111TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
111–524

ASSISTANCE, QUALITY, AND AFFORDABILITY ACT OF 2010

JULY 1, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 5320]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5320) to amend the Safe Drinking Water Act to increase assistance for States, water systems, and disadvantaged communities; to encourage good financial and environmental management of water systems; to strengthen the Environmental Protection Agency's ability to enforce the requirements of the Act; to reduce lead in drinking water; to strengthen the endocrine disruptor screening program; and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

89–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Assistance, Quality, and Affordability Act of 2010".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

(c) REFERENCES.—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

SEC. 2. TECHNICAL ASSISTANCE FOR SMALL PUBLIC WATER SYSTEMS.

Subsection (e) of section 1442 (42 U.S.C. 300j–1(e)) is amended to read as follows:

"(e) TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—The Administrator, directly or through grants or cooperative agreements with nonprofit organizations, may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations.

"(2) TYPES OF ASSISTANCE.—Technical assistance under paragraph (1) may include onsite technical assistance and compliance assistance; circuit-rider and multi-State regional technical assistance programs; training; assistance with implementing source water protection programs; assistance with increasing water or energy efficiency; assistance with designing, installing, or operating sustainable energy infrastructure to produce or capture sustainable energy on site or through water transport; assistance with developing technical, financial, and managerial capacity; assistance with long-term infrastructure planning; assistance with applying for funds from a State loan fund under section 1452; and assistance with implementation of monitoring plans, rules, regulations, and water security enhancements.

"(3) PRIORITY.—In providing assistance under this subsection, the Administrator shall give priority to assistance that will promote compliance with national primary drinking water standards, public health protection, and long-term sustainability of small public water systems. In awarding grants and cooperative assistance under paragraph (1) to nonprofit organizations, the Administrator shall (subject to the preceding sentence) give greater weight to nonprofit organizations that, as determined by the Administrator, are most qualified and most effective and that, as determined by the Administrator using information where available, are providing the types of technical assistance that are preferred by small public water systems.

"(4) COMPETITIVE PROCEDURES.—It is the presumption of Congress that any award of assistance under this subsection will be awarded using competitive procedures based on merit. If assistance is awarded under this subsection using procedures other than competitive procedures, the Administrator shall submit to the Congress, within 90 days of the award decision, a report explaining why competitive procedures were not used.

"(5) FUNDING.—

"(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2011 through 2015.

"(B) PROHIBITION ON EARMARKS.—No funds made available under this subsection may be used to carry out a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or congressional district, other than through a statutory or administrative formula-driven or competitive award process.

"(C) LOBBYING EXPENSES.—No portion of any State loan fund established under section 1452 and no portion of any funds made available under this subsection may be used for lobbying expenses.

"(D) INDIAN TRIBES.—Of the total amount made available under this section for each fiscal year, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.".

SEC. 3. PREVAILING WAGES.

Subsection (e) of section 1450 (42 U.S.C. 300j–9) is amended to read as follows:

"(e) LABOR STANDARDS.—

"(1) IN GENERAL.—The Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor in connection with a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this title (including assistance provided by a State loan fund established under section 1452) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

"(2) AUTHORITY OF SECRETARY OF LABOR.—With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.".

SEC. 4. USE OF FUNDS.

Section 1452(a)(2) (42 U.S.C. 300j–12(a)(2)) is amended—

(1) by striking "Except as otherwise" and inserting the following:

"(A) IN GENERAL.—Except as otherwise";

(2) by striking "Financial assistance under this section" and inserting the following:

"(B) PERMISSIBLE EXPENDITURES.—Financial assistance under this section";

(3) by striking "The funds may also be used" and inserting the following:

"(D) CERTAIN LOANS.—Financial assistance under this section may also be used";

(4) by striking "The funds shall not be used" and inserting the following:

"(E) LIMITATION.—Financial assistance under this section shall not be used";

(5) by striking "Of the amount credited" and inserting the following:

"(F) SET-ASIDE.—Of the amount credited";

(6) in subparagraph (B) (as designated by paragraph (2)) by striking "(not" and inserting "(including expenditures for planning, design, siting, and associated preconstruction activities, for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, or for producing or capturing sustainable energy on site or through the transportation of water through the public water system, but not"; and

(7) by inserting after such subparagraph (B) the following:

"(C) SALE OF BONDS.—If a State issues revenue or general obligation bonds to provide all or part of the State contribution required by subsection (e), and the proceeds of the sale of such bonds will be deposited into the State loan fund—

"(i) financial assistance made available under this section may be used by the State as security for payment of the principal and interest on such bonds; and

"(ii) interest earnings of the State loan fund may be used by the State as revenue for payment of the principal and interest on such bonds.".

SEC. 5. REQUIREMENTS FOR USE OF AMERICAN MATERIALS.

Section 1452(a) (42 U.S.C. 300j-12(a)) is amended by adding at the end the following new paragraph:

"(4) REQUIREMENTS FOR USE OF AMERICAN MATERIALS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, none of the funds made available by a State loan fund as authorized under this section may be used for a project for the construction, alteration, maintenance, or repair of a public water system unless the steel, iron, and manufactured goods used in such project are produced in the United States.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply in any case in which the Administrator (in consultation with the Governor of the State) finds that—

"(i) applying subparagraph (A) would be inconsistent with the public interest;

"(ii) steel, iron, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

"(iii) inclusion of steel, iron, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

"(C) PUBLIC NOTIFICATION AND WRITTEN JUSTIFICATION FOR WAIVER.—If the Administrator determines that it is necessary to waive the application of subparagraph (A) based on a finding under subparagraph (B), the Administrator shall—

"(i) not less than 15 days prior to waiving application of subparagraph (A), provide public notice and the opportunity to comment on the Administrator's intent to issue such waiver; and

"(ii) upon issuing such waiver, publish in the Federal Register a detailed written justification as to why the provision is being waived.

"(D) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—This paragraph shall be applied in a manner consistent with United States obligations under international agreements.".

SEC. 6. DATA ON VARIANCES, EXEMPTIONS, AND PERSISTENT VIOLATIONS.

Section 1452(b)(2) (42 U.S.C. 300j–12(b)(2)) is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(D) a list of all water systems within the State that have in effect an exemption or variance for any national primary drinking water regulation or that are in persistent violation of the requirements for any maximum contaminant level or treatment technique under a national primary drinking water regulation, including identification of—

"(i) the national primary drinking water regulation in question for each such exemption, variance, or violation; and

"(ii) the date on which the exemption or variance came into effect or the violation began.".

SEC. 7. ASSISTANCE FOR RESTRUCTURING.

(a) DEFINITION.—Section 1401 (42 U.S.C. 300f) is amended by adding at the end the following:

"(17) RESTRUCTURING.—The term 'restructuring' means changes in operations (including ownership, management, cooperative partnerships, joint purchasing arrangements, consolidation, and alternative water supply).".

(b) RESTRUCTURING.—Clause (ii) of section 1452(a)(3)(B) (42 U.S.C. 300j–12(a)(3)(B)) is amended by striking "changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures)" and inserting "restructuring".

SEC. 8. PRIORITY AND WEIGHT OF APPLICATIONS.

(a) PRIORITY.—Section 1452(b)(3) (42 U.S.C. 300j–12(b)(3)) is amended—

(1) in subparagraph (A)—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(iv) improve the ability of systems to protect human health and comply with the requirements of this title affordably in the future.";

(2) by redesignating subparagraph (B) as subparagraph (D);

(3) by inserting after subparagraph (A) the following:

"(B) AFFORDABILITY OF NEW STANDARDS.—For any year in which enforcement begins for a new national primary drinking water standard, each State that has entered into a capitalization agreement pursuant to this section shall evaluate whether capital improvements required to meet the standard are affordable for disadvantaged communities in the State. If the State finds that such capital improvements do not meet affordability criteria for disadvantaged communities in the State, the State's intended use plan shall provide that priority for the use of funds for such year be given to public water systems affected by the standard and serving disadvantaged communities.

"(C) WEIGHT GIVEN TO APPLICATIONS.—After determining priority under subparagraphs (A) and (B), an intended use plan shall provide that the State will give greater weight to an application for assistance if the application contains—

"(i) a description of measures undertaken by the system to improve the management and financial stability of the system, which may include—

"(I) an inventory of assets, including a description of the condition of the assets;

"(II) a schedule for replacement of assets;

"(III) an audit of water losses;

"(IV) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; and

"(V) a review of options for restructuring;

"(ii) a demonstration of consistency with State, regional, and municipal watershed plans;

"(iii) a water conservation plan consistent with guidelines developed for such plans by the Administrator under section 1455(a); and

"(iv) a description of measures undertaken by the system to improve the efficiency of the system or reduce the system's environmental impact, which may include—

"(I) water efficiency or conservation, including the rehabilitation or replacement of existing leaking pipes;

"(II) use of reclaimed water;

"(III) actions to increase energy efficiency;

"(IV) actions to generate or capture sustainable energy on site or through the transportation of water through the system;

"(V) actions to protect source water;

"(VI) actions to mitigate or prevent corrosion, including design, selection of materials, selection of coating, and cathodic protection; and

"(VII) actions to reduce disinfection byproducts."; and

(4) in subparagraph (D) (as redesignated by paragraph (2)) by striking "periodically" and inserting "at least biennially".

(b) GUIDANCE.—Section 1452 (42 U.S.C. 300j–12) is amended—

(1) by redesignating subsection (r) as subsection (s); and

(2) by inserting after subsection (q) the following:

"(r) SMALL SYSTEM GUIDANCE.—The Administrator may provide guidance and, as appropriate, tools, methodologies, or computer software, to assist small systems in undertaking measures to improve the management, financial stability, and efficiency of the system or reduce the system's environmental impact.".

SEC. 9. DISADVANTAGED COMMUNITIES.

(a) ASSISTANCE TO INCREASE COMPLIANCE.—Section 1452(b)(3) (42 U.S.C. 300j–12(b)(3)), as amended, is further amended by adding at the end the following:

"(E) ASSISTANCE TO INCREASE COMPLIANCE.—A State's intended use plan shall provide that, of the funds received by the State through a capitalization grant under this section for a fiscal year, the State will, to the extent that there are sufficient eligible project applications, reserve not less than 6 percent to be spent on assistance under subsection (d) to public water systems included in the State's most recent list under paragraph (2)(D).".

(b) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—Section 1452(d) (42 U.S.C. 300j–12(d)) is amended—

(1) in paragraph (1), by adding at the end the following: "Such additional subsidization shall directly and primarily benefit the disadvantaged community."; and

(2) in paragraph (3), by inserting ", or portion of a service area," after "service area".

(c) AFFORDABILITY CRITERIA.—Section 1452(d)(3) is amended by adding at the end: "Each State that has entered into a capitalization agreement pursuant to this section shall, in establishing affordability criteria, consider, solicit public comment on, and include as appropriate—

"(A) the methods or criteria that the State will use to identify disadvantaged communities;

"(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that affect identified affordability criteria; and

"(C) a description of how the State will use the authorities and resources under this subsection to assist communities meeting the identified criteria.".

SEC. 10. ADMINISTRATION OF STATE LOAN FUNDS.

Section 1452(g) (42 U.S.C. 300j–12(g)) is amended—

(1) in paragraph (2)—

(A) in the first sentence, by striking "up to 4 percent of the funds allotted to the State under this section" and inserting ", for each fiscal year, an amount that does not exceed the sum of the amount of any fees collected by the State for use in covering reasonable costs of administration of programs under this section, regardless of the source, and an amount equal to the greatest of $400,000, ⅕ of one percent of the current valuation of the State loan fund, or 6 percent of all grant awards to the State loan fund under this section for the fiscal year,";

(B) by striking "1419," and all that follows through "1993." and inserting "1419."; and

(C) in the matter following subparagraph (D), by striking "2 percent" and inserting "4 percent"; and

(2) by adding at the end the following:

"(5) TRANSFER OF FUNDS.—

"(A) IN GENERAL.—The Governor of a State may—

"(i) reserve for any fiscal year not more than the lesser of—

"(I) 33 percent of a capitalization grant made under this section; or

"(II) 33 percent of a capitalization grant made under section 601 of the Federal Water Pollution Control Act; and

"(ii) add the funds so reserved to any funds provided to the State under this section or section 601 of the Federal Water Pollution Control Act.

"(B) STATE MATCHING FUNDS.—Funds reserved under this paragraph shall not be considered for purposes of calculating the amount of a State contribution required by subsection (e) of this section or section 602(b) of the Federal Water Pollution Control Act.".

SEC. 11. STATE REVOLVING LOAN FUNDS FOR AMERICAN SAMOA, NORTHERN MARIANA ISLANDS, GUAM, AND THE VIRGIN ISLANDS.

Section 1452(j) (42 U.S.C. 300j–12(j)) is amended by striking "0.33 percent" and inserting "1 percent".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

Subsection (m) of section 1452 (42 U.S.C. 300j–12) is amended to read as follows:

"(m) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

"(A) $1,400,000,000 for fiscal year 2011;

"(B) $1,600,000,000 for fiscal year 2012; and

"(C) $1,800,000,000 for fiscal year 2013.

"(2) AVAILABILITY.—Amounts made available pursuant to this subsection shall remain available until expended.

"(3) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than $1,000,000 per year to pay the costs of conducting needs surveys under subsection (h).".

SEC. 13. NEGOTIATION OF CONTRACTS.

Section 1452 (42 U.S.C. 300j–12), as amended, is further amended by adding at the end the following:

"(t) NEGOTIATION OF CONTRACTS.—For community water systems serving communities with populations of more than 10,000 individuals, a contract to be carried out using funds made available through a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

"(1) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

"(2) a contract subject to an equivalent State or local qualifications-based requirement (as determined by the Governor of the State).".

SEC. 14. AFFORDABILITY OF NEW STANDARDS.

(a) TREATMENT TECHNOLOGIES FOR SMALL PUBLIC WATER SYSTEMS.—Clause (ii) of section 1412(b)(4)(E) (42 U.S.C. 300g–1(b)(4)(E)) is amended by adding at the end the following: "If no technology, treatment technique, or other means is included in a list under this subparagraph for a category of small public water systems, the Administrator shall periodically review the list and supplement it when new technology becomes available.".

(b) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

(1) IN GENERAL.—Subparagraph (E) of section 1452(a)(1) (42 U.S.C. 300j–12(a)(1)) is amended—

(A) by striking "except that the Administrator may reserve" and inserting "except that—

"(i) in any year in which enforcement of a new national primary drinking water standard begins, the Administrator may use the remaining amount to make grants to States whose public water systems are disproportionately affected by the new standard for the provision of assistance under subsection (d) to such public water systems;

"(ii) the Administrator may reserve"; and

(B) by striking "and none of the funds reallotted" and inserting "; and

"(iii) none of the funds reallotted".

(2) ELIMINATION OF CERTAIN PROVISIONS.—

(A) Section 1412(b) (42 U.S.C. 300g–1(b)) is amended by striking paragraph (15).

(B) Section 1415 (42 U.S.C. 300g–4) is amended by striking subsection (e).

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 1414(c)(1) (42 U.S.C. 300g–3(c)(1)(B)) is amended by striking "(a)(2), or (e)" and inserting "or (a)(2)".

SEC. 15. FOCUS ON LIFECYCLE COSTS.

Section 1412(b)(4) (42 U.S.C. 300g–1(b)(4)) is amended—

(1) in subparagraph (D), by striking "taking cost into consideration" and inserting "taking lifecycle costs, including maintenance, replacement, and avoided costs, into consideration"; and

(2) in the matter preceding subclause (I) in subparagraph (E)(ii), by inserting "taking lifecycle costs, including maintenance, replacement, and avoided costs, into consideration," after "as determined by the Administrator in consultation with the States,".

SEC. 16. ENFORCEMENT.

(a) ADVICE AND TECHNICAL ASSISTANCE.—Section 1414 (42 U.S.C. 300g–3) is amended—

(1) in the matter following clause (ii) in subsection (a)(1)(A), by striking "and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time"; and

(2) in subsection (a)(1), by adding at the end the following:

"(C) At any time after providing notice of a violation to a State and public water system under subparagraph (A), the Administrator may provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time. In deciding whether the provision of advice or technical assistance is appropriate, the Administrator may consider the potential for the violation to result in serious adverse effects to human health, whether the violation has occurred continuously or frequently, and the effectiveness of past technical assistance efforts.".

(b) ADDITIONAL INSPECTIONS.—

(1) IN GENERAL.—Section 1414 (42 U.S.C. 300g–3) is amended—

(A) by redesignating subsections (d) through (i) as subsections (e) through (j), respectively; and

(B) by inserting after subsection (c) the following:

"(d) ADDITIONAL INSPECTIONS FOLLOWING VIOLATIONS.—

"(1) IN GENERAL.—The Administrator shall, by regulation, and after consultation with the States, prescribe the number, frequency, and type of additional inspections to follow any violation requiring notice under subsection (c). Regulations under this subsection shall—

"(A) take into account—

"(i) differences between violations that are intermittent or infrequent and violations that are continuous or frequent;

"(ii) the seriousness of any potential adverse health effects that may be involved; and

"(iii) the number and severity of past violations by the public water system; and

"(B) specify procedures for inspections following a violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure.

"(2) STATE PRIMARY ENFORCEMENT RESPONSIBILITY.—Nothing in this subsection shall be construed or applied to modify the requirements of section 1413.".

(2) CONFORMING AMENDMENTS.—

(A) Subsections (a)(1)(B), (a)(2)(A), and (b) of section 1414 (42 U.S.C. 300g–3) are amended by striking "subsection (g)" each place it appears and inserting "subsection (h)".

(B) Section 1448(a) is amended by striking "1414(g)(3)(B)" and inserting "1414(h)(3)(B)".

SEC. 17. REDUCING LEAD IN DRINKING WATER.

(a) IN GENERAL.—Section 1417 (42 U.S.C. 300g–6) is amended—

(1) by adding at the end of subsection (a) the following:

"(4) EXEMPTIONS.—The prohibitions in paragraphs (1) and (3) shall not apply to—

"(A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

"(B) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger."; and

(2) by amending subsection (d) to read as follows:

"(d) DEFINITION OF LEAD FREE.—

"(1) IN GENERAL.—For the purposes of this section, the term 'lead free' means—

"(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and

"(B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

"(2) CALCULATION.—The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.".

(b) EFFECTIVE DATE.—The provisions of subsections (a)(4) and (d) of section 1417 of the Safe Drinking Water Act, as added by this section, apply beginning on the day that is 36 months after the date of the enactment of this Act.

SEC. 18. ENDOCRINE DISRUPTOR SCREENING PROGRAM.

Section 1457 (42 U.S.C. 300j–17) is amended to read as follows:

"ENDOCRINE DISRUPTOR SCREENING PROGRAM

"SEC. 1457. (a) TESTING OF SUBSTANCES.—

"(1) IN GENERAL.—In carrying out the screening program under section 408(p) of the Federal Food, Drug, and Cosmetic Act, the Administrator shall provide for the testing of substances described in paragraph (2) in addition to the substances described in section 408(p)(3) of such Act.

"(2) COVERED SUBSTANCES.—A substance is subject to testing pursuant to paragraph (1) if—

"(A) the substance may be found in sources of drinking water; and

"(B) the Administrator determines that a substantial population may be exposed to such substance.

"(3) SUBSTANCES ALREADY SUBJECT TO TESTING.—Notwithstanding paragraph (2), a substance is not subject to testing pursuant to paragraph (1) if—

"(A) the substance is already subject to evaluation determined by the Administrator to be equivalent to testing pursuant to paragraph (1); or

"(B) the Administrator has already determined the effect of the substance on the endocrine system.

"(4) SUBSTANCES DERIVED FROM DEGRADATION OR METABOLISM OF ANOTHER SUBSTANCE.—If a substance subject to testing pursuant to paragraph (1) (in this paragraph referred to as the 'covered substance') is derived from the degradation or metabolism of another substance, or is used in or generated by the manufacture of another substance, the Administrator shall provide for such testing of the covered substance by the importer or manufacturer of the other substance.

"(b) IDENTIFICATION AND TESTING OF ENDOCRINE DISRUPTING SUBSTANCES THAT MAY BE IN DRINKING WATER.—

"(1) IDENTIFICATION.—Not later than 1 year after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, after opportunity for comment, the Administrator shall publish—

"(A) a list of no fewer than 100 substances for testing pursuant to subsection (a)(1) (in accordance with the schedule specified in paragraph (3)); and

"(B) a plan for the identification of additional substances for testing pursuant to subsection (a)(1), and a schedule for issuing test orders for all such additional substances by not later than 10 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, with the goal of testing, at a minimum and consistent with subsection (a), all substances that have been placed on the Drinking Water Preliminary Contaminant Candidate List published pursuant to section 1412(b)(1)(B)(i).

In publishing the plan and schedule required by subparagraph (B), the Administrator shall obtain advice and direction from the Science Advisory Board.

"(2) PRIORITIZATION; CONSIDERATIONS.—In selecting substances for listing under paragraph (1)(A) or identification pursuant to the plan under paragraph (1)(B), the Administrator—

"(A) shall prioritize the selection of substances that pose the greatest public health concern, using the best available science and taking into consideration (among other factors of public health concern) the effect of such substances on subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, and other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to substances in drinking water; and

"(B) shall take into consideration—

"(i) available information on the extent of potential public exposures to the substances through drinking water; and

"(ii) the Drinking Water Preliminary Contaminant Candidate List published pursuant to section 1412(b)(1)(B)(i).

"(3) SCHEDULE.—After publication of the list under paragraph (1)(A), the Administrator shall issue test orders for—

"(A) at least 25 substances on the list by the end of each year during the 4-year period following the date of the enactment of the Assistance, Quality, and Affordability Act of 2010; and

"(B) all substances on the list by the end of such 4-year period.

"(c) TESTING PROTOCOL PROCESS.—

"(1) IN GENERAL.—Not later than 2 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, the Administrator shall, after opportunity for comment, and after obtaining advice and direction from the Science Advisory Board, publish guidance on developing and updating proto-

cols for testing of possible endocrine disruptors that may be found in sources of drinking water. The guidance shall specify—

"(A) the manner in which the Administrator will evaluate and, where necessary, revise such protocols;

"(B) the manner in which the Administrator will determine when testing of substances will be required; and

"(C) the procedures by which other scientifically relevant information can be used in lieu of some or all of the information that otherwise would be collected pursuant to testing under section 408(p) of the Federal Food, Drug, and Cosmetic Act.

"(2) MINIMUM CONTENTS.—The procedures specified pursuant to paragraph (1)(C) shall ensure that the Administrator may use information that is prepared or provided by any person (including a registrant, manufacturer, or importer of a substance for which testing is required, and any other entity) and shall apply equally with respect to any such person.

"(3) AMENDMENTS.—The Administrator may, after opportunity for comment, and after obtaining advice and direction from the Science Advisory Board, amend any guidance published pursuant to this subsection.

"(d) REVISION OF TESTING PROTOCOLS.—Not later than 2 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, the Administrator shall, after opportunity for comment, determine whether sufficient scientific information has been developed to warrant updating the screening protocols developed under section 408(p) of the Federal Food, Drug, and Cosmetic Act for substances that may be found in sources of drinking water. Not later than 5 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010 and every 3 years thereafter, the Administrator shall determine, consistent with the guidance published under subsection (c), whether to revise screening protocols under such section for substances that may be found in sources of drinking water based on significant improvements in the sensitivity, accuracy, reliability, reproducibility, or efficiency of such protocols, or a reduction in the number of animals required to conduct such protocols. Whenever the Administrator revises such a protocol, the Administrator shall also determine, after obtaining advice and direction from the Science Advisory Board, whether any substance that has already been subjected to testing should be tested using the revised protocol.

"(e) VALID SCIENTIFIC DATA.—Any testing protocols pursuant to this section shall be designed to produce scientific results that are based on—

"(1) verifiable measurements with sufficiently small error rates;

"(2) well-controlled measurements whose interpretation is not confounded by extraneous influences; and

"(3) results that are repeatable by independent scientists.

"(f) RESULTS OF TESTING.—

"(1) PUBLICATION OF DATA EVALUATION RECORDS.—Not later than 6 months after receipt of testing results for a substance that may be found in sources of drinking water, the Administrator shall prepare and, consistent with subsection (g), publish data evaluation records for such results in a publicly searchable database.

"(2) ADMINISTRATIVE ACTION.—Not later than 6 months after receipt of test results that determine the endocrine-related effects caused by a substance that may be found in sources of drinking water, the Administrator shall—

"(A) determine whether to take action related to the substance pursuant to the agency's statutory authority; and

"(B) consistent with subsection (g), publish such determination in a publicly searchable database.

Nothing in this section shall be construed to affect the Administrator's authority to take action under other provisions of law.

"(3) STRUCTURED EVALUATION FRAMEWORK.—To assess the overall weight of the evidence and relevance to human health of results of testing for substances that may be found in sources of drinking water, the Administrator shall develop and use a structured evaluative framework consisting of science-based criteria, consistent with the protection of public health, for systematically evaluating endocrine mode of action and for determining data relevance, quality, and reliability.

"(g) PUBLIC DATABASE.—Beginning not later than 180 days after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010 and consistent with section 552 of title 5, United States Code, the Administrator shall publish, in electronic format, a publicly searchable database that contains information regarding the testing program. Not later than 30 days after the date on which the information becomes available, the Administrator shall ensure that, at a minimum, the database—

"(1) identifies the substances selected for testing under the program; and

"(2) includes the documents and information pertaining to the status of testing activities for each such substance, including test orders, deadlines for submission, the Environmental Protection Agency's data evaluation records, any scientific information on which the Administrator based actions under subsection (f), the Administrator's determination under subsection (f) on whether action will be taken under other statutory authority, and the summary of chemical test results.

"(h) PETITION FOR INCLUSION OF A SUBSTANCE IN THE PROGRAM.—

"(1) IN GENERAL.—Any person may submit a petition to the Administrator to add a substance to the list under subsection (b)(1)(A) or identify a substance pursuant to the plan under subsection (b)(1)(B).

"(2) SPECIFICATION OF FACTS.—Any petition under paragraph (1) shall specify the facts that are claimed to establish that an action described in paragraph (1) is warranted.

"(3) ADMINISTRATIVE ACTION.—Not later than 90 days after the filing of a petition described under paragraph (1), the Administrator shall determine whether the petition has established that an action described in paragraph (1) is warranted and shall grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly add the substance to the list under subsection (b)(1)(A) or identify the substance pursuant to the plan under subsection (b)(1)(B), as applicable. If the Administrator denies the petition, the Administrator shall publish the reasons for such denial in the Federal Register.

"(i) COORDINATION WITH OTHER FEDERAL AGENCIES.—After the Administrator—

"(1) requires testing of a substance that may be found in sources of drinking water, or

"(2) based in whole or in part on the results of testing of such a substance, takes action related to the substance pursuant to the agency's statutory authority,

the Administrator shall give notice of such testing or action to Federal agencies which are authorized by other provisions of law to regulate the substance or products, materials, medications, processes, or practices that use the substance.

"(j) REPORTING REQUIREMENT.—Not later than 1 year after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010 and every 3 years thereafter, the Administrator shall provide a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate that describes—

"(1) progress made in identifying and testing potential endocrine disruptors as well as plans for future activities;

"(2) any change in screening or testing methodology and evaluation or criteria for evaluating scientifically relevant information;

"(3) actions taken to ensure communication and sharing of scientific information with other Federal agencies and the public; and

"(4) any deviations from the plan or schedule published under subsection (b)(1)(B) as well as the reasons therefor.

"(k) TESTING CONSORTIA, COMPENSATION, AND COMPLIANCE.—

"(1) IN GENERAL.—Any person required by the Administrator to conduct testing of an endocrine disruptor that may be found in sources of drinking water may—

"(A) submit, on its own, data in response to an order for such testing; and

"(B) form (on a voluntary basis) a consortium in order to satisfy the requirements of one or more orders for such testing.

"(2) RELIANCE ON CONSORTIUM SUBMISSIONS.—Each member of a consortium described in paragraph (1)(B) shall have full rights to rely on all submissions of the consortium to satisfy the requirements of any order for testing, but continues to be individually subject to such requirements.

"(3) SHARING OF COSTS.—

"(A) IN GENERAL.—Each member of a consortium described in paragraph (1)(B) shall share the applicable costs according to appropriate arrangements established by the consortium members.

"(B) BINDING OFFER.—Whenever, to satisfy the requirements of one or more orders for testing, any person offers to form or join a consortium described in paragraph (1)(B), or offers compensation to a person that has already submitted data to the Administrator satisfying an order for testing, such offer shall constitute a binding offer to share an appropriate portion of the applicable costs.

"(C) APPLICABLE COSTS.—In this subsection, the term 'applicable costs' includes the costs—

"(i) incurred to generate and report information to comply with an order for testing; or

"(ii) associated with the organization and administration of the consortium.

"(4) DISPUTE RESOLUTION.—

"(A) IN GENERAL.—In the event of any dispute about an appropriate share or a fair method of determining an appropriate share of applicable costs of the testing requirements in a test order, any person involved in the dispute may initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service or a hearing with a regional office of the American Arbitration Association. A copy of the request shall be sent to each person from whom the requesting party seeks compensation or who seeks compensation from that party.

"(B) NO REVIEW OF FINDINGS AND DETERMINATION.—The findings and determination of the arbitrator in a dispute initiated pursuant to subparagraph (A) shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except in the case of fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or by the arbitrator.

"(C) PAYMENT OF FEE AND EXPENSES.—The parties to arbitration initiated pursuant to subparagraph (A) shall share equally in the payment of the fee and expenses of the arbitrator.

"(5) ENFORCEMENT.—If the Administrator determines that any person seeking to comply with an order for testing by relying on a submission made by a consortium or an original data submitter has failed to make an offer in accordance with paragraph (3)(B), to participate in an arbitration proceeding under paragraph (4), or to comply with the terms of an agreement or arbitration decision concerning sharing of applicable costs under paragraph (3), that person is deemed to have failed to comply with an order under subparagraph (A) of section 408(p)(5) of the Federal Food, Drug, and Cosmetic Act for purposes of subparagraphs (B) and (C) of such section.

"(l) DEFINITIONS.—In this section:

"(1) The term 'endocrine disruptor' means an exogenous agent or mixture of agents that interferes or alters the synthesis, secretion, transport, metabolism, binding action, or elimination of hormones that are present in the body and are responsible for homeostasis, growth, neurological signaling, reproduction and developmental process, or any other effect that the Administrator has designated as an 'endocrine effect' pursuant to section 408(p)(1) of the Federal Food, Drug, and Cosmetic Act.

"(2) The term 'testing' means the testing of a substance pursuant to the screening program under section 408(p) of the Federal Food, Drug, and Cosmetic Act, including a test of a substance that is intended to identify substances that have the potential to interact with the endocrine system or that is intended to determine the endocrine-related effects caused by such substance and obtain information about effects at various doses.

"(m) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there is authorized to be appropriated $5,000,000 for each of fiscal years 2011 through 2015.".

SEC. 19. PRESENCE OF PHARMACEUTICALS AND PERSONAL CARE PRODUCTS IN SOURCES OF DRINKING WATER.

Subsection (a) of section 1442 (42 U.S.C. 300j–1) is amended by adding at the end the following:

"(11) PRESENCE OF PHARMACEUTICALS AND PERSONAL CARE PRODUCTS IN SOURCES OF DRINKING WATER.—

"(A) STUDY.—The Administrator shall carry out a study on the presence of pharmaceuticals and personal care products in sources of drinking water, which shall—

"(i) identify pharmaceuticals and personal care products that have been detected in sources of drinking water and the levels at which such pharmaceuticals and personal care products have been detected;

"(ii) identify the sources of pharmaceuticals and personal care products in sources of drinking water, including point sources and nonpoint sources of pharmaceutical and personal care products;

"(iii) identify the effects of such products on humans, the environment, and the safety of drinking water; and

"(iv) identify methods to control, limit, treat, or prevent the presence of such products.

"(B) CONSULTATION.—The Administrator shall conduct the study described in subparagraph (A) in consultation with the Secretary of Health and Human

Services (acting through the Commissioner of Food and Drugs), the Director of the United States Geological Survey, the heads of other appropriate Federal agencies (including the National Institute of Environmental Health Sciences), and other interested stakeholders (including manufacturers of pharmaceuticals and personal care products and consumer groups and advocates).

"(C) REPORT.—Not later than 2 years after the date of the enactment of this paragraph, the Administrator shall submit to the Congress a report on the results of the study carried out under this paragraph.

"(D) DEFINITIONS.—In this paragraph:

"(i) The term 'personal care product' has the meaning given the term 'cosmetic' in section 201 of the Federal Food, Drug, and Cosmetic Act.

"(ii) The term 'pharmaceutical' has the meaning given the term 'drug' in section 201 of the Federal Food, Drug, and Cosmetic Act.".

SEC. 20. ELECTRONIC REPORTING OF COMPLIANCE MONITORING DATA TO THE ADMINISTRATOR.

(a) REQUIREMENT.—Section 1414 (42 U.S.C. 300g-3), as amended, is further amended by adding at the end the following:

"(k) ELECTRONIC REPORTING OF COMPLIANCE MONITORING DATA TO THE ADMINISTRATOR.—The Administrator shall by rule establish requirements for—

"(1) electronic submission by public water systems of all compliance monitoring data—

"(A) to the Administrator; or

"(B) with respect to public water systems in a State which has primary enforcement responsibility under section 1413, to such State; and

"(2) electronic submission to the Administrator by each State which has primary enforcement responsibility under section 1413 of all compliance monitoring data submitted to such State by public water systems pursuant to paragraph (1)(B).".

(b) FINAL RULE.—Not later than 12 months after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall issue a final rule to carry out section 1414(k) of the Safe Drinking Water Act, as added by subsection (a).

PURPOSE AND SUMMARY

H.R. 5320 is a bill to amend the Safe Drinking Water Act (SDWA) to authorize increased assistance to states, water systems, and disadvantaged communities, encourage improved financial and environmental management of water systems, provide the Environmental Protection Agency (EPA) with additional tools for enforcement, reduce lead in drinking water fixtures and piping, and amend the Endocrine Disruptor Screening Program (EDSP) for chemicals in drinking water.

The bill reauthorizes and increases the authorization levels for the drinking water state revolving fund (SRF) and technical assistance for small systems. It adds projects designed to improve the sustainability and long-term viability of water systems to the list of priorities that should inform state funding decisions and encourages public water systems to improve their managerial capacity and reduce their environmental impact. It provides priority for SRF funds for water systems serving disadvantaged communities that cannot afford to comply with new drinking water standards and requires states to provide additional assistance to water systems serving disadvantaged communities and struggling to comply with existing drinking water standards. It changes the legal definition of "lead-free" for pipes and fixtures from 8% lead to 0.25% lead in wetted surfaces. It increases the funding available to the territories for drinking water infrastructure. It provides additional tools for enforcement of the Safe Drinking Water Act by clarifying requirements for technical assistance and follow-up inspections and amends the Endocrine Disruptor Screening Program for chemicals

in drinking water by outlining transparent procedures for requiring testing and updating methods.

BACKGROUND AND NEED FOR LEGISLATION

In 1996, amendments to the Safe Drinking Water Act established the state revolving fund program to finance drinking water infrastructure improvements. The funds are used to increase compliance with drinking water standards, protect public health, and assist the water systems most in need. To date, the program has helped finance more than 6,600 drinking water projects throughout the country, using federal funds to supplement and leverage investment from other sources.

Funds from the SRF are allotted to the states based on a needs survey, with no state receiving less than 1% of the fund.[1] Since 1996, the EPA Administrator has been authorized to reserve up to 0.33% of the fund for the territories. Each state or territory administers its fund according to an approved intended use plan, providing loans to public water systems at below-market interest rates. The priorities for these funds under existing law are addressing the most serious risks to human health, ensuring compliance with SDWA requirements, and assisting systems most in need on a per household basis. Some states allow these funds to be used for preconstruction activities, to produce or capture sustainable energy, and to replace aging infrastructure, but the availability of the funding for these activities is inconsistent.

Public water systems in the United States serve more than 272 million people, and, according to the most recent needs survey carried out by EPA, are facing infrastructure bills with the potential to climb to $334 billion over the next 17 years as our existing infrastructure ages.[2] According to the American Water Works Association, cast iron pipes dating to the late 1800s have an average life expectancy of about 120 years.[3] Because of changing materials and manufacturing techniques, pipes laid in the 1920s have an average life expectancy of about 100 years, and pipes laid in the post-World War II boom can be expected to last about 75 years.[4] EPA's "Gap Analysis," performed in 2002, predicted that by 2020, 44% of our drinking water pipe network will be classified as either "poor," "very poor," or—disturbingly—"life elapsed."[5] The drinking water SRF provides an important funding source to help meet these infrastructure needs.

Infrastructure investment also encourages job creation. The U.S. Conference of Mayors has estimated that, for every million dollars spent on water infrastructure, 8.7 construction jobs are created, and each of those construction jobs creates 3.68 additional jobs.

---

[1] 42 U.S.C. 300j–12.

[2] United States Environmental Protection Agency, Drinking Water Infrastructure Needs Survey and Assessment: Fourth Report to Congress, (Feb. 2009).

[3] American Water Works Association. Reinvesting in Drinking Water Structure: Dawn of the Replacement Era. Denver, CO: AWWA (May 2001).

[4] Id.

[5] United States Environmental Protection Agency, Clean Water and Drinking Water Infrastructure Gap Analysis, EPA–816–R–02–020 (Sept. 2002).

LEGISLATIVE HISTORY

The drinking water state revolving fund was created by the Safe Drinking Water Act Amendments of 1996 to finance projects necessary for protection of public health and compliance with drinking water standards.[6] In 1997, appropriations for the drinking water SRF were $1.275 billion, and by 1999, more than 100 projects had been completed using SRF funds. By 2007, more than 3,500 projects had been completed with SRF funds.[7]

The American Recovery and Reinvestment Act of 2009 (ARRA) directed $2 billion to states through the drinking water SRF, in addition to the 2009 SRF appropriation. Those funds were required to be obligated within one year of passage of ARRA. All states met that deadline and had their portion of the ARRA funds under contract by February 17, 2010, demonstrating the significant need for funds.

ARRA included a requirement that 20% of the funds be used for "green" projects. This introduced environmental sustainability concerns into the SRF for the first time, and directed funds towards water efficiency and energy efficiency measures. ARRA also included a requirement for the provision of extra assistance to systems serving disadvantaged communities. Since its inception, the SRF has provided states with the authority to give extra assistance, in the form of extended loan terms, lower interest rates, or principal forgiveness to disadvantaged communities. Until ARRA, such assistance was completely discretionary.

The 1996 amendments to the SDWA also created a technical assistance grant program to assist small systems. That provision does not include priority criteria for the selection of grant applications, and no competitive grants have ever been awarded under that authority.

Since 1986, SDWA has prohibited the installation or repair of plumbing providing water for human consumption that does not meet the statutory definition of "lead free".[8] The 1996 amendments additionally prohibited the introduction into commerce of any pipe or plumbing fitting or fixture that does not meet the definition. At all times since 1986, the definition of "lead free" under SDWA for pipes and pipe fittings has been 8% lead.[9]

The Endocrine Disruptor Screening Program was also created in 1996 by provisions in the SDWA amendments and provisions in the Food Quality Protection Act (FQPA).[10] Under the EDSP, EPA is required to test all pesticides that may come into contact with food for their ability to interfere with the body's hormonal system. This program also provides EPA discretionary authority to test substances that might be found in drinking water for their ability to interfere with the body's hormonal system.

Upon issuance of a test order by EPA, chemical manufacturers are responsible for screening a chemical to determine its potential to produce effects in humans that mimic or interfere with hormone action in the body. The FQPA authorizes EPA to take appropriate

---

[6] P.L. 104–182.
[7] United States Environmental Protection Agency, Drinking Water State Revolving Fund: 2007 Annual Report (Mar. 2008).
[8] 42 U.S.C. 300g–6.
[9] 42 U.S.C. 300g–6(d).
[10] P.L. 104–170.

action to protect public health under existing statutory authority if substances are found to have endocrine effects in humans.

The selection of testing protocols and the chemicals to test first were not finalized until October 2009, 11 years after the program's official establishment. Between October 2009 and February 2010, EPA issued test orders for 67 pesticide chemicals. EPA has never exercised its discretionary authority to issue test orders for non-pesticide chemicals found in sources of drinking water.

Reps. Henry A. Waxman (D–CA) and Edward J. Markey (D–MA) released proposed legislative text on May 10, 2010, to reauthorize the Safe Drinking Water Act state revolving fund. The legislative language was the focus of a hearing held by the Subcommittee on Energy and Environment on May 13, 2010. At this hearing, witnesses representing rural and metropolitan water systems, and state administrators testified on the SRF-related portions of the legislation. The Subcommittee also received testimony on the provisions related to the EDSP from Sarah Janssen, representing the Natural Resources Defense Council, and Terry Quill, of Quill Law Group. Cynthia Dougherty, Director of EPA's Office of Ground Water and Drinking Water, offered testimony on all provisions of the bill.

COMMITTEE CONSIDERATION

H.R. 5320, the "Assistance, Quality, and Affordability Act of 2010", was introduced by Chairmen Waxman and Markey on May 18, 2010, and referred to the Committee on Energy and Commerce. H.R. 5320 was then referred to the Subcommittee on Energy and Environment on May 18, 2010, and the Subcommittee met in open markup session and considered the bill on May 19, 2010. Subsequently, the Subcommittee agreed to favorably forward H.R. 5320 to the full Committee, amended, by a roll call vote of 18 yeas to 13 nays.

On May 26, 2010, the Committee on Energy and Commerce met in open markup session to consider H.R. 5320, as approved by the Subcommittee. Subsequently, the Committee agreed to order H.R. 5320 favorably reported to the House, amended, by a roll call vote of 45 yeas and 1 nay.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee agreed to a motion by Mr. Waxman ordering H.R. 5320 favorably reported to the House, amended, by a record vote of 45 yeas and 1 nay. The following is the record vote taken during Committee consideration, including the names of those Members voting for and against:

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 170

BILL: **H.R. 5320,** the "Assistance, Quality, and Affordability Act of 2010".

MOTION: A motion by Mr. Waxman to order H.R. 5320 favorably reported to the House, amended. (Final Passage)

DISPOSITION: **AGREED TO** by a roll call vote of 45 yeas to 1 nay.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton	X		
Mr. Dingell	X			Mr. Hall			
Mr. Markey	X			Mr. Upton	X		
Mr. Boucher	X			Mr. Stearns			
Mr. Pallone				Mr. Whitfield	X		
Mr. Gordon				Mr. Shimkus	X		
Mr. Rush	X			Mr. Shadegg		X	
Ms. Eshoo	X			Mr. Blunt			
Mr. Stupak	X			Mr. Buyer	X		
Mr. Engel				Mr. Radanovich	X		
Mr. Green	X			Mr. Pitts	X		
Ms. DeGette	X			Ms. Bono Mack	X		
Mrs. Capps	X			Mr. Terry	X		
Mr. Doyle	X			Mr. Rogers	X		
Ms. Harman				Mrs. Myrick	X		
Ms. Schakowsky				Mr. Sullivan	X		
Mr. Gonzalez	X			Mr. Murphy of PA	X		
Mr. Inslee	X			Mr. Burgess	X		
Ms. Baldwin	X			Ms. Blackburn	X		
Mr. Ross	X			Mr. Gingrey	X		
Mr. Weiner	X			Mr. Scalise	X		
Mr. Matheson	X			Mr. Griffith	X		
Mr. Butterfield	X			Mr. Latta			
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen							
Ms. Castor							
Mr. Sarbanes							
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch							

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5320 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized. The purpose of this legislation is to amend the Safe Drinking Water Act to reauthorize the drinking water state revolving fund and for other purposes, including:

- Adding projects designed to improve sustainability and long term viability to the list of priorities that should inform state funding decisions under the SRF.
- Encouraging public water systems to improve their managerial capacity and reduce their environmental impact.
- Ensuring that technical assistance funds for small water systems are awarded through a competitive process to nonprofits providing the types of technical assistance preferred by small communities.
- Providing priority for SRF funds to water systems serving disadvantaged communities that cannot afford to comply with new drinking water standards.
- Requiring states to reserve funding for water systems serving disadvantaged communities that have been unable to comply with existing drinking water standards.
- Amending the Endocrine Disruptor Screening Program for chemicals in drinking water by outlining transparent procedures for requiring testing and updating methods.
- Changing the legal definition of "lead-free" for pipes and fixtures from 8% lead to 0.25% lead in wetted surfaces.
- Providing additional tools for enforcement of the Safe Drinking Water Act by clarifying requirements for technical assistance and follow up inspections.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the constitutional authority for H.R. 5320 is provided in Article I, section 8, clauses 1, 3, and 18 of the Constitution of the United States.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5320 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

ADVISORY COMMITTEE STATEMENT

No advisory committees were created by H.R. 5320 within the meaning of section 5 U.S.C. App., 5(b) of the Federal Advisory Committee Act.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 5320 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1985.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandate Reform Act.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate on H.R. 5320 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 5320 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 11, 2010.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5320, the Assistance, Quality, and Affordability Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 5320—Assistance, Quality, and Affordability Act of 2010

Summary: H.R. 5320 would authorize the appropriation of nearly $5 billion for the Environmental Protection Agency (EPA) to provide grants to states and nonprofit organizations to support a wide range of water quality projects and programs over the 2011–2015 period. This legislation also would authorize the appropriation of

$5 million annually over the next five years to support EPA's Endocrine Disruptor Screening program. CBO estimates that implementing this legislation would cost about $3.5 billion over the next five years, assuming appropriation of the authorized amounts. Remaining amounts would be spent after 2015.

The Joint Committee on Taxation (JCT) estimates that enacting the bill would increase the use of tax-exempt bonds by states, thus reducing revenues by $337 million over the next 10 years. Pay-as-you-go procedures apply because enacting the legislation would affect revenues.

H.R. 5320 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of the intergovernmental mandates would fall below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). Based on information from industry sources, CBO estimates that the aggregate cost of private-sector mandates would probably exceed the annual threshold established in UMRA for the private sector ($141 million in 2010, adjusted annually for inflation).

Estimated cost to the Federal Government: For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2011, that the full amounts authorized will be appropriated for each year, and that outlays will follow the historical patterns of spending for existing programs. Components of the estimated costs are described below.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 5320

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Authorization Level	1,425	1,625	1,825	25	25	0	0	0	0	0	4,925	4,925
Estimated Outlays	66	392	867	1,209	1,057	627	277	120	61	33	3,591	4,709
CHANGES IN REVENUES												
Estimated Revenues [a b]	*	−1	−6	−15	−29	−44	−55	−61	−63	−64	−51	−337

Note: Components may not sum to totals because of rounding. * = revenue loss of less than $500,000.
[a] Estimate provided by the Joint Committee on Taxation.
[b] Negative numbers indicate a reduction in revenues and an increase in the deficit.

BASIS OF ESTIMATE

Revenues

The JCT expects that some of the funds authorized in H.R. 5320 would be used by states to leverage additional funds by issuing tax-exempt bonds. The JCT estimates that issuing additional tax-exempt bonds would reduce federal revenues by about $337 million over the next 10 years.[11]

Spending subject to appropriation

This legislation would authorize appropriations totaling nearly $5 billion over the next five years for EPA's water infrastructure and grant programs and to support EPA's Endocrine Disruptor Screening program. Amounts authorized to be appropriated for individual programs are shown in Table 2.

TABLE 2.—AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR EPA PROGRAMS UNDER H.R. 5320

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
Safe Drinking Water SRF Grants	1,400	1,600	1,800	0	0	4,800
Grants for Small Public Water Systems	20	20	20	20	20	100
Endocrine Disruptor Screening Program	5	5	5	5	5	25
Total Authorization Level	1,425	1,625	1,825	25	25	4,925

Note: SRF = state revolving fund; EPA = Environmental Protection Agency.

The bill would authorize the appropriation of $4.8 billion over the 2011–2015 period for EPA to provide capitalization grants for the State Revolving Fund program for safe drinking water. In 2010, this program received an appropriation of about $1.4 billion. (In addition, the American Recovery and Reinvestment Act of 2009 provided $2 billion for this program). States use such grants along with their own funds to make low-interest loans to communities to build or improve drinking water facilities. Indian tribes also use such grants to fund projects that would improve the quality of drinking water. This bill would make several revisions to those grant programs, including expanding the types of projects eligible for assistance and changing the formulas used to allocate grant money among the states and tribes.

This bill also would authorize the appropriation of about $100 million over the 2011–2015 period for EPA to make grants to small public water systems to address the cost of complying with drinking water regulations and $5 million annually over the same period to support EPA's Endocrine Disruptor Screening program, which tests for certain substances in drinking water.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

[11] CBO estimates that federal revenues would be reduced by $22 million over the 2010–2014 period and by $274 million over the 2010–2019 period.

CBO ESTIMATE OF PAY-AS-YOU GO EFFECTS FOR H.R. 5320, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON MAY 26, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	1	6	15	29	44	55	61	63	64	51	337

Intergovernmental and private-sector impact: H.R. 5320 would impose intergovernmental and private-sector mandates as defined in UMRA. CBO estimates that the aggregate cost of the intergovernmental mandates would fall below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). Based on information from industry sources, CBO estimates that the aggregate cost of private-sector mandates would probably exceed the annual threshold established in UMRA for the private sector ($141 million in 2010, adjusted annually for inflation).

MANDATES

Lead-Free Plumbing. The bill would modify the definition of "lead free" under the Safe Drinking Water Act to reduce the amount of lead allowed in plumbing products. The new definition would apply to pipes, fittings, or fixtures used to provide drinking water that are sold after the bill's enactment. Plumbing products used and sold in the United States would have to meet the new standard within three years of enactment.

The cost of the mandate would be the additional costs to manufacturers, importers, or users associated with producing or acquiring compliant products. Based on information from industry sources, CBO expects that some manufacturers would already be in compliance with the new standard because of existing standards in some states. However, information from those sources suggests that the incremental cost of manufacturing or importing such products would total hundreds of millions of dollars to the private sector in at least some of the first five years the mandate is in effect. Some of those costs could be passed through to end users, including public entities. While the additional costs to state, local, and tribal entities could be significant, CBO estimates that those costs would total less than the annual threshold established in UMRA for intergovernmental mandates.

Reporting Requirements. The bill would require public water systems (including both public and private entities) to submit monitoring data electronically. CBO estimates that the cost to submit such information electronically would be minimal.

OTHER IMPACTS

The bill would provide capitalization grants to states to make loans to public water systems for infrastructure improvements relating to drinking water. Any costs to those entities related to the capitalization grants would result from complying with conditions of assistance.

Estimate prepared by: Federal Spending: Susanne S. Mehlman; Federal Revenues: Mark Booth; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents; references

This Act may be cited as the "Assistance, Quality, and Affordability Act of 2010". The table of contents of this Act is provided

in this section. This section also provides that, unless otherwise specified, wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, it is referring to a section or other provision of the Safe Drinking Water Act (42 U.S.C. 300f et. seq.).

Section 2. Technical assistance for small public water systems

This section amends the technical assistance provisions of the Safe Drinking Water Act (SDWA) to ensure that funds are awarded through a competitive process to the most qualified non-profits, to help small public water systems comply with SDWA requirements and protect public health.

Section 3. Prevailing wages

This section requires that laborers and mechanics employed in connection with a construction project financed pursuant to the Safe Drinking Water Act, including through funds from a state revolving fund, are paid at a rate not less than the prevailing wage in the area.

Section 4. Use of funds

This section amends the list of activities for which funds from the drinking water SRF may be used, to clarify that preconstruction activities, rehabilitation and replacement of aging infrastructure, and production or capture of sustainable energy are eligible for funding through the revolving funds. This section also codifies the existing practice of using funds for issuance of bonds.

Section 5. Requirements for use of American materials

This section requires that water systems purchase iron, steel, and manufactured goods that have been produced in the United States for use in projects funded through the SRF, unless the required goods are not produced in the United States, the purchase of other goods is in the public interest, or making the purchase will increase the overall cost of the project by more than 25%. This section also provides the Administrator the authority to waive these provisions.

Section 6. Data on variances, exemptions, and persistent violations

This section amends the list of items that must be included by states in their intended use plans. Specifically, this section requires state intended use plans to include a list of all of that state's water systems that have an exemption for a variance for any drinking water standard under SDWA, particularly those water systems that are in persistent violation of contaminant or treatment requirements under SDWA.

Section 7. Assistance for restructuring

This section adds a new definition to the Safe Drinking Water Act. The Committee does not intend this definition to imply a preference for privatization.

Section 8. Priority and weight of applications

This section amends the provisions describing the SRF and the procedures for prioritizing applications for funds from the SRF.

This section adds an additional priority for the use of funds from the SRF. Existing law includes three priorities: addressing the most serious risks to human health, ensuring compliance with SDWA requirements, and assisting systems most in need on a per household basis. This amendment adds consideration of sustainability, by prioritizing projects that increase a system's ability to provide safe, affordable water for years to come. This will allow projects that anticipate significant needs and offer improvements that will benefit a system for many years to receive funding before public health concerns become acute.

Additionally, and separate from the overall priority scheme, this section makes clear that SRF funds should be available for systems serving disadvantaged communities and facing unaffordable capital costs to come into compliance with a new national primary drinking water standard.

This section also establishes a system for giving greater weight to applications from systems that have taken measures to improve their management and financial stability, efficiency, and environmental impact. Individual states may select qualifying measures in their Intended Use Plans, and this section provides several examples of measures that could qualify. The inclusion of restructuring option reviews among listed examples is intended to encourage water systems to undertake such reviews, but not to imply that restructuring is required.

In order to ensure that small systems have the ability to evaluate and undertake qualifying measures, this section allows the Administrator to provide guidance, software, and tools to those systems. This guidance will supplement the assistance available under the technical assistance provisions of SDWA.

Section 9. Disadvantaged communities

This section amends the disadvantaged community provisions of SDWA that allows states to provide additional assistance to public water systems serving disadvantaged communities. This section will, for the first time, require states with a demonstrated need to provide assistance through the disadvantaged community provisions of SDWA. Any state that reports exemptions or persistent violations by one or more systems serving disadvantaged communities will be required to reserve at least 6% of its SRF funds for assistance to those systems.

The section would require states establishing definitions of "disadvantaged communities" after enactment to solicit public comment on and consider the methodology for identifying disadvantaged communities, the factors affecting identified affordability criteria, and approaches to use authorities under the SRF to help identified communities. The Committee does not intend for states with definitions in place when the AQUA Act is enacted to be required to revise their definitions.

Additionally, this section will make disadvantaged community assistance available to public water systems whose service areas include a disadvantaged portion, and will require that the assistance is provided to that portion. Many water systems serve multiple communities, which may have different infrastructure needs and economic indicators. As systems consider restructuring, and possibly consolidation, the number of such systems may increase.

This section will encourage projects to benefit disadvantaged areas served by larger systems, and address the concern that metropolitan systems have often been unable to qualify for disadvantaged community assistance, even for projects that directly benefit an area that would meet the state definition.

Section 10. Administration of State loan funds

This section increases the portion of SRF funds that states may use for administration of their SRF programs. It also codifies the current practice of allowing states to transfer a portion of funds between the drinking water SRF and the Clean Water Act's state revolving funds.

Section 11. State loan funds for American Samoa, Northern Mariana Islands, Guam, and the Virgin Islands

This section increases the portion of SRF funds that may be reserved by the Administrator for infrastructure projects in the territories from 0.33% to 1% of the fund.

Section 12. Authorization of appropriations

This section authorizes appropriations at $1.4 billion in fiscal year 2011, $1.6 billion in fiscal year 2012, and $1.8 billion in fiscal year 2013.

Section 13. Negotiation of contracts

This section requires that contracts to be carried out using federal funds provided through the SRF program be negotiated in keeping with federal qualifications-based requirements, or equivalent state or local requirements. This section applies only to communities of 10,000 or more, and leaves discretion to the states to determine what state or local requirements are equivalent.

Section 14. Affordability of new standards

In promulgating new standards, the Administrator will now be required to regularly update and supplement the list of technologies that are affordable for different classes of systems to drive innovation and provide information for small systems.

Any state finding that a new standard poses affordability issues for disadvantaged communities in that state will be required to prioritize projects for those systems under the SRF. Any state that is disproportionately affected by a new standard will be eligible, under this section, for additional funds from the SRF program to ensure that prioritizing projects for the new system does not limit funding for other projects.

These funding priorities will replace the current small system variance mechanism. This section is designed to direct SRF funds to help make new standards affordable for all systems and customers.

Section 15. Focus on lifecycle costs

This section will require the Administrator to look at the lifecycle costs, including maintenance, replacement, and avoided costs, in determining what technologies are feasible for new standards.

Section 16. Enforcement

This section will amend the enforcement provisions of the Safe Drinking Water Act to ensure that technical assistance is provided to bring systems into compliance where deemed appropriate by the Administrator, and require the Administrator to promulgate regulations concerning the number, frequency, and types of inspections that should be conducted to ensure water systems with violations achieve and maintain compliance.

Section 17. Reducing lead in drinking water

This section amends existing provisions in section 1417 of the Safe Drinking Water Act related to lead fixtures and to change the legal definition of "lead-free" from 8% lead to 0.25% lead in wetted surfaces.

The existing provisions on lead fixtures include a requirement for the Administrator to provide technical information and assistance to qualified third party certifiers for the development of voluntary standards and testing protocols for lead leaching. Nothing in this Act is intended to amend or abridge that direction.

The Committee is aware that the Administrator has relied on third party certification in other programs, such as WaterSense, and nothing in this Act is intended to bar the Administrator from making use of third party certification for lead content.

Importantly, this section provides 36 months for this new provision to take effect once this bill becomes enacted. The Committee believes, based on the assurances of manufacturers and distributors of faucets that would meet this standard, that this time frame is appropriate to provide adequate time for the infrastructure necessary to machine compliant piping and faucets for the national market.

Section 18. Endocrine disruptor screening program

The Committee is interested in knowing more about the possible presence and potential ramifications of endocrine disrupting chemicals in drinking water and any impact they may have on the health of persons. This section amends section 1457 of the Safe Drinking Water Act to update its screening and testing program for this specific area and thereby help inform EPA's efforts to protect public health.

The Committee is aware that the Endocrine Disrupter Screening Program (EDSP) currently utilizes a two-tiered screening and testing protocol. The "screen," known as Tier 1, is a battery of assays intended to screen substances to identify whether they have the potential to interact with the endocrine system. A showing that a substance may interact with an endocrine system does not mean that the substance will cause adverse effects in humans or ecological systems. The program's Tier 2 "testing" is a combination of assays intended to determine what, if any, endocrine-related adverse effects are caused by each chemical substance or mixture and obtain information about these effects at various doses.

In choosing its definition of "testing" the Committee included both the elements of screening and testing described above.

The Committee, however, chose not to create statutory definitions of "Tier 1" and "Tier 2" as experts believe that future advances in technology could result in screening and testing being

conducted simultaneously, with the potential for these tiers to be collapsed into one combined set of assays. The definition chosen by the Committee reflects the possibility that future advances in technology could result in newer and more effective screening and testing methodologies that may not fit neatly into today's definitions.[12] It is the Committee's expectation that until such time when existing protocols are revised, EPA will continue to utilize the EDSP's existing policies and procedures.

The Committee did not limit the scope of endocrine-related effects in the definitions in this section to those effects determined to be "adverse," though it is the understanding of the Committee that any examination of adverse effects would be included in the Tier 2 testing protocols developed. The Committee made this decision in recognition of the fact that the EDSP should be an effort to understand all effects of substances on the endocrine system. The Committee expects that regulatory decision-making regarding endocrine disrupting substances will continue to be based on the presence of adverse effects, using legislatively mandated risk-based criteria. Nothing in the definitions of endocrine disruptor or testing, contained in this section, is intended to alter any such criteria.

The Committee is aware that there are numerous sources of scientific information regarding endocrine disruption, including results of studies generated by industry, academia and government institutions. The Administrator should take into consideration all sources of information when determining if substances need to be screened under this program, and should make use of best available science in prioritizing selection of substances. If the Administrator determines that a substance has already undergone equivalent screening or testing or has sufficient information that would render results of the program to be duplicative, EPA does not need to run the substance through the EDSP. The Administrator may also determine that data available for a substance would suffice for the "screening" portion of the program, and in this instance the Administrator may choose to only run the substance through the "testing" assays that would determine the endocrine-related effects at various doses.

The Committee is aware that EPA recently issued test orders for 67 substances under the EDSP. The Committee is also aware that EPA is currently engaged in the identification of 100 additional substances for testing that this section of the bill requires EPA to identify, and that EPA plans, in the near future, to issue test orders for the testing of these 100 substances. Nothing in this section is intended to require EPA to restart, repeat, or delay its ongoing work.

Section 19. Presence of pharmaceuticals and personal care products in sources of drinking water

This section requires the Administrator to carry out a study on the presence of pharmaceuticals and personal care products in sources of drinking water.

---

[12] See, e.g., Testimony of Jim Jones, Deputy Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, Subcommittee on Energy and Environment, Hearing on Endocrine Disrupting Chemicals in Drinking Water: Risks to Human Health and the Environment (Feb. 25, 2010) (discussing advancements in methodologies).

Section 20. Electronic reporting of compliance monitoring data to the Administrator

This section requires the Administrator to promulgate a rule, no later than 12 months after the date of enactment of the AQUA Act, to require electronic submission of compliance monitoring data by water systems and to U.S. EPA or states with primary enforcement authority and further from states with primary enforcement authority to U.S. EPA.

EXPLANATION OF AMENDMENTS

Two amendments were adopted during Committee consideration of H.R. 5320. The amendment offered by Representative Rush directs the Administrator to issue a regulation within 12 months of enactment to require electronic submission of monitoring and compliance data by water systems. The amendment offered by Representatives Sutton, Murphy of Connecticut, Braley, Doyle, and Murphy of Pennsylvania requires water systems receiving funds from the SRF to purchase iron, steel, and manufactured goods produced in the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SAFE DRINKING WATER ACT

TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

SHORT TITLE

SEC. 1400. This title may be cited as the "Safe Drinking Water Act".

PART A—DEFINITIONS

DEFINITIONS

SEC. 1401. For purposes of this title:
(1) * * *

* * * * * * *

(17) RESTRUCTURING.—The term "restructuring" means changes in operations (including ownership, management, cooperative partnerships, joint purchasing arrangements, consolidation, and alternative water supply).

PART B—PUBLIC WATER SYSTEMS

* * * * * * *

NATIONAL DRINKING WATER REGULATIONS

SEC. 1412. (a) * * *
(b) STANDARDS.—

(1) * * *

* * * * * * *

(4) GOALS AND STANDARDS.—

(A) * * *

* * * * * * *

(D) DEFINITION OF FEASIBLE.—For the purposes of this subsection, the term "feasible" means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available ([taking cost into consideration] *taking lifecycle costs, including maintenance, replacement, and avoided costs, into consideration*). For the purpose of this paragraph, granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(E) FEASIBLE TECHNOLOGIES.—

(i) * * *

(ii) LIST OF TECHNOLOGIES FOR SMALL SYSTEMS.—The Administrator shall include in the list any technology, treatment technique, or other means that is affordable, as determined by the Administrator in consultation with the States, *taking lifecycle costs, including maintenance, replacement, and avoided costs, into consideration,* for small public water systems serving—

(I) * * *

* * * * * * *

and that achieves compliance with the maximum contaminant level or treatment technique, including packaged or modular systems and point-of-entry or point-of-use treatment units. Point-of-entry and point-of-use treatment units shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The Administrator shall not include in the list any point-of-use treatment technology, treatment technique, or other means to achieve compliance with a maximum contaminant level or treatment technique requirement for a microbial contaminant (or an indicator of a microbial contaminant). If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry or point-of-use treatment unit, individual units of that type shall not be accepted for compliance with a maximum contaminant level or treat-

ment technique requirement unless they are independently certified in accordance with such standards. In listing any technology, treatment technique, or other means pursuant to this clause, the Administrator shall consider the quality of the source water to be treated. *If no technology, treatment technique, or other means is included in a list under this subparagraph for a category of small public water systems, the Administrator shall periodically review the list and supplement it when new technology becomes available.*

* * * * * * *

[(15) VARIANCE TECHNOLOGIES.—

[(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Administrator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as "variance technology") for the contaminant that the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

[(i) a population of 10,000 or fewer but more than 3,300;

[(ii) a population of 3,300 or fewer but more than 500; and

[(iii) a population of 500 or fewer but more than 25, if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

[(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

[(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall pro-

vide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and underground sources.

[(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after the date of enactment of this paragraph and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to the date of enactment of this paragraph for which a variance may be granted under section 1415(e). The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.]

* * * * * * *

ENFORCEMENT OF DRINKING WATER REGULATIONS

SEC. 1414. (a)(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 1413(a)) that any public water system—

(i) * * *

* * * * * * *

he shall so notify the State and such public water system [and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time].

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under [subsection (g)] *subsection (h)* requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b).

(C) At any time after providing notice of a violation to a State and public water system under subparagraph (A), the Administrator may provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time. In de-

ciding whether the provision of advice or technical assistance is appropriate, the Administrator may consider the potential for the violation to result in serious adverse effects to human health, whether the violation has occurred continuously or frequently, and the effectiveness of past technical assistance efforts.

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) * * *

* * * * * * *

the Administrator shall issue an order under **[**subsection (g)**]** *subsection (h)* requiring the public water system to comply with the requirement, or commence a civil action under subsection (b).

(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under **[**subsection (g)**]** *subsection (h)*, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if—

(1) * * *

* * * * * * *

(c) NOTICE TO PERSONS SERVED.—

(1) IN GENERAL.—Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) * * *

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), **[**(a)(2), or (e)**]** *or (a)(2)* of section 1415 for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 1416, notice of—

(i) * * *

* * * * * * *

(d) ADDITIONAL INSPECTIONS FOLLOWING VIOLATIONS.—

(1) IN GENERAL.—The Administrator shall, by regulation, and after consultation with the States, prescribe the number, frequency, and type of additional inspections to follow any violation requiring notice under subsection (c). Regulations under this subsection shall—

(A) take into account—

(i) differences between violations that are intermittent or infrequent and violations that are continuous or frequent;

(ii) the seriousness of any potential adverse health effects that may be involved; and

(iii) the number and severity of past violations by the public water system; and

(B) specify procedures for inspections following a violation by a public water system that has the potential to have

serious adverse effects on human health as a result of short-term exposure.

(2) STATE PRIMARY ENFORCEMENT RESPONSIBILITY.—Nothing in this subsection shall be construed or applied to modify the requirements of section 1413.

[(d)] *(e)* Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

[(e)] *(f)* Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

[(f)] *(g)* If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1)) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) * * *

* * * * * * *

[(g)] *(h)*(1) * * *

* * * * * * *

[(h)] *(i)* CONSOLIDATION INCENTIVE.—

(1) * * *

* * * * * * *

[(i)] *(j)* DEFINITION OF APPLICABLE REQUIREMENT.—In this section, the term "applicable requirement" means—

(1) * * *

* * * * * * *

(k) ELECTRONIC REPORTING OF COMPLIANCE MONITORING DATA TO THE ADMINISTRATOR.—The Administrator shall by rule establish requirements for—

(1) electronic submission by public water systems of all compliance monitoring data—

(A) to the Administrator; or

(B) with respect to public water systems in a State which has primary enforcement responsibility under section 1413, to such State; and

(2) electronic submission to the Administrator by each State which has primary enforcement responsibility under section 1413 of all compliance monitoring data submitted to such State by public water systems pursuant to paragraph (1)(B).

VARIANCES

SEC. 1415. (a) * * *

* * * * * * *

[(e) SMALL SYSTEM VARIANCES.—

[(1) IN GENERAL.—A State exercising primary enforcement responsibility for public water systems under section 1413 (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to—

[(A) public water systems serving 3,300 or fewer persons; and

[(B) with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons,

if the variance meets each requirement of this subsection.

[(2) AVAILABILITY OF VARIANCES.—A public water system may receive a variance pursuant to paragraph (1), if—

[(A) the Administrator has identified a variance technology under section 1412(b)(15) that is applicable to the size and source water quality conditions of the public water system;

[(B) the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

[(C) the State in which the system is located determines that the conditions of paragraph (3) are met.

[(3) CONDITIONS FOR GRANTING VARIANCES.—A variance under this subsection shall be available only to a system—

[(A) that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 1413), with a national primary drinking water regulation, including compliance through—

[(i) treatment;

[(ii) alternative source of water supply; or

[(iii) restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 1413) makes a written determination that restructuring or consolidation is not practicable); and

[(B) for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 1413) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

[(4) COMPLIANCE SCHEDULES.—A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement re-

sponsibility under section 1413) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 1452 or any other Federal or State program.

[(5) DURATION OF VARIANCES.—The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 1413) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

[(6) INELIGIBILITY FOR VARIANCES.—A variance shall not be available under this subsection for—

[(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

[(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

[(7) REGULATIONS AND GUIDANCE.—

[(A) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify—

[(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

[(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 1412(b)(15)) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

[(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 1412(b)(15)(A)); and

[(iv) information requirements for variance applications.

[(B) AFFORDABILITY CRITERIA.—Not later than 18 months after the date of enactment of the Safe Drinking Water Act Amendments of 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information

to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

[(8) REVIEW BY THE ADMINISTRATOR.—

[(A) IN GENERAL.—The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 1413 with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

[(B) NOTICE AND PUBLICATION.—If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

[(9) APPROVAL OF VARIANCES.—A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

[(10) OBJECTIONS TO VARIANCES.—

[(A) BY THE ADMINISTRATOR.—The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.

[(B) PETITION BY CONSUMERS.—Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 1413 proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to

the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

[(C) TIMING.—No variance shall be granted by a State until the later of the following:

[(i) 90 days after the State proposes to grant a variance.

[(ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.]

* * * * * * *

PROHIBITION ON USE OF LEAD PIPES, SOLDER, AND FLUX

SEC. 1417. (a) IN GENERAL.—

(1) * * *

* * * * * * *

(4) EXEMPTIONS.—The prohibitions in paragraphs (1) and (3) shall not apply to—

(A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

(B) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.

* * * * * * *

[(d) DEFINITION OF LEAD FREE.—For purposes of this section, the term "lead free"—

[(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead;

[(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and

[(3) when used with respect to plumbing fittings and fixtures, refers to plumbing fittings and fixtures in compliance with standards established in accordance with subsection (e).]

(d) DEFINITION OF LEAD FREE.—

(1) IN GENERAL.—For the purposes of this section, the term "lead free" means—

(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and

(B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(2) CALCULATION.—The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weight-

ed percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.

* * * * * * *

PART E—GENERAL PROVISIONS

* * * * * * *

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 1442. (a)(1) * * *

* * * * * * *

(11) PRESENCE OF PHARMACEUTICALS AND PERSONAL CARE PRODUCTS IN SOURCES OF DRINKING WATER.—

(A) STUDY.—The Administrator shall carry out a study on the presence of pharmaceuticals and personal care products in sources of drinking water, which shall—

(i) identify pharmaceuticals and personal care products that have been detected in sources of drinking water and the levels at which such pharmaceuticals and personal care products have been detected;

(ii) identify the sources of pharmaceuticals and personal care products in sources of drinking water, including point sources and nonpoint sources of pharmaceutical and personal care products;

(iii) identify the effects of such products on humans, the environment, and the safety of drinking water; and

(iv) identify methods to control, limit, treat, or prevent the presence of such products.

(B) CONSULTATION.—The Administrator shall conduct the study described in subparagraph (A) in consultation with the Secretary of Health and Human Services (acting through the Commissioner of Food and Drugs), the Director of the United States Geological Survey, the heads of other appropriate Federal agencies (including the National Institute of Environmental Health Sciences), and other interested stakeholders (including manufacturers of pharmaceuticals and personal care products and consumer groups and advocates).

(C) REPORT.—Not later than 2 years after the date of the enactment of this paragraph, the Administrator shall submit to the Congress a report on the results of the study carried out under this paragraph.

(D) DEFINITIONS.—In this paragraph:

(i) The term "personal care product" has the meaning given the term "cosmetic" in section 201 of the Federal Food, Drug, and Cosmetic Act.

(ii) The term "pharmaceutical" has the meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act.

* * * * * * *

[(e) TECHNICAL ASSISTANCE.—The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 1452 (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.]

(e) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Administrator, directly or through grants or cooperative agreements with nonprofit organizations, may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations.

(2) TYPES OF ASSISTANCE.—Technical assistance under paragraph (1) may include onsite technical assistance and compliance assistance; circuit-rider and multi-State regional technical assistance programs; training; assistance with implementing source water protection programs; assistance with increasing water or energy efficiency; assistance with designing, installing, or operating sustainable energy infrastructure to produce or capture sustainable energy on site or through water transport; assistance with developing technical, financial, and managerial capacity; assistance with long-term infrastructure planning; assistance with applying for funds from a State loan fund under section 1452; and assistance with implementation of monitoring plans, rules, regulations, and water security enhancements.

(3) PRIORITY.—In providing assistance under this subsection, the Administrator shall give priority to assistance that will promote compliance with national primary drinking water standards, public health protection, and long-term sustainability of small public water systems. In awarding grants and cooperative assistance under paragraph (1) to nonprofit organizations, the Administrator shall (subject to the preceding sentence) give greater weight to nonprofit organizations that, as determined by the Administrator, are most qualified and most effective and that, as determined by the Administrator using information where available, are providing the types of technical assistance that are preferred by small public water systems.

(4) COMPETITIVE PROCEDURES.—It is the presumption of Congress that any award of assistance under this subsection will be awarded using competitive procedures based on merit. If assistance is awarded under this subsection using procedures other than competitive procedures, the Administrator shall submit to the Congress, within 90 days of the award decision, a report explaining why competitive procedures were not used.

(5) FUNDING.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2011 through 2015.

(B) PROHIBITION ON EARMARKS.—No funds made available under this subsection may be used to carry out a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(C) LOBBYING EXPENSES.—No portion of any State loan fund established under section 1452 and no portion of any funds made available under this subsection may be used for lobbying expenses.

(D) INDIAN TRIBES.—Of the total amount made available under this section for each fiscal year, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

* * * * * * *

JUDICIAL REVIEW

SEC. 1448. (a) A petition for review of—

(1) * * *

* * * * * * *

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section ⟦1414(g)(3)(B)⟧ *1414(h)(3)(B)*, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that

the assessment of the penalty by the Administrator constitutes an abuse of discretion.

* * * * * * *

GENERAL PROVISIONS

SEC. 1450. (a) * * *

* * * * * * *

[(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a–276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).]

(e) LABOR STANDARDS.—

(1) IN GENERAL.—The Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor in connection with a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this title (including assistance provided by a State loan fund established under section 1452) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(2) AUTHORITY OF SECRETARY OF LABOR.—With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

* * * * * * *

STATE REVOLVING LOAN FUNDS

SEC. 1452. (a) GENERAL AUTHORITY.—

(1) GRANTS TO STATES TO ESTABLISH STATE LOAN FUNDS.—

(A) * * *

* * * * * * *

(E) REALLOTMENT.—The grants not obligated by the last day of the period for which the grants are available shall be reallotted according to the appropriate criteria set forth in subparagraph (D), [except that the Administrator may reserve] *except that—*

(i) in any year in which enforcement of a new national primary drinking water standard begins, the Administrator may use the remaining amount to make grants to States whose public water systems are disproportionately affected by the new standard for the provision of assistance under subsection (d) to such public water systems;

(ii) the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) **[**and none of the funds reallotted**]***; and*

(iii) none of the funds reallotted by the Administrator shall be reallotted to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

* * * * * * *

(2) USE OF FUNDS.—**[**Except as otherwise**]**

(A) IN GENERAL.—Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. **[**Financial assistance under this section**]**

(B) PERMISSIBLE EXPENDITURES.—Financial assistance under this section may be used by a public water system only for expenditures **[**(not**]** *(including expenditures for planning, design, siting, and associated preconstruction activities, for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, or for producing or capturing sustainable energy on site or through the transportation of water through the public water system, but not* including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. **[**The funds may also be used**]**

(C) SALE OF BONDS.—If a State issues revenue or general obligation bonds to provide all or part of the State contribution required by subsection (e), and the proceeds of the sale of such bonds will be deposited into the State loan fund—

(i) financial assistance made available under this section may be used by the State as security for payment of the principal and interest on such bonds; and

(ii) interest earnings of the State loan fund may be used by the State as revenue for payment of the principal and interest on such bonds.

(D) CERTAIN LOANS.—Financial assistance under this section may also be used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III). **[**The funds shall not be used**]**

(E) LIMITATION.—Financial assistance under this section shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. **[**Of the amount credited**]**

(F) SET-ASIDE.—Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) LIMITATION.—

(A) * * *

(B) RESTRUCTURING.—A public water system described in subparagraph (A) may receive assistance under this section if—

(i) * * *

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate **[**changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures)**]** *restructuring* if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this title over the long term.

* * * * * * *

(4) REQUIREMENTS FOR USE OF AMERICAN MATERIALS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, none of the funds made available by a State loan fund as authorized under this section may be used for a project for the construction, alteration, maintenance, or repair of a public water system unless the steel, iron, and manufactured goods used in such project are produced in the United States.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply in any case in which the Administrator (in consultation with the Governor of the State) finds that—

(i) applying subparagraph (A) would be inconsistent with the public interest;

(ii) steel, iron, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) inclusion of steel, iron, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(C) PUBLIC NOTIFICATION AND WRITTEN JUSTIFICATION FOR WAIVER.—If the Administrator determines that it is necessary to waive the application of subparagraph (A) based on a finding under subparagraph (B), the Administrator shall—

(i) not less than 15 days prior to waiving application of subparagraph (A), provide public notice and the op-

portunity to comment on the Administrator's intent to issue such waiver; and

(ii) upon issuing such waiver, publish in the Federal Register a detailed written justification as to why the provision is being waived.

(D) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—This paragraph shall be applied in a manner consistent with United States obligations under international agreements.

(b) INTENDED USE PLANS.—

(1) * * *

(2) CONTENTS.—An intended use plan shall include—

(A) * * *

(B) the criteria and methods established for the distribution of funds; **[**and**]**

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund**[**.**]***; and*

(D) a list of all water systems within the State that have in effect an exemption or variance for any national primary drinking water regulation or that are in persistent violation of the requirements for any maximum contaminant level or treatment technique under a national primary drinking water regulation, including identification of—

(i) the national primary drinking water regulation in question for each such exemption, variance, or violation; and

(ii) the date on which the exemption or variance came into effect or the violation began.

(3) USE OF FUNDS.—

(A) IN GENERAL.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

(i) * * *

(ii) are necessary to ensure compliance with the requirements of this title (including requirements for filtration); **[**and**]**

(iii) assist systems most in need on a per household basis according to State affordability criteria**[**.**]***; and*

(iv) improve the ability of systems to protect human health and comply with the requirements of this title affordably in the future.

(B) AFFORDABILITY OF NEW STANDARDS.—For any year in which enforcement begins for a new national primary drinking water standard, each State that has entered into a capitalization agreement pursuant to this section shall evaluate whether capital improvements required to meet the standard are affordable for disadvantaged communities in the State. If the State finds that such capital improvements do not meet affordability criteria for disadvantaged communities in the State, the State's intended use plan shall provide that priority for the use of funds for such year be given to public water systems affected by the standard and serving disadvantaged communities.

(C) WEIGHT GIVEN TO APPLICATIONS.—After determining priority under subparagraphs (A) and (B), an intended use plan shall provide that the State will give greater weight to an application for assistance if the application contains—

(i) a description of measures undertaken by the system to improve the management and financial stability of the system, which may include—

(I) an inventory of assets, including a description of the condition of the assets;

(II) a schedule for replacement of assets;

(III) an audit of water losses;

(IV) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; and

(V) a review of options for restructuring;

(ii) a demonstration of consistency with State, regional, and municipal watershed plans;

(iii) a water conservation plan consistent with guidelines developed for such plans by the Administrator under section 1455(a); and

(iv) a description of measures undertaken by the system to improve the efficiency of the system or reduce the system's environmental impact, which may include—

(I) water efficiency or conservation, including the rehabilitation or replacement of existing leaking pipes;

(II) use of reclaimed water;

(III) actions to increase energy efficiency;

(IV) actions to generate or capture sustainable energy on site or through the transportation of water through the system;

(V) actions to protect source water;

(VI) actions to mitigate or prevent corrosion, including design, selection of materials, selection of coating, and cathodic protection; and

(VII) actions to reduce disinfection byproducts.

[(B)**]** *(D)* LIST OF PROJECTS.—Each State shall, after notice and opportunity for public comment, publish and **[**periodically**]** *at least biennially* update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

(E) ASSISTANCE TO INCREASE COMPLIANCE.—A State's intended use plan shall provide that, of the funds received by the State through a capitalization grant under this section for a fiscal year, the State will, to the extent that there are sufficient eligible project applications, reserve not less than 6 percent to be spent on assistance under subsection (d) to public water systems included in the State's most recent list under paragraph (2)(D).

* * * * * * *

(d) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

(1) LOAN SUBSIDY.—Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal). *Such additional subsidization shall directly and primarily benefit the disadvantaged community.*

* * * * * * *

(3) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term "disadvantaged community" means the service area*, or portion of a service area,* of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria. *Each State that has entered into a capitalization agreement pursuant to this section shall, in establishing affordability criteria, consider, solicit public comment on, and include as appropriate—*

(A) the methods or criteria that the State will use to identify disadvantaged communities;

(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that affect identified affordability criteria; and

(C) a description of how the State will use the authorities and resources under this subsection to assist communities meeting the identified criteria.

* * * * * * *

(g) ADMINISTRATION OF STATE LOAN FUNDS.—

(1) * * *

(2) COST OF ADMINISTERING FUND.—Each State may annually use **[**up to 4 percent of the funds allotted to the State under this section**]***, for each fiscal year, an amount that does not exceed the sum of the amount of any fees collected by the State for use in covering reasonable costs of administration of programs under this section, regardless of the source, and an amount equal to the greatest of $400,000, 1/5 of one percent of the current valuation of the State loan fund, or 6 percent of all grant awards to the State loan fund under this section for the fiscal year,* to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after the date of enactment of this section, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) * * *

* * * * * * *

(D) for an operator certification program for purposes of meeting the requirements of section **[**1419,

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993.] *1419.* An additional [2 percent] *4 percent* of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

* * * * * * *

(5) TRANSFER OF FUNDS.—

(A) IN GENERAL.—The Governor of a State may—

(i) reserve for any fiscal year not more than the lesser of—

(I) 33 percent of a capitalization grant made under this section; or

(II) 33 percent of a capitalization grant made under section 601 of the Federal Water Pollution Control Act; and

(ii) add the funds so reserved to any funds provided to the State under this section or section 601 of the Federal Water Pollution Control Act.

(B) STATE MATCHING FUNDS.—Funds reserved under this paragraph shall not be considered for purposes of calculating the amount of a State contribution required by subsection (e) of this section or section 602(b) of the Federal Water Pollution Control Act.

* * * * * * *

(j) OTHER AREAS.—Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 1443(a)(4) for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2). The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed [0.33 percent] *1 percent* of the aggregate amount made available to carry out this section in that fiscal year.

* * * * * * *

[(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.]

(m) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $1,400,000,000 for fiscal year 2011;

(B) $1,600,000,000 for fiscal year 2012; and

(C) $1,800,000,000 for fiscal year 2013.

(2) AVAILABILITY.—Amounts made available pursuant to this subsection shall remain available until expended.

(3) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than $1,000,000 per year to pay the costs of conducting needs surveys under subsection (h).

* * * * * * *

(r) SMALL SYSTEM GUIDANCE.—The Administrator may provide guidance and, as appropriate, tools, methodologies, or computer software, to assist small systems in undertaking measures to improve the management, financial stability, and efficiency of the system or reduce the system's environmental impact.

[(r)**]** *(s)* EVALUATION.—The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, United States Code, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

(t) NEGOTIATION OF CONTRACTS.—For community water systems serving communities with populations of more than 10,000 individuals, a contract to be carried out using funds made available through a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

(1) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

(2) a contract subject to an equivalent State or local qualifications-based requirement (as determined by the Governor of the State).

* * * * * * *

[ESTROGENIC SUBSTANCES SCREENING PROGRAM

[SEC. 1457. In addition to the substances referred to in section 408(p)(3)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(p)(3)(B)) the Administrator may provide for testing under the screening program authorized by section 408(p) of such Act, in accordance with the provisions of section 408(p) of such Act, of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.**]**

ENDOCRINE DISRUPTOR SCREENING PROGRAM

SEC. 1457. (a) TESTING OF SUBSTANCES.—

(1) IN GENERAL.—In carrying out the screening program under section 408(p) of the Federal Food, Drug, and Cosmetic

Act, the Administrator shall provide for the testing of substances described in paragraph (2) in addition to the substances described in section 408(p)(3) of such Act.

(2) COVERED SUBSTANCES.—A substance is subject to testing pursuant to paragraph (1) if—

(A) the substance may be found in sources of drinking water; and

(B) the Administrator determines that a substantial population may be exposed to such substance.

(3) SUBSTANCES ALREADY SUBJECT TO TESTING.—Notwithstanding paragraph (2), a substance is not subject to testing pursuant to paragraph (1) if—

(A) the substance is already subject to evaluation determined by the Administrator to be equivalent to testing pursuant to paragraph (1); or

(B) the Administrator has already determined the effect of the substance on the endocrine system.

(4) SUBSTANCES DERIVED FROM DEGRADATION OR METABOLISM OF ANOTHER SUBSTANCE.—If a substance subject to testing pursuant to paragraph (1) (in this paragraph referred to as the "covered substance") is derived from the degradation or metabolism of another substance, or is used in or generated by the manufacture of another substance, the Administrator shall provide for such testing of the covered substance by the importer or manufacturer of the other substance.

(b) IDENTIFICATION AND TESTING OF ENDOCRINE DISRUPTING SUBSTANCES THAT MAY BE IN DRINKING WATER.—

(1) IDENTIFICATION.—Not later than 1 year after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, after opportunity for comment, the Administrator shall publish—

(A) a list of no fewer than 100 substances for testing pursuant to subsection (a)(1) (in accordance with the schedule specified in paragraph (3)); and

(B) a plan for the identification of additional substances for testing pursuant to subsection (a)(1), and a schedule for issuing test orders for all such additional substances by not later than 10 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, with the goal of testing, at a minimum and consistent with subsection (a), all substances that have been placed on the Drinking Water Preliminary Contaminant Candidate List published pursuant to section 1412(b)(1)(B)(i).

In publishing the plan and schedule required by subparagraph (B), the Administrator shall obtain advice and direction from the Science Advisory Board.

(2) PRIORITIZATION; CONSIDERATIONS.—In selecting substances for listing under paragraph (1)(A) or identification pursuant to the plan under paragraph (1)(B), the Administrator—

(A) shall prioritize the selection of substances that pose the greatest public health concern, using the best available science and taking into consideration (among other factors of public health concern) the effect of such substances on subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant

women, the elderly, individuals with a history of serious illness, and other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to substances in drinking water; and

(B) shall take into consideration—

(i) available information on the extent of potential public exposures to the substances through drinking water; and

(ii) the Drinking Water Preliminary Contaminant Candidate List published pursuant to section 1412(b)(1)(B)(i).

(3) SCHEDULE.—After publication of the list under paragraph (1)(A), the Administrator shall issue test orders for—

(A) at least 25 substances on the list by the end of each year during the 4-year period following the date of the enactment of the Assistance, Quality, and Affordability Act of 2010; and

(B) all substances on the list by the end of such 4-year period.

(c) TESTING PROTOCOL PROCESS.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, the Administrator shall, after opportunity for comment, and after obtaining advice and direction from the Science Advisory Board, publish guidance on developing and updating protocols for testing of possible endocrine disruptors that may be found in sources of drinking water. The guidance shall specify—

(A) the manner in which the Administrator will evaluate and, where necessary, revise such protocols;

(B) the manner in which the Administrator will determine when testing of substances will be required; and

(C) the procedures by which other scientifically relevant information can be used in lieu of some or all of the information that otherwise would be collected pursuant to testing under section 408(p) of the Federal Food, Drug, and Cosmetic Act.

(2) MINIMUM CONTENTS.—The procedures specified pursuant to paragraph (1)(C) shall ensure that the Administrator may use information that is prepared or provided by any person (including a registrant, manufacturer, or importer of a substance for which testing is required, and any other entity) and shall apply equally with respect to any such person.

(3) AMENDMENTS.—The Administrator may, after opportunity for comment, and after obtaining advice and direction from the Science Advisory Board, amend any guidance published pursuant to this subsection.

(d) REVISION OF TESTING PROTOCOLS.—Not later than 2 years after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010, the Administrator shall, after opportunity for comment, determine whether sufficient scientific information has been developed to warrant updating the screening protocols developed under section 408(p) of the Federal Food, Drug, and Cosmetic Act for substances that may be found in sources of drinking water. Not later than 5 years after the date of the enactment of the Assist-

ance, Quality, and Affordability Act of 2010 and every 3 years thereafter, the Administrator shall determine, consistent with the guidance published under subsection (c), whether to revise screening protocols under such section for substances that may be found in sources of drinking water based on significant improvements in the sensitivity, accuracy, reliability, reproducibility, or efficiency of such protocols, or a reduction in the number of animals required to conduct such protocols. Whenever the Administrator revises such a protocol, the Administrator shall also determine, after obtaining advice and direction from the Science Advisory Board, whether any substance that has already been subjected to testing should be tested using the revised protocol.

(e) VALID SCIENTIFIC DATA.—Any testing protocols pursuant to this section shall be designed to produce scientific results that are based on—

(1) verifiable measurements with sufficiently small error rates;

(2) well-controlled measurements whose interpretation is not confounded by extraneous influences; and

(3) results that are repeatable by independent scientists.

(f) RESULTS OF TESTING.—

(1) PUBLICATION OF DATA EVALUATION RECORDS.—Not later than 6 months after receipt of testing results for a substance that may be found in sources of drinking water, the Administrator shall prepare and, consistent with subsection (g), publish data evaluation records for such results in a publicly searchable database.

(2) ADMINISTRATIVE ACTION.—Not later than 6 months after receipt of test results that determine the endocrine-related effects caused by a substance that may be found in sources of drinking water, the Administrator shall—

(A) determine whether to take action related to the substance pursuant to the agency's statutory authority; and

(B) consistent with subsection (g), publish such determination in a publicly searchable database.

Nothing in this section shall be construed to affect the Administrator's authority to take action under other provisions of law.

(3) STRUCTURED EVALUATION FRAMEWORK.—To assess the overall weight of the evidence and relevance to human health of results of testing for substances that may be found in sources of drinking water, the Administrator shall develop and use a structured evaluative framework consisting of science-based criteria, consistent with the protection of public health, for systematically evaluating endocrine mode of action and for determining data relevance, quality, and reliability.

(g) PUBLIC DATABASE.—Beginning not later than 180 days after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010 and consistent with section 552 of title 5, United States Code, the Administrator shall publish, in electronic format, a publicly searchable database that contains information regarding the testing program. Not later than 30 days after the date on which the information becomes available, the Administrator shall ensure that, at a minimum, the database—

(1) identifies the substances selected for testing under the program; and

(2) includes the documents and information pertaining to the status of testing activities for each such substance, including test orders, deadlines for submission, the Environmental Protection Agency's data evaluation records, any scientific information on which the Administrator based actions under subsection (f), the Administrator's determination under subsection (f) on whether action will be taken under other statutory authority, and the summary of chemical test results.

(h) PETITION FOR INCLUSION OF A SUBSTANCE IN THE PROGRAM.—

(1) IN GENERAL.—Any person may submit a petition to the Administrator to add a substance to the list under subsection (b)(1)(A) or identify a substance pursuant to the plan under subsection (b)(1)(B).

(2) SPECIFICATION OF FACTS.—Any petition under paragraph (1) shall specify the facts that are claimed to establish that an action described in paragraph (1) is warranted.

(3) ADMINISTRATIVE ACTION.—Not later than 90 days after the filing of a petition described under paragraph (1), the Administrator shall determine whether the petition has established that an action described in paragraph (1) is warranted and shall grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly add the substance to the list under subsection (b)(1)(A) or identify the substance pursuant to the plan under subsection (b)(1)(B), as applicable. If the Administrator denies the petition, the Administrator shall publish the reasons for such denial in the Federal Register.

(i) COORDINATION WITH OTHER FEDERAL AGENCIES.—After the Administrator—

(1) requires testing of a substance that may be found in sources of drinking water, or

(2) based in whole or in part on the results of testing of such a substance, takes action related to the substance pursuant to the agency's statutory authority,

the Administrator shall give notice of such testing or action to Federal agencies which are authorized by other provisions of law to regulate the substance or products, materials, medications, processes, or practices that use the substance.

(j) REPORTING REQUIREMENT.—Not later than 1 year after the date of the enactment of the Assistance, Quality, and Affordability Act of 2010 and every 3 years thereafter, the Administrator shall provide a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate that describes—

(1) progress made in identifying and testing potential endocrine disruptors as well as plans for future activities;

(2) any change in screening or testing methodology and evaluation or criteria for evaluating scientifically relevant information;

(3) actions taken to ensure communication and sharing of scientific information with other Federal agencies and the public; and

(4) any deviations from the plan or schedule published under subsection (b)(1)(B) as well as the reasons therefor.

(k) TESTING CONSORTIA, COMPENSATION, AND COMPLIANCE.—

(1) IN GENERAL.—Any person required by the Administrator to conduct testing of an endocrine disruptor that may be found in sources of drinking water may—

(A) submit, on its own, data in response to an order for such testing; and

(B) form (on a voluntary basis) a consortium in order to satisfy the requirements of one or more orders for such testing.

(2) RELIANCE ON CONSORTIUM SUBMISSIONS.—Each member of a consortium described in paragraph (1)(B) shall have full rights to rely on all submissions of the consortium to satisfy the requirements of any order for testing, but continues to be individually subject to such requirements.

(3) SHARING OF COSTS.—

(A) IN GENERAL.—Each member of a consortium described in paragraph (1)(B) shall share the applicable costs according to appropriate arrangements established by the consortium members.

(B) BINDING OFFER.—Whenever, to satisfy the requirements of one or more orders for testing, any person offers to form or join a consortium described in paragraph (1)(B), or offers compensation to a person that has already submitted data to the Administrator satisfying an order for testing, such offer shall constitute a binding offer to share an appropriate portion of the applicable costs.

(C) APPLICABLE COSTS.—In this subsection, the term "applicable costs" includes the costs—

(i) incurred to generate and report information to comply with an order for testing; or

(ii) associated with the organization and administration of the consortium.

(4) DISPUTE RESOLUTION.—

(A) IN GENERAL.—In the event of any dispute about an appropriate share or a fair method of determining an appropriate share of applicable costs of the testing requirements in a test order, any person involved in the dispute may initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service or a hearing with a regional office of the American Arbitration Association. A copy of the request shall be sent to each person from whom the requesting party seeks compensation or who seeks compensation from that party.

(B) NO REVIEW OF FINDINGS AND DETERMINATION.—The findings and determination of the arbitrator in a dispute initiated pursuant to subparagraph (A) shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except in the case of fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or by the arbitrator.

(C) PAYMENT OF FEE AND EXPENSES.—The parties to arbitration initiated pursuant to subparagraph (A) shall

share equally in the payment of the fee and expenses of the arbitrator.

(5) ENFORCEMENT.—If the Administrator determines that any person seeking to comply with an order for testing by relying on a submission made by a consortium or an original data submitter has failed to make an offer in accordance with paragraph (3)(B), to participate in an arbitration proceeding under paragraph (4), or to comply with the terms of an agreement or arbitration decision concerning sharing of applicable costs under paragraph (3), that person is deemed to have failed to comply with an order under subparagraph (A) of section 408(p)(5) of the Federal Food, Drug, and Cosmetic Act for purposes of subparagraphs (B) and (C) of such section.

(l) DEFINITIONS.—In this section:

(1) The term "endocrine disruptor" means an exogenous agent or mixture of agents that interferes or alters the synthesis, secretion, transport, metabolism, binding action, or elimination of hormones that are present in the body and are responsible for homeostasis, growth, neurological signaling, reproduction and developmental process, or any other effect that the Administrator has designated as an "endocrine effect" pursuant to section 408(p)(1) of the Federal Food, Drug, and Cosmetic Act.

(2) The term "testing" means the testing of a substance pursuant to the screening program under section 408(p) of the Federal Food, Drug, and Cosmetic Act, including a test of a substance that is intended to identify substances that have the potential to interact with the endocrine system or that is intended to determine the endocrine-related effects caused by such substance and obtain information about effects at various doses.

(m) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there is authorized to be appropriated $5,000,000 for each of fiscal years 2011 through 2015.

* * * * * * *

○