

#### IV. Summary of Major Comments and New Information and the Agency's Response

This section summarizes the major public comments, including the Agency's response, and other new information, and explains any modifications to EPA's preliminary revise/not revise decisions. For a more detailed summary of the comments and the Agency's response, please refer to the document: "Public Comment and Response Summary for the Six-Year Review of National Primary Drinking Water Regulation" (USEPA, 2003e).

##### A. What Did Commenters Say Regarding the Reasonableness and Appropriateness of EPA's Six-Year Review Approach?

###### 1. Overall Approach and Decision Criteria

###### a. Adequacy of the Review.

Commenters generally agreed that EPA had identified the appropriate key elements of the review. However, some commenters stated that the Agency could have done more in some areas (e.g., implementation) and a few commenters expressed the opinion that the Agency's review process contains weaknesses, or was not applied appropriately, because it did not identify any chemical NPDWRs for revision at this time.

**EPA Response:** The Agency believes that its basic review protocol and decision rationale are reasonable and appropriate. Even though EPA's application of the protocol did not identify any chemical NPDWRs for revision at this time, that is not a reason to reject or modify the protocol. The review did result in the initiation of health risk assessments for three contaminants and efforts to address data gaps/research needs for several other contaminants. Health risk assessments are underway for approximately half of the chemical contaminants addressed in today's action. The Agency expects most of these assessments to be completed within the next few years. When completed, these assessments will support further analysis that may result in different revise/not revise decisions as part of the ongoing Six-Year Review process.

**b. Criteria for Deciding that an MCLG/MCL Revision is Appropriate and Definition of "Significant" and "Negligible."** While some commenters agreed, others disagreed with the Agency's consideration of estimated changes in occurrence levels and available economic information whenever a health or technological basis exists to revise a standard. For example,

some commenters felt that EPA should revise the MCLG and, as appropriate, the maximum contaminant level (MCL), whenever a health basis exists, regardless of other considerations. A few commenters criticized the Agency for not defining what it considers "significant" and "negligible" gains in public health protection and/or cost-savings in terms of regulatory revision.

**EPA Response:** Section 1412(b)(9) of SDWA, as amended in 1996, provides the Administrator with broad discretion to determine when a revision to an NPDWR is appropriate. As a part of this determination, the Agency believes it is reasonable to consider whether a potential revision is likely to provide a meaningful opportunity for health risk reduction. This criterion is consistent with the statutory provisions governing the regulatory determination process under section 1412(b)(1)(A) for contaminants not currently regulated. EPA also believes it is reasonable to consider the extent of potential cost-savings for public water systems and their customers when determining whether revisions that potentially would result in a relaxed standard (i.e., where a health basis exists for a less stringent standard) or streamlined implementation are appropriate. These considerations allow the Administrator to better prioritize efforts that are most likely to result in a meaningful opportunity for health risk reduction or cost-savings to public water systems and their customers. Revisions that do not satisfy at least one of these criteria are a low priority activity for the Agency, and thus are not appropriate at this time because of one or more of the following considerations:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

EPA believes that the determination of whether the impact of a potential revision is "significant" or "negligible" is a matter of judgment that depends on a number of variables, not all of which are amenable to precise definition. However, EPA recognizes that the use of "negligible/significant" terminology may imply more precision and quantitation in the determination than is possible. The Agency also understands that the use of the term "negligible" may imply to some that the Agency is belittling small gains in health risk reduction. This is not the Agency's intent. Accordingly, in today's action, the Agency has explained its rationale more clearly in terms of the criteria noted in the previous paragraph.

**c. Authority to Relax an Existing Standard and Deregulation of Low/Non-Occurring Contaminants.** Some commenters argued that the Agency should never consider relaxing a standard because doing so, by definition, would lessen the level of public health protection. Other commenters encouraged the Agency to actively consider deregulating contaminants that have low occurrence or do not appear to be occurring in finished water or, at a minimum, to further reduce the frequency of monitoring for these contaminants.

**EPA Response:** EPA disagrees with those commenters who oppose relaxing a standard for any reason. The legislative history of the SDWA Amendments of 1996 makes clear that Congress envisioned the possibility that a relaxed standard might be appropriate under circumstances that would not result in a lessening of the level of public health protection. In its discussion of potential revisions to an existing drinking water standard, Senate Report Number 104-169 (available electronically at <http://thomas.loc.gov/>) states:

Amendments made by the bill require that any future standard issued for a contaminant already regulated must maintain or provide for greater protection of the health of persons. Generally, this will preclude the promulgation of a revised standard for a contaminant that is less stringent than the standard already in place. However, there are circumstances under which a standard may be relaxed. The maximum contaminant level goal for a contaminant is set at a level at which there is no adverse effect on the health of persons with an adequate margin of safety. New scientific information may cause the MCLG to be revised and in some cases these revisions may be to less stringent levels. This may lead to a revision of the maximum contaminant level since it need be no more stringent than the MCLG. New information may also allow for a smaller margin of safety because it narrows the range of uncertainty for estimates of health risks. Finally, some substances which have been regulated as carcinogens for ingestion in drinking water may be reclassified (as asbestos has been in the most recent revision) or assigned a threshold for the effect based on new scientific information. In each of these cases, EPA may issue a revised standard for a contaminant that is less stringent than the one it replaces.

(S. Rep. 104-169, 104th Cong., 1st Sess. (1995) at 38)

However, because section 1412(b)(9) of SDWA requires that any revision to an existing NPDWR maintain or improve the level of public health protection, EPA believes that a clear, technically-based demonstration