ENVIRONMENTAL PROTECTION AGENCY

[FRL–5708–2]

Allotment of Drinking Water State Revolving Fund Monies; Notice

AGENCY: Environmental Protection Agency.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its decision on allotment of Drinking Water State Revolving Fund (DWSRF) monies to States. For fiscal year 1997, funds will be allotted based on the formula used to distribute public water systems supervision grants in fiscal year 1995. For fiscal year 1998 and subsequent fiscal years, funds will be allotted based on each State's proportional share of the total eligible needs for the States, derived from the Drinking Water Infrastructure Needs Survey: First Report to Congress. Each State will be allotted at least one percent of the funds available to the States.

Introduction

The DWSRF program was established by the reauthorized Safe Drinking Water Act (SDWA), signed by President Clinton on August 6, 1996. The SDWA authorizes $9.599 billion for the DWSRF program through FY 2003. For FY 1997, EPA's budget includes $1.275 billion for the DWSRF program. EPA's Office of Water is the national program manager for the SDWA, including the DWSRF program. As intended by Congress, the DWSRF program will be implemented largely by the States.

Fiscal Year 1997

Funds available for allotment to States in FY 1997 will be allotted based on the formula used to distribute public water system supervision grant funds in FY 1995 (SDWA Section 1452(a)(1)(D)(i)). In accordance with the law, each State, including the District of Columbia, will be allotted at least one percent of the funds available for allotment to all the States. The law also requires that the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam together receive an allotment not to exceed 0.33 percent of the total funds available for allotment. The formula results are shown below for each State in dollar terms as well as in percentages of the funds available to the States. Allotment amounts are rounded to the nearest one hundred dollars. Under the law, the funds available for allotment to the States are determined by deducting national set-asides from the total DWSRF appropriation. In fiscal year 1997, this means that the one and one half percent set-aside for Native Americans, which totals $19,125,000, is removed from the total appropriation to calculate the level of funds available to the States. In fiscal year 1997, $1,255,875,000 is the level of funds available to the States.

Fiscal Year 1997 DWSRF Final Allotment Results

Alabama $12,558,800 (1.00%);
Alaska $ 27,039,000 (2.15%);
Arizona $16,938,300 (1.35%);
Arkansas $12,558,800 (1.00%);
California $75,682,600 (6.03%);
Colorado $16,784,100 (1.34%);
Connecticut $21,408,200 (1.70%);
Delaware $12,558,800 (1.00%);
District of Columbia $12,558,800 (1.00%);
Florida $45,132,600 (3.59%);
Georgia $25,775,000 (2.05%);
Hawaii $12,558,800 (1.00%);
Idaho $14,157,800 (1.13%);
Illinois $38,502,400 (3.07%);
Indiana $25,712,100 (2.05%);
Iowa $16,857,300 (1.34%);
Kansas $14,095,000 (1.12%);
Kentucky $12,558,800 (1.00%);
Louisiana $20,420,300 (1.63%);
Maine $12,653,200 (1.01%);
Maryland $17,640,900 (1.40%);
Massachusetts $14,344,600 (1.14%);
Michigan $59,681,100 (4.75%);
Minnesota $42,086,000 (3.35%);
Mississippi $16,474,200 (1.31%);
Missouri $21,857,600 (1.74%);
Montana $14,826,200 (1.18%);
Nebraska $12,824,000 (1.02%);
Nevada $12,558,800 (1.00%);
New Hampshire $13,754,800 (1.10%);
New Jersey $27,947,300 (2.23%);
New Mexico $12,759,800 (1.02%);
New York $59,167,700 (4.71%);
North Carolina $46,114,100 (3.67%);
North Dakota $12,558,800 (1.00%);
Ohio $43,073,000 (3.43%);
Oklahoma $17,561,900 (1.40%);
Oregon $18,920,500 (1.51%);
Pennsylvania $53,270,700 (4.24%);
Puerto Rico $12,558,800 (1.00%);
Rhode Island $12,558,800 (1.00%);
South Carolina $14,821,600 (1.18%);
South Dakota $12,558,800 (1.00%);
Tennessee $12,776,200 (1.02%);
Texas $70,153,800 (5.59%);
Utah $12,558,800 (1.00%);
Vermont $12,558,800 (1.00%);
Virginia $29,442,400 (2.34%);
Washington $31,145,900 (2.48%);
West Virginia $12,558,800 (1.00%);
Wisconsin $41,546,400 (3.31%);
Wyoming $12,558,800 (1.00%);
Other Areas [1] $4,144,400 (0.33%)

Fiscal Year 1998 and Subsequent Fiscal Years

Under SDWA Section 1452(a)(1)(D)(ii), Congress has directed that capitalization grants for FY 1998 and subsequent years be allotted among States based on each State's proportional share of the State needs identified in the most recent Drinking Water Needs Survey, provided that each State be allotted a minimum share of one percent of the funds available for allotment to all the States. The first Drinking Water Needs Survey was conducted over the last two years with the cooperation of every State. The results of the Survey were presented to Congress on January 29, 1997.

Options Presented for Public Comment

On October 31, 1996, EPA solicited public comment on six options for using the results of the Drinking Water Needs Survey to allocate DWSRF monies among States (61 FR 56231). The options presented in that Federal Register notice are summarized below. All of the options discussed below assume that each State, and the District of Columbia, will be allotted a minimum share of one percent of the funds available for allotment to all the States, as required by law. All of the options also assume, as required by law, that the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam, will together receive an allotment not to exceed 0.33 percent of the funds available for allotment to the States. The funds available for allotment to the States will be the level of funds appropriated by Congress, less the national set-asides, which include funds reserved for Indian Tribes and Alaska Native water systems. This framework was specified by Congress in the 1996 amendments to the SDWA (Section 1452).

- Option 1 was a formula that would allocate DWSRF monies to States based on each State's share of the total need. Total need is the capital infrastructure need faced by publicly and privately owned community water systems nationwide. Total need includes both current and future needs for the 20-year period from January 1995 through December 2014. This option was the one most favored by commenters, and was selected by EPA, with some modifications, as the basis for the allotment formula. As discussed below, total eligible need is the basis for allocation of DWSRF monies.
- Option 2 was a formula based on each State's share of Current Need. Current Need is identified as all infrastructure improvement projects needed now to protect public health.
- Option 3 was a formula based on Current SDWA Need, which represents capital improvement projects needed

[1] Other Areas include: the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

now to ensure compliance with existing SDWA regulations. Current SDWA Need does not include distribution need tied to the Total Coliform Rule (TCR).

• Option 4 was a formula based on Total SDWA Need. This component of need includes Current SDWA Need and Future SDWA Need. Future SDWA need includes projects needed over the next 20 years for compliance with existing regulations, as well as for the proposed Disinfectants and Disinfection Byproducts and Enhanced Surface Water Treatment Rules. Total SDWA Need does not include distribution need tied to the TCR.

EPA also solicited comments on hybrid options that would take advantage of the strengths of different options and/or address concerns for meeting the needs of small systems. EPA presented two such options in its request for comments:

• Option 5 was a hybrid of Current Need and Current SDWA Need (e.g., 50% of the formula based on a State's share of Current Need, with the other 50% based on Current SDWA Need). Such an approach would combine the benefits of formulas based on both types of need. The Current SDWA Need component would place emphasis on the projects required now for compliance with regulations, while the Current Need component would take into account all projects needed now—including current distribution need associated with the TCR.

• Option 6 was a hybrid formula emphasizing the needs of small systems (e.g., basing 50% on total need and 50% on small system need). Giving added weight to small system need would acknowledge the special problems of small systems. Small water systems have both a higher per-household need and more trouble in maintaining compliance with drinking water regulations than larger systems.

In addition to comments on these hybrid options, EPA requested suggestions for other hybrid options. EPA also requested comment on the percentages to employ in any hybrid. EPA requested that commenters suggesting alternative hybrids or other options not included in the Federal Register notice keep those options within the scope of the law. The law requires that funds be allotted to States based on each State's proportional share of the State needs identified in the most recent Drinking Water Needs Survey.

Summary of Comments

EPA received 23 responses to its request for comments. These commenters included the following:

• 12 State representatives.[2]
• 6 regional or city water agencies.
• 5 associations.

Almost three-fourths of the commenters (15) favored Option 1, total need, as their first choice. In addition, 6 commenters supported the total need option as either their second choice, or as the most significant factor in a hybrid formula. Thus, 21 of the 23 commenters supported use of total need in some significant manner. The other options that received support were: Option 2, Current Need (1 commenter); Option 6, Total or SDWA Need with an emphasis on small systems need (5 commenters); and two allotment formula options not presented in the request for comments (2 commenters). A summary of comments appears below.

Comments Favoring Total Need

As stated above, the majority of comments supported Option 1, total need. Commenters from all but one State favored this option, and all State representatives participating in the October 14, 1996, meeting of the Association of State Drinking Water Administrators favored this option.

Commenters in favor of total need argued that this option is most consistent with the intent of SDWA. They noted that total need was the bottom-line of the Drinking Water Needs Survey. Section 1452(a)(1)(D) of the SDWA requires that DWSRF monies for fiscal year 1998 and following years be allotted to States based on each State's proportional share of the State needs identified in the most recent Drinking Water Infrastructure Needs Survey. These commenters interpreted this provision to mean the bottom line total need in the survey. Additionally, statistical precision associated with total need is the highest.

According to the commenters, this approach appropriately provides States with flexibility to determine which needs are critical for protecting public health, does not put States with the most active SDWA compliance programs at a disadvantage, includes distribution system needs associated with the TCR, and encourages proactive health protection. In addition, these commenters noted that many of the projects identified as future needs when the information was collected, are now or will become current needs during the lifetime of this formula.

EPA is persuaded by the arguments of the commenters that supported Option 1, total need. The Agency feels that this approach recognizes the differences in need among States and gives the maximum degree of flexibility. The Agency will allot funds to each State based on the State's proportional share of total eligible needs reported for the most recent Drinking Water Needs Survey conducted under SDWA Section 1452(h). Each State shall be allocated a minimum of one percent of the funds available to States, as required under SDWA Section 1452(a)(1)(D)(ii). Once funds have been allotted, States must then choose projects for funding based on the criteria in the law. The law requires that State Intended Use Plans, to the maximum extent practicable, give priority for funding to projects that address the most serious risk to human health, are necessary to ensure compliance with SDWA requirements (including filtration), and assist systems most in need on a per household basis, according to State affordability criteria.

Total eligible need for the purpose of the allotment formula will include most but not all types of need under the category of total need reported for the Drinking Water Infrastructure Needs Survey: First Report to Congress. Total eligible need for the allotment formula (or total eligible need) will not contain projects that are ineligible for DWSRF funding. Projects not eligible for funding that are included in the Drinking Water Infrastructure Needs Survey: First Report to Congress are new and improved dams and reservoirs. These ineligible projects total just over three percent of the total need identified in the *Drinking Water Infrastructure Needs Survey: First Report to Congress.*

Comments Favoring Current Need

One commenter provided an argument against Option 1, total need, stating that it would require public water systems or States to project future needs, which depend on a variety of factors. For this reason, the commenter advocated Option 2, Current Need. However, EPA notes that the Drinking Water Needs Survey included only well-documented future needs that affect the current population and are very likely to be implemented. Furthermore, the Agency notes that most future needs are no more than five years away, because systems generally plan only five years in advance. Consequently, EPA believes that basing the allotment formula upon total needs will not result in an unfair distribution of funds.

Comments Favoring Small System Need

In addition to the commenters that favored total need and the one commenter that favored Current Need, five commenters favored a hybrid

[2] The State of Alaska Department of Environmental Conservation submitted two separate responses.

option that emphasizes small system needs. Four commenters advocated a hybrid of total need and total need for small systems, and one commenter advocated a hybrid of Total SDWA Need and Total SDWA Need for small systems.

One commenter supported a hybrid option emphasizing small system needs because the commenter felt that it would be most beneficial to the commenter's State. Some commenters believed that the Drinking Water Needs Survey underestimated small system need because many small systems do not have the resources available to document current and future needs. Additionally, commenters argued that this option was most consistent with the SDWA's intent to provide relief to small systems and address the most serious threats to public health.

EPA disagrees that small system needs have been underestimated. The approach for estimating small system needs was developed by a workgroup that included State representatives. Under this approach, a statistically significant sample of small systems participated in the Drinking Water Needs Survey. Because the workgroup was aware that many small systems would not have the capacity to document their needs, the approach called for site visits to all selected systems. EPA staff and other water system professionals, often accompanied by State personnel, interviewed small system operators, examined all system components, and developed documentation on site. If project costs were not available, this documentation, along with data provided by States, engineering firms, and other water systems, was used to model small system costs. EPA believes this methodology yielded a very accurate estimate of need for small systems.

It was not feasible to conduct a survey of small systems that was statistically significant on a State-by-State basis because the Drinking Water Needs Survey approach emphasized the importance of accurately capturing small system needs through site visits. Therefore, the workgroup's approach called for a survey that was statistically significant on a national basis. (For medium and large systems, the survey was statistically significant on a State-by-State basis.) The national small system need was distributed among States based on the number of small systems in each State, taking system size and type (surface vs. ground) and regional construction cost trends into account. Since small system needs were not based on State-by-State samples, EPA concludes that it would not be appropriate to assign a disproportionately heavy weight to small system needs in the allotment formula.

Additionally, EPA notes that the decision to utilize Option 1, total need, does not diminish access by small systems to DWSRF funding. The formula allocates money to States, which in turn determine how to distribute the funds to systems. As required under SDWA 1452(a)(2), States must make available to small systems a minimum of fifteen percent of DWSRF funds, and it is within their purview to distribute a greater percentage. There is no reason to believe that weighting small system needs in the allotment formula would affect States'' decisions to provide DWSRF funding to small systems. The Agency adds that the reauthorized SDWA provides other relief for small systems. The Act includes provisions that allow States to issue subsidized loans to ''disadvantaged communities''. Further, it allows States to use two percent of their allotments for technical assistance to small systems serving 10,000 or fewer people. In addition, the SDWA requires that States make available a minimum of 15 percent of all dollars credited to a DWSRF for loan assistance to small systems that serve fewer than 10,000 persons.

Comments Suggesting Other Options

Two commenters advocated allotment formula options not presented in the October 31, 1996, Federal Register notice requesting comments. One commenter suggested a formula that would take into account either the number of individuals without piped water or State populations. However, EPA notes that SDWA Section 1452(a)(1)(D)(ii) requires that DWSRF funding be allocated to States based on a State's proportional share of the State needs identified in the most recent Drinking Water Needs Survey of eligible water systems. No provision is made in the law to distribute DWSRF funds to States based on the number of individuals without piped water or on population.

Another commenter suggested a hybrid formula based 50 percent on total need and 50 percent on Current SDWA Need. While EPA recognizes that current SDWA need emphasizes many of the most serious threats to public health, many commenters pointed out that the category does not cover all projects needed to protect public health.

There were no comments received in favor of Options 3 or 4.

The commenters also addressed other, related issues. Most significantly, commenters requested that EPA reevaluate the allotment formula after the completion of the next Drinking Water Needs Survey. The results of the next Drinking Water Needs Survey are due to Congress in February 2001 (SDWA Section 1452(h)). In late 2000, EPA intends to again solicit comments on the allotment formula for the purpose of evaluating whether the DWSRF allotment formula should be modified.

Some commenters also questioned whether comments on the allotment formula should have been solicited before the results of the Drinking Water Infrastructure Needs Survey were made available. The Agency believes that seeking comments on the options for the allotment formula before the survey results were available invited commenters to provide impartial comments on which option best meets the intent of the reauthorized SDWA. EPA is confident that this approach helped ensure that the chosen allotment method was equitable and would meet the intent of the SDWA.

EPA appreciates the participation of all commenters in this process. To reiterate, the Agency will use an allotment formula that allocates to each State a share of funding proportional to the State's total eligible need as determined by the Drinking Water Infrastructure Needs Survey: First Report to Congress (SDWA Section 1452(a)(1)(D)). Each State, and the District of Columbia, shall be allotted a minimum of one percent of the funds available for allotment to States (SDWA Section 1452(a)(1)(D)(ii)). The Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, will together receive an allotment not to exceed 0.33 percent of the funds available for allotment to the States (SDWA Section 1452(j)). The funds available for allotment to the States will equal the level of funds appropriated by Congress, less the national set-asides.

The national set-asides for fiscal year 1998 include funds for Indian Tribes and Alaska Native Village water systems at the level of one and one half of one percent of the total appropriation. (SDWA Section 1452(i)). This comes to $10,875,000 for Indian Tribes and Alaska Native Villages in fiscal year 1998. Also, a national set-aside of $2,000,000 is anticipated to be used for monitoring for unregulated contaminants. If funds are appropriated for the DWSRF at the level of the President's budget of $725 million and if the anticipated national set-asides do

not change, the total funds available to the States would equal $712,125,000. Each State's allotment, based on these assumptions, is shown below. Because the percentages are based on the total funds available for allotment to the States, they can be used for planning purposes for future years. Once the appropriated amount and national set-asides are known, a State's allotment can be estimated by subtracting the national set-asides from the total funds available for allotment and then applying the appropriate percentage shown below.

Fiscal Year 1998 DWSRF Allotment Results (Based on the President's Budget of $725 Million and National Set-Aside Assumptions)

Alabama $8,465,600 (1.19%);
Alaska $7,121,300 (1.00%);
Arizona $7,257,400 (1.02%);
Arkansas $10,132,200 (1.42%);
California $77,108,200 (10.83%);
Colorado $9,581,800 (1.35%);
Connecticut $7,121,300 (1.00%);
Delaware $7,121,300 (1.00%);
District of Columbia $7,121,300 (1.00%);
Florida $20,642,800 (2.90%);
Georgia $15,253,300 (2.14%);
Hawaii $7,121,300 (1.00%);
Idaho $7,121,300 (1.00%);
Illinois $ 24,753,200 (3.48%);
Indiana $8,687,500 (1.22%);
Iowa $11,238,700 (1.58%);
Kansas $10,008,100 (1.41%);
Kentucky $10,851,600 (1.52%);
Louisiana $9,949,200 (1.40%);
Maine $7,121,300 (1.00%);
Maryland $7,121,300 (1.00%);
Massachusetts $27,414,400 (3.85%);
Michigan $20,951,400 (2.94%);
Minnesota $11,856,100 (1.66%);
Mississippi $8,271,700 (1.16%);
Missouri $9,574,900 (1.34%);
Montana $7,121,300 (1.00%);
Nebraska $7,121,300 (1.00%);
Nevada $7,121,300 (1.00%);
New Hampshire $7,121,300 (1.00%);
New Jersey $17,347,900 (2.44%);
New Mexico $7,121,300 (1.00%);
New York $45,061,600 (6.33%);
North Carolina $12,859,400 (1.81%);
North Dakota $7,121,300 (1.00%);
Ohio $22,806,200 (3.20%);
Oklahoma $10,224,200 (1.44%);
Oregon $10,567,800 (1.48%);
Pennsylvania $22,404,800 (3.15%);
Puerto Rico $10,225,000 (1.44%);
Rhode Island $7,121,300 (1.00%);
South Carolina $7,669,400 (1.08%);
South Dakota $7,121,300 (1.00%);
Tennessee $9,557,400 (1.34%);
Texas $54,014,400 (7.58%);
Utah $7,121,300 (1.00%);
Vermont $7,121,300 (1.00%);
Virginia $13,895,300 (1.95%);
Washington $19,169,100 (2.69%);
West Virginia $7,121,300 (1.00%);
Wisconsin $9,548,400 (1.34%);
Wyoming $7,121,300 (1.00%);
Other Areas [3] $2,350,000 (0.33%)

[3] Other Areas include: the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

ADDRESSES: A copy of the public comment received regarding this allotment formula is available for review at the EPA Drinking Water Docket, 401 M ST, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. The allotment formula results for fiscal year 1998 will be published in the Federal Register once national set-aside amounts have been finalized.

FOR FURTHER INFORMATION CONTACT: Mr. Clive Davies (202) 260–1421.

Dated: March 12, 1997.

Robert Perciasepe,

Assistant Administrator for Water.

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