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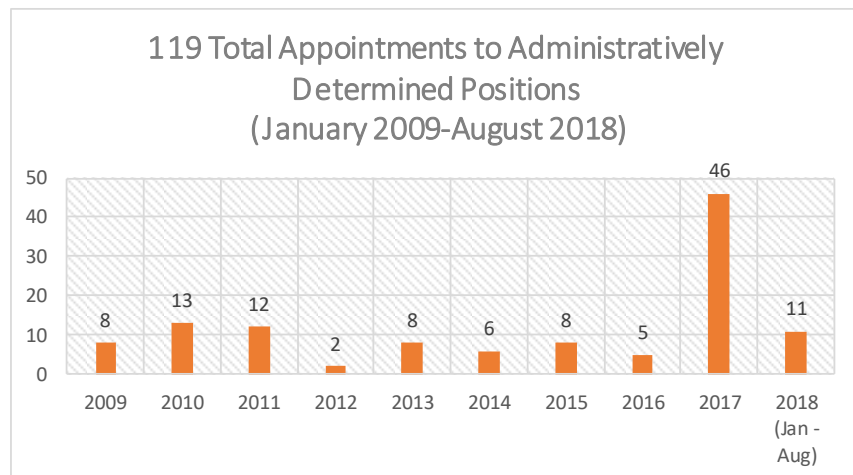


*Compliance with the law  
Operating efficiently and effectively*

# EPA's Use of Administratively Determined Positions Is Consistent with Its Authority Under the Safe Drinking Water Act

Report No. 19-P-0279

August 21, 2019



## Report Contributors:

Angela Bennett  
Jean Bloom  
Darren Schorer  
Claire McWilliams  
Wendy Swan  
John Trefry

## Abbreviations

AD	Administratively Determined
EPA	U.S. Environmental Protection Agency
GS	General Schedule
OIG	Office of Inspector General
OPM	U.S. Office of Personnel Management
SDWA	Safe Drinking Water Act
SES	Senior Executive Service
U.S.C.	United States Code

**Cover Image:** Between January 2009 and August 2018, various EPA Administrators have used the authority under the SDWA to appoint 119 personnel to administratively determined positions without regard to the civil service laws. (EPA OIG graphic)

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# At a Glance

## Why We Did This Project

The U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) conducted this audit to determine how the agency used its authority under the Safe Drinking Water Act to fill administratively determined (AD) positions.

Under the Safe Drinking Water Act, the Administrator has the authority to appoint personnel to fill not more than 30 scientific, engineering, professional, legal and administrative positions. The agency refers to these positions as *AD positions*.

Our audit focused on appointments made between January 2009 and August 2018. Six different Administrators or acting Administrators served during this period, beginning with Lisa Jackson and ending with Andrew Wheeler.

## This report addresses the following:

- *Compliance with the law.*
- *Operating efficiently and effectively.*

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List of [OIG reports](#).

## *EPA's Use of Administratively Determined Positions Is Consistent with Its Authority Under the Safe Drinking Water Act*

### What We Found

Between January 2009 and August 2018, the agency used its authority under the Safe Drinking Water Act to make 119 appointments to AD positions. The appointments varied by Administrator in terms of location, number and classification. Our analysis of the 119 appointments showed that 63 (53 percent)

were made to positions in the Administrator's office, 26 (22 percent) were made to positions in program offices, and 30 (25 percent) were made to positions in regional offices. Former Administrator Scott Pruitt made the most appointments to AD positions (54), followed by former Administrator Jackson (36). The appointments were spread across four position classifications allowed under the Safe Drinking Water Act. Specifically, there were 102 appointments made to professional positions, five to legal positions, one to a scientific position, and 11 to administrative positions.

Since 2009, the EPA has made 119 appointments to AD positions consistent with the authority provided by the Safe Drinking Water Act.

The appointments were primarily made for new employees; however, we identified two existing employees who were converted to AD positions. We also identified a shift that began in 2017 to use AD positions to facilitate the hiring of political appointees. In this regard, the agency used its Safe Drinking Water Act authority to expedite the hiring of individuals who, within a matter of months, were converted to political appointments (i.e., noncareer Senior Executive Service or Schedule C positions).

Because the act does not specify how AD appointments are to be used and does not require that appointees work on drinking-water related issues, the agency's use is consistent with the authority provided by the statute. As a result, we make no recommendations.

### Agency Response and OIG Comments

The report contained no recommendations; therefore, the agency was not required to respond. Nonetheless, the agency responded on August 12, 2019. The response did not address the factual accuracy of the report. As such, the OIG stands by the factual accuracy of the report and its conclusion that the agency's use of AD positions is consistent with the authority provided by the Safe Drinking Water Act.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
INSPECTOR GENERAL

August 21, 2019

**MEMORANDUM**

**SUBJECT:** EPA's Use of Administratively Determined Positions Is Consistent with  
Its Authority Under the Safe Drinking Water Act  
Report No. 19-P-0279

**FROM:** Charles J. Sheehan, Deputy Inspector General

A handwritten signature in blue ink that reads "Charles J. Sheehan".

**TO:** Donna Vizian, Principal Deputy Assistant Administrator  
Office of Mission Support

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY18-0085. This report addresses the EPA's use of authority under the Safe Drinking Water Act to make AD appointments. This report represents the opinion of the OIG and does not necessarily represent the EPA's position.

You are not required to respond to this report because this report contains no recommendations. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

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## Purpose

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted an audit of the EPA's use of administratively determined (AD) positions. Our objective was to determine how the agency used its authority under the Safe Drinking Water Act (SDWA) to fill up to 30 AD positions. This audit was initiated based, in part, on a congressional request.

## Background

The EPA Administrator has authority under the SDWA to appoint personnel to fill not more than 30 scientific, engineering, professional, legal and administrative positions without regard to the civil service laws. The agency refers to these positions as *AD positions*.

A provision of the SDWA—42 U.S.C. § 300j-10, which is titled *Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation*—provides the following description of the Administrator's authority related to AD positions:

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. §§ 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.<sup>1</sup>

The EPA has various appointment authorities besides those granted under the SDWA. Depending on the requirements of the position, the agency can convert employees in AD positions to other types of appointments, including:

- *Noncareer Senior Executive Service (SES)*. The number of these appointments are limited by law and are excepted from competitive service.
- *Schedule C*. The appointments to these positions are excepted from competitive service because they have policy-determining (i.e., policymaking) responsibilities or require the appointees to serve in close

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<sup>1</sup> GS stands for *General Schedule*.

and confidential working relationships with the head of an agency or other key appointed officials.

- *Schedule A.* These appointments include positions excepted from competitive service that are not of a confidential or policy-determining character. This appointing authority is used for special jobs or situations for which it is impractical to use standard qualification requirements and to rate applicants using traditional competitive procedures.
- *Career Conditional.* These appointments are permanent positions in the competitive service for employees with less than 3 years of federal service.

Schedule C and noncareer SES employees are considered *political appointees* because they are excepted from the competitive service due to their confidential or policymaking nature within an executive agency. All Schedule C and noncareer SES appointments, including those converted from AD positions, must undergo a U.S. Office of Personnel Management (OPM) approval process.

## Responsible Offices

The EPA's Chief of Staff and the White House Liaison, both within the Office of the Administrator, are responsible for recruiting and recommending individuals for AD positions, with input from the Administrator.

Within the Office of Mission Support, the Office of Human Resources provides agencywide policy development, strategic planning and direction for the EPA's human resources program, including executive resources management.

## Prior Report

EPA OIG Report No. [18-N-0154](#), *Management Alert: Salary Increases for Certain Administratively Determined Positions*, issued April 16, 2018, provided information pertaining to six employees who occupied AD positions. Specifically, the report outlined certain personnel actions, including who requested and signed actions related to these employees, position conversions and salary increases. The OIG found that the authority under the SDWA was used to provide significant pay raises for individuals in AD positions. We identified three employees in AD positions who were converted to Schedule C positions and then back to their original AD positions. Two of these employees received salary increases with the Schedule C conversion. All three employees received significant salary increases, ranging from 25.1 percent to 72.3 percent, when converted back to their original AD positions. As a result of the audit, the agency later reduced the salaries of the two employees who received increases with their Schedule C conversions back to their original AD salaries. The OIG made no recommendations.

## Scope and Methodology

We conducted our audit from January 2018 to August 2019 in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for the findings and conclusions presented in this report.

To determine how the agency used its authority to fill AD positions, we interviewed staff from the Office of Human Resources, reviewed the provisions of the SDWA, obtained a list of AD positions, and reviewed personnel files. We also compared how different EPA Administrators used AD positions between January 2009 and August 2018.

EPA Administrations	
The scope of our audit spanned six EPA Administrators:	
Administrator	Tenure
Andrew Wheeler	7/7/18–present* (acting until 2/28/19)
Scott Pruitt	2/17/17–7/6/18
Catherine McCabe (acting)	1/20/17–2/17/17
Gina McCarthy	7/19/13–1/20/17
Bob Perciasepe (acting)	2/15/13–7/18/13
Lisa Jackson	1/26/09–2/14/13

\* As of publication of report.

## Results

### ***Use of AD Positions Varied by Administrator***

The EPA's use of its authority under the SDWA to fill AD positions varied by Administrator and included AD appointments to positions located in the Administrator's office, program offices and regional offices. The Administrators primarily hired new employees to fill AD positions; however, we identified two existing employees who were also converted to AD positions.

While the SDWA identifies the maximum number of AD positions allowed and provides examples of position classifications, it does not provide specific details regarding how the positions are to be used. We found no requirement that employees hired to AD positions work on issues related to the SDWA. In addition, the congressional record does not clearly identify whether the AD positions are intended to be drinking-water related.



As shown in Table 1, the six EPA Administrators within our audit scope appointed 119 individuals to AD positions. Of the 119 appointments, 63 (53 percent) were made to positions in the Administrator’s office, 26 (22 percent) were made to the program offices, and 30 (25 percent) were made to positions in various regional offices. Of the six agency Administrators, former Administrator Pruitt made the most appointments to AD positions (54), followed by former Administrator Jackson (36).

**Table 1: Number of appointments to AD positions between January 2009 and August 2018**

Office	Administrator <sup>a</sup>						Total
	Jackson	Perciasepe	McCarthy	McCabe	Pruitt	Wheeler	
Administrator	10	1	12	1	36	1	<b>61</b>
<i>Program offices</i>							
Air and Radiation		1	2		3		6
Chief Financial Officer	1						1
Chemical Safety and Pollution Prevention	1				1		2
Enforcement and Compliance Assurance	1						1
International and Tribal Affairs	4		1				5
Solid Waste and Emergency Response <sup>b</sup>	1						1
Water	1		1		3		5
Research and Development			1		1		2
Environmental Information <sup>c</sup>			1				1
General Counsel	1		2		1		4
<i>Program office subtotal</i>	10	1	8	0	9	0	<b>28</b>
<i>Regional offices</i>							
Region 1	2				1		3
Region 2	3				1		4
Region 3	2				1		3
Region 4	1		1		2		4
Region 5	2				1		3
Region 6	1	1			1		3
Region 7	1				1		2
Region 8	2		1		1		4
Region 9	1					1	2
Region 10	1		1				2
<i>Regional office subtotal</i>	16	1	3		9	1	<b>30</b>
<b>Total AD appointments</b>	<b>36</b>	<b>3</b>	<b>23</b>	<b>1</b>	<b>54</b>	<b>2</b>	<b>119</b>

Source: OIG-generated based on personnel records from the OPM’s electronic Office Personnel Folder.

<sup>a</sup> Administrators are listed in chronological order.

<sup>b</sup> Effective December 15, 2015, the name of the EPA’s Office of Solid Waste and Emergency Response was changed to the Office of Land and Emergency Management.

<sup>c</sup> Effective November 26, 2018, the EPA combined its Office of Environmental Information with the Office of Administration and Resources Management to become the Office of Mission Support.

As shown in Table 2, the 119 appointments were spread across four classifications allowed in the SDWA: professional, legal, scientific and administrative. Based on information obtained from personnel records, we classified 102 (86 percent) of the total appointments as professional positions. The

remaining 17 appointments were classified as either legal, scientific or administrative positions.<sup>2</sup>

**Table 2: AD position classifications between January 2009 and August 2018**

Administrator <sup>a</sup>	Professional	Legal	Scientific	Administrative	Total
Jackson	32	1		3	36
Perciasepe	3				3
McCarthy	18	2		3	23
McCabe				1	1
Pruitt	47	2	1	4	54
Wheeler	2				2
<b>Total</b>	<b>102</b>	<b>5</b>	<b>1</b>	<b>11</b>	<b>119</b>
<b>Percent of total</b>	<b>86%</b>	<b>4%</b>	<b>1%</b>	<b>9%</b>	<b>100%</b>

Source: OIG-generated based on data from personnel records from the OPM’s electronic Office Personnel Folder.

<sup>a</sup> Administrators are listed in chronological order.

### ***AD Positions Converted to Political Appointments***

We identified a shift that began in 2017 to use AD positions to facilitate the hiring of political appointees. In this regard, the agency used AD positions to enable individuals who were intended for political appointments to begin work sooner. As mentioned in the “Background” section, Schedule C and noncareer SES appointments must undergo an OPM approval process, which means it takes longer to hire political appointees than AD appointees. By initially appointing intended political employees to AD positions, the agency enables these individuals to begin work prior to and during the OPM approval process. Upon approval, the AD appointees are then converted to their political appointments.

This approach was used from 2017 through August 2018 by two EPA Administrators to appoint 24 people to AD positions that were later converted—often within months—to political appointments (i.e., noncareer SES or Schedule C). As shown in Table 3 and Figure 1, between 2009 and 2016 only 11 AD appointees were converted to other positions, and not all of the positions were political.

Furthermore, our analysis showed that the one conversion made under Administrator Wheeler as of August 2018 occurred 33 days after the person’s being appointed to an AD position. For the 23 conversions made under former Administrator Pruitt, the average number of days was 58 days. Conversions made by the other Administrators ranged on average from 363 days to 770 days.

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<sup>2</sup> The OIG’s position classification includes some auditor judgment, especially for the “administrative” category. The auditor based the “administrative” designation on education, experience and pay. For example, if the individual lacked experience, was a recent college graduate, or had no college degree and was at a GS-7 or GS-9 pay level, the individual was classified as “administrative.”

**Table 3: AD position activity between January 2009 and August 2018**

Administrator <sup>a</sup>	Total number of AD appointments	Conversions					Average number of days to conversion	Resigned, retired or terminated
		Noncareer SES	Schedule C	Schedule A <sup>b</sup>	Career conditional <sup>b</sup>	Total		
Jackson	36				1	1	363	11
Perciasepe	3					0		5
McCarthy	23	2	5	2	1	10	770	<sup>c</sup> 35
McCabe	1					0		
Pruitt	54	6	17			23	58	10
Wheeler	2		1			1	33	7
<b>Total</b>	<b>119</b>	<b>8</b>	<b>23</b>	<b>2</b>	<b>2</b>	<b>35</b>		<b>68</b>

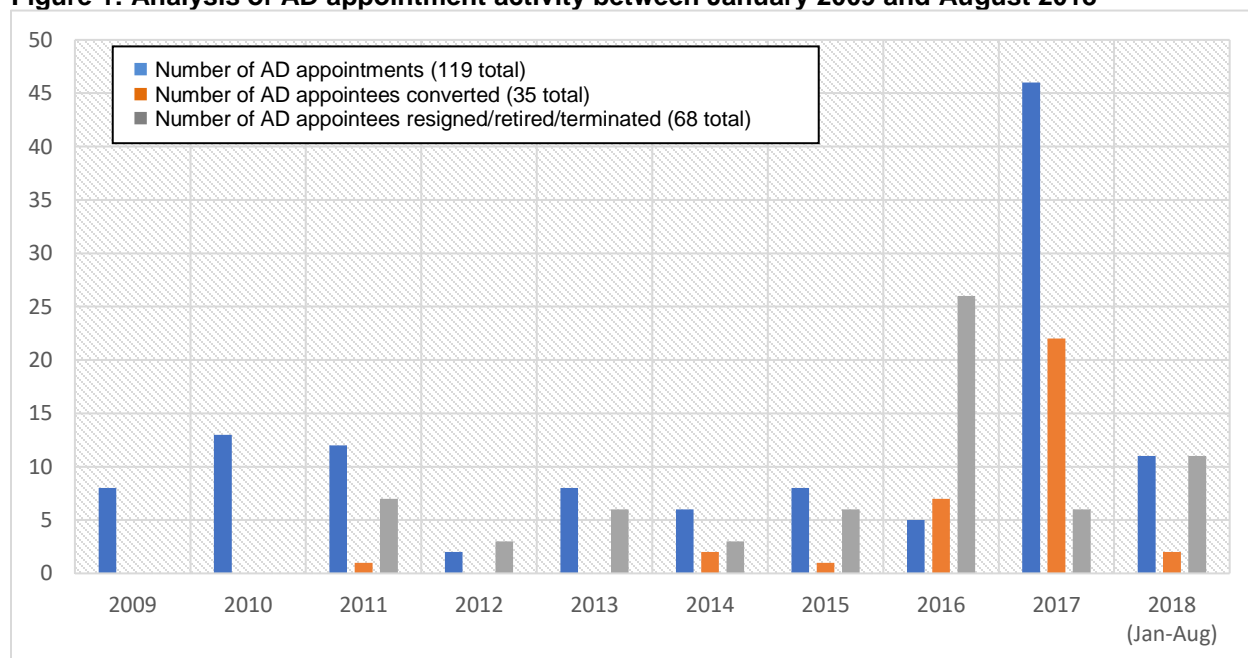
Source: OIG-generated based on information provided by the EPA Office of Human Resources' Executive Resources Division.

<sup>a</sup> Administrators are listed in chronological order.

<sup>b</sup> Not considered political appointments.

<sup>c</sup> McCarthy's Chief of Staff believed that all employees in AD positions should leave when agency administrations changed, and most employees appointed by McCarthy—including those remaining from Jackson—did leave when McCarthy resigned.

**Figure 1: Analysis of AD appointment activity between January 2009 and August 2018**



Source: OIG-generated based on information provided by the EPA Office of Human Resources' Executive Resources Division.

## Conclusion

Since January 2009, EPA Administrators have used their authority under the SDWA to make a variety of appointments to AD positions, including new hires and existing employees. Appointments varied in terms of type (professional,

legal, scientific and administrative) and location (Administrator's office, program offices and regional offices). Beginning in 2017, EPA Administrators used their authority under the SDWA to expedite the hiring of employees intended for political appointments. The act does not specify how appointments are to be used and does not require that appointees work on drinking-water related issues. Therefore, the agency's use of AD positions is consistent with the authority provided by the statute. As a result, we make no recommendations.

## **Agency Comments and OIG Evaluation**

The report contained no recommendations; therefore, the agency was not required to respond. Nonetheless, the agency responded on August 12, 2019 (Appendix A). The response did not address the factual accuracy of the report. As such, the OIG stands by the factual accuracy of the report and its conclusion that the agency's use of AD positions is consistent with the authority provided by the SDWA.

## Agency Response to Draft Report




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

AUG 1 2 2019

### MEMORANDUM

**SUBJECT:** Agency Response on the OIG Draft Report, "*EPA's Use of Administratively Determined Positions Is Consistent with Its Authority Under the Safe Drinking Water Act*," Project No. OA-FY18-0085, dated August 1, 2019

**FROM:** Ryan Jackson, Chief of Staff 

**TO:** Charles Sheehan, Acting Inspector General

EPA Administrators have exercised their authority under the Safe Drinking Water Act (SDWA) to hire agency personnel in administratively determined (AD) positions since the authority originated in 1977. The EPA maintains a written policy which has existed since at least 2010 describing the process for hiring AD employees, their responsibilities, and employment rights. The OIG's conclusion that beginning in 2017, EPA Administrators used their authority under the SDWA to expedite the hiring of employees intended for political appointments is misleading. The appropriate inquiry is whether an EPA Administrator has ever used their SDWA AD hiring authority to hire a career employee. The answer to that inquiry is no. This audit covers January 2009 to August 2018. The EPA has no evidence based on the records for that time period, and those records the EPA has access to dating back to 2001, that SDWA AD authority was ever used to hire a career employee.

The audit includes a discussion of the OIG Report No. 18-N-0154 Management Alert. The draft report references 25.1% and 72.3% salary raises, yet it does not address whether there were interim raises nor does it discuss the progression of the salary history as the personnel became responsible for new and additional responsibilities nor does it compare the referenced salaries of the individuals to the salaries of their peers.

Finally, the audit includes a discussion and contains a table addressing what the OIG refers to as conversions. Changing an employee's type of appointment has nothing to do with the SDWA. What the audit refers to as a "conversion" is actually a move to a different appointment. Those moves often require an OPM approval process for noncareer/Schedule C political appointments or the delegated examination process for career-conditional appointments. "Conversion" is simply used as a functional processing term and is an indication that the employee was already

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on the agency's employment roster at the time of the move to the new appointment. The audit admits this was a practice used by previous Administrations and another indication the EPA's use of administratively determined positions is and continues to be consistent with its authority under the SDWA.

**CONTACT INFORMATION:**

If you have any questions regarding this response, please contact Aaron Dickerson at 202-564-6999 or [Dickerson.aaron@epa.gov](mailto:Dickerson.aaron@epa.gov) to ensure it is appropriately addressed.

Attachments:

Administratively Determined Positions  
Administratively Determined Positions Legislative History

cc: Donna Vizian, OMS/PDAA,  
Matthew Z. Leopold, General Counsel  
Holly W. Greaves, Chief Financial Officer  
Elise Packard, Deputy General Counsel for Operations  
W. Carpenter, OMS/DAA-ARM  
D. Zeckman, OMS/ADAA  
K. Christensen, OIG/DIG  
J. Trefry, OIG/Director  
D. Fotohui, OGC/PDAA  
D. Bloom, OCFO/PDAA

## ADMINISTRATIVELY DETERMINED (AD)

<b>Authority</b>	Under provisions of the Safe Drinking Water Amendments of 1977 (Public Law 95-190, November 16, 1977), the EPA Administrator has the authority to fill 30 scientific, engineering, professional, legal, or administrative positions without regard to the civil service laws. These appointments allow the Administrator the flexibility of appointing individuals to positions equivalent to the GS-15 grade level and below pursuant to Section 11(b) of the Safe Drinking Water Amendments. No interaction or approval with OPM is required. The agency independently establishes positions, makes qualifications determinations and effects appointment.
<b>Pay</b>	The AD authority is an ungraded system, consisting of any pay rate not in excess of the maximum salary rate payable for the GS-15 step 10 level. When comparability increases are granted to other GS employees, the Administrator normally reviews existing AD pay rates and determines whether or not to adjust them as well. Such adjustments can be made across the board or on an individual basis.
<b>Benefits</b>	AD employees are entitled to the same benefits as competitive service employees: Annual and sick leave; health, life insurance coverage, and retirement.
<b>Awards</b>	Non-temporary AD employees are entitled to Time Off (TOA) and monetary awards (Q award, S award, On-The-Spot award, or Team award). These awards will be processed in accordance with the same guidance as provided for General Schedule employees. <b>NOTE: Monetary awards for AD employees are on "freeze" per a memorandum from the White House dated August 3, 2010. They will remain on freeze until further notice.</b>
<b>Performs</b>	AD employees are covered by the Agency's PERFORMS plan. AD employees should have performance agreements in place (based upon the Statement of Work) and evaluated accordingly.
<b>Details</b>	AD employees can be detailed to other excepted service positions.



**AD's as Supervisors**

AD appointees may supervise employees who occupy competitive service of SES positions (both General and Career Reserved).

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**Reassignment and Promotion**

AD employees may be assigned to various capacities as the Administrator determines necessary. Thus, each reassignment action must be accompanied by a signed memorandum from the Administrator and Statement of Work.

Because AD employees are not in "graded" (GS) positions, they cannot be promoted; however, their pay may be adjusted at the request and approval of the Administrator.

Employees in AD positions must be able to qualify for the position's classification series and the level of work and responsibilities to be performed in accordance with the Office of Personnel Management's qualifications policies and standards. Example: In order to qualify for a position that has duties and responsibilities determined to be classifiable at the grade 11, the employee must have a least one year of specialized/directly related work experience at the next lower grade (grade 9).

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**Separations/Removals**

AD employees serve at the pleasure of the Administrator and may be separated at any time. They have no appeal rights.

For additional information or questions, please call the Executive Resources Division, Office of Human Resources on 202-564-0400.



97th Congress }  
3d Session }

COMMITTEE PRINT

A LEGISLATIVE HISTORY OF THE  
SAFE DRINKING WATER ACT

TOGETHER WITH A  
SECTION-BY-SECTION INDEX

PREPARED BY THE  
ENVIRONMENT AND NATURAL RESOURCES  
POLICY DIVISION

OF THE  
CONGRESSIONAL RESEARCH SERVICE

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Senate Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1982

X-221 0

person served by it of contaminant levels of any unregulated contaminant, referred to in section 1445(a)(2)(B) of the Public Health Service Act, as amended by section 9 of this Act, in further amended by striking out "respecting drinking water" and all that follows down through the period to the end thereof and substituting "affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health, criteria provided under this subparagraph shall be used only to assign those actions which (1) are necessary for preventing, limiting or will bring to an end the public health in such emergency situation and (2) would otherwise be the responsibility of the Administrator, be taken without such emergency as a condition of the Administrator's approval of the program authorized under this subparagraph, as part of and in accordance with the terms and conditions of any other program of approval of such emergency situations which the Administrator is authorized to carry out under the provisions of this Act, and on appropriation for any such other program shall apply to activities provided under this subparagraph."

EMERGENCY AUTHORITY

Sec. 13 Section 1445(a)(2)(B) of the Public Health Service Act, as amended by section 9 of this Act, in further amended by striking out "respecting drinking water" and all that follows down through the period to the end thereof and substituting "affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health, criteria provided under this subparagraph shall be used only to assign those actions which (1) are necessary for preventing, limiting or will bring to an end the public health in such emergency situation and (2) would otherwise be the responsibility of the Administrator, be taken without such emergency as a condition of the Administrator's approval of the program authorized under this subparagraph, as part of and in accordance with the terms and conditions of any other program of approval of such emergency situations which the Administrator is authorized to carry out under the provisions of this Act, and on appropriation for any such other program shall apply to activities provided under this subparagraph."

(Material pertaining to Clean Air Act technical and conforming amendments has been omitted.)

Mr. KASPOWICKI, Mr. President, presently pending before the Senate are amendments to S. 1528, the Safe Drinking Water Act Amendments of 1977.

The original version of this bill, approved by the Senate in May, extended through fiscal year 1978 the authorization for the safe drinking water program, which is administered by the Environmental Protection Agency. In July the House approved amendments to the Senate bill which provided for a 2-year reauthorization, extended for 2 years the date by which States must assume primary enforcement of the act, and made other substantive changes in the program. In August the Senate made additional changes in S. 1528 before sending it back to the House for approval. These increase the number of supergrade positions available in the EPA, place certain qualifications on the act's underground injection control program, and provide \$10 million for safe drinking water research.

Consultations held by the Senate Committee on Environment and Public Works with the House Committee on Interstate and Foreign Commerce and the administration indicate that further clarifications in S. 1528 are required. The measure now before the Senate contains these modifications and has been approved by the House. In addition, this legislation is being used to enact technical changes in the Clean Air Act amendments (Public Law 95-95).

I briefly discuss these changes in the previously adopted version of the Safe Drinking Water Act.

*Senate debate CR 11-1-77*

S. 1528, as passed by the Senate in August, allocated to the Environmental Protection Agency a total of 150 supergrade positions, which would be exempted from ceilings imposed by civil service laws and regulations. The provision was intended to augment the Agency's cadre of senior management and scientific personnel—substantially smaller in proportion to Agency size than that of other Federal agencies which carry out similar regulatory functions.

There has been consultation on this matter with the EPA, the Office of Management and Budget, the Civil Service Commission, and the House Committee on Post Office and Civil Service. The Senate Environment and Public Works Committee and the House Commerce Committee have agreed to authorize a total of 80 new positions. Fifty of these will be provided by increasing the Government-wide quota on supergrades contained in 5 U.S.C. 5303(a), and the Civil Service Commission has agreed that EPA will have first priority on assignment of these positions. Thirty additional supergrade positions will be provided directly to EPA and will be exempt from civil service laws and regulations.

The second amendment relates to the underground injection control (UIC) program under the Safe Drinking Water Act. In August the Senate approved language which directs the Administrator to avoid issuing UIC regulations which unnecessarily duplicate or disrupt existing State programs. This language was prompted by a concern over the effects of these requirements on the exploration for, and development of, oil and natural gas.

The amendments before the Senate clarify when a regulation would be unnecessarily duplicative or disruptive. According to the language approved by the Environment and Public Works Committee, a regulation would be duplicative only if it would be infeasible to comply with both the regulation and the State UIC program. Furthermore, a regulation would be deemed duplicative only if, without such regulation, underground sources of drinking water will not be endangered by any underground injection. Mr. President, these relations will insure protection of the public health without unduly disrupting existing State UIC programs or the national energy effort.

A third amendment, recommended by the National Academy of Sciences and the House Commerce Committee Subcommittee on Oversight and Investigations, authorizes the Administrator to require public water systems to monitor for sodium and other unregulated contaminants and to notify their customers concerning the level of this contaminant in their drinking water. The intent of the provision is to insure that medically sensitive groups, such as heart patients, are able to avoid drinking water which may be harmful to them, but not to the general public. The Environmental Protection Agency currently recommends that States require monitoring for sodium, but it has no statutory authority for making this recommendation mandatory.

Finally, in August the Senate approved an authorization of \$16 million for research and development activities under the Safe Drinking Water Act. However, that authorization has been included in the conference report on H.R. 5101, the Environmental Research, Development, and Demonstration Act of 1977, approved by the Senate on October 20—and has, therefore, been deleted from S. 1528.



my colleagues across the aisle in formulating the components of the amendment. I appreciate their counsel and assistance.

As I stated on the floor of the House in July when we first considered this bill, it would extend authorities for several existing programs that are essential to assure the provision of safe drinking water for the citizens of this country. The bill also directs the Administrator of the Environmental Protection Agency to study alternative methods to provide and pay for safe drinking water and to study the effect of PCB's trihalomethanes, and other toxic substances on sources of drinking water. These studies should supplement, but not delay, current or future control efforts. The bill also would extend the deadline for the attainment of primacy by States that have not done so and would permit States in the process of attaining primacy to receive program grants for public water system supervision programs.

I am offering today an amendment. Two parts of the amendment perfect and correct amendments to the bill passed by the Senate on August 5, 1977. Two other parts of the amendment add new sections to the bill. The remaining part of the amendment is technical in nature.

First, we propose to amend the Senate amendment pertaining to underground injection control programs. [Sec. 1412(b) SDWA] This amendment would carefully define and limit the effect of the Senate amendment on underground injection control regulations. It would provide that the Administrator's underground injection control regulations must, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States. The amendment clearly defines what would constitute an unnecessary disruption of State programs and retains the basic and overriding requirement that the Administrator assure that underground drinking water sources—present and potential—will not be endangered by underground injection-related activities. This amendment has the support of the American Petroleum Institute and my colleagues on the other side of the aisle.

Second, we propose to amend the Senate amendment which would have authorized the appointment to the Environmental Protection Agency of 150 persons exempted from the civil service laws. Our amendment would reduce this amount to authorize the Administrator to appoint personnel to fill not more than 30 scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency; these positions would be exempted from the civil service laws. Additionally, the amendment would expand the civil service pool by 50, from 3,243 to 3,293. This expansion would be earmarked for EPA. This amendment has the approval of the Office of Management and Budget, the Civil Service Commission, the Post Office and Civil Service Committee, and my colleagues on the minority side.

The third facet of the amendment would amend the bill by adding new section 12 which would authorize the Administrator to require periodic assessment and evaluation of unregulated contaminants of drinking water which may require continuous monitoring or regulation. [Sec. 1412(e), 1414(c), 1445(a), (b) SDWA] Presently the act may be read to authorize the Administrator only to require moni-

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Third, the Senate amendment was vague and contained no definition of the term "unnecessarily disruptive." The House amendment defines those persons principally in a way which narrows the impact of the mandatory and discretionary measures and proper legal challenge to the Administrator's regulations. In specific, the definition of the term "disruptive" in the House amendment with the prohibition to these national requirements which are so inconsistent with the specific requirements being carried out in a number of States that both the national and State requirements cannot be met. If both State and national requirements can be met, even at substantially greater cost, then the national requirements could not be deemed disruptive.

Moreover, the definition of "unnecessarily" makes clear that a disruptive national regulation would be prohibited only if it were also "unnecessarily" in the opinion of the State which wishes to challenge the regulation as both "disruptive" and "unnecessary" under this provision. Furthermore, this definition is consistent with, and reinforces, the words contained in section 1421(b)(3)(C) that nothing in the entire section should be construed to override the Administrator's duty to protect underground water from any potential endangerment relating to underground injection of water from any well. Finally, the directive nature of this provision is underscored by including the words "to the extent possible" in new section 1421(b)(3)(D)(i). These words were not included in the Senate amendment.

*Studies*

The House amendment contains certain provisions directing studies be undertaken under the Act. The Senate amendment contained identical provisions. In this report, it is important to restate and emphasize the continued importance of two excerpts from the House Commerce Committee's report on this bill pertaining to these studies. (H. Rep. No. 95-224, May 10, 1977). At page 6, the report emphasizes that these studies should be conducted with the assistance and involvement of public and nonprofit private groups. One function of the Act should be to increase local, public involvement in recognizing and finding solutions to drinking water problems. This goal can be furthered by locally making special efforts to include citizens groups and other non-profit organizations. This statement of Committee intent is underlined and supported by the recent recommendation of the National Academy of Science that "EPA's current means of awarding grants must be reexamined and public education extended to solicit or sponsor grants from researchers and public education relevant to regulatory issues." (NAS, *Technical Information for Environmental Protection*, Vol. 1, 1977, p. 491).

The House Commerce report also explains that these studies are not meant to delay or otherwise affect regulatory or enforcement actions by EPA. Much too much delay has resulted already and these studies should supplement, rather than supplant, effective regulatory action.

*Monitoring unregulated pollutants*

While this provision is specifically intended for application in the case of wells, where heat pollutants need to be kept out of the sodium content of water for dietary purposes, the amendment should be limited by its terms or intent to that single pollutant. Furthermore, nothing in this amendment should be construed to alter pre-existing public notice requirements for regulated contaminants.

*Supergrade amendment*

Section 11 is a revision of the Senate amendment which would have provided the Administrator of EPA with special authority to appoint 160 additional personnel in the Agency. There have been extensive discussions and negotiations between the Civil Service Commission, OMB, and the Agency to determine the most critical needs for additional personnel and the most effective way of providing appointment authorities to meet those needs. The supergrade amendment is the result of those discussions.

It provides for an increase of 90 positions in the government-wide pool of GS-16, 17 and 18 positions allocated to the Executive Branch agencies by the Civil Service Commission with the understanding that this increase will be allocated

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EPA. In addition, the amendment provides the Administrator with authority to appoint 30 scientific, engineering, professional, legal and administrative personnel without regard to the competitive appointment and pay provisions of Title 5, United States Code.

The Administrator may pay such personnel up to the maximum rate payable for GS-18 (currently \$12,960). The combination of these two authorities provides EPA with 60 additional supergrade and equivalent positions. The Test Office and Civil Service Committee concern in this amendment.

[Material pertaining to Clean Air Act technical and conforming amendments has been omitted.]

Mr. JONSON of Colorado. Mr. Speaker, will the gentleman yield?

Mr. HOERNER. I yield to the gentleman from Colorado.

Mr. JONSON of Colorado. I thank the gentleman for yielding.

It is my understanding that the amendment relating to the water recycling program has been stricken from this bill, is that correct?

Mr. HOERNER. It is not in here because it is in the other bill. The gentleman is correct.

Mr. JONSON of Colorado. It was not the intention of the managers to eliminate this because of a feeling that it should not be there but because it was included somewhere else for the EPA?

Mr. HOERNER. The gentleman is entirely correct.

Mr. HOERNER of Colorado. I thank the gentleman.

Mr. Speaker, Mr. Speaker, I reserve the remainder of my time.

Mr. Speaker, I support this legislation. I think the chairman has explained it quite well.

Mr. Speaker, I support this legislation, the safe drinking water amendments, as modified by the House amendment to the Senate passed bill—S. 1528.

Mr. Speaker, most of the provisions in this measure have already been approved by the House when it passed H.R. 6827 by voice vote on July 22 of this year.

This new provisions, which I support, include the following:

A provision to strike the Senate amendment authorizing \$16 million for research and development, because the EPA research and development conference bill already contains an identical authorization.

Provisions to clarify and amplify the intent of the Senate amendment on underground injection control programs to avoid unnecessary disruption of State underground injection control programs.

A provision, which reduces the number of additional personnel for EPA from 150 to 80.

Authority for the Administrator of EPA to require periodic assessment and evaluation of unregulated contaminants which may require continuous monitoring or regulation, such as sodium.

Technical and conforming amendments to the Clean Air Act.

And an amendment to section 9 of the House-passed bill which authorizes emergency assistance. The amendment would not change the basic thrust of this authority, but would permit the Administrator to carry it out in conjunction with any other emergency program for environmental assistance. Moreover, the amendment states that—

No limitation on appropriations for any such other program shall apply to amounts appropriated under this subparagraph.

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