

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF DRINKING WATER
MARCH 15, 2016**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING EMERGENCY REGULATIONS FOR PUBLIC WATER SYSTEMS' USE OF POINT-OF-USE AND POINT-OF-ENTRY TREATMENT DEVICES IN TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTIONS 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, and 64420.7

DISCUSSION

Health and Safety Code (HSC) Sections 116380 and 116552, as amended by Assembly Bill (AB) 434 (2015), requires the State Water Resources Control Board (State Water Board) to adopt regulations governing the use of point-of-use (POU) and point-of-entry (POE) treatment devices by a public water system (PWS), in lieu of centralized treatment. HSC Section 116380 requires the State Water Board to adopt the regulations as emergency regulations, which are exempt from the rulemaking provisions of the Administrative Procedure Act (APA). It also requires the State Water Board to adopt subsequent regular regulations in accordance with the APA. The emergency regulations are to remain in effect until the earlier of January 1, 2018, or the effective date of the permanent regulations adopted by the State Board in accordance with the APA. The proposed resolution is to adopt the emergency regulations for use of POU and POE treatment devices.

When drinking water treatment is necessary due to contamination, centralized treatment is typically utilized, ensuring the drinking water within the distribution system, as a whole, meets all drinking water standards. Alternatively, a POE treatment device provides necessary treatment of the distributed water at or near the point at which the water enters a consumer's house or a building. Similarly, a POU treatment device does not provide centralized treatment for the entire distribution system; the POU treatment device is installed at a single tap and is used to reduce the contaminants at that tap only.

The California Department of Public Health (CDPH) adopted two sets of emergency regulations, one governing the use of POU treatment devices, and the other POE treatment devices, in 2010 and 2011, respectively. The regulations were repealed by operation of law on January 1, 2014. The proposed regulations take into consideration comments received and experience implementing the regulations previously adopted by CDPH. In addition, a briefing for stakeholders was held on October 9, 2015, during which comments were received on the draft regulations that also were considered by staff.

POLICY ISSUE

1. Should the State Water Board adopt the proposed resolution and accompanying regulations?

FISCAL IMPACT

There is no fiscal impact and no funds are being requested.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution adopting the emergency regulations.

The proposed resolution supports section 106.3 of the Water Code (added by Assembly Bill 685 (Stats. 2012, ch. 524)), Human Right to Water.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

ADOPTING EMERGENCY REGULATIONS FOR PUBLIC WATER SYSTEMS' USE OF POINT-OF-USE AND POINT-OF-ENTRY TREATMENT DEVICES IN TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTIONS 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, and 64420.7

WHEREAS:

1. On October 9, 2015, Assembly Bill No. 434 (AB 434) took effect. AB 434 amended sections 116380 and 116552 of the Health and Safety Code, which pertain to point-of-entry (POE) and point-of-use (POU) treatment by public water systems;
2. AB 434 mandates the State Water Resources Control Board (State Water Board) to adopt emergency regulations governing the permitted use of POE and POU treatment by public water systems in lieu of centralized treatment. The emergency regulations must comply with all of the requirements set forth in Section 116380(a) and Section 116552, but adoption of the regulations is not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The emergency regulations take effect when filed by the Office of Administrative Law (OAL) with the Secretary of State;
3. The proposed regulations will be contained in Title 22, California Code of Regulations, Sections 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, and 64420.7;
4. State Water Board staff recommend adoption of the proposed emergency regulations; and
5. Health and Safety Code Section 116380 authorizes the State Water Board to adopt the proposed emergency regulations for POU and POE treatment by public water systems.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, Title 22, Sections 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, and 64420.7, as appended to this Resolution;
2. The State Water Board determines that the adoption of Title 22, California Code of Regulations, Sections 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, and 64420.7 is a project that is categorically exempt from CEQA as a Class 8 project pursuant to Public Resources Code section 21084 and CEQA Guidelines 14 CCR 15308, and directs the State Water Board staff to prepare and submit to the State Clearinghouse a Notice of Exemption reflecting this determination;

D R A F T

3. The State Water Board Executive Director shall sign the Form 400 and the State Water Board staff shall submit the adopted regulations to OAL for filing with the Secretary of State; and
4. If, prior to the OAL filing the regulations with the Secretary of State, State Water Board staff, the State Water Board, or OAL staff determine that non-substantive corrections to the language of the regulations or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director may make such changes.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 15, 2016.

Jeanine Townsend
Clerk to the Board

**TITLE 22, CALIFORNIA CODE OF REGULATIONS
DIVISION 4, CHAPTER 15**

ARTICLE 2.5. Point-of-Use Treatment

(1) Adopt Section 64417 as follows:

§64417. Definitions.

“Point-of-use treatment device” or “POU” means a treatment device applied to a single tap for the purpose of reducing contaminants in drinking water at that tap.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.

(2) Adopt Section 64418 as follows:

§64418. General Provisions.

(a) With State Board approval, a public water system may be permitted to use point-of-use treatment devices (POUs) in lieu of centralized treatment for the purpose of reducing contaminants to achieve compliance with one or more maximum contaminant levels in this Chapter, other than for microbial contaminants, volatile organic chemicals, or radon, if:

(1) the water system meets the requirements of this Article and any applicable statutory requirements;

(2) the water system has demonstrated to the State Board that centralized treatment for achieving compliance is not economically feasible;

(3) the water system has applied for a permit or permit amendment to use POUs;

(4) following a public hearing, the State Board determines pursuant to section 64418.6 that there is no substantial community opposition;

(5) the water system has a State Board-approved:

(A) POU Treatment Strategy,

(B) POU Operations and Maintenance Program, and

(C) POU Monitoring Program; and

(6) the water system ensures that each residential unit, dwelling unit, commercial building or other establishment or institution, served by the water system, has a POU installed pursuant to this Article.

(b) With State Board approval and without having to meet the requirement of subsection (a)(6), a public water system may utilize POU's in lieu of centralized treatment for the purpose of reducing contaminants, other than microbial contaminants, volatile organic chemicals, or radon, to levels at or below one or more of the maximum contaminant levels established in this Chapter, in the water it supplies to some or all of the persons it serves, but the water system will not be deemed in compliance without meeting the requirement of subsection (a)(6). A water system's application for a permit to utilize POU's pursuant to this subsection may include a request that one or more of the requirements of this article be amended or eliminated to address the water system's specific utilization, and such request may be granted or denied by the State Board.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.

(3) Adopt Section 64418.1 as follows:

§64418.1. Economic Feasibility of Centralized Treatment.

(a) To meet the requirements of section 64418(a)(2), a community water system shall submit to the State Board information demonstrating that the:

(1) estimated cost of centralized treatment, per household, is more than one percent (1%) of the median household income (MHI) of the customers served by the community water system; or

(2) estimated cost of centralized treatment, per household, plus the median water bill from the most recent 12 months is:

(A) if the community's MHI is equal to or less than the statewide MHI, more than 1.5 percent (1.5%) of the MHI of the customers served by the community water system, or

(B) if the community's MHI is greater than the statewide MHI, more than two percent (2%) of the MHI of the customers served by the community water system.

(b) The estimated cost of centralized treatment may include, but is not limited to, the costs associated with equipment, design and construction, residual disposal, monitoring, and operation and maintenance.

(c) The public water system shall submit to the State Board the supporting documentation, assumptions, and calculations used to determine any anticipated increase in water bills to be presented pursuant to section 64418.6(a)(4).

(d) To meet the requirements of section 64418(a)(2), a noncommunity water system shall submit to the State Board, documents that demonstrate that the water system does not have the financial resources for the cost of centralized treatment.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(4) Adopt Section 64418.2 as follows:

§64418.2. POU Requirements.

(a) As ensured by the public water system, each POU shall:

(1) If the American National Standard Institute (ANSI) has issued a product standard applicable to the specific type of POU, be independently certified in accordance with the standard;

(2) If ANSI has not issued a product standard applicable to the specific type of proposed POU, be approved by the State Board;

(3) If an ANSI-issued standard does not adequately address a California drinking water standard or if a POU has not been independently certified for a specific contaminant, be approved by the State Board;

(4) Be owned, controlled, operated, and maintained by the public water system and/or a person(s) under contract with the water system, to ensure proper operation, maintenance, monitoring, and compliance with this Article and applicable drinking water standards;

(5) Be equipped with a mechanical warning (e.g. alarm, light, etc.) that alerts users when a unit needs maintenance or is no longer operating in a manner that assures the unit is producing effluent meeting state and federal drinking water standards, unless the device is equipped with an automatic shut-off mechanism that prevents the flow of water under such circumstances; and

(6) If requested by the State Board, be equipped with a totalizing flow meter.

(b) Except as provided in subsection (c), pilot testing shall be performed by the public water system, and/or a person(s) under contract with the water system, on each proposed type of POU to establish its use limitations and operations and maintenance criteria, as well as verification that it will produce effluent that meets drinking water standards under local expected influent water quality and flow conditions.

(1) Prior to performing pilot testing, a pilot testing protocol shall be submitted to the State Board for review and the water system shall obtain State Board approval of the protocol.

(2) Pilot testing for a POU shall be conducted in the manner and for the time period specified by the pilot testing protocol for that POU, and shall be conducted for no less than two months.

(3) After completion of the pilot testing, the water system shall submit a report to the State Board describing the results and findings of the pilot testing.

(c) With State Board approval, a public water system may be exempt from, or be subject to, a reduced level of pilot testing required pursuant to subsection (b) if the water system demonstrates to the State Board that the POUs proposed for use have been tested, by the water system or another person, under equivalent water quality and flow conditions, and the limitations, criteria, and effluent verification in subsection (b) can be ascertained and are reported to the State Board.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116835, Health and Safety Code.

(5) Adopt Section 64418.3 as follows:

§64418.3. POU Treatment Strategy.

Prior to installing POUs, a public water system shall submit a POU Treatment Strategy for State Board review and obtain State Board approval of the Strategy. At a minimum, the POU Treatment Strategy shall include each of the following:

(a) A description of the compliance issues for which POUs are being proposed to address and how the use of POUs will achieve compliance;

(b) A description of how the water system will determine the type, number, and location of POU's to ensure a sufficient number of devices are installed for human consumption at all residential and non-residential premises within the water system's service area;

(c) The water system's authority to require customers to accept POU's in lieu of centralized treatment and to take an action, such as discontinuing service, if a customer fails to accept POU's;

(d) The basis for the POU selection(s);

(e) The qualifications and identification of the person(s) responsible for POU installation, operation, maintenance, and water quality sampling and analyses;

(f) A customer education program to be implemented prior to and following installation of POU's;

(g) The authority, ordinances, and/or access agreements that allow the water system's representatives access to customers' premises for POU installation, maintenance, and water quality monitoring, as well as the surveys necessary to meet subsection (b);

(h) Identification of applicable local regulatory requirements;

(i) In the event an installed POU fails to produce water that meets drinking water standards:

(1) a consumer notification protocol, along with example notices, consistent with Article 18 of Chapter 15 of Division 4 of Title 22, of the California Code of Regulations, and

(2) a plan for provision of an alternative water supply, meeting drinking water standards, to customers served by such installed POU;

(j) An on-going customer notification protocol that includes:

(1) notices in the language(s) appropriate for communication with the customers,
and

(2) quarterly (or more frequent) notices informing the customers:

(A) that only the taps for which POU's are installed provide water meeting
drinking water standards, and

(B) of information pertaining to the mechanical warning or shut-off mechanism
required pursuant to section 64418.2(a)(5), including a telephone number that connects
the customer to water system personnel or recording system that shall be accessible by
water system personnel 24-hours a day, seven days a week, for the purpose of
providing the customer a reliable means of notifying personnel when the mechanical
warning or shut-off mechanism is activated;

(k) The anticipated schedules for:

(1) the distribution of public hearing information,

(2) the public hearing required pursuant to section 64418.6,

(3) the distribution to customers of POU acceptance surveys,

(4) POU installation, and

(5) the construction of centralized treatment; and

(l) An estimate of the percent of all customers within the water system's service
area who are expected to voluntarily allow installation of POU devices, as well as a
description of how the water system will address customers who do not.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety
Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(6) Adopt Section 64418.4 as follows:

§64418.4. POU Operations and Maintenance (O&M) Program.

(a) Prior to installing POU, a public water system shall submit a POU Operations and Maintenance (O&M) Program for State Board review and obtain State Board approval of the Program. The POU O&M Program shall include, but not be limited to, the following:

(1) An installation protocol that, at a minimum, describes locations and assurances that POU, will be accessible for operation and maintenance;

(2) The type and frequency of maintenance, at intervals specified by the manufacturer and determined by pilot testing, whichever is shorter, that ensures POU produce effluent that meets drinking water standards;

(3) The number and type of auxiliary POU and parts necessary to ensure continuous effective treatment;

(4) Replacement schedules for critical components and POU;

(5) The qualifications and identification of the person(s) responsible for POU installation, operation, and maintenance; and

(6) POU waste-handling and disposal procedures.

(b) To ensure a POU is properly operating and has not been bypassed, POU shall be inspected by the public water system no less often than every twelve months and when a POU's effluent is monitored pursuant to section 64418.5.

(c) Based on the on-going operation and maintenance of installed POU, a public water system shall revise its POU O&M Program as necessary to ensure continuous effective treatment and that POU produce effluent that meets drinking water standards. Revised POU O&M Programs shall be submitted to the State Board for review prior to implementation of the revised Program.

(d) A public water system shall maintain a copy of and implement its most recent POU O&M Program prepared pursuant to this section.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(7) Adopt Section 64418.5 as follows:

§64418.5. POU Monitoring Program.

(a) A public water system shall submit a POU Monitoring Program for State Board review and obtain State Board approval of the Program. At a minimum, the POU Monitoring Program shall include monitoring of the contaminant(s) for which the water system has applied to use POUs, as follows:

(1) Source water monitoring – quarterly, with samples collected during the same month (first, second, or third) of each calendar quarter;

(2) POU effluent – initially, with samples collected as soon as possible but no later than 72 hours after a device is installed; and

(3) POU effluent, on-going following the monitoring in paragraph (2) – annually, with one twelfth of all units sampled monthly on a rotating basis. With State Board approval and after completion of one year of monitoring, a water system may alternatively monitor one quarter of all units each calendar quarter.

(b) For a contaminant other than nitrate, nitrite, nitrate plus nitrite, or perchlorate, after no less than one year of monitoring conducted pursuant to subsection (a), a public water system may apply to the State Board for reduced on-going monitoring if all the results of the on-going monitoring conducted pursuant to subsection (a)(3) do not exceed 75 percent (75%) of a contaminant's MCL.

(c) The State Board may require further monitoring for the contaminant of concern or other contaminants, including microbial contaminants, based on monitoring results, the health risk associated with the contaminant, POU technology, or a public water system's compliance with this Article.

(d) The public water system shall revise its POU Monitoring Program as necessary based on the on-going operation and maintenance of installed POU's or additional monitoring required pursuant to subsection (c). Revised POU Monitoring Programs shall be submitted to the State Board for review prior to implementation of the revised Program.

(e) The public water system shall maintain a copy of and implement its most recent POU Monitoring Program prepared pursuant to this section.

(f) If an on-going POU effluent sample result exceeds an MCL, the public water system shall:

(1) implement the public notification and alternative water procedures identified in its State Board-approved POU Treatment Strategy;

(2) except as noted in paragraph (3), collect a confirmation sample within seven days of notification of the exceedance;

(3) for an exceedance of a nitrate, nitrite, nitrate plus nitrite, or perchlorate MCL;

(A) as soon as possible, but no later than 24 hours following notification of an exceedance, provide each affected customer with alternative water that meets drinking water standards, and

(B) collect a confirmation sample within 72 hours of notification of the exceedance; and

(4) if the confirmation sample, or the average of the original and confirmation sample, exceeds the MCL, notify the State Board within 24 hours of the result, complete

corrective actions as soon as possible but within one month of receipt of the result, and increase the monitoring frequency if requested to do so by the State Board.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(8) Adopt Section 64418.6 as follows:

§64418.6. Public Hearing and Acceptance.

To meet the requirements of section 64418(a)(4), a public water system shall, pursuant to this section, conduct a customer survey and participate in, and provide information for, a public hearing held by the State Board. At least 30 days prior to initiating the activities required in this section, the water system shall submit a protocol, to the State Board for review and approval, describing the water system's plan to meet the requirements of this section.

(a) Prior to conducting a customer survey, a water system shall participate in and provide information for a public hearing that, at a minimum, disseminates the following to those in its service area:

(1) A description of the water system's POU Treatment Strategy;

(2) The adverse health effects, as specified in the appendices in section 64465, associated with the contaminant(s) of concern;

(3) POU Operation and Maintenance Program and Monitoring Program information that necessitates customer involvement; and

(4) The estimate of any anticipated increase in water bills that may result from utilization of POUs.

(b) At least 30 days prior to the public hearing, the water system shall place the information to be presented at the public hearing into a publicly accessible repository

and notify the State Board and those in its service area of the date, time, and location of the public hearing, as well as the location and hours of operation of the repository. If the water system serves multi-unit residential dwellings including, but not limited to, apartments and residential institutions, whether sub-metered or not, the water system shall provide notice to each resident of such residential dwellings.

(c) Following the public hearing, the water system shall survey all of its customers. The survey shall be delivered in a manner designed to reach each customer and include the following language-specific options:

(1) "I vote FOR the use of Point-of-Use treatment devices.", and

(2) "I vote AGAINST the use of Point-of-Use treatment devices."

(d) Use of POU treatment devices in lieu of centralized treatment shall be considered to have no substantial community opposition if;

(1) the sum of the number of non-voting customers and the number of customers voting against POU, is less than half of the total customers, and

(2) no more than 25 percent of the total number of customers voted against POU.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116552, Health and Safety Code.

(9) Adopt Section 64418.7 as follows:

§64418.7. Recordkeeping, Reporting, and Compliance.

(a) A public water system shall maintain the following records for at least ten years and provide the records to the State Board when requested:

- (1) Results of all water quality monitoring conducted pursuant to this Article;
- (2) The location and type of each installed POU;
- (3) The date and type of maintenance and repairs performed; and
- (4) Verbal and written customer complaints received and the resulting corrective actions and/or responses.

(b) A public water system shall report to the State Board, at the frequency noted, the following:

- (1) Monthly – treated water quality monitoring results;
- (2) Quarterly – source water monitoring results and any investigations and/or corrective action(s) taken to ensure POUs meet the requirements of this Article including, but not limited to, POU maintenance, customer complaints, inspection results, and manufacturer notices pertaining to proper operation of devices.

(c) The reports required pursuant to subsection (b) shall be submitted to the State Board within ten days following the applicable reporting period.

(d) A public water system shall be in violation of the MCL if:

(1) for all POUs combined, during a 12-month interval more than five percent (5%) of the results of the effluent monitoring conducted pursuant to section 64418.5 exceed an MCL,

(2) for a POU, the effluent fails to meet the applicable compliance determination requirements in this Chapter for an MCL, or

(3) a residential unit, dwelling unit, commercial building or other establishment or institution, served by the water system, does not have a POU installed pursuant to this Article.

(e) Funding for centralized treatment is available when funding for centralized treatment, from any source, is received by, or otherwise placed under control of, the public water system.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.

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ARTICLE 2.7. Point-of-Entry Treatment

(10) Adopt Section 64419 as follows:

§64419. Definitions.

“Point-of-entry treatment device” or “POE” means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building. Notwithstanding the foregoing, where all the water supplied by a public water system for human consumption is treated by the public water system via a single device or facility, regardless of location of the device or facility, the public water system shall be considered to have centralized treatment.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.

(11) Adopt Section 64420 as follows:

§64420. General Provisions.

With State Board approval, a public water system may be permitted to use point-of-entry treatment devices (POEs) in lieu of centralized treatment for the purpose of reducing contaminants to achieve compliance with one or more maximum contaminant levels or treatment techniques in this Chapter if:

(a) the water system meets the requirements of this Article and any applicable statutory requirements;

(b) the water system has demonstrated to the State Board that centralized treatment for achieving compliance is not economically feasible;

(c) the water system has applied for a permit or permit amendment to use POEs;

(d) following a public hearing, the State Board determines pursuant to section 64420.6 that there is no substantial community opposition;

(e) the water system has a State Board-approved:

(1) POE Treatment Strategy,

(2) POE Operations and Maintenance Program, and

(3) POE Monitoring Program; and

(f) the water system ensures that each building, residential unit, dwelling unit, commercial building or other establishment or institution, served by the water system, has a POE installed pursuant to this Article.

(g) With State Board approval and without having to meet the requirement of subsection (f), a public water system may utilize POEs in lieu of centralized treatment for the purpose of reducing contaminants to levels at or below one or more of the maximum contaminant levels established in this Chapter, in the water it supplies to some or all of the persons it serves, but the water system will not be deemed in compliance without meeting the requirement of subsection (f). A water system's application for a permit to utilize POE's pursuant to this subsection may include a request that one or more of the requirements of this article be amended or eliminated to address the water system's specific utilization, and such request may be granted or denied by the State Board.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.

(12) Adopt Section 64420.1 as follows:

§64420.1. Economic Feasibility of Centralized Treatment.

(a) To meet the requirements of section 64420(b), a community water system shall submit to the State Board information demonstrating that the:

(1) estimated cost of centralized treatment, per household, is more than one percent (1%) of the median household income (MHI) of the customers served by the community water system, or

(2) estimated cost of centralized treatment, per household, plus the median water bill from the most recent 12 months is:

(A) if the community's MHI is equal to or less than the statewide MHI, more than 1.5 percent (1.5%) of the MHI of the customers served by the community water system, or

(B) if the community's MHI is greater than the statewide MHI, more than two percent (2%) of the MHI of the customers served by the community water system.

(b) The estimated cost of centralized treatment may include, but is not limited to, the costs associated with equipment, design and construction, residual disposal, monitoring, and operation and maintenance.

(c) The public water system shall submit to the State Board the supporting documentation, assumptions, and calculations used to determine any anticipated increase in water bills to be presented pursuant to section 64420.6(a)(4).

(d) To meet the requirements of section 64420(b), a noncommunity water system shall submit to the State Board, documents that demonstrate that the water system does not have the financial resources for the cost of centralized treatment.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(13) Adopt Section 64420.2 as follows:

§64420.2. POE Requirements.

(a) As ensured by the public water system, each POE shall:

(1) If the American National Standard Institute (ANSI) has issued a product standard applicable to the specific type of POE, be independently certified in accordance with the standard and approved by the State Board;

(2) If ANSI has not issued a product standard applicable to the specific type of POE, be approved by the State Board and receive certification of performance and field testing;

(3) If an ANSI-issued standard does not adequately address a California drinking water standard or if a POE has not been independently certified for a specific contaminant, be approved by the State Board;

(4) Be owned, controlled, operated, and maintained by the public water system and/or a person(s) under contract with the water system, to ensure proper operation, maintenance, monitoring, and compliance with this Article and applicable drinking water standards;

(5) Be equipped with a mechanical warning (e.g. alarm, light, etc.) that alerts users when a unit needs maintenance or is no longer operating in a manner that assures the unit is producing effluent meeting state and federal drinking water standards, unless the device is equipped with an automatic shut-off mechanism that prevents the flow of water under such circumstances;

(6) Be equipped with a totalizing flow meter; and

(7) Provide health protection equivalent to that which would be provided by centralized treatment.

(b) Except as provided in subsection (c), pilot testing shall be performed by the public water system, and/or a person(s) under contract with the water system, on each proposed type of POE to establish its use limitations and operations and maintenance criteria, as well as verification that it will produce effluent that meets drinking water standards under local expected influent water quality and flow conditions.

(1) Prior to performing pilot testing, a pilot testing protocol shall be submitted to the State Board for review and the water system shall obtain State Board approval of the protocol.

(2) Pilot testing for a POE shall be conducted in the manner and for the time period specified by the pilot testing protocol for that POE, and shall be conducted for no less than two months.

(3) After completion of the pilot testing, the water system shall submit a report to the State Board describing the results and findings of the pilot testing.

(c) With State Board approval, a public water system may be exempt from, or be subject to a reduced level of, pilot testing required pursuant to subsection (b) if the water system demonstrates to the State Board that the POEs proposed for use have been tested, by the water system or another person, under equivalent water quality and flow conditions, and the limitations, criteria, and effluent verification in subsection (b) can be ascertained and are reported to the State Board.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116835, Health and Safety Code.

(14) Adopt Section 64420.3 as follows:

§64420.3. POE Treatment Strategy.

Prior to installing POEs, a public water system shall submit a POE Treatment Strategy for State Board review and obtain State Board approval of the Strategy. At a minimum, the POE Treatment Strategy shall include each of the following:

(a) A description of the compliance issues for which POEs are being proposed to address and how the use of POEs will achieve compliance;

(b) A description of how the water system will determine the type, number, and location of POEs to ensure POEs serve, in their entirety, each customer's building, dwelling unit, establishment, or other location within the water system's service area where drinking water is provided for human consumption;

(c) The water system's authority to require customers to accept POEs in lieu of centralized treatment and to take an action, such as discontinuing service, if a customer fails to accept POEs, or disconnects or modifies a POE installed pursuant to this Article;

(d) The basis for the POE selection(s);

(e) The qualifications and identification of the person(s) responsible for POE installation, operation, maintenance, and water quality sampling and analyses;

(f) A customer education program to be implemented prior to and following installation of POEs;

(g) The authority, ordinances, and/or access agreements that allow the water system's representatives access to customers' premises for POE installation, maintenance, and water quality monitoring, as well as the surveys necessary to meet subsection (b);

(h) Identification of applicable local regulatory requirements;

(i) In the event an installed POE fails to produce water that meets drinking water standards:

(1) a consumer notification protocol, along with example notices, consistent with Article 18 of Chapter 15 of Division 4 of Title 22, of the California Code of Regulations, and

(2) a plan for provision of an alternative water supply, meeting drinking water standards, to customers served by such installed POE;

(j) An on-going customer notification protocol that includes:

(1) notices in the language(s) appropriate for communication with the customers, and

(2) quarterly (or more frequent) notices informing the customers of:

(A) the extent to which POEs provide water meeting drinking water standards, including a description of water supplies that are not treated by the POEs, and

(B) of information pertaining to the mechanical warning or shut-off mechanism required pursuant to section 64420.2(a)(5), including a telephone number that connects the customer to water system personnel or recording system that shall be accessible by water system personnel 24-hours a day, seven days a week, for the purpose of providing the customer a reliable means of notifying personnel when the mechanical warning or shut-off mechanism is activated;

(k) The anticipated schedules for:

(1) the distribution of public hearing information,

(2) the public hearing required pursuant to section 64420.6,

(3) the distribution to customers of POE acceptance surveys,

(4) POE installation, and

(5) the construction of centralized treatment;

(l) An estimate of the percent of all customers within the water system's service area who are expected to voluntarily allow installation of POE devices, as well as a description of how the water system will address customers who do not; and

(m) The means for ensuring that the rights and responsibilities of the customer, with respect to an installed POE, convey with title upon the sale or transfer of property to which the POE is attached.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(15) Adopt Section 64420.4 as follows:

§64420.4. POE Operations and Maintenance (O&M) Program.

(a) Prior to installing POEs, a public water system shall submit a POE Operations and Maintenance (O&M) Program for State Board review and obtain State Board approval of the Program. The POE O&M Program shall include, but not be limited to, the following:

(1) An installation protocol that, at a minimum, describes locations and assurances that POEs will be accessible for operation and maintenance;

(2) The type and frequency of maintenance, at intervals specified by the manufacturer and determined by pilot testing, whichever is shorter, that ensures POEs produce effluent that meets drinking water standards;

(3) The number and type of auxiliary POEs and parts necessary to ensure continuous effective treatment;

(4) Replacement schedules for critical components and POEs;

(5) The qualifications and identification of the person(s) responsible for POE installation, operation, and maintenance; and

(6) POE waste-handling and disposal procedures.

(b) To ensure a POE is properly operating and has not been bypassed, POEs shall be inspected by the public water system no less often than every twelve months and when a POE's effluent is monitored pursuant to section 64420.5.

(c) Based on the on-going operation and maintenance of installed POEs, a public water system shall revise its POE O&M Program as necessary to ensure continuous effective treatment and that POEs produce effluent that meets drinking water standards. Revised POE O&M Programs shall be submitted to the State Board for review prior to implementation of the revised Program.

(d) A public water system shall maintain a copy of and implement its most recent POE O&M Program prepared pursuant to this section.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350 and 116380, Health and Safety Code.

(16) Adopt Section 64420.5 as follows:

§64420.5. POE Monitoring Program.

(a) A public water system shall submit a POE Monitoring Program for State Board review and obtain State Board approval of the Program. At a minimum, the POE Monitoring Program shall include monitoring of the contaminant(s) and/or constituents for which the water system has applied to use POEs, as follows:

(1) Source water monitoring – quarterly, with samples collected during the same month (first, second, or third) of each calendar quarter;

(2) POE effluent – initially, with samples collected as soon as possible but no later than 72 hours after a device is installed; and

(3) POE effluent, on-going following the monitoring in paragraph (2) – annually, with one twelfth of all units sampled monthly on a rotating basis. With State Board approval and after completion of one year of monitoring, a water system may alternatively monitor one quarter of all units each calendar quarter.

(b) For a contaminant other than nitrate, nitrite, nitrate plus nitrite, or perchlorate, after no less than one year of monitoring conducted pursuant to subsection (a), a public water system may apply to the State Board for reduced on-going monitoring if all the results of the on-going monitoring conducted pursuant to subsection (a)(3) do not exceed 75 percent (75%) of a contaminant's MCL.

(c) The State Board may require further monitoring for the contaminant of concern or other contaminants, including microbial contaminants, based on monitoring results, the health risk associated with the contaminant, POE technology, or a public water system's compliance with this Article.

(d) The public water system shall revise its POE Monitoring Program as necessary based on the on-going operation and maintenance of installed POEs or additional monitoring required pursuant to subsection (c). Revised POE Monitoring Programs shall be submitted to the State Board for review prior to implementation of the revised Program.

(e) The public water system shall maintain a copy of and implement its most recent POE Monitoring Program prepared pursuant to this section.

(f) If an on-going POE effluent sample result exceeds an MCL, the public water system shall:

(1) implement the public notification and alternative water procedures identified in its State Board-approved POE Treatment Strategy;

(2) except as noted in paragraph (3), collect a confirmation sample within seven days of notification of the exceedance;

(3) for an exceedance of a nitrate, nitrite, nitrate plus nitrite, or perchlorate MCL;

(A) as soon as possible, but no later than 24 hours following notification of an exceedance, provide each affected customer with alternative water that meets drinking water standards, and

(B) collect a confirmation sample within 72 hours of notification of the exceedance; and

(4) if the confirmation sample, or the average of the original and confirmation sample, exceeds the MCL, notify the State Board within 24 hours of the result, complete corrective actions as soon as possible but within one month of receipt of the result, and increase the monitoring frequency if requested to do so by the State Board..

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, and 116380, Health and Safety Code.

(17) Adopt Section 64420.6 as follows:

§64420.6. Public Hearing and Acceptance.

To meet the requirements of section 64420(d), a public water system shall, pursuant to this section, conduct a customer survey and participate in, and provide information for, a public hearing held by the State Board. At least 30 days prior to initiating the activities required in this section, the water system shall submit a protocol, to the State Board for review and approval, describing the water system's plan to meet the requirements of this section.

(a) Prior to conducting a customer survey, a water system shall participate in and provide information for a public hearing that, at a minimum, disseminates the following to those in its service area:

(1) A description of the water system's POE Treatment Strategy;

(2) The adverse health effects, as specified in the appendices in section 64465, associated with the contaminant(s) of concern;

(3) POE Operation and Maintenance Program and Monitoring Program information that necessitates customer involvement; and

(4) The estimate of any anticipated increase in water bills that may result from utilization of POEs.

(b) At least 30 days prior to the public hearing, the water system shall place the information to be presented at the public hearing into a publicly accessible repository and notify the State Board and those in its service area of the date, time, and location of the public hearing, as well as the location and hours of operation of the repository. If the water system serves multi-unit residential dwellings including, but not limited to, apartments and residential institutions, whether sub-metered or not, the water system shall provide notice to each resident of such residential dwellings.

(c) Following the public hearing, the water system shall survey all of its customers. The survey shall be delivered in a manner designed to reach each customer and include the following language-specific options:

(1) "I vote FOR the use of Point-of-Entry treatment devices.", and

(2) "I vote AGAINST the use of Point-of-Entry treatment devices."

(d) Use of POE treatment devices in lieu of centralized treatment shall be considered to have no substantial community opposition if:

(1) the sum of the number of non-voting customers and the number of customers voting against POEs, is less than half of the total customers, and

(2) no more than 25 percent of the total number of customers voted against POEs.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.

(18) Adopt Section 64420.7 as follows:

§64420.7. Recordkeeping, Reporting, and Compliance.

(a) A public water system shall maintain the following records for at least ten years and provide the records to the State Board when requested:

- (1) Results of all water quality monitoring conducted pursuant to this Article;
- (2) The location and type of each installed POE;
- (3) The date and type of maintenance and repairs performed; and
- (4) Verbal and written customer complaints received and the resulting corrective actions and/or responses.

(b) A public water system shall report to the State Board, at the frequency noted, the following:

- (1) Monthly – treated water quality monitoring results;
- (2) Quarterly – source water monitoring results and any investigations and/or corrective action(s) taken to ensure POEs meet the requirements of this Article including, but not limited to, POE maintenance, customer complaints, inspection results, and manufacturer notices pertaining to proper operation of devices.

(c) The reports required pursuant to subsection (b) shall be submitted to the State Board within ten days following the applicable reporting period.

(d) A public water system shall be in violation of the MCL if:

(1) for all POEs combined, during a 12-month interval more than five percent (5%) of the results of the effluent monitoring conducted pursuant to section 64420.5 exceed an MCL,

(2) for a POE, the effluent fails to meet the applicable compliance determination requirements in this Chapter for an MCL, or

(3) a building, residential unit, dwelling unit, commercial building or other establishment or institution, served by the water system, does not have a POE installed pursuant to this Article.

(e) Funding for centralized treatment is available when funding for centralized treatment, from any source, is received by, or otherwise placed under control of, the public water system.

NOTE: Authority cited: Sections 116271, 116350 and 116375, Health and Safety Code. Reference: Sections 116325, 116350, 116380 and 116552, Health and Safety Code.