Testimony of
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Chairman Boxer, Ranking Member Inhofe, and Members of the Committee, thank you for inviting me to discuss how the EPA decides when to set new drinking water standards. The public relies on EPA to ensure the safety of the water they drink every day, and EPA takes this responsibility very seriously.

Strong science and the law are the foundation of our decision-making at EPA. Under the Safe Drinking Water Act (SDWA), EPA identifies priority contaminants that are known or anticipated to occur in public water systems and then evaluates whether new drinking water standards are warranted for these contaminants. EPA appreciates the Government Accountability Office's (GAO) attention to the important matter of setting drinking water regulations and we welcome GAO's input about how to do this most effectively. EPA has reviewed GAO's draft report so my testimony reflects my consideration of the recommendations in that version. GAO's draft recommendations address three key areas for EPA to improve implementation of requirements on whether to regulate additional contaminants:

1. Development of criteria to identify contaminants that pose the greatest health risk;

2. Improvement of EPA's unregulated contaminants testing program, and

3. Development of policies or guidance to interpret the broad statutory criteria.

EPA agrees with GAO that consistency, transparency and clarity are essential in assuring the safety of public drinking water and our credibility with the public. While we have made substantial progress in achieving this goal, we agree that there is room for improvement. We are committed to actions to ensure that the public has confidence that the EPA's decisions are protective of their health and based on a thorough consideration of the best available science and information.

EPA is in the third cycle of evaluating unregulated contaminants as required by the 1996 SDWA amendments. EPA has completed the third Contaminant Candidate List (CCL), proposed the third Unregulated Contaminant Monitoring Rule (UCMR3), is developing the third round of regulatory determinations, and also recently made the off-cycle determination to regulate perchlorate. We are continually learning from each iteration of this process and are currently applying lessons learned from previous determinations. We believe the improvements we have made go a long way towards addressing GAO's concerns.

Administrator Jackson also announced last year a new vision for better protecting drinking water including changing the paradigm of evaluating individual contaminants for regulation. Under the new drinking water strategy, EPA is committed to:

1. Considering regulation of groups of contaminants to better protect public health by streamlining decision-making and in a way that is likely more cost-effective for water systems to implement
2. Fostering development of new drinking water technologies

3. Leveraging other regulatory programs such as the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act as appropriate to protect sources or drinking water

4. Working with states to share more complete drinking water monitoring data to support evaluation of drinking water protection nationwide and make information accessible to the public.

We are implementing this strategy as we conduct the ongoing cycle of regulatory determinations.

Identifying Contaminants of Concern

The first step of the evaluation is to identify the contaminants of greatest public health concern, which EPA does through the Contaminant Candidate List. In the most recent CCL, published in October 2009, EPA used the advice from the National Academy of Sciences and the National Drinking Water Advisory Council to develop and usea significantly improved, more transparent and reproducible multi-step process to ensure more effective identification of public health threats. We cast a wide net in identifying possible drinking water contaminants including those nominated by the public. From an initial universe of 7,500 contaminants, EPA evaluated available occurrence and potential health effects data for this universe and incorporated public input and expert review. Through this review, we selected from this universe a list of 116 priority contaminants that we found to be of the greatest public health concern based on both the severity of the health effect and the anticipated occurrence. EPA also improved transparency by making all data and criteria used to classify contaminants publicly available on the EPA's website.

GAO's report expresses concern that EPA's past decisions have been driven not by considering the greatest health concern but by considering available data. EPA agrees that we can improve our process to better focus on contaminants that may be of public health concern. The improved approach in the most recent CCL was a substantial step forward in achieving this by using a rigorous scientific process to better ensure that the contaminants on the list are the ones that should be of highest priority for public health protection. Because the new CCL selection process targeted candidates based on possible health effects or exposure rather than just on available data, the list includes emerging contaminants that are not currently well enough understood to discern whether regulation of drinking water could improve public health. EPA cannot make a credible decision driven by science without sufficient understanding of the potential for impacts to the health of the American people. Therefore, EPA has since narrowed the CCL down to a "short list" of 32 contaminants that have sufficient data to make a determination within the statutory timeline. This short list is being prioritized for regulatory decision making in this cycle based on the greatest public health concern. Those determinations will be announced by next summer for public comment. We believe this approach addresses GAO's concerns with previous cycles of our process.

Collect and Evaluate Information

For the remaining candidates, obtaining robust data and information regarding potential impacts is essential. For the current CCL, the evaluation of contaminants included a discussion of data gaps so that further information can be collected to support

future decisions. The CCL classifies the contaminants based on the need for health effects data or occurrence data or analytical methods.

To obtain occurrence data, EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) and also looks to data collected by others such as the states and the U.S. Geological Survey. GAO had a number of recommendations to improve the UCMR process. We agree with the GAO recommendations regarding UCMR. They are consistent with the most recent UCMR proposal, published in March, in which EPA looked at health effects information to target the contaminants of greatest concern. We also proposed, as GAO has recommended, to use our full statutory authority to require testing for 30 contaminants and to conduct full assessment monitoring rather than more limited screening surveys. Additionally, the proposed UCMR generally requires much lower minimum reporting levels than have been required in the past, making the data obtained more useful in determining the likelihood of health impacts when contaminants are detected.

Good data about health effects are also essential, and EPA's Office of Water identifies priority contaminants and health assessment information needs and coordinates with the EPA's Office of Research and Development and external organizations. The Agency searches the available literature and participates in scientific meetings to identify evolving science that may support evaluation of health effects. EPA has also made substantial revisions to the Integrated Risk Information System (IRIS) process to provide assessments in a timely fashion to best support regulatory decisions. EPA has reduced the IRIS backlog and shortened the risk assessment development time while ensuring

rigorous peer review. Strengthening and streamlining the IRIS process is a continuing and ongoing priority for EPA.

Regulatory Determination

According to SDWA, EPA must make determinations for at least five contaminants from each CCL. SDWA defines three criteria to determine whether it is appropriate for EPA to regulate a potential drinking water contaminant:

- The contaminant may have an adverse effect on the health of persons;
- The contaminant is known to occur or there is a substantial likelihood the contaminant will occur in public water systems with a frequency and at levels of public health concern; and
- In the sole judgment of the Administrator, regulation of the contaminant presents a meaningful opportunity for health risk reductions for persons served by public water systems.

EPA determines whether an adverse health effect may occur, identifies what levels of exposure may result in public health concern and then evaluates how extensive potential exposure at those levels might be. Finally, the Administrator must decide whether regulatory action taken by EPA would serve to reduce public health risk in a meaningful way. A decision by the Administrator to regulate a contaminant is the beginning of the SDWA regulatory development process. EPA has extensive further requirements regarding analyses of health benefits, costs, and treatment technologies that must be conducted before a National Primary Drinking Water Regulation is proposed and made final.

In the first two cycles of regulatory determinations, EPA made negative determinations for 20 contaminants, in each case deciding that the occurrence of the contaminant was not at a frequency and level of public health concern to merit a new drinking water standard. This February, EPA made the Agency's first positive determination, when we announced that we will be developing a proposed drinking water standard for perchlorate by February 2013 at the latest.

Strong science must be the foundation of decisions regarding the criteria defined by SDWA, but science alone cannot fully address the criteria. As the GAO describes in their report, there are a large number of factors that can impact our understanding of what levels would be of concern and how likely those are to occur, such as the severity of health effects, the potency of the contaminant, the geographic distribution and levels of drinking water detections, or other possible sources of exposure. In its regulatory determinations, EPA has sought out and evaluated available information on these factors and based our determinations on our best understanding of the existing information.

Given the many possible combinations of factors and the constantly evolving science, it is essential that the bases for EPA's decisions be clearly presented so that the public can have confidence in our actions. For our regulatory determinations, our *Federal Register* notices and supporting documentation list the primary occurrence and health effects data, describe our evaluation of whether this information is sufficient, and explain our approach for deriving endpoints.

The concerns that GAO raises indicate that we have not always done this effectively enough. We will do a better job in the future. EPA will work to improve the

transparency of regulatory determination so that the public can better understand how EPA came to its conclusions and most effectively comment or review. EPA will make this information available when we publish our preliminary determination.

In response to the GAO recommendations, EPA will also consult with an independent panel of scientists on the regulatory determinations, specifically on the evaluation of the contaminants against the first and second criteria defined by SDWA, the use of best available science to develop the determination, and whether the determination focuses on the greatest public health risk. We will post the regulatory determination process publicly and review the process every five years as we conduct the regulatory determination cycle.

Regulating Contaminants as Groups

As I stated earlier, in parallel to these improvements to the standard regulatory determination process, EPA is changing the regulatory approach that has primarily addressed contaminants one at a time. In February, Administrator Jackson announced that we are developing a single regulation to include up to 16 volatile organic compounds that may cause cancer. Several of these contaminants are on the current CCL and others are currently regulated and need to be revised. By considering them as part of a group rather than through individual regulatory determinations, we can address the public health concerns from a larger portion of our priority list at one time, achieving greater health protection more expeditiously and in a way that is likely to be more cost-effective for utilities to implement.

In the current round of regulatory determinations, EPA is also evaluating whether to regulate nitrosamines (currently on the CCL) as a group. We have found these disinfection byproducts in a number of water systems and considering them as a group would allow us to take advantage of shared analytical methods and treatment or control processes, as well as making a greater impact on public health because nitrosamines sometimes co-occur, and because controlling nitrosamines also reduces exposure to related disinfection byproducts.

Conclusion

Clean and safe water is the foundation of healthy communities, healthy families, and a healthy economy. EPA is committed to continuing to improve our methods in using science and the law to best protect public health. I greatly appreciate the leadership of this Committee in helping to protect drinking water. We look forward to coordinating with this Committee as we work to achieve these important goals.