

TITLE 22. STATE WATER RESOURCES CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The State Water Resources Control Board (State Board) proposes to adopt the proposed regulations described below after all comments, objections, and recommendations regarding the proposed action.

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED DRINKING WATER FEE REGULATIONS

The State Board will conduct a public hearing at the time and place noted below. At the hearing any person may present statements or arguments orally or in writing relevant to the proposed action described below.

DATE: June 22, 2016

TIME: 9:00 A.M.

PLACE: California Environmental Protection Agency
State Water Resources Board
Coastal Hearing Room
1001 I Street
Sacramento, California 95814

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk to the Board at (916) 341-5600 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno u otro idioma
- Una acomodación razonable relacionados con una incapacidad

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 341-5600 lo más pronto posible, pero no menos

de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any interested person, or his or her representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 341-5248 or by email to DAS-DrinkingWaterFees@waterboards.ca.gov. The written comment period closes at **5:00 pm on June 22, 2016**. The Board will consider only comments received at the Board offices by that time.

Submit written comments to:

Postal mail: Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in Health and Safety Code (HSC) sections 116271, 116350, 116375, and 116565. This action is proposed to implement, interpret, and make specific sections 116565, and 116590.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

Sections Affected:

Proposed adoption to California Code of Regulations, title 22, sections 64300, 64305, 64310, and 64315. The proposed regulations would be contained in a new chapter, Title 22, division 4, chapter 14.5, California Code of Regulations. The following provides a detailed discussion of the proposed changes.

Title 22, CCR, Division 4, Chapter 14.5.

The State Board proposes to add the title of the chapter to be added, chapter 14.5, division 4, Title 22 Code of Regulations.

Section 64300, Definitions.

The purpose of this section is to provide clarification of the terms used in chapter 14.5. Specifically, the terms “severely disadvantaged community” and “wholesaler” are defined.

The addition of the term severely disadvantaged community is necessary as the proposed fee schedule would provide that a community water system that serves a severely disadvantaged community may receive a reduction in the annual fee that the system is required to pay. The definition clarifies which public water systems are eligible for the reduced rate.

The addition of the term wholesaler is necessary because the fee schedule establishes a new category of public water systems, wholesalers, and would require them to pay an annual fee that is determined differently than the fees established for other public water systems. A wholesaler would be defined as a public water system that sells water to other public water systems. The definition would also provide that public water systems that would otherwise meet the definition of a wholesaler, but that have 1,000 service connections or more or that sell water only on a short-term or intermittent basis would be excluded from the definition of wholesaler for purposes of the chapter establishing the fee regulations. It is common for public water systems to sell water to other public water systems on a short-term or intermittent basis, such as during a fire or water outage. As set forth in the fee schedule, a public water system would not be required to pay both the community water system and wholesaler fee.

Section 64305, Fee Schedule for Annual Fees.

The purpose of this section is to establish the annual fees that must be paid by all public water systems, and inform the public water system as to how the fee will be calculated. The fees are set forth separately for community water systems, nontransient noncommunity water systems, transient noncommunity water systems, and wholesalers. Except for the term "wholesaler," which would be defined in the proposed regulations, the categories of public water systems are defined in Health and Safety Code section 116275.

Each of the fees is specified in Table 64305-A. The fees for the community water systems would be established based on the number of service connections, a term that is defined in the Safe Drinking Water Act (SDWA), and systems would be eligible to pay a reduced rate if they serve a severely disadvantaged community, a term that would be defined in section 64300. Nontransient noncommunity water systems would pay an annual fee of \$2.00 per person served, but not less than \$456.00. Transient noncommunity public water systems would pay a flat fee of \$800.00. Wholesalers would pay \$1.36 per Million Gallons, and the regulation will define "Million Gallons."

Section 64310, Reduction of Fees for Public Water Systems Serving Severely Disadvantaged Community.

The purpose of this section is to establish the criteria for reducing the annual fee for community water systems serving a severely disadvantaged community. The

community water system would be required to pay the annual fee established in Section 64305, Table A unless the water system requests and receives approval from the State Board to reduce the fees because it serves a severely disadvantaged community. A public community water system must certify, and must provide documentation to the State Board upon request, that it serves a severely disadvantaged community. The fees for those systems that serve severely disadvantaged communities, and have received approval from the State Board to pay a reduced fee, are established in Table 64305 - A.

The proposed regulation would authorize the State Board to require documentation from any public water system that self-certifies that they are a severely disadvantaged community. Some community water systems have already been found to be severely disadvantaged communities because they did so as part of the application for receiving funding from the Drinking Water State Revolving Fund (DWSRF) operated by the State Board, which uses the same definition for severely disadvantaged as is being proposed in these regulations.

Section 64315, Payment of Fees.

The purpose of this section (64315) is to establish that fees must be paid to the State Board within thirty (30) calendar days of the date of the invoice. The due date for the fees may be extended by the State Board for good cause, a determination which is to be made at the sole discretion of the State Board.

Background and Effect of the Proposed Regulatory Action:

These proposed regulations establish a fee schedule to support the Drinking Water Program as required by SB 83 (2015). Effective July 1, 2016, the existing HSC section 116565, which establishes annual fees for public water systems, will become inoperative (Stats. 2015, ch. 24, § 19), and a new HSC section 116565 (added by Stats. 2015, ch. 24, § 20), will become operative, requiring the State Board to adopt a fee schedule in regulation. The fees that the State Board is required to establish in a fee schedule are to reimburse the State Board for costs it incurs in administering the SDWA (Stats. 2015, ch. 24, § 20). HSC section 116565, subdivision (d), which will become operative July 1, 2016, provides that the State Board "shall set the amount of total revenue collected each year through the fee schedule at an amount equal to the amount appropriated by the Legislature in the annual Budget Act from the Safe Drinking Water Account for expenditure for the administration of this chapter, taking into account the reserves in the Safe Drinking Water Account" (Stats. 2015, ch. 24, § 20). The legislature acknowledged, in subdivision (d) of new HSC section 116565, that the actual amount of revenue may not equal the amount appropriated, and so authorized the State Board to adjust fees accordingly (Stats. 2015, ch. 24, § 20). The law requires that the fee schedule initially be set through the regular rulemaking process and that, thereafter, amendments to the schedule may be done as emergency regulations that are not subject to review by the Office of Administrative Law (Stats. 2015, ch. 24, § 20).

Objectives and Benefits of the Proposed Regulatory Action:

The proposed regulations set forth a fee schedule for public water systems, which ensures, as the law requires, that the State Board generates sufficient revenue to pay for the level of expenditures authorized in the Budget Act.

The benefits to be provided by the regulation are that the legislative mandate will be carried out and the regulation will ensure the program will be fully funded, allowing the necessary resources to ensure that water delivered by public water systems is pure, wholesome, and potable.

Comparable Federal Regulations:

There are no regulations in the federal Code of Regulations that address the same issues as are addressed by these proposed regulations. These regulations relate only to fees charged by the State Board, and federal regulations regarding public water systems do not address fees.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

The State Board evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. HSC section 116565 establishes the current fee schedule for public water systems. These proposed regulations establish a fee schedule to support the Drinking Water Program as required by SB 83 (2015). Effective July 1, 2016, the existing HSC section 116565, which prescribes the annual fees to be paid by public water systems, will become inoperative (Stats. 2015, ch. 24, § 19), and a new HSC section 116565 (added by Stats. 2015, ch. 24, § 20), will become operative, requiring the State Board to adopt a fee schedule in regulation. No other state regulations exist that would conflict with the proposed regulations for fees to support the State Board’s drinking water program. .

MANDATED BY FEDERAL LAW OR REGULATIONS (Gov. Code, §§ 11346.2, subd. (c).)

The proposed regulatory action is not identical to previously adopted or amended federal regulations.

DISCLOSURE REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

Pursuant to Government Code Sections 11346.5(a)(5), the State Board has determined the proposed regulatory action would not impose a mandate on a local agency or school district that requires reimbursement pursuant to Section 17500 et seq. as the Division is implementing HSC section 116565 (added by Stats. 2015, ch. 24, § 20).

Local agencies and school districts currently incur costs in their operation of public water systems. The costs imposed by these regulations are not the result of a “new program or higher level of service” within the meaning of Article XIIB, Section 6 of the California Constitution because they apply generally to all individuals and entities that

operate public water systems in California, and do not impose unique requirements on local governments (County of Los Angeles v. State of California, et al., 43 Cal.App. 3d 46 (1987)). Therefore, no state reimbursement of these costs is required.

Local regulatory agencies also may incur additional costs for their responsibility to enforce state regulations related to small public water systems (fewer than 200 service connections) that they regulate. However, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems (Health and Safety Code, § 101325). Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required (Gov. Code, § 17556(d)).

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

The State Board has determined that the proposed regulations would have no impact on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

The proposed regulations apply only to public water systems (PWS) as defined pursuant to HSC section 116275, which are not businesses or individuals. PWS are water companies providing drinking water to the public, and pursuant to Government Code section 11342.610, are exempt from the definition of a small business. As such, there will be no economic impact to businesses.

NON-MAJOR REGULATION: Statement of the Results of the Economic Impact Assessment (EIA):

The State Board has determined that the proposed regulations would not significantly affect the following:

- A. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in that there would not be any significant change in public water system or regulatory personnel needed for compliance with the new requirements.
- B. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the drinking water industry is such that the

adoption of this proposed regulation would not result in the creation or elimination of businesses. The impact of the proposed regulations would be insignificant.

- C. The expansion of businesses currently doing business within the State of California. Since public water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any effect on expansion.
- D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. The State Board has made a determination that the proposed regulations would improve the protection of the public's health and welfare by fully funding the Drinking Water Program and ensuring that water delivered by public water systems is pure, wholesome and potable.

Business Report (Gov. Code, §§ 11346.5, subd. (a)(11); 11346.3, subd. (d)):

The State Board has determined that the proposed regulations would not require reports from businesses.

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations apply only to public water systems, as defined pursuant to HSC section 116275, which are not businesses or individuals. Public water systems are water companies providing drinking water to the public and, pursuant to Government Code section 11342.610, are exempt from the definition of a small business.

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):

The State Board has determined that the proposed regulations would not affect small business because Government Code chapter 3.5, article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

Alternatives Statement (Gov. Code, § 11346.5, subd. (a)(13)):

In accordance with Government Code section 11346.5, subdivision (a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) provides a statutory exemption for the review and modification of charges by public agencies. Specifically, Public Resources Code Section 21080 (b)(8) provides for such statutory exemption if the public agency finds that such charges "are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter."

The State Water Board intends to use the exemption in Public Resources Code Section 21080 (b)(8) and find that the charges identified in proposed Title 22, California Code of Regulations, division 4, chapter 14.5 are for the purpose of: meeting operating expenses, including employee wage rates and fringe benefits; purchasing or leasing supplies, equipment, or materials; and meeting financial reserve needs and requirements. In establishing and adopting the proposed regulations, the State Board considered the statewide policy set forth in section 106.3 of the Water Code and determined the proposed regulations will further the stated policy.

AGENCY CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:
Justin Davis, Analyst, Division of Administrative Services (DAS), at phone:
(916) 449-5670, email: Justin.Davis@waterboards.ca.gov, or address: 1001 I Street,
17th Floor, Sacramento, CA 95814

or (designated back-up contact):

Ryan Wilson, Manager, Fee Branch, at phone: (916) 341-5135, email:
Ryan.Wilson@waterboards.ca.gov, or address: 1001 I Street, 17th Floor, Sacramento,
CA 95814.

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Davis.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE.

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address by contacting the agency contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, Economic and Fiscal Impact Statement (STD 399), and the Notice of Publication/Regulations Submission (Form 400). Copies may be obtained by contacting Justin Davis at the address, phone number, or email listed above.

Further, the agency representative to whom inquiries concerning the proposed administrative action may be directed is Justin Davis, Regulations Coordinator, (916) 449-5670.

INTERNET ACCESS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations may be accessed through the Board's website at:
http://www.waterboards.ca.gov/press_room/announcements/index.shtml

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are substantially related to the originally proposed text, it will make the modified text with the modifications changes clearly indicated, available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Justin Davis at the address indicated above. The Board will accept written comments on the modified regulations for 15-days after the date on which they are made available.

FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, copies of the Final Statement of Reasons (FSOR) may be obtained from the agency contact persons in this notice, or may be accessed on the State Board's website listed below.

Date: April 18, 2016