

because it is redundant with the MCL for fluoride that is now contained in section 141.62(b). Section 141.11(d), which addresses an increased MCL for nitrate that may be allowed at the discretion of the State, is unchanged by today's action and remains in effect.

Also, EPA revised its regulations for lead on June 7, 1991 (56 FR 26460) and in that rulemaking established December 7, 1992 as the date beyond which the existing MCL for lead in section 141.11(b) would no longer be effective. Because that date has passed, the MCL for lead in 141.11(b) is obsolete and is deleted today.

The MCL for arsenic in section 141.11(b) is unaffected by today's rulemaking and remains in full force and effect.

*Sections 141.51(b), 141.62(b)(14), 141.23(a)(4)(i)(Table), and 141.32(e)(56)—Nickel Drinking Water Regulations.* By today's notice, EPA is alerting the public that the Agency has requested and received a court order vacating and remanding the MCL and MCLG (maximum contaminant level goal) for nickel. The remand has already taken effect; today's action simply removes the nickel MCLG and MCL from the Code of Federal Regulations.

On July 17, 1992, EPA promulgated an MCLG of 0.1 mg/L for nickel under the Safe Drinking Water Act ("SDWA"). 57 FR 31776. The MCLG is a non-enforceable health goal that is set at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety" (SDWA section 1412(b)(4)). In the same rulemaking, EPA also promulgated a national primary drinking water regulation ("NPDWR") for nickel, consisting of an MCL of 0.1 mg/L, associated monitoring, analytical testing, and public notice requirements, and identification of best available treatment technologies for nickel. The MCL is an enforceable limit that is set as close to the MCLG as is feasible (SDWA section 1412(b)(4)).

In September, 1992, the Nickel Development Institute (a nickel trade association) and other industry parties filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the MCLG and MCL for nickel. *Nickel Development Institute, et al. v. EPA* (No. 92-1407) and *Specialty Steel Industry of the United States v. Browner* (No. 92-1410). The petitioners raised objections over EPA's methodology for determining the MCLG for nickel. Specifically, they raised questions concerning the derivation of the relative source contribution ("RSC") factor and the need for a 3-fold uncertainty factor that EPA applied due

to the lack of adequate data on the effects of nickel ingestion on reproductive systems. Because the MCL for nickel was based directly on the MCLG, the petitioners also challenged the nickel MCL.

EPA and the petitioners entered into discussions in an attempt to settle this litigation but could not agree on the merits of the petitioners' challenges. Nevertheless, EPA has agreed that it did not fully address in the public record the petitioner's comments on the proposed methodology for deriving the MCLG for nickel. Therefore, it is in the public interest to conduct further rulemaking to obtain a full public airing of those issues. Accordingly, EPA has agreed to take a remand of the MCLG and MCL for nickel.

The Agency notes that as of the 1992 rulemaking, projections from available data estimated that only seven public drinking water systems nationwide were expected to have nickel levels exceeding the MCL of 0.1 mg/L. Therefore, this remand of the nickel MCL is not expected to have a significant effect nationwide on the levels of nickel in public water systems.

#### *Terms of the remand order.*

Accordingly, on February 9, 1995, EPA and the nickel industry petitioners filed a joint motion for a voluntary remand of the nickel MCL and MCLG. By orders of February 23, 1995 and March 6, 1995, the court granted this motion and vacated and remanded the following regulations (and dismissed the lawsuit):

1. The MCLG for nickel listed in 40 CFR 141.51(b);
2. The MCL for nickel listed in 40 CFR 141.62(b)(14) and 141.23(a)(4)(i)(Table); and
3. 40 CFR 141.32(e)(56).

All other portions of 40 CFR 141.51(b) and 141.23(a)(4)(i)(Table) are not affected by the court's order.

The MCLGs for contaminants other than nickel listed in § 141.51(b) remain, of course, in full force and effect. Similarly, as to the Table in § 141.23(a)(4)(i), the court vacated only the MCL for nickel, leaving the sampling methodologies and detection limits for nickel (as well as the MCLs, sampling methodologies and detection limits for the other contaminants) in full force and effect, since they were not at issue in the litigation. At EPA's request, the court also vacated the public notice language in § 141.32(e)(56) for nickel because it mentioned the nickel MCL and public notice language is not necessary until the Agency reestablishes an MCL for nickel. No other aspects of the national primary drinking water regulations for nickel were vacated, including monitoring requirements and

identification of best available technologies for nickel. EPA emphasizes that monitoring and analytical testing requirements for nickel remain in full force and effect.

The nickel MCLG and MCL should be considered vacated and not in effect as of February 23, 1995, the date of the court's original remand order. Today's action merely formally removes these regulations from the Code of Federal Regulations. Under the Administrative Procedure Act, EPA finds that public comment on today's action is unnecessary, since this remand has been ordered by the court. See 5 U.S.C. § 553(b). Therefore, EPA is issuing today's action as a final rule rather than as a proposed rule for comment.

*Health Advisory on Nickel.* EPA does not currently have a schedule for reestablishing an MCLG and MCL for nickel. EPA has initiated an effort to prioritize all its drinking water regulatory development activities in order to maximize risk reduction potential. The priority of the nickel reproposal is being considered as part of that effort. To provide guidance for the period prior to new regulations for nickel, the Office of Water has recently issued an updated Health Advisory for nickel. A copy of the Health Advisory can be obtained by contacting the Safe Drinking Water Hotline, whose toll free number is 1-800-426-4791. For further information on Health Advisories, contact Barbara Corcoran, Health Advisory Project Manager at (202) 260-1332.

One of the primary issues raised by the petitioners, as noted, concerned EPA's derivation of the RSC factor used in establishing the nickel MCLG. Since the litigation was filed, EPA's Office of Water has formed a cross-Agency workgroup to reexamine its RSC/human exposure apportionment policy, as noted at the front of the Health Advisory. The charge of the workgroup has since expanded to focus on the development of a consistent Agency-wide approach for assessing total human exposure to a contaminant and, where appropriate, allocating the Reference Dose (RfD) among the media of concern. This workgroup has or will be seeking input from EPA's Science Advisory Board, Science Policy Council and Risk Assessment Forum. EPA expects to publish proposed revisions to this policy in the **Federal Register** for public comment with the revision to the human health methodology for determining water quality criteria. Subsequent to this remand, further rulemaking on nickel will allow the Agency to encompass its ongoing efforts on the RSC issues and will allow a full