



March 25, 2024

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

Re: Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category, Docket No. EPA-HQ-OW-2021-0736

Dear Administrator Regan:

On January 23, 2024, the Environmental Protection Agency (EPA) published a proposed rule entitled Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (MPP ELG).¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule.

Advocacy is concerned elements of the rule may be duplicative of efforts already undertaken by publicly owned treatment works (POTWs) serving small entities. Additionally, the rule may prevent small businesses from taking advantage of the Administration's efforts to increase capacity in the meat and poultry production sector. Advocacy appreciates the EPA offering three different regulatory options. With the concerns of small entities in mind, Advocacy supports the EPA's preferred choice of Option 1.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

¹ 89 Fed. Reg. 4474 (Jan. 23, 2024).

The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴ Additionally, section 609 of the RFA requires the Consumer Financial Protection Bureau, the Occupational Safety and Health Administration, and the Environmental Protection Agency to conduct special outreach efforts through a review panel.⁵ The panel must carefully consider the views of the impacted small entities, assess the impact of the proposed rule on small entities, and consider less burdensome alternatives for small entities.⁶ If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.⁷ The agency must provide a statement of factual basis that adequately supports its certification.⁸

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁹ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.¹⁰

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."¹¹

B. The Proposed Rule

The proposed rule revises the technology-based effluent limitations guidelines for the meat and poultry products point source category to reduce the discharge of pollutants into surface waters.¹² The EPA has proposed three regulatory scenarios to achieve this objective and identified a preferred option. The EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives (SERs) that would be subject to the rule's requirements.¹³

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

³ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁴ 5 U.S.C. § 603.

⁵ *Id.* § 609.

⁶ *Id.*

⁷ *Id.* § 605(b).

⁸ *Id.*

⁹ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

¹⁰ *Id.*

¹¹ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

¹² 89 Fed. Reg. 4474 (Jan. 23, 2024).

¹³ U.S. ENV'T PROT. AGENCY, PANEL REPORT OF THE SMALL BUSINESS ADVOCACY REVIEW PANEL ON EPA'S PLANNED PROPOSED MEAT AND POULTRY PRODUCTS EFFLUENT LIMITATIONS GUIDELINES RULEMAKING (Sept. 19, 2023), <https://www.epa.gov/system/files/documents/2024-01/mpp-sbar-panel-report-508.pdf> [hereinafter PANEL REPORT].

II. Advocacy’s Small Business Concerns

Advocacy held a roundtable to discuss the proposed rule on February 29, 2024, with presentations from the EPA, representatives of impacted small businesses, and the National Association of Clean Water Agencies (NACWA). Advocacy also attended two virtual public hearings held by the EPA on January 24 and March 20, 2024, and an in-person public hearing on January 31, 2024.

A. The EPA’s Preferred Option Under the Proposed Rule Minimizes Impacts to Small Businesses.

The EPA has proposed three different regulatory options in the proposed rule. The EPA’s preferred option is Option 1. Option 1 would establish more stringent effluent limitations for nitrogen and, for the first time, limitations for phosphorus. Option 1 would also establish pretreatment standards for oil and grease, total suspended solids, and biochemical oxygen demand for the first time. Options 2 and 3 would apply effluent limitations to additional direct and indirect dischargers. Options 2 and 3 would also establish pretreatment standards for nitrogen and phosphorus for some of the indirect discharging facilities.

Advocacy has consulted with multiple small businesses who support Option 1. Specifically, the Kentucky Livestock Coalition noted their support for Option 1 while stating that Options 2 and 3 would be “disastrous for meat processors, and therefore the entire poultry and livestock supply chain.”¹⁴

Option 1 presents the least burdensome option for small businesses in the meat and poultry processing sector. If Option 1 is chosen, the EPA estimates that 96 out of 3,233 small businesses in the meat and poultry processing sector will experience an impact of less than 3 percent of revenues.¹⁵ Of those 96 small businesses, 95 will experience impacts of less than one percent of revenue.¹⁶ Option 1 will also reduce pollutant discharges by 100 million pounds per year and “result in environmental and ecological improvements, including reduced adverse impacts to wildlife and human health.”¹⁷

Advocacy supports the EPA’s preferred option and commends the agency for seeking to mitigate impacts to small businesses in the meat and poultry processing sector while also achieving its goals under the Clean Water Act.

B. POTWs and Local Limits Already Accomplish the Goals of the Proposed Rule.

The proposed rule seeks to reduce water pollution from the meat and poultry processing industry. However, the specific pollutants regulated are already addressed through POTWs and local pollution limits. Small businesses in the MPP sector told Advocacy they generally discharge

¹⁴ See Ky. Livestock Coal., Comment Letter on Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (Mar. 4, 2024), <https://www.regulations.gov/comment/EPA-HQ-OW-2021-0736-0684>.

¹⁵ 89 Fed. Reg. 4519 (Jan. 23, 2024).

¹⁶ *Id.*

¹⁷ *Id.* at 4,476.

directly into POTWs. Additionally, the small businesses Advocacy spoke with noted they had not experienced any previous issues with their POTWs regarding excessive pollutant levels.

At the EPA's January 31, 2024, public hearing on the proposed rule, the National Association of Clean Water Agencies (NACWA) stated that the nutrient controls required by Options 2 and 3 of the proposal are "unnecessary" because POTWs and local limits are sufficient to control nutrient levels. NACWA additionally stated that "cost and practical considerations, such as space available at the facility, would make nutrient control untenable for many meat and poultry facilities."¹⁸ Advocacy received similar comments from Boone's Butcher Shop, one of the SERs participating in the SBAR Panel:

Space is another challenge that some small processors, and perhaps some larger processors, will face if these regulations are implemented. My plant sits on a one-acre lot, and we have used every bit of available space. We purchased a lot across the street for overflow employee parking, and our parking lot is still not big enough. We have customers parking on grassy areas that adjoin our property when our parking lot is full, which occurs multiple days during the week. There is a steep hillside on one side and behind our building and a powerplant on the other side. There is no property to purchase that could be used for a lagoon or to install equipment. All square footage inside of our building is also maxed out with production equipment and cold storage. We simply do not have the space for additional equipment, and certainly have no space for a lagoon.¹⁹

Small meat and poultry processors should not be required to take on additional expenses and purchase new equipment to accomplish goals already being achieved by their local POTWs.

Advocacy has similar, though lesser, concerns with Option 1, which would require pretreatment standards and focus on larger direct and indirect dischargers. While Advocacy prefers Option 1 over Options 2 and 3, the goals of Option 1 are already being accomplished by POTWs. NACWA stated at the EPA's January 31, 2024, hearing that their members "reported that they are able to regulate their meat and poultry products facilities without needing federal pretreatment standards."²⁰ Additionally, NACWA noted that one of its members felt the proposal "seems to be trying to fix a problem that doesn't exist."²¹

Boone's Butcher Shop similarly summed up their relationship with their local POTW, noting in response to a question from the EPA as part of the SBAR panel: "Our POTW has never contacted us regarding our wastewater. After the informal conference with the EPA in May, I reached out to our POTW to ask whether they ever had any problems with our wastewater. They

¹⁸ U.S. Env't Prot. Agency, *Public Hearing on Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Category*, YOUTUBE (Jan. 31, 2024), <https://www.youtube.com/watch?v=HRzJxQODxDo> (statement of the Nat'l Ass'n of Clean Water Agencies).

¹⁹ PANEL REPORT, *supra* note 13, at B1-8.

²⁰ U.S. Env't Prot. Agency, *supra* note 18 (statement of the Nat'l Ass'n of Clean Water Agencies).

²¹ *Id.*

had not. We are a very small user of their system.”²² The EPA has sought comment on the possibility of affording POTWs or permit authorities the ability to grant waivers for indirect dischargers in certain circumstances.

Advocacy recommends the EPA reexamine the proposed rule to ensure that the existing efforts of POTWs are being duplicated. Additionally, Advocacy believes regulations should be tailored as narrowly as possible to achieve their goals as opposed to utilizing waivers to exempt entities which should not have been impacted.

C. The Proposed Rule May Prevent Small Businesses from Participating in the Administration’s Efforts to Aid Small Meat Processors.

In January of 2022, the Administration launched an action plan aimed at promoting competition and aiding small businesses in the meat and poultry processing industry.²³ The plan’s goal is “creating a more competitive, fair, resilient meat and poultry sector, with better earnings for producers and more choices and affordable prices for consumers.”²⁴ Included in the plan is \$1 billion in funding for “expansion of independent processing capacity.”²⁵ The ability of small meat and poultry processors to use these funds to grow their businesses is a key element of the Action Plan’s success.

During the SBAR process, multiple SERs expressed concern that the proposed rule would dilute the Action Plan’s impact by leading to increased expenses. Specifically, Boone’s Butcher Shop explained, “We considered building a small fully-cooked products plant, and we were planning to submit an application for the USDA’s meat capacity grant. We chose not to submit an application or move forward with a building at this time, in part, due to the potential financial burden these regulations could have.”²⁶ Additionally, the U.S. Poultry & Egg Association warned, “the estimated costs associated with the ELG for small processors’ wastewater treatment systems could present a major obstacle to achieving the Administration’s goals.”²⁷

Advocacy recommends the EPA carefully consider the impact of each of the proposed regulatory options on the ability of small businesses to participate in the Administration’s efforts to expand capacity for small and independent meat and poultry processors.

III. Conclusion

Advocacy appreciates the EPA considering three regulatory options to address pollutants in the meat and poultry processing sector. Advocacy supports the EPA’s preferred regulatory option of Option 1. Advocacy also encourages the EPA to avoid duplicating the current pollution

²² PANEL REPORT, *supra* note 13, at B2-12.

²³ The White House, *Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain* (Jan. 3, 2022), <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/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ PANEL REPORT, *supra* note 13, at B2-14.

²⁷ *Id.* at B1-15.

prevention efforts of POTWs and analyze the impacts of all the proposed options on the ability of small businesses to take advantage of the Administration's stated goal of expanding small and independent meat and poultry processing capacity.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or by email at nick.goldstein@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

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Copy to: The Honorable Richard L. Revesz, Administrator
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