
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(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 (OAL), 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

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 section 116565, which establishes annual fees for public water systems, became inoperative (Stats. 2015, Ch. 24, § 19), and a new 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 OAL.

On September 18, 2024, the State Water Board will consider adopting emergency regulations that adjust drinking water fees to conform to the revenue levels set forth in the Budget Act for fiscal year (FY) 2024-25. The proposed emergency regulation will adjust the fee schedule by increasing the fees approximately 12.7 percent for community water systems, nontransient noncommunity water systems, transient noncommunity water systems, and wholesalers. Additionally, changes are proposed to the fees for community water systems defined as group quarters, using residential population instead of service connections as the basis for their fees, and proposing a new fee structure. Finally, minor modifications are proposed including: how service connections are calculated if a community water system does not report their service connections; changing the term “per person” to “per customer” as defined in section

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64400.30 of Article 1, Chapter 15 for the purpose of calculating nontransient noncommunity water system fees; changing the term “public water system” to “community water system” in section 64305(b); and allowing data from sources other than the electronic Annual Report (eAR) to be used for the calculation of fees, if directed by the State Water Board.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulation.

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

The State Water Board has a mandatory legal duty to assess fees through adoption of a regulation and to adopt by emergency regulation amendments thereto or subsequent adjustments to the annual schedule of fees (Health & Saf. Code, §§ 116565, 116590.) Health and Safety Code section 116565, subdivision (e)(1), states 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.” Health and Safety Code section 116565, subdivision (e)(2)(B), states that the emergency regulations shall remain in effect until revised by the State Water Board.

Moreover, the State Water Board finds that the proposed amendments to the Board’s fee regulations must be adopted immediately in order to allow for the timely collection of fees to conform to amounts appropriated by the Legislature from the Safe Drinking Water Account for the support of drinking water program activities. Without fee revenue in the amounts appropriated, much of the drinking water program would be in danger of being shut down. Continued administration of the drinking water program is essential to the economy, public health, and environment of the State of California.

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, subd. (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, subd. (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, which is set forth in section 64305 of title 22 of the California Code of Regulations.

This emergency regulation ensures that the State Water Board has sufficient funds to administer the California Safe Drinking Water Act, as required by law. Ensuring that public water systems meet minimum requirements helps safeguard 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 set by statute or regulation applicable to the State Water Board.

Local Mandate Determination (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 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. Public water systems can also increase the fees that they charge for their services to address the increased annual fee. 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 in annual fees for public water systems. However, there is no cost to any local agency or school district for which reimbursement is required, or other nondiscretionary cost or savings imposed on local agencies as the fee changes are not a state mandate. The amended fee schedule will result in a total estimated increase to state agencies of approximately \$183,235 and an estimated increase to local agencies of approximately \$3,889,885. Additionally, there is no cost or savings in federal funding to the state.

§ 64305. Schedule for Annual Fees.

(a) Each public water system shall pay an annual fee to the State Board in the amount provided in Table 64305-A.

(b) Except as provided in subsection (c), for each community water system, the number of service connections is equal to the number of service connections that the community public water system reported on the electronic Annual Report (eAR), or other reporting tool as directed by the State Board, ~~that the public water system was filed with the State Board for the calendar year immediately preceding the year in which the invoice is submitted to the community public water system. If the community water system did not report the number of service connections to the State Board in the previous calendar year, the State Board will calculate the number of service connections. If the public water system did not file an eAR, or did not report the number of service connections, for the calendar year immediately preceding the year in which the invoice is submitted, the State Board will calculate the number of service connections by increasing the number of service connections most recently reported on the eAR by 10% for each year that the number of service connections was not reported, except that if the public water system did not file an eAR for the calendar year 2012 or any calendar year thereafter, the State Board will calculate the number of service connections.~~

(c) For each community water system that serves a group quarters, as defined in Section 64300, the fee will be based on the residential population as determined in the eAR or other reporting tools as directed by the State Board. The fee will be calculated based on residential population pursuant to Table 64305-A. ~~the number of service connections for the group quarters is equal to the greater of the population for which the group quarters is designed or for which it is permitted divided by 3.3.~~

TABLE 64305-A – Public Water Systems Annual Fee

Water System Type	Fee
<u>Community Water System</u>	
100 or fewer service connections	\$677 or \$11.32 per service connection, whichever is greater.
100 or fewer service connections (disadvantaged community)	\$339
101 to 1,000 service connections	\$11.32 per service connection
101 to 1,000 service connections (disadvantaged community)	\$339 plus \$3.76 per each service connection greater than 100
1,001 to 5,000 service connections	\$11.32 per each of first 1,000 service connections plus \$6.62 per each service connection greater than 1,000
1,001 to 5,000 service connections (disadvantaged community)	\$339 plus \$3.76 per each service connection greater than 100
5,001 to 15,000 service connections	\$11.32 per each of first 1,000 service connections plus \$6.62 per each service connection greater than 1,000 but less than 5,001 plus \$3.76 per each service connection greater than 5,000
5,001 to 15,000 service connections (disadvantaged community)	\$339 plus \$3.76 per each service connection greater than 100
15,001 or more service connections	\$11.32 per each of first 1,000 service connections plus \$6.62 per each service connection greater than 1,000 but less than 5,001 plus \$3.76 per each service connection greater than 5,000 but less than 15,001 plus \$2.56 per each service connection greater than 15,000
15,001 or more service connections (disadvantaged community)	\$339 plus \$3.76 per each service connection greater than 100 but less than 15,001 plus \$2.56 per each service connection greater than 15,000
<u>Community Water System - Group Quarters</u>	
<u>3,300 or fewer persons served</u>	\$677 or \$3.43 per person served, whichever is greater

<u>3,301 to 16,500 persons served</u>	<u>\$3.43 per each of first 3,300 persons served plus \$2.01 per each person served greater than 3,300</u>
<u>16,501 to 49,500 persons served</u>	<u>\$3.43 per each of first 3,300 persons served plus \$2.01 per each person served greater than 3,300 but less than 16,501 plus \$1.14 per each person served greater than 16,500</u>
<u>49,501 or more persons served</u>	<u>\$3.43 per each of first 3,300 persons served plus \$2.01 per each person served greater than 3,300 but less than 16,501 plus \$1.14 per each person served greater than 16,500 but less than 49,501 plus \$0.78 per each person served greater than 49,500</u>
Nontransient Noncommunity Water System	\$3.76 ³⁴ per customer ^{person} served, but not less than \$862 ⁷⁶⁵ . ¹
Transient Noncommunity Water System	\$1,509 ^{1,339} .
Wholesaler	\$11,316 ^{10,044} plus \$2.58 ^{2.29} per each MG ²⁴

¹ Customer as defined in section 64400.30 of Article 1, Chapter 15.

²⁴ “Million Gallons” (MG) means the annual average, rounded to the nearest million, as reported to the State Board by the wholesaler in the eAR or other reporting tool as directed by the State Board, for the four years immediately preceding the year in which the invoice is submitted to the public water system, of the total gallons of water that the wholesaler produced from surface water and from groundwater and gallons of finished water that the wholesaler purchased or received from another public water system.

Note: Authority cited: Sections 116271, 116350, 116375, and 116565, Health and Safety Code. Reference: Sections 116565 and 116590, Health and Safety Code.