
State Water Resources Control Board

NOTICE OF PROPOSED RULEMAKING

STATE WATER RESOURCES CONTROL BOARD

TITLE 22. SOCIAL SECURITY DIVISION 4. ENVIRONMENTAL HEALTH CHAPTER 15 (Domestic Water Quality and Monitoring)

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed regulatory action.

SUMMARY OF PROPOSED REGULATORY ACTION

The State Water Board proposes to adopt regulations governing the use of point-of-use (POU) treatment and point-of-entry (POE) treatment by public water systems, in lieu of centralized treatment. The State Water Board proposes to adopt the following in the California Code of Regulations (CCR), Title 22, Division 4, Chapter 15:

- Adopt Article 2.5, to establish requirements for use of POU by a public water system (PWS).
- Adopt Article 2.7, to establish requirements for use of POEs by a PWS.

The State Water Board previously adopted emergency regulations governing the use of POU and POE devices, Articles 2.5 and 2.7, Chapter 15, Division 4, CCR. The regulations that are the subject of this Notice are being proposed to make the emergency regulations permanent regulations.

NOTICE OF PUBLIC HEARING

The State Water Board will conduct a public hearing regarding the subject proposed regulations at the time and place noted below. At the hearing, any person may present comments orally or in writing relevant to the proposed action described in this notice.

DATE: November 27, 2017

TIME: 9:30 AM

PLACE: California Environmental Protection Agency
State Water Resources Control Board
Byron Sher Auditorium
1001 I Street, Second Floor
Sacramento, CA 95814

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

A quorum of the State Water Board members may attend this public hearing, but the State Water Board will not take action.

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.

SI NECESITA ARREGLOS ESPECIALES

Conforme a la Sección 7296.2, del Código del Gobierno de California, los siguientes servicios o arreglos especiales pueden ser solicitados:

- Servicio de intérprete durante la audiencia;
- Documentos en otro idioma o en un formato alterno;
- Arreglos razonables relacionados a una discapacidad.

Para pedir estos arreglos especiales o servicios en otro idioma, puede contactar a la Secretaria de la Junta (Board) al (916) 341-5600 lo más pronto posible, pero a más tardar 10 días hábiles antes de la fecha de la audiencia de la Junta (Board). Los usuarios del Sistema TTY/TDD/Voz-a-Voz pueden marcar el 7-1-1 para utilizar el California Relay Service.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any person, or his or her representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes at noon on November 30, 2017. The State Water Board will only consider comments received at the State Water Board offices by that time.

You may submit written comments via any of the following:

Electronic mail (email): commentletters@waterboards.ca.gov

FAX: (916) 341-5620.

U.S. Postal Service: Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100,
Sacramento, CA 95812-2000

Hand Delivery: Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor,
Sacramento, CA 95814

Persons delivering comments must check in with lobby security and have them contact Ms. Jeanine Townsend at (916) 341-5600.

Also, please indicate in the subject line and/or on the cover page of submittals: **“Comments – Proposed POU/POE Regulations”**.

All comments, including email or fax transmissions, should include the author’s name and U.S. Postal Service mailing address in order for the State Water Board to provide any notices that may be required in future.

Due to the limitations of the email system, emails larger than 15 megabytes (MB) may be rejected and will not be delivered and received by the State Water Board. Therefore, emails larger than 15 MB should be submitted under separate emails or via another form of delivery.

The State Water Board requests, but does not require, that written comments sent by mail or hand-delivered be submitted in triplicate.

The State Water Board requests, but does not require, that if reports or articles in excess of 25 pages are submitted in conjunction with the comments, that the commentator provide a summary of the report or article and describe the reason for which the report or article is being submitted or its relevance to the proposed regulation.

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.

AUTHORITY AND REFERENCE

Pursuant to Health and Safety Code sections 116271, 116325, 116350, 116375, 116380, and 116552, the State Water Board is authorized to adopt the subject regulations. This action is proposed to implement, interpret, and make specific one or more of the following: Health and Safety Code sections 116325, 116350, 116380, and 116552.

INFORMATIVE DIGEST

Background and Summary of Existing Relevant Laws: All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (U.S. EPA) under the U.S. Safe Drinking Water Act (SDWA) of 1974, as amended (42 U.S.C. §300f et seq.), as well as by the State Water Board under the California SDWA (Health & Saf. Code, div. 104, pt. 12, ch. 4, §116270 et seq.). Pursuant to section 116270 of the Health and Safety Code, et al., it is the objective of the California SDWA for a PWS to deliver drinking water to consumers that is, at all times, pure, wholesome, and potable. The ability to meet this objective is a reflection of the water quality and quantity of a PWS's source of supply, the PWS's ability to treat the source of supply (if necessary), and the PWS's ability to deliver drinking water, all in a manner that ensures compliance with all applicable drinking water standards.

Drinking water is commonly delivered to consumers via distribution systems, with consumers' service lines being connected to the distribution system. When 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, POE Treatment provides necessary treatment of the distribution system water at or near the point the water enters a consumer's house or a building, as opposed to providing centralized treatment for the entire distribution system. Similarly, POU Treatment does not provide centralized treatment for the entire distribution system, with the POU(s) being applied to a single tap (or taps) used to reduce the contaminants at that tap only.

AB 434 (2015) amended California Health and Safety Code (HSC) Sections 116380 and 116552, to require the State Water Board to adopt regulations governing the use of POU/POE treatment by a public water system in lieu of centralized treatment. HSC section 116380 requires the State Water Board to first adopt the regulations as emergency regulations, which were exempt from the rulemaking provisions of the Administrative Procedures Act (APA), and to then adopt subsequent permanent regulations in accordance with the APA. The regulations that are the subject of this notice are being proposed to make the emergency regulations permanent.

The emergency regulations were adopted by the Board on March 15, 2016 and became effective on April 1, 2016. The emergency provisions will remain in effect until the earlier of January 1, 2018, or the effective date of the permanent regulations adopted by the State Water Board in accordance with the APA.

The proposed regulations, if adopted, would result in two new articles being added to CCR, title 22, division 4, chapter 15 (domestic water quality and monitoring), just as the emergency regulations did. There are a number of differences between the proposed permanent regulations and the existing, emergency regulations, but the two versions are fairly similar. Because the proposed regulations would make the emergency regulations permanent, they are not an amendment of the emergency regulations, and this notice does not compare the proposed permanent regulations to the emergency regulations. The public may, therefore, submit comments on any of the proposed regulations, regardless of the fact that they are in many cases identical to the emergency regulations.

Comparable Federal Statute and Regulations: There are federal regulations and statutes that address, in part, the specific subject addressed by the proposed regulations. They are: 42 U.S.C. section 300g-1 (b)(4)(E)(ii); 40 C.F.R. section 141.100, and 40 C.F.R. section 142.62.

Any substantial differences from the existing, comparable federal regulations or statutes are due to the mandates of state law. For example, HSC section 116380 provides that neither POU nor POE devices may be used unless the public water system demonstrates that centralized treatment is not immediately economically feasible, and that public water systems have applied for funding. Federal law has no such limitations or preliminary requirements. HSC section 116552 provides that the State Water Board can permit use of the devices for no more than three years or until funding for centralized treatment is available, whichever occurs first, while federal law does not have a similar limitation.

Policy Statement Overview and Summary of Proposed Regulatory Action:

The objective of the California SDWA is for PWSs to deliver drinking water to consumers that is, at all times, pure, wholesome, and potable. Drinking water is commonly delivered to consumers via distribution systems, with consumers' service lines being connected to the distribution system. When treatment is necessary due to contamination, centralized treatment is typically utilized, ensuring the drinking water throughout the distribution system meets all drinking water standards. For some communities, however, centralized treatment may be prohibitively expensive, and therefore, POU and POE treatment offer alternatives for PWSs to deliver drinking water that meets drinking water standards.

Objective (Goal): The broad objective of this proposed regulatory action is to:

- Adopt drinking water regulations governing the use of POU and POEs by a PWS, which:
 - assure availability of pure, wholesome, and potable drinking water to consumers when an applicable PWS and its customers choose treatment via POU or POEs in lieu of centralized treatment;
 - are consistent with the statutory requirements of the California SDWA; and

- are consistent with, and no less stringent than, the U.S. SDWA and its implementing regulations and guidance.

Benefit: The anticipated benefit, including any nonmonetary benefit to the protection of public health and safety of California residents, worker safety, and the state's environment, from this proposed regulatory action is to:

- Allow a viable and affordable means of providing drinking water, which meets all drinking water standards, to a PWS serving a small community that may not be otherwise able to readily afford centralized treatment.

Proposed Changes

Pursuant to Health and Safety Code sections 116271, 116350, and 116375, the State Board proposes the following changes to CCR, title 22, division 4, chapter 15:

- Adopt Article 2.5, establishing requirements for use of POUs by a PWS, which includes the proposed adoption of sections summarized as follows:
 - Section 64417 (Definitions), defining POU treatment device;
 - Section 64418 (General Provisions), establishing general provisions for use of POUs by a PWS, including contaminant constraints and permitting for a PWS to utilize POUs in lieu of centralized treatment;
 - Section 64418.1 (Economic Feasibility of Centralized Treatment), establishing the economic feasibility criteria a PWS must meet to be permitted to utilize POUs in lieu of installation of centralized treatment;
 - Section 64418.2 (POU Requirements), establishing criteria specific to POUs;
 - Section 64418.3 (POU Treatment Strategy), establishing the criteria for a PWS's treatment strategy plan when employing POUs in lieu of centralized treatment;
 - Section 64418.4 (POU Operations and Maintenance (O&M) Program), establishing the criteria for a PWS's operations and maintenance program;
 - Section 64418.5 (POU Monitoring Program), setting forth minimum monitoring requirements and criteria for development of a PWS monitoring program;
 - Section 64418.6 (Public Hearing and Acceptance), establishing public hearing criteria and minimum public acceptance requirements that must be met to use POUs in lieu of centralized treatment; and
 - Section 64418.7 (Recordkeeping and Reporting), setting forth recordkeeping and reporting requirements for a PWS using POUs in lieu of centralized treatment.
- Adopt Article 2.7, establishing requirements for use of POEs by PWS as follows:
 - Section 64419 (Definitions), defining POE treatment device;
 - Section 64420 (General Provisions), establishing general provisions for use of POEs by a PWS, including permitting requirements for a PWS to utilize POEs in lieu of centralized treatment;

- Section 64420.1 (Economic Feasibility of Centralized Treatment), establishing the economic feasibility criteria a PWS must meet to be permitted to utilize POEs in lieu of installation of centralized treatment;
- Section 64420.2 (POE Requirements), establishing criteria specific to POEs;
- Section 64420.3 (POE Treatment Strategy), establishing the criteria for a PWS's treatment strategy plan when employing POEs in lieu of centralized treatment;
- Section 64420.4 (POE Operations and Maintenance (O&M) Program), establishing the criteria for a PWS's operations and maintenance program;
- Section 64420.5 (POE Monitoring Program), setting forth minimum monitoring requirements and criteria for development of a PWS monitoring program;
- Section 64420.6 (Public Hearing and Acceptance), establishing public hearing criteria and minimum public acceptance requirements that must be met to use POEs in lieu of centralized treatment; and
- Section 64420.7 (Recordkeeping and Reporting), setting forth recordkeeping and reporting requirements for a PWS using POEs in lieu of centralized treatment.

The net effect of the proposed regulations would be to establish specific regulatory criteria for PWSs choosing to utilize POU and/or POE in lieu of installation and operation of more costly centralized treatment.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations:

The State Water Board evaluated this proposal as to whether the proposed regulations are inconsistent or incompatible with existing California state regulations. This evaluation included a review of California's existing regulations, and those regulations specific to use of POU and POE by a PWS. It was determined that no other state regulation addressed the same subject matter and that this proposal was not inconsistent or incompatible with other state regulations. Therefore, the State Water Board has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The State Water Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any State Agency: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in Federal funding to the State: None.

- Cost impacts on a representative private person or business: None.
- Statewide adverse economic impact directly affecting businesses and individuals, including ability to compete: The State Water Board concludes that there will be no significant adverse impact directly affecting businesses or individuals, including the ability of California businesses to compete with businesses in other states.
- Significant effect on housing costs: None.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Adoption of the proposed regulations will not: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; 3) affect the expansion of businesses currently doing business in California; or 4) affect worker safety or the environment. Adoption of the proposed regulations may have a positive effect on the health and welfare of California residents by providing a viable and affordable means of providing drinking water that meets all drinking water standards to a PWS serving a small community that may not be otherwise able to readily afford centralized treatment.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS.

The State Water Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations provide an alternative means of treatment for eligible public water systems (PWS) to utilize for providing drinking water that complies with existing drinking water standards. Absent these regulations, a PWS would typically be required to install centralized treatment to correct for deficiencies in water quality delivered to customers. These regulations provide a more economically feasible option for PWS, and therefore do not represent an actual cost. The State Water Board recognizes that costs for the treatment and monitoring would likely be passed on to a water system's customers, which may include individuals and businesses. Therefore, even though the regulations do not directly affect businesses or individuals, those entities may be indirectly impacted by the regulation. To the extent that it would impact businesses or individuals because they are customers of public water systems and pay fees, there will be no increased costs because POU and POE can only be used if they are less expensive than centralized treatment, which would otherwise be required.

BUSINESS REPORT

The State Water Board has determined that the proposed regulations would require reports from businesses that elect to install POU or POE devices, but it is necessary for the health of the people of the state that the regulation apply to businesses

EFFECT ON SMALL BUSINESS

The State Water Board has determined that the proposed regulations would not affect small business because Government Code chapter 3.5, article 2, section 11342.610 excludes utilities from the definition of small business. To the extent that it would impact small businesses because they are customers of public water systems and pay fees, there will be no increased costs because POU and POE can only be used if they are less expensive than centralized treatment, which would otherwise be required.

CONSIDERATION OF ALTERNATIVES

The State Water Board must determine that no reasonable alternative considered or otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to the regulated water systems and affected private persons, or would be more cost-effective to the regulated water systems and affected private persons, yet equally effective in implementing statutory requirements or other provisions of law, than the proposed action.

The State Water Board invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period, as identified in this notice.

WATER CODE SECTION 106.3 CONSIDERATION

In establishing and adopting the proposed regulations, the State Water 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.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) mandates that guidelines be adopted that "include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from ... [CEQA]." (Pub. Res. Code § 21084). One of those classes of projects is "Actions by Regulatory Agencies for Protection of the Environment." (Cal. Code Regs., title 14, §15308).

The State Water Board intends to make a finding that adoption of the proposed POU/POE treatment regulations represents action taken by a regulatory agency pursuant to its general and specific statutory authority for the maintenance and

protection of the environment, and that adoption of the proposed POU/POE treatment regulations satisfies the requirements of California Code of Regulations (CCR), title 14, sections 15301, 15302, 15303, 15308, 15311, and 15330, and is a Class 1, Class 2, Class 3, Class 8, Class 11, and Class 30 categorical exempt project. The State Water Board intends to further find that there are no facts on the record to indicate or suggest that the proposed POU/POE treatment regulations fall within any of the enumerated exceptions for the appropriate use of a categorical exemption as set forth in CCR, title 14, section 15300.2. The State Water Board intends to find, therefore, that pursuant to CCR, title 14, section 15300, adoption of the proposed POU/POE treatment regulations is categorically exempt from CEQA requirements for the preparation of environmental documents.

STATE WATER BOARD CONTACT PERSONS

Requests for copies of the proposed regulatory text, the initial statement of reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed action may be directed to:

Melissa Hall, P.E.
Senior Water Resource Control Engineer
State Water Resources Control Board
1001 I Street, 17th floor
Sacramento, CA 95814
Telephone: (916) 323-0373
Electronic mail address: melissa.hall@waterboards.ca.gov

In the event Melissa Hall is not available to respond to requests or inquiries, please contact:

Mark Bartson, P.E.
Supervising Sanitary Engineer
State Water Resources Control Board, Division of Drinking Water
1001 I Street, 17th Floor
Sacramento, CA 95814
Telephone: (916) 449-5622
Electronic mail address: mark.bartson@waterboards.ca.gov

A subscription e-mail list is available for updates to this and other proposed drinking water regulations at

https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html.

Subscribe under Drinking Water, Drinking Water Program Announcements.

INTERNET ACCESS

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations may be found on the State Water Board's Web site at the following address:

http://www.waterboards.ca.gov/public_notices/comments/index.shtml

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND THE RULEMAKING FILE

The State Water Board has prepared an Initial Statement of Reasons for the proposed regulatory action. The Initial Statement of Reasons includes the specific purpose for the regulations proposed for adoption, and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulations are proposed. All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for inspection and copying throughout the rulemaking process. To inspect or copy the rulemaking file at the State Water Board office, contact the contact persons named in this Notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering relevant comments received in a timely manner, the State Water Board may adopt the proposed regulations substantially as described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, the State Water Board will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the State Water Board adopts the modified regulations. Any such modifications will also be posted on the State Water Board Web site. Please send requests for copies of any modified regulations to the attention of the contact persons named in this Notice. The State Water Board will accept written comments on the modified regulation for 15 days after the date on which they were made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the contact person(s) named in this Notice, or may be accessed on the Web site address provided above ("Internet Access").