
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Environmental Laboratory Accreditation Program Fees

Amendments to Title 22, California Code of Regulations Section 64802.25

Required Notice of Proposed Emergency Action

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, 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. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Proposed Emergency Action

Health and Safety Code section 100829 requires the State Water Resources Control Board (State Water Board) to set the amount of total revenue collected each year through the fee schedule at an amount equal to expenditures appropriated by the Legislature in the annual Budget Act for the Environmental Laboratory Improvement Fund (ELIF), taking into account the reserves in the ELIF. Health and Safety Code section 100829 also provides that the schedule of fees be set in an amount sufficient to recover all reasonable regulatory costs incurred for the purposes of the Environmental Laboratory Accreditation Act, and that the State Water Board review and revise the fees each fiscal year as necessary to conform to the amounts appropriated by the Legislature. Furthermore, Health and Safety Code section 100829, subdivision (f)(3) requires the State Water Board to adopt the schedule of fees by emergency regulation, and the regulations may include provisions concerning the administration and collection of the fees.

On September 19, 2023, the State Water Board will consider adopting emergency regulations that adjust fees to conform to the revenue levels set forth in the Budget Act for fiscal year (FY) 2023-24. The proposed emergency regulation will adjust the fee schedule by increasing fees 30 percent.

Proposed Text of Emergency Regulation

See the attached proposed text of the emergency regulation.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

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

The State Water Board is responsible for administering the Environmental Laboratory Accreditation Act. (Health and Safety Code, §100825 et seq.) Health and Safety Code section 100860.1 requires that a laboratory pay a fee at the time of applying for Environmental Laboratory Accreditation Program (ELAP) certification and annually thereafter. Health and Safety Code section 100829 further states the State Water Board shall adopt the schedule of fees by emergency regulation, not subject to review by the Office of Administrative Law.

Moreover, the State Water Board finds that the proposed amendments to the fee regulations must be adopted immediately in order to allow for the timely collection of fees to conform to amounts appropriated by the Legislature. Without fee revenue in the amounts appropriated, the ELAP would not be able to fully support ELAP activities.

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 the fee schedules by emergency regulation.

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

Authority: Sections 100829 and 116271, Health and Safety Code. Reference: Sections 100829, 100860.1, Health and Safety Code.

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

On May 5, 2020, the State Water Board adopted a resolution proposing changes to the ELAP regulations. The changes to the regulations necessitated a change in the ELAP fee structure. Therefore, on July 21, 2020 the State Water Board adopted Resolution 2020-0027, an emergency regulation amending the ELAP fee schedule in title 22, California Code of Regulations by adding section 64802.25. The revised ELAP regulations and fee schedule went into effect on January 1, 2021.

Currently, the fee structure is comprised of an annual base fee, a fee based upon the number of fields-of-accreditation requesting, and, depending on applicability, fees for reciprocity accreditation, a biennial assessment fee, and fees for amendments to accreditation and late submittal of applications.

These fees support the work the ELAP program conducts to accredit laboratories to perform analyses on environmental samples for regulatory purposes. The fees are consistent with existing state laws and regulations. Ensuring that laboratories can meet minimum requirements helps ensure protection of public health and safety and the environment.

There is no comparable federal statute or regulation. The proposed regulation is not inconsistent or incompatible with existing state regulations.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

No other matters are prescribed by statute or regulation applicable to the State Water Board's ELAP fees. The adoption of the fee schedule is exempt from the California Environmental Quality Act.

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

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not impose a cost unique to local governments, affecting both private and public laboratories the same, and laboratories are able to recoup the increased fees by raising their own fees for service. 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, subd. (a)(6))

Under the proposed emergency regulation there would be increases to fees for laboratories. There is, however, no cost for reimbursement to any local agency or school district, as the fee changes are not a state mandate. There are currently two active state laboratories whose fees would be expected to increase by a combined \$2,550 in FY 2023-24.

Additionally, there is no cost or savings in federal funding to the state.

Section 64802.25. Accreditation Fees.

(a) A laboratory located in California shall pay the following fees to the State Water Board at the time of initial application for accreditation and annually thereafter:

- (1) A non-refundable base fee of ~~\$4,030~~3,100;
 - (2) A non-refundable Field of Accreditation fee in accordance with Table 1;
- and
- (3) Late fees in accordance with 64808.05, if applicable.

(b) A laboratory physically located outside of California shall pay the following fees to the State Water Board at the time of initial application for accreditation and annually thereafter:

- (1) A non-refundable reciprocity fee of ~~\$6,500~~5,000;
- (2) A non-refundable base fee of ~~\$4,030~~3,100;
- (3) A non-refundable Field of Accreditation (FOA) fee in accordance with

Table 1; and

(c) A laboratory requesting ELAP perform an on-site assessment shall pay a non-refundable assessment fee, in accordance with Table 2, to the State Water Board payable at the time the on-site assessment is scheduled.

(d) A laboratory requesting a third-party Assessment Agency perform an on-site assessment shall pay the fees determined by the third-party Assessment Agency directly to the third-party Assessment Agency.

(e) A laboratory applying for amendment accreditation shall pay a non-refundable amendment application fee of ~~\$1,950~~1,500 for amendment applications with 49 or fewer FOAs, and ~~\$3,250~~2,500 for amendment applications with 50 or greater FOAs to the State Water Board payable at the time the amendment application is submitted. In addition, if ELAP is required to perform an on-site assessment, the laboratory shall pay a non-refundable assessment fee, in accordance with Table 2, to the State Water Board at the time the onsite assessment is scheduled.

TABLE 1. FIELD OF ACCREDITATION (FOA) FEES

Number of FOAs in Application/Certificate of Accreditation	Fee
1-10	\$585 <u>450</u>
11-49	\$1,495 <u>1,150</u>
50-99	\$4,485 <u>3,450</u>
100-149	\$7,475 <u>5,750</u>
150-249	\$10,465 <u>8,050</u>

Number of FOAs in Application/Certificate of Accreditation	Fee
250-349	\$13,455 10,350
350 +	\$16,445 12,650

TABLE 2. ASSESSMENT FEES

Assessment Type	Fee
Assessment of Main Laboratory	\$6,500 5,000
Assessment of Satellite/Mobile Laboratory	\$3,250 2,500
Assessment for Change of Laboratory Location	\$6,500 5,000
Assessment for Adding Field(s) of Accreditation to a Renewal Assessment (Includes Assessment of Main Laboratory)	\$7,800 6,000
Assessment for Adding Field(s) of Accreditation as Standalone Items	\$6,500 5,000

Note: Authority cited: Section 100829 Health and Safety Code; Reference: Sections 100829, 100837, 100860.1 Health and Safety Code.