

enforcement responsibility for drinking water standards must revise their programs to adopt new or revised Federal regulations. Today's final rule clarifies one issue raised by stakeholders concerning the standard published in January 2001.

### III. What Is EPA Doing Today?

Today, EPA is revising the rule text to express the new arsenic maximum contaminant level (MCL) as 0.010 mg/L instead of 0.01 mg/L. EPA is making this minor regulatory amendment in response to a concern raised by a number of States and other stakeholders that State laws adopting the Federal arsenic standard as 0.01 mg/L might allow rounding of monitoring results above 0.01 mg/L so that the effective standard (in consideration of rounding of results) would be 0.014 mg/L (or 14 ppb), not 0.010 mg/L (10 ppb). These States and other stakeholders suggested that the rule text be revised to clarify the rounding issue and avoid the potential for confusion about how to evaluate compliance monitoring results that are greater than 10 ppb. In response, EPA solicited public comment on today's amendment in a proposed rulemaking that was published on December 23, 2002 (67 FR 78203). Although EPA considers this amendment to be a minor clarification of the intent of the January 2001 rule, EPA chose to conduct a formal rulemaking to provide a full opportunity for public comment with respect to the rounding issue.

### IV. Summary of Public Comments on Today's Regulatory Change

The comment period on the December 2002 proposed rule closed on January 22, 2003. Most commenters strongly supported today's action; other commenters indicated a concern. A summary of these comments follows. The comments and EPA's responses are included in the Docket for today's final rule.

In expressing support for making today's clarification, some commenters requested extensions of the compliance deadlines that were specified in the January 2001 rule. EPA does not agree that an extension of the compliance deadline is necessary or appropriate. The EPA Administrator is firmly committed to maintaining the January 23, 2006, compliance date for a new arsenic standard (66 FR 20581, April 23, 2001). EPA also has been clear that the 2006 compliance deadline applies to all systems with arsenic levels above 10 ppb. As noted in the December 2002 proposal to clarify the rule text, every aspect of the existing final rule and all analyses supporting the rule establish

10 ppb as the new arsenic standard. In addition, EPA made clear in several contexts that rounding down monitoring results in the range of 11 to 14 ppb to 10 ppb was not allowed under the rule (e.g., in a guidance memorandum (EPA 2002a), in EPA's document "Implementation Guidance for the Arsenic Rule" (EPA 2002b), and in the training conducted by EPA (EPA 2002c) on the rule since its issuance). For systems that may need additional time to come into compliance with the rule for cost or technical reasons, there is an exemption process under SDWA section 1416 under which eligible systems may receive additional time, if necessary. This process was fully addressed in the January 22, 2001, rule (66 FR 6988).

In expressing support for making today's clarification, some commenters also requested extensions of the deadlines to submit revised arsenic primacy packages that were specified in the January 2001 rule. With respect to the deadline for States or Tribes to submit primacy revision packages, because the Agency has been clear that no rounding is permitted under the Federal rule, State programs that allow systems to round compliance monitoring results that are greater than 10 ppb down to 10 ppb will not be approved. The provisions in 40 CFR 142.12, for EPA (at the EPA regional office level) to grant extensions of the two-year period for adoption of the revised arsenic regulation as appropriate on a case-by-case basis, are sufficient to accommodate the commenters' requests for additional time for submission or revision of primacy packages. EPA notes that States routinely request and receive extensions of their primacy deadline.

One commenter believes that State and local governments should have maximum flexibility in implementing Federal regulatory requirements. The commenter does not support today's clarification because it limits the ability of State and local governments to mitigate adverse financial effects of the arsenic standard, especially for rural or low income systems. The commenter suggested States should have the flexibility to use public education at systems where arsenic levels are between 10 and 14 ppb instead of requiring compliance at 10 ppb. However, EPA does not agree that the final arsenic rule, as promulgated in January 2001, would allow the use of public education rather than compliance with the 10 ppb standard at any system where arsenic levels exceed the 10 ppb standard and are between 10 and 14 ppb. As EPA discussed in the January 22, 2001, preamble, EPA is aware of the impact that the new arsenic

standard will have on certain systems. As discussed in the January 2001 final rule (67 FR 6992), the Agency is implementing many financial and technical assistance actions to mitigate this impact with an emphasis on assisting small systems. In addition, EPA notes that there are certain flexibilities already built into the statutory and regulatory structure. For example, the final arsenic rule discusses the flexibility for small systems to receive an extension of up to nine years to comply with the new arsenic standard through the exemption process provided in SDWA section 1416.

One commenter submitted comments that were not relevant to the December 2002 proposal to revise the arsenic rule text to express the 10 ppb standard as 0.010 mg/L instead of 0.01 mg/L. EPA is not addressing these comments because, in the December 2002 proposal, EPA clearly informed readers that EPA was not requesting and would not respond to comment on any other issue associated with the arsenic standard or its implementation. As noted in the December 2002 proposal and in the April 17, 2002, (67 FR 19037) announcement of the preliminary results of EPA's review of existing drinking water standards, EPA will continue to evaluate the expert analysis, the public comment received after publication of the final rule, and other relevant information on the arsenic drinking water standard, as part of the next six-year review of drinking water standards, which is to be completed in August of 2008.

### V. Administrative Requirements

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees,