
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Annual Drinking Water Fees

Amendments to Division 4, Chapter 14.5 of Title 22 of the California Code of Regulations

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. This document provides the required notice. Upon receiving the proposed emergency regulation, OAL shall publish the notice on their Website and allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in the Government Code section 11349.6.

Proposed Emergency Action

SB 83 (2015) required the State Water Resources Control Board (State Water Board) to establish a fee schedule to support the Drinking Water Program. Effective July 1, 2016, the existing Health and Safety Code (HSC), section 116565, which establishes annual fees for public water systems became inoperative (Stats. 2015, Ch. 24, § 19), and a new HSC section 116565 (added by Stats. 2015, Ch. 24, § 20), became operative. The law requires the fee regulations initially be set through the regular rulemaking process, which occurred on April 10, 2017. Thereafter, regulations, any amendment thereto, or subsequent adjustments to the annual fees shall be adopted as emergency regulations that are not subject to review by the Office of Administrative Law.

Upon monitoring and reviewing the regulations, which became effective on April 10, 2017, several areas were identified as potentially benefitting from further clarification and/or amendments to the regulation text in order to eliminate potential ambiguity in the text.

On September 19, 2017, the State Water Board adopted emergency regulations amending drinking water fee regulation language in title 22, division 4, chapter 14.5, sections 64300, 64305, 64310, and 64315 of the California Code of Regulations. In general, the emergency regulation will: 1) add text to clarify "Disadvantaged community" to mean the entire service area of the public water system; 2) define group quarters, which are group living arrangements, for purposes of calculating number of service connections; and 3) specify how service connections are generally defined and calculated. The amendments would also: 1) specify the point in time and metrics for determining volumetric-based fees for wholesale water systems; 2) require that the fee for wholesalers be based on the average of four years of production as opposed to three; and 3) require water systems requesting disadvantaged status to certify under penalty of perjury, that the system meets the definition, and provide documentation, which may include an income survey, to the State Water Board upon request. Lastly, the amended regulations would

make invoices due upon receipt, rather than 45 days from the date of invoice. However, the statute provides that fees are not due until 90 days following the due date in the regulations, so the effect of the amendment is to make fees due 90 days after the date of the invoice. This change is necessary in order for State Water Board staff to align fee revenue timing more closely with the expenditure period for which the fees are supporting.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulation.

Finding of Emergency (Gov. Code, § 11346.1(b)(2))

The State Water Board has a mandatory legal duty to assess fees and to adopt the regulations, any amendment thereto, or subsequent adjustments to the annual schedule of fees by emergency regulation (HSC §§ 116565 and 116590). Health and Safety Code sections 116565, subdivision (e)(1) and subdivision (2)(B) state that the “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.”

Notwithstanding chapter 3.5 (commencing with section 11340) of part 1 of division 3 of Title 2 of the Government Code, the emergency regulation shall remain in effect until revised by the State Water Board (HSC § 116565).

Moreover, the State Water Board finds that the proposed amendments to the fee regulations must be adopted immediately in order to provide clarity and remove ambiguity about the fees to be paid, which will allow for timely collection of fees to conform to amounts appropriated by the Legislature from the Safe Drinking Water Fund for support of drinking water activities. Without these changes, funding could be delayed, potentially compromising critical water design, operation, and maintenance of public water systems.

The State Water Board is unable to address the situation through non-emergency regulations because, as discussed above, it has a mandatory legal duty to adopt or change the fee schedules and language by emergency regulation.

Authority and Reference (Gov. Code, § 11346.5(a)(2))

Health and Safety Code sections 116271, 116350, 116375, and 116565 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Health and Safety Code sections 116565 and 116590.

Informative Digest (Gov. Code, § 11346.5(a)(3))

Under the Health and Safety code and existing regulations, each public water system shall pay an annual fee to the State Board in the amount provided in Table 64305-A. Although staff is not recommending an increase in fees for FY 2017-18, it is recommending changes to the text of the emergency regulations. The proposed changes will, in general, provide clarity and remove areas of identified ambiguity in the current regulations.

Specific Agency Statutory Requirements (Gov. Code, § 11346.5(a)(4))

No other matters are set by statute or regulation applicable to the State Water Board.

Local Mandate Determination (Gov. Code, § 11346.5(a)(5))

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not mandate a new program or a higher level of service of an existing program. The fee schedule applies equally to public and private entities, and is not unique to

local government. No state reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

Estimate of Cost or Savings (Gov. Code, § 11346.5(a)(6))

There is no cost to any state agency, local agency, or school district for which reimbursement is required.

There is no cost or savings in federal funding to the state.