

Final Report

of the

SBREFA Small Business Advocacy Review Panel

on EPA's Planned Proposed Rule for

Effluent Limitations Guidelines and Pretreatment Standards

for the

Industrial Laundries Point Source Category

August 8, 1997

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INTRODUCTION

This report is presented by the Small Business Advocacy Review (SBAR) Panel convened for the rulemaking entitled “**Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category**” that the Environmental Protection Agency (EPA) is currently developing. The Panel was convened by EPA’s Small Business Advocacy Chairperson under Section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Office of Science and Technology within EPA’s Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration.

The purpose of the Panel is to collect the advice and recommendations of representatives of small entities that will be affected by the rule and to report on those comments and the Panel’s findings as to issues related to the key elements of an initial regulatory flexibility analysis (IRFA) under Section 603 of the RFA. The elements of an IRFA are:

- The number of small entities to which the proposed rule will apply.
- Projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including the classes of small entities which will be subjected to the requirements and the type of professional skills necessary for preparation of the report or record.
- Other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.
- 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.

Once completed, the Panel report is provided to the agency issuing the proposed rule and is included in the rulemaking record. In light of the Panel report, the agency will consider changes to the proposed rule or the IRFA for the proposed rule, where appropriate.

This report by the Panel for the Industrial Laundries proposed rule includes a summary of the advice and recommendations received from each of the small entity representatives identified for purposes of the panel process. Written comments submitted by the representatives are provided in Attachment 1 to the

report. The report also presents the Panel’s findings and a discussion of issues related to the elements of an IRFA identified above.

BACKGROUND

The objective of the Clean Water Act (CWA) is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” EPA is developing pretreatment standards for existing and new industrial laundries (PSES and PSNS) to limit the discharge of pollutants into waters of the United States and Publicly Owned Treatment Works (POTWs).

EPA defines industrial laundries as certain facilities that launder industrial textile items from off site as a business activity (i.e., launder industrial textile items for other business entities for a fee or through a cooperative arrangement). Laundering means washing with water, including water washing following dry cleaning. This rule would not apply to laundering exclusively through dry cleaning. Industrial textile items include, but are not limited to: shop towels, printer towels, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room garments.

For facilities covered under the industrial laundry definition, wastewater from all water washing operations would be covered. This would include wastewater from washing linen items except at facilities that wash only linens, since the proposed rule would exclude such facilities. Linen items are specifically defined in the following list: sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns and robes, tablecloths, napkins, table skirts, kitchen textile items, continuous roll towels, laboratory coats, family laundry, executive wear, mattress pads, incontinence pads, and diapers.

Additionally, EPA does not plan to propose to regulate wastewater at facilities that exclusively launder denim prewash, new items (i.e., items directly from textile manufacturers, not yet used for intended purpose), any other items that come from hospitals, hotels, or restaurants or any combination of linen, denim prewash, or new items. This proposed rule would not apply to the discharges from oil-only treatment of mops. Also, the proposed rule would not apply to on-site laundering at industrial facilities of industrial textile items originating from the same business entity.

EPA found that certain wastestreams are responsible for the vast majority of priority pollutant loadings. EPA would like to identify these “heavy” wastestreams and structure the regulation to focus on them.¹ For the analysis conducted to date, EPA has been able to identify two items, shop and printer towels,

¹Specifically, the production-based exclusion would be limited to facilities with less than a defined amount (in pounds per year) of production of shop/printer towels.

that can be characterized consistently as “heavy” in terms of pollutant loadings. Thus, in some of EPA’s analysis, these two items were used to define exclusions (identified throughout this report as shop/printer towels). These two items, however, are not the only items that generate a large amount of the priority pollutant loadings discharged by the industry, and an expanded list of five items was used in other exclusion scenarios (identified as “heavy” in the table on page 7) .

In the early stages of economic analysis for this proposed regulation, EPA divided the industry into segments by annual revenue to look at various financial impacts and evaluate if small facilities may be disproportionately affected. EPA relied on a set of economic assumptions and on information obtained from the industry survey. EPA found that one revenue group, facilities with less than \$1 million a year in revenues, was the source of more than 50 percent of the projected facility closures under most regulatory options, even though those facilities made up less than 10 percent of the facilities in the closure analysis. EPA determined that approximately 29 percent of these low-revenue facilities might close as a result of the proposed rule. Because of the disproportionate impact on this subset of small facilities (most of which are single-facility firms), EPA investigated a number of options to minimize these impacts and tentatively selected one, exclusion of facilities with less than 1 million pounds of total production annually and less than 255,000 pounds of shop/printer towels (see below). EPA’s evaluation of whether or not the proposed rule would have a significant impact on a substantial number of small entities and the decision to convene a SBAR Panel were based upon that recommended exclusion. This evaluation considered a variety of economic measures at both the firm and facility level.

PROFILE OF THE INDUSTRY

EPA conducted a survey of the industrial laundries industry, using a detailed questionnaire that gathered technical, economic and financial data on potentially affected firms and facilities. This survey was conducted under the authority of Section 308 of the Clean Water Act and provides the data for EPA’s profile of the industry, which is summarized below.

EPA estimates that the industry consists of approximately 1,747 facilities. Facilities in this industry are in all 50 states and most are in urban areas. These facilities are owned by an estimated 903 firms, 92 percent of which own only one facility. Of the 903 firms, 837 (93%) are small businesses under SBA’s definition for this industry. These 837 small firms operate 900 facilities. SBA’s size standards define “small business” for SIC 7218 and 7213 as firms with less than \$10.0 and \$10.5 million in annual revenues, respectively. EPA’s IRFA for the industrial laundries regulation uses the higher of these two revenue thresholds.

In addition to revenues, there are at least three other ways to categorize industrial laundries by size. These are according to:

- The types and volume of items they clean,
- The amount of wastewater they generate, and

- The number of people they employ.

Although the industrial laundries industry includes many single-facility firms, there are also large corporations that operate many facilities nationwide. Employment ranges from one or two employees at a single-facility firm to hundreds of employees at large, multi-facility corporations. Annual laundry production per facility ranges from 107,000 to 47,300,000 pounds. Annual revenues average \$4.3 million per facility, with facilities owned by multi-facility firms averaging about \$5.0 million and single-facility firms averaging about \$3.4 million.

APPLICABLE “SMALL BUSINESS” DEFINITIONS

SBA’s size standards rely on the North American Industry Classifications System (NAICS) to describe the industry. The predominant NAICS codes for industrial laundries are 812391 and 812331, which correspond to the old Standard Industrial Classification (SIC) codes Industrial Launderers 7218 and Linen Supply 7213. SBA’s size standards define “small business” for both SIC 7218 and 7213 as firms with less than \$10.0 and \$10.5 million in annual revenues, respectively. EPA’s IRFA for the industrial laundries regulation relies on the higher of the two definitions.

SUMMARY OF OUTREACH ACTIVITIES

Outreach to the regulated community is an important part of regulatory development. EPA has actively involved stakeholders in the development of this rule in order to ensure the quality of information, identify and understand potential implementation and compliance issues, and explore regulatory alternatives. EPA has performed over 35 site visits to industrial laundry facilities and has participated in numerous meetings, seminars and workshops that included substantial small business representation. EPA also conducted a survey of the industry and received completed detailed questionnaires from 193 facilities, the vast majority of which are operated by small businesses. Since this rulemaking effort began in 1992, EPA has involved the two major trade associations (Textile Rental Service Association of America and the Uniform and Textile Service Association) and representatives of several small businesses in a variety of activities from questionnaire development to identification of regulatory options and compliance issues.

SUMMARY OF SBREFA OUTREACH

As part of its SBREFA outreach, EPA tentatively identified 7 small entity representatives (SERs) “for the purpose of obtaining advice and recommendations . . . about the potential impacts of the proposed rule;” (SBREFA, § 244(b)(2)) and provided the following list to the Chief Counsel for Advocacy of the Small Business Administration in February of 1997:

SERs	Company or Trade Association
Mr. David Dunlap	Uniform and Textile Service Association
Mr. David Trimble	Textile Rental Service Association of America
Mr. John Williamson	Milliken and Company
Mr. Jerry Blucher	Industrial Towel Service, Inc
Mr. Jim Vaudreuil	Huebsch Linen and Uniform
Ms. Marcia Kinter	Screen Printing and Graphic Imaging Association International
Ms. Mary Scalco	International Fabricare Institute

In March of 1997, two additional SERs were identified, the first through a public meeting on the proposed rule and the other by the Chief Counsel:

SERs	Company or Trade Association
Mr. Gene Leonard	Rite-Way Laundry & Dry Cleaners, Inc
Mr. Douglas Greenhaus	National Automobile Dealers Association

The Panel's subsequent outreach to those 9 SERs consisted of the following:

- EPA sent background materials about the industrial laundries industry to the SERs on February 20, 1997.
- EPA held a SER meeting to discuss the background materials and to address any questions they might have on April 15, 1997.
- Deadline for SER comments on the initial materials was May 12, 1997.
- EPA provided additional information on projected impacts and regulatory options to the SERs on June 4, 1997.
- EPA held a SER conference call on June 11, 1997 to address any questions on the June 4th information.
- The Panel held a SER conference call on June 19, 1997, to obtain additional input. The conference call summary is Attachment 2 to this report.
- EPA sent Panel material on additional small business exclusion options to the SERs on June 27, 1997.
- SERs provided additional written comments through July 9, 1997.

EPA requested information from the SERs about each of the areas specifically mentioned in the RFA as amended by SBREFA:

- The number of small entities to which the proposed rule would apply.
- Projected reporting, record keeping, and other compliance requirements of the proposed rule, including the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.
- Other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.
- 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.

Of the nine representatives, six responded to EPA's request for comments. The majority of comments did not specifically address all of the issues presented above but tended to focus on the issue of significant alternatives. Most of the SERs focused their comments on suggesting small business exclusions from the standards.

In the material initially presented to SERs for comment, EPA discussed four possible exclusions to minimize impacts on small businesses: facilities with under \$1 million in annual revenues, facilities with fewer than 30 employees, facilities with less than 2.65 million gallons per year in flow, and facilities processing fewer than 1 million pounds of laundry annually.

EPA expressed a preference for an exclusion based on pounds processed because EPA's modeling showed it to be effective in reducing small business impacts (see discussion below) and it would be relatively easy to implement. EPA subsequently provided the SERs with an evaluation of various production-based regulatory exclusions that included an analysis of economic impacts in terms of facility closures, costs to revenues, and costs to profits, and of environmental impacts in terms of excluded pollutant removals. That information is presented on the next page.²

EPA initially suggested a 1 million pound annual production exclusion. In response to concerns raised at a public meeting, EPA subsequently examined the types of laundry processed by these potentially excluded facilities to ensure that they were not processing large quantities of heavily contaminated laundry (thus discharging larger pollutant loadings than other regulated laundries). EPA then determined that limiting the exclusion to those facilities processing less than 255,000 pounds of shop/printer towels would not change the number of projected plant closures but would ensure that the wastestreams with the highest pollutant loadings are adequately controlled.

²This information was also provided to the Panel members on June 27, 1997.

EPA is thus currently considering an exclusion for facilities with less than 1 million pounds of total production per year and less than 255,000 pounds of shop/printer towel production. This exclusion balances three major concerns: that disproportionate small business impacts be minimized, that the pollutant reduction benefits of the proposal not be lost, and that the number of excluded facilities be small in order to minimize competitive impacts in a local market. It would eliminate about half of the 71 facility closures projected to result from the rule, but would exclude only about 2% of the projected pollutant loading reductions, and would exclude less than 8% of the covered facilities. A higher production cutoff (at 5 million pounds of production per year) would be needed to eliminate most of the remaining closures; however, this exclusion option would sacrifice over one third of the potential pollutant loading reductions, which EPA considers unacceptable.

SUMMARY OF INPUT FROM SMALL ENTITY REPRESENTATIVES

General Comments

In general, SERs expressed concern that the proposed rule could well have a significant impact on a substantial number of small entities, including not only industrial laundries themselves, but their small business customers.

James F. Vaudreuil of Huebsch Services discussed local pretreatment requirements his company has been required to meet for the past 10 years. Some of his competitors are not required by their local POTW to pretreat their industrial laundry wastewater. He supports a national standard to “level the playing field.” He expressed concern that the standards should be “reasonable,” since unreasonable standards would result in additional costs that would place reusable textiles at a distinct disadvantage compared with disposables. He was also concerned that some firms that process health care or linens could be able to use dilution to avoid pretreatment, and he wanted to know how EPA would enforce pretreatment standards.

Gene Leonard, President of Rite-Way Laundry and Dry Cleaners, Inc, gave a brief history of the market fluctuation in the industrial laundry industry. He stated that the proposed rule has the potential to eliminate the remaining few small laundries in the United States.

Douglas Greenhaus of the National Automobile Dealers Association (NADA) suggested that the rule would include or involve new RCRA, Superfund, and Clean Air Act liabilities, compliance costs, and burden for laundries.

David Dunlap from the Uniform & Textile Service Association (UTSA), stated that his trade association has had very little access to information that EPA and others would use to make decisions relative to this regulation’s effect on small businesses. Because of the lack of data, he posed several questions that he hopes will encourage further investigation. He asked for pollutant discharge limits. (EPA explained in subsequent meetings that the limits were not yet calculated.) He also expressed concern that UTSA did not

have enough time to poll its membership and committees to determine its final position on a small business exclusion for the proposed rule.

David Trimble of the Textile Rental Services Association of America (TRSA) expressed a concern about lack of data to evaluate the effect of the rule and of the exclusion for facilities with less than 1 million pounds per year of production, which EPA is considering. He recommended that EPA provide commenters with information on how this exemption threshold was derived.

Impacts on Customers

David Dunlap noted that the SBREFA review panel should not just consider small laundries but also the many small businesses (including printers, food establishments, health services, contractors, manufacturers, retail sales, and automobile repair shops) that launderers service. Laundries touch the entire business community and thus any effects that categorical standards have on the laundry industry may be felt by small businesses in other industries as well.

Marcia Y. Kinter from the Screenprinting & Graphic Imaging Association International (SGIA), noted that their membership is not composed of industrial laundry facilities; therefore, the initial impact of this new regulation would be minimal on their industry. The association's concern is that the regulation will indirectly affect the printing industry due to its use of shop towels. Provisions regarding "best management practices" for shop towels or any type of language indicating the acceptance state of used shop towels should not be included in the industrial laundries proposal.

Douglas Greenhaus (NADA) expressed concern that the rule would result in costly new pretreatment technologies, the cost of which would be passed on to the laundries' customers. He also noted that adoption of pollution prevention strategies may require laundry customers to remove contaminants from materials prior to sending them to a laundry facility, resulting in economic impacts on small business customers.

Reporting, Recordkeeping and Other Compliance Requirements

David Dunlap (UTSA) stated that categorical standards are just another administrative and bureaucratic burden adding costs to a small business' bottom line.

Gene Leonard (Rite-Way) noted that he would incur the increased cost of hiring a person to oversee operations.

David Trimble (TRSA) stated that many small businesses lack the skills and resources to comply with additional record keeping and reporting requirements that they have not been subject to in the past.

Interaction with other Federal Rules

David Dunlap (UTSA) stated that all laundries are indirect dischargers and thus are already burdened by complying with the national pretreatment program and local pretreatment limits. He believes categorical standards would be redundant. David Trimble (TRSA) made a similar comment and suggested that EPA issue a finding that categorical pretreatment standards are not necessary for the textile rental industry.

Marcia Kinter (SGIA) stated that inclusion of any type of language in this rule concerning management practices for shop and printer towels might appear to set standards for the acceptance and management of used towels from the end user (i.e., the printing facility) and would be in direct conflict with a current effort being undertaken by the Office of Solid Waste on this issue (OSW is looking at use of reusable and disposable shop towels and disposal of disposable shop towels).

Suggested Regulatory Alternatives

The primary comments on regulatory alternatives dealt with EPA's consideration of possible small business exclusions.

Gene Leonard (Rite-Way) discussed each method EPA considered to minimize impacts on small facilities and how each would create a problem for small facilities.

Mr. Leonard began by addressing the revenue exemption option. He noted that other federal programs define "small" as a company with revenues less than \$10.5 million annually. The revenue level EPA suggested, \$1 million, is considerably lower. He also noted that his company's annual revenues are \$1.15 million, so they would exceed the limit. He went on to say his industry is dominated by large multi-state and national companies and that he is indeed a very small operation.

With respect to EPA's second option examined (to exempt facilities with 30 employees or less), Mr. Leonard pointed out that small firms have less automation than large firms and may be located in rural areas where customers are more spread out. For both of these reasons, they may require more labor per pound of production than large facilities. He also noted that a large percentage of his own business is from health care facilities, which also require more labor per pound of production than shop towels or uniforms.

With respect to EPA's remaining options (based on wastewater flow and facility production), Mr. Leonard gave a description of his company and how it would be affected by the suggested exemptions. He also noted several ways in which the exclusions EPA considered were inconsistent with each other:

- 1) One million pounds a year cannot generate enough dollars in sales to pay the salaries of 30 employees.

- 2) Most firms cannot generate \$1 in revenue for a pound produced, as EPA seemed to imply by consideration of either 1 million pounds or \$1 million sales.
- 3) A facility can not produce 1 million pounds of laundry with 2.65 million gallons of wastewater flow.

Mr. Leonard recommended the following alternatives to EPA:

- 1) Allow the local POTW facility to determine if the laundry is contributing pollutants that constitute a problem for the facility to treat. Require regular testing by the laundry at the point of discharge into the sewer line. If the local POTW determines that it can treat the effluent to EPA standards then the laundry does not have to pretreat, regardless of size or volume.
- 2) Use concentration based limits. As a matter of survival, most small laundries produce a mix of linen and industrial items. Linen items are not of concern to EPA, and concentration based limits allow for a mix of product types. Compliance with concentration based limits would also be easier to monitor. Large firms may prefer mass-based limits because many of these firms are already in compliance with such limits, which may force small firms out of business.
- 3) If revenue is used, raise the cut-offs to \$3 million. At this volume a facility may be able to afford installation and maintenance of treatment operations.
- 4) If number of employees is used, raise it to at least 50. This number has been used in other regulations, such as the Family and Medical Leave Act, to define companies exempt from regulations.
- 5) If production is used, raise the cut-off to 4 or 6 million pounds. His facility generates about 72 cents per pound for the "EPA items of concern" and 49 cents per pound overall. Health care is being done at 27 cents per pound. It takes 6,000,000 pounds at 49 cents or 4,000,000 pounds at 72 cents to raise \$3 million in revenue. At 72 cents, the proposed 1,000,000 pounds limit will only raise \$720,000 and a pretreatment system cannot be supported with that sales volume.
- 6) Do not use gallons of wastewater as a measure of "small." It is not a good indicator. Different laundries have vastly different products mixes, and some products require more water per pound processed than others. Small laundries are not as efficient with water use as are their larger counterparts. At the proposed 2,650,000 gallons and his facility's consumption rate, they could only bill for 77,941 pounds. At their average price of 49 cents, this would generate only \$38,191.09.
- 7) Eliminate the exemption for on-site facilities unless they process only "pure linen." Any laundry contributing pollutants to the waste stream that creates a compliance problem for the local treatment facility should be covered by this regulation. If the intent of the regulation is to reduce pollution, any facility that meets the criteria (e.g., prisons, military bases) should be covered.
- 8) Regulate shop towels only, since they constitute 90% of the problem.

Mr. Leonard also raised concerns regarding EPA's recommended exclusion for facilities under 1 million pounds of production. These included implementation by POTWs, enforcement, and existing facilities versus new facilities.

Other SERs also commented on possible exclusions.

David Dunlap (UTSA) noted that the Agency needs to ensure the enforceability of any exclusion. A threshold based on something other than production (lb/yr) may be easier to enforce and thus be less burdensome to the local authority and the launderer. Any exclusion threshold should be based on a characteristic that the local authority can easily measure (e.g., wastewater flow rate, number of washers or design capacity of the washers [lb/load]). He also commented that on-site facilities should not be excluded. He also asked EPA to consider the competitive factors associated with reusable and disposable products.

James Vaudreuil (Huebsch Services) suggested an exclusion for facilities processing less than 3 million pounds per year total and less than 255,000 pounds per year of shop towels.

PANEL FINDINGS AND DISCUSSION

It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comment on the proposed rule. Any options the Panel identifies 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.

Disposable vs. Reusable Items

Several commenters expressed concern that the substitution of disposable items for laundered ones could cause negative impacts on laundries whose customers chose to switch rather than pay the higher laundering costs that could result from the rule. EPA investigated this possibility during rule development. It found that for many of the applications where laundered items are currently being used, disposable items would not necessarily be a suitable substitute. Its economic modeling, based on data from its survey of the industry, shows only a 0.3 percent decrease in production industry-wide in response to the estimated price increases that would result from the rule. Finally, EPA notes that many of the disposable items that might compete with laundered items are already regulated under other environmental statutes. However, in view of EPA's policy promoting resource conservation, the Panel would prefer to preserve the option of reusing towels, rather than forcing customers to disposable towels that are likely to be landfilled after use.

The Panel is sympathetic to the concerns of small laundries about increased competition from disposable items and OMB and SBA note that the impact on individual small facilities may be significantly

greater than the industry-wide effect estimated by EPA. At the same time, the Panel also notes that the most significant competition involves items that are also responsible for a large share of the pollutant loadings from this industry (i.e., shop towels). It would thus be difficult to structure an exemption to fully address this concern while still achieving the rule's primary purpose of eliminating the majority of loadings from the industry. However, this concern does underscore the need for an effective small business exemption that excludes those small facilities that are contributing relatively little of the total pollutant loadings and can least afford expensive new treatment technologies.

Exclusion of On-Site Laundries

Commenters also expressed concern that the exclusion of on-site laundries would give such facilities a competitive advantage over covered industrial laundries that compete with them. EPA believes it is appropriate to address on-site laundry discharges at industrial facilities as part of the effluent from the facility as a whole, for several reasons. First, many such facilities commingle laundry wastewater with wastewater from other processes. Second, EPA anticipates that contaminants removed from laundered items can best be treated with process wastewater containing similar contaminants. EPA has already established effluent limitations guidelines and standards for 51 industries. These regulations apply to wastewater generated from on-site laundering where appropriate. For industries not yet covered by effluent limitations guidelines and standards, EPA believes it should address on-site laundry discharges along with other wastewater at the time that guidelines and standards are promulgated. The economic impacts of regulating on-site laundries in these industries can also best be evaluated in this wider context.

The Panel believes that EPA has sound reasons for regulating discharge from on-site laundries along with the other wastewater of the facilities that operate them rather than in this proposed rulemaking. Given that most such facilities are either already regulated or eventually would be considered for regulation, the Panel does not believe that excluding them from the current rulemaking will produce a long-term competitive advantage.

Record keeping, Reporting and other Compliance Requirements. The proposed rule contains no specific record keeping or reporting requirements. Monitoring for compliance with the limitations being established on eleven pollutant parameters will be determined under existing Title 40 of the Code of Federal Regulations Part 403.

Interaction with Other Federal Rules. The Panel received comments that the proposed rule may impose or involve new Resource Conservation and Recovery Act (RCRA), Superfund and Clean Air Act liabilities, compliance costs, and burden for laundries. The Office of Solid Waste (OSW) is currently examining the use of shop towels and the disposal of "disposable" shop towels for potential regulation as a hazardous waste under RCRA. The Panel recommends that any new requirements imposed on customers of laundries as a result of this proposed rule and the OSW effort be coordinated.

Additional Small Business Exclusion Options

At the time the Panel convened, EPA identified a regulatory alternative to decrease regulatory burden on small entities. For Pretreatment Standards for Existing Sources (PSES), EPA suggested an alternative that would exclude existing facilities processing less than 1 million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop/printer towels per calendar year.

During the course of small entity outreach and as a result of Panel discussions, EPA evaluated various other small business exclusion options; these are summarized in the table on page 7. In light of the range of predicted economic and environmental effects, and concerns that EPA may have overestimated pollutant loadings from and underestimated economic impacts on small businesses (see below for more detail), the Panel discussed several production based exclusion options with higher thresholds than the one initially suggested by EPA. In discussing these options the Panel considered, among other factors, the total pollutant loadings from the industry, the cost effectiveness of pollutant removals, and the fact that all facilities are indirect dischargers and thus already potentially subject to local limits set by POTWs. Throughout the Panel discussions, EPA maintained that the 1 million/255,000 pound combination was the most appropriate for the proposed rule based upon analysis to date. EPA agreed with other Panel members that exclusion options based upon higher production thresholds are worthy of serious consideration, but expressed concerns that further analyses might not be completed in time for consideration in advance of proposal, given its Court ordered deadline of September 30, 1997.³ The Panel thus recommends that EPA present the information in the table on page 7 in the preamble to the proposed rule and solicit comment on a range of alternative small business exclusions, specifically including total production limits of from 3 to 5 million pounds total and “heavy” (or shop/printer towel) production limits of from 250,000 to 500,000 pounds.

The Panel also recommends that EPA complete analyses evaluating the following additional small business exclusion options and other appropriate options for future consideration in the regulatory development process:

- Less than 3 million pounds of production and less than 255,000 and 500,000 pounds of shop/printer towels production
- Less than 4 million pounds of production and less than 255,000 and 500,000 pounds of shop/printer towels production
- Less than 5 millions pounds of production and less than 500,000 pounds of shop/printer towels production.⁴

³EPA and NRDC (the plaintiff in the original court case) recently petitioned the Court to extend this deadline to November 7, 1997; the Court has not yet acted on this petition.

⁴The impacts of an exclusion based on less than 5 million pounds of production and less than 255,000 pounds of shop or printer towel/rag production has already been analyzed and is part of the

No Regulation Option

SBA noted that the EPA has the authority to choose not to regulate a given industry or a given subcategory of facilities based upon a variety of considerations. SBA expressed some concerns that much of EPA's analysis of potential exclusions began with an analysis of "economic achievability" in terms of facility closures and firm failures, and was then amended to ensure that the environmental goals of the Clean Water Act were not compromised. SBA pointed out that "economic achievability," though one of the statutory factors the Agency must assess in establishing effluent limitations guidelines and standards on toxic and nonconventional pollutants, is not the only decision criterion available to the Administrator with respect to whether or not to regulate an industry or a specific subcategory of an industry.

The Panel understands that EPA may decline to regulate subcategories of facilities on a national basis, based on considerations other than economic achievability, and has done so in the past. For example, consistent with the June 1994 recommendations of the EPA Effluent Guidelines Task Force, EPA may decline to regulate subcategories based on small total pollutant loadings. In this manner, EPA may be able to exclude subcategories of small facilities from the scope of the guidelines. The Panel recognizes that in the absence of national effluent limitations guidelines and standards, direct dischargers would still be subject to BAT limits on their discharges (determined on a best-professional judgment basis) and indirect dischargers would still be subject to the general prohibitions in the general pretreatment regulations and potentially subject to local limits on their discharges to POTWs. EPA could still provide nonbinding guidance to permit writers in the event no effluent guidelines are promulgated for those subcategories, an option also discussed by the Effluent Guidelines Task Force.

In considering no regulation options, the Panel notes that one of the SERs (Gene Leonard of Rite-Way) believes that the small laundry share of the national market may have significantly declined since EPA's survey of the industry was conducted. A significant shift in total or "heavy" production away from small businesses would cause EPA's projections of loading and environmental impacts attributable to them to be overstated and its projections of impacts attributable to larger businesses to be understated. The Panel also notes that the total pollutant loadings (pre-regulation) are not as high for this industry as they were (pre-regulation) for most industries with effluent guidelines in place and that the regulatory options are not as cost-effective as those selected for most other effluent guidelines.

SBA expressed interest in having EPA explore a "no regulation option" for small facilities based on factors beyond facility closures and firm failures. Examples of such factors include environmental impacts and other economic impacts considered by the Agency in its regulatory analysis (e.g., cost to revenue ratio, community impacts, domestic market impacts).

rulemaking record.

The Panel recommends that EPA solicit comment on a no regulation option in the proposal.

Methodological Issues

The Panel discussed the determination of “significant” impact, and agreed that this analysis should go beyond the determination of facility closures and should include assessment of other economic measures. Several such measures, including the ratio of costs to revenues, the ratio of costs to profits, domestic market impacts, and local community impacts, were considered by EPA in its analysis of small business impacts for the proposed rule.

The Panel also discussed some methodological aspects of the way closure analysis is performed by EPA as part of its economic achievability determination under the Clean Water Act. This analysis is typically based on the assumption that facilities will close only if net cash flow becomes negative. SBA and OMB suggested that a return to assets test may be a more appropriate way to estimate closures. (Presumably, if the return that the owner of an affected firm might make by liquidating the firm’s assets and investing them elsewhere is greater than the return being made by continuing to operate the firm, liquidation may become an attractive option and the firm may well be closed, even if it is earning a positive cash flow.) Although EPA does not include a return to assets test in its facility closure analysis, EPA believes that the Altman Z test, which employs return to assets in its analysis of firm failures, is appropriately incorporated into EPA’s analysis.⁵ EPA, SBA, and OMB agreed to further explore this issue during inter-agency review of the draft proposal.

In addition, SBA and OMB expressed concern with the measure of cash flow used by the Agency. EPA uses net income, *plus depreciation*, as its measure of cash flow. SBA and OMB believe that this approach overstates actual cash flow, as it does not account for the cost of acquiring or replacing capital assets. In any given year, depreciation may be overstated (or understated) but on average it should just cover the cost of new or replacement assets. It is possible that an expanding business will consistently overstate

⁵In the current proposal, for example, EPA used the Altman Z-score, which directly incorporates numerous financial variables, including return on assets, for the firm-level failure analysis of multifacility firms. In the case of single facility firms, EPA conducted both a negative cash flow test and an Altman Z-score test. EPA also notes that although incorporation of the salvage value of assets adjusted for any associated legacy costs is the most appropriate methodological approach when reliable estimates of salvage values are available, EPA’s experience has indicated that firms are generally unable to provide usable estimates of salvage value and legacy costs. Furthermore, EPA believes that for this industry, net salvage value is rarely used to determine whether to liquidate a facility, since its analysis indicates that if salvage value is taken into account, nearly a third of all facilities appear to be candidates for liquidation. A complete discussion of EPA’s rationale for not using salvage value in the closure analysis will be contained in the Economic Assessment report.

“true” depreciation because of front-loaded depreciation schedules allowed under the current tax code, but even in this case, it would not be appropriate to add all of its reported depreciation back into cash flow. SBA and OMB recommend that EPA revise this approach in future small entity economic impact analyses to more accurately reflect the cash flow that is actually available to regulated entities for environmental compliance purposes. EPA agreed to explore ways to refine its cash flow analysis to address this concern.

Finally, the Panel discussed the treatment of “baseline” closures. These are facilities or firms that, according to EPA’s modeling, should be closed already. As the first step in its economic analysis, EPA defines the baseline. The baseline should be the best assessment of the way the world would look absent the proposed regulation. The definition of the baseline requires the Agency to forecast changes between the time of data collection and the time of implementation of the proposed rule. Baseline closures are facilities which, given the financial conditions at the time of data collection, the nature of the forecast (typically, a conservative assumption of the future resembling the present) and the structure of the economic and financial analysis, are projected to close by the time of implementation of the rule. EPA does not usually include baseline closures when determining the economic achievability of a rule, but instead, focuses on the incremental closures associated with compliance costs. EPA believes this approach is consistent with the discussion of baseline selection in OMB’s Economic Analysis of Federal Regulations under Executive Order 12866. SBA and OMB are concerned that baseline closures, to the extent that they do not close by the time a rule goes into effect, are precisely the firms that may be most vulnerable to any economic stress the rule may impose. They believe a more conservative approach is appropriate, that takes into account the inherent uncertainty of projecting baseline closures in the future using survey data. One such approach would count baseline closures among the casualties of the rule, along with closures which, according to Agency modeling, result directly from the added costs of the rule. The Panel recommends that EPA solicit comment on this issue in the proposal, and encourages EPA (resources permitting) to conduct a retrospective analysis to determine the accuracy of past projections of baseline closures.

In general, EPA follows the OMB guidelines for performing economic analysis, takes into consideration lessons learned over the years, and adapts the analysis to the available data and the industry’s characteristics. EPA’s economic analyses have received significant reviews by both OMB and the affected industries. The Agency feels they are sound and generally conservative, and seeks to base regulatory decision-making on the best, most recent data available. EPA will continue to explore alternative approaches, such as those suggested here by SBA and OMB. Also, based on Panel discussions and SER comments, EPA plans to consider alternate calculations of compliance costs, including alternate interest rates and amortization periods.