage that does not cause contamination (e.g., water baths for thawing). This was also noted in their written comments (see Appendix B). This possible disadvantage would affect small processors using water meters as well.

Many of the SERs discussed that they would need support in order to comply with any new regulatory requirements contemplated in a proposed rule. Some facilities may not understand how to comply with such requirements or may not have the knowledge and skills to operate wastewater treatment systems that could be necessary to comply with new requirements.

9.3 Related Federal Rules

The Panel is not aware of any Federal rules that duplicate, overlap or conflict with the planned proposed rule. However, there are regulations that MPP facilities must abide by, administration goals, and ongoing rulemakings that may indirectly affect the MPP industry.

The primary federal rules related to the proposed MPP ELG are USDA food and safety regulations. MPP facilities must comply with these regulations in order to sell food for human or animal consumption.

The SERs mentioned the current Administration's "Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain"³. Under the Action Plan, the Administration is encouraging small MPP facilities to expand their capacities through USDA grants. The SERs mentioned some facilities planning to expand could become regulated by new requirements if their expansion caused them to cross a particular production threshold.

The Panel is also aware that there are other ongoing rulemakings related to wastewater treatment that could increase the general demand for wastewater treatment expertise and equipment, potentially delaying compliance activities until such expertise could be procured. One of the SERs mentioned that

³ See the January 3, 2022, White House Fact Sheet at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/>.

promulgation of new rules will increase demand for wastewater treatment expertise and technologies, which may cause a rise in prices.

9.4 Regulatory Flexibility Alternatives

Implementation Timeline: Providing small facilities with an extended implementation timeline could help facilities with issues related to costs, knowledge/skills, and the ability to adapt to change.

Costs. SERs mentioned some small entities would not be able to afford the expected costs presented in examples during the SBAR process. Allowing an extended implementation timeline could allow facilities to acquire the necessary finances, plan for the costs, and draw out the spending to reduce costs each year.

Knowledge/Skills. SERs mentioned unfamiliarity with wastewater regulations. SERs also mentioned many facilities do not have the engineering knowledge to install or operate wastewater treatment systems. Due to a lack of general knowledge on regulations, an employee shortage and increasing demand for wastewater treatment technologies, facilities may not be able to comply with new requirements and deadlines.

Ability to Adapt. Due to the smaller size of their businesses, SERs mentioned the businesses may not be able to adapt to changing regulations as quickly as large businesses.

Exclude Small/Very Small Firms: Several SERs mentioned small entities would not be able to afford the example costs presented during the SBAR Outreach process, and many could go out of business if they had to incur such costs. SERs also mentioned there is a shortage of employees and a shortage of wastewater operators that would have knowledge to operate wastewater systems that may be needed for a facility to comply with new requirements. One SER suggested excluding firms based on the number of employees. One SER mentioned meat associations consider small plants as those with less than 100 employees and very small plants as having less than 25 employees. The Panel notes that some facilities have mechanized their processes with fewer employees and high production. Facilities with similar production levels may have very different numbers of employees. As a result, thresholds based on total full-time employees would not necessarily exclude those small facilities that contribute less pollutants. Several SERs recommended EPA exclude small and very small firms from the proposed rule. Two SERs mentioned excluding facilities with yearly production under 2 million pounds from any new numeric effluent limits.

Conditional Limits: EPA discussed the concept of “conditional” limits for MPP facilities that discharge to POTWs with nitrogen and phosphorus treatment capabilities equivalent to the level of treatment that could be proposed by EPA in a MPP rulemaking. For these indirect discharging MPP facilities, the facilities would not need to treat the wastewater for nitrogen and phosphorus before discharging to the POTW if they could document that the POTW in fact provides such treatment and commits to continue to meet limits equivalent to possible MPP limits. EPA notes the POTW or other pretreatment control authority would also need to approve these “conditional” limits in order for such limits to be credible.

Mass Balances: Several SERs requested EPA consider using mass balances to determine if wastewater from facilities causes an environmental impact. One SER mentioned some facilities with high chlorides streams may be able to combine the stream with other wastewater streams to achieve a concentration

that does not harm the environment. Another SER recommended applying the mass balance to other pollutants.

9.5 Summary of Panel Recommendations

As described in Section 3.2, the RFA, as amended by SBREFA, requires that EPA consider providing regulatory flexibilities to small entities as appropriate, in accordance with the Agency's authority under the Clean Water Act. The purpose of the SBAR panel process is to solicit information as well as suggestions on regulatory flexibility alternatives from the SERs. During the rulemaking process, EPA has and will continue to evaluate potential regulatory alternatives for small entities. Based on the Panel Outreach meetings and SER comments, the Panel recommendations include:

1. **Exclude Small/Very Small Firms:** The Panel recommends EPA consider and take public comment in the notice of proposed rulemaking (NPRM) on production thresholds so as not to cause substantial economic hardship on small entities. As the MPP industry under the current regulations is split into 12 subcategories, the Panel recommends EPA consider adjusting production thresholds for the subcategories to account for differences across the industry.
2. **Wastewater Flows instead of Production Thresholds:** The Panel recommends EPA evaluate thresholds based on wastewater flows as an alternative to production thresholds for determining applicability for small facilities. EPA had explained that potential effluent limits could vary depending on production rate thresholds. Using wastewater flows was suggested by the SERs because some facilities do not monitor their production rates and wastewater flow is typically recorded or estimated by the sewer authority for billing. SERs expressed some concerns that not all process wastewater comes in contact with slaughtered animals or meat products and so does not contribute to the problem that EPA is trying to address. They felt that including this process water in flow calculations to determine regulatory compliance would unfairly penalize facilities with higher non-contaminated wastewater flows. Therefore, the Panel also recommends that EPA consider the fact that not all process water contains pollutants when they are considering the flow rates that might be used for setting thresholds.
3. **Implementation Timeline:** The Panel recommends EPA consider and take comment on a longer, or flexible, timeline for small entities. Allowing an extended implementation timeline could allow facilities to acquire the necessary finances, plan for the costs, and draw out the spending to reduce costs each year. A longer timeline for small entities could help facilities acquire necessary knowledge or personnel to install and operate wastewater treatment systems. Additionally, as small businesses may not be able to adapt to changing regulations as quickly as large businesses, a longer or flexible timeline could be helpful.
4. **Conditional Limits:** The Panel recommends EPA consider and take public comment in the NPRM on "conditional" limits for MPP facilities that discharge to POTWs with nitrogen and phosphorus limits and treatment capabilities equivalent to the treatment that would be needed to comply with any new proposed requirements. For these indirect discharging facilities, with documentation and approval by the POTW/control authority, and public posting of this information, the MPP facilities would not need to treat the wastewater for nitrogen and phosphorus before discharging to the POTW. The Panel recommends EPA consider and take comment in the NPRM on what documentation and approval by the POTW/control authority would be sufficient to establish conditional limits as a compliance mechanism.

5. Guidance/Instruction Documents: The Panel recommends that if EPA finalizes a rule that expands applicability to smaller facilities than those currently regulated, EPA will create and publish compliance guides after a final rule is published to help facilities determine rule applicability and requirements, with a focus on those facilities that may be unfamiliar with ELGs and wastewater regulations more generally even if a small entity compliance guide is not required by the RFA. The Panel recommends EPA take comment on what information small facilities would find beneficial (e.g., terms to know for determining applicability and compliance, information from the POTW or control authority, information on the general permitting process, wastewater operator requirements, and how to measure annual production).

Appendix A: Materials EPA shared with Small Entity Representatives

Appendix A1 (separate document) is a compilation of all outreach materials shared with potential SERs for the Pre-Panel Outreach meeting. Below is a list of those materials.

- Pre-Panel Outreach Meeting Agenda
- SBAR Panel Process Presentation
- Pre-Panel Outreach Rulemaking Presentation
- Pre-panel questions for SERs

Appendix A2 (separate document) is a compilation of all outreach materials shared with SERs for the Panel Outreach meeting. Below is a list of those materials.

- Panel Outreach Meeting Agenda
- Panel Outreach Rule Presentation

Appendix B: Written Comments Submitted by Small Entity Representatives

Appendix B1 (separate document) is a compilation of all written comments submitted by potential SERs following the Pre-Panel Outreach meeting. Below are the SERs that submitted comments.

- Blue Grass Quality Meats
- Boone's Butcher Shop and Kentucky Association of Meat Processors
- Missouri Association of Meat Processors (MAMP)
- U.S. Poultry and Egg Association

Appendix B2 (separate document) is a compilation of all written comments submitted by SERs following the Panel Outreach meeting. Below are the SERs that submitted comments.

- American Association of Meat Processors (AAMP)
- Bob's Processing Inc. and Michigan Meat Association
- Boone's Butcher Shop and Kentucky Association of Meat Processors
- Missouri Association of Meat Processors (MAMP)