

Initial Statement of Reasons/Statements of Determination
Ground Water Rule
Title 22, California Code of Regulations

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f et seq.) as well as by the California Department of Public Health (Department) under the California Safe Drinking Water Act (Health & Saf. Code, div. 104, pt. 12, ch. 4, § 116270 et seq.). Pursuant to the Health & Safety (H&S) Code sections 116350, 116375, 131052 and 131200, the Department has authority to adopt the subject regulations.

The Department is promulgating federally mandated regulations. The proposed regulations are identical to the federal regulations in all but a few respects. H&S Code section 116365.02 authorizes the Department to adopt federal regulations that have been promulgated pursuant to the federal Safe Drinking Water Act (SDWA) pursuant to Government Code section 11346.2(c). Government Code section 11346.2 provides that departments promulgating regulations need not comply with 11346.2(b) for those regulations that are identical to the federal regulations, provided that certain information is included in the notice of proposed adoption. California has been granted “primacy” for the enforcement of the SDWA. To receive and maintain primacy, California must promulgate regulations that are no less stringent than the federal regulations.

Federally Mandated Regulations Identical to Federal Regulations:

On November 8, 2006, the U.S. EPA promulgated the Ground Water Rule (GWR) (71 Fed. Reg. 65574; amended Nov. 21, 2006, 71 Fed. Reg. 67427 and June 29, 2009, 74 Fed. Reg. 30953), pursuant to the Safe Drinking Water Act Amendments of 1996 (SDWAA), which provides increased protection against microbial pathogens, specifically viral and bacterial pathogens, in public water systems (PWS) that use ground water sources.

The following federal regulations are being adopted:

1. 40 Code of Federal Regulations, parts 141.21(d)(3), 141.28(a), 141.153(h)(6), Appendix A to Subpart O (Consumer Confidence Reports), 141.202(a)(8), 141.203(a)(4), Appendices A and B to Subpart Q (Public Notification), and 141.400 through 141.405 (71 Fed. Reg. 65574 (November 8, 2006)), “Ground Water Rule”.
2. 40 Code of Federal Regulations part 141.402(c)(2) (71 Fed. Reg. 67427 (November 21, 2006)), “Ground Water Rule, Correction”.
3. 40 Code of Federal Regulations part 141.402(c)(2)(74 Fed. Reg. 30953 (June 29, 2009)), “National Primary Drinking Water Regulations: Minor Correction to Stage 2 Disinfectants and Disinfection Byproducts Rule and Changes in References to Analytical Methods”.

An explanation of the federal regulations that are being adopted may be found in the federal registers identified above. In summary, the GWR establishes a risk-targeted approach to identify ground water systems susceptible to fecal contamination and requires corrective action to correct significant deficiencies and source water fecal contamination in all public ground water systems.

The GWR applies to all PWS that use ground water, including consecutive systems. The GWR does not apply to PWS that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to surface water treatment; California currently requires these PWS to filter and disinfect the combined sources under the existing state Surface Water Treatment Rule (Cal. Code Regs., tit. 22, div. 4, ch. 17, § 64650 et seq.).

Federally Mandated Regulations Not Identical to Federal Regulations:

Pursuant to federal primacy requirements and sections 116350, 116375, 131052, and 131200 of the H&S Code, the Department proposes the following changes to title 22, chapter 15, be adopted:

Article 3.5 (Ground Water Rule)

- In section 64430 (Requirements), sections 141.21(a), (b), and (c) from the existing federal Total Coliform Rule (TCR) are replaced by the corresponding sections 64422, 64423, 64424, and 64425 from the state TCR for clarity.

The net effect is that there are no significant differences between the proposed adoptions and the federal regulation.

Note: All Federal Register references may also be viewed, at no cost, through the following internet address: <http://www.gpoaccess.gov/fr/index.html>.

Alternatives Considered

The Department has determined that no alternative considered by the Department would be more effective in carrying out the purpose for which the amendments to the regulations are being proposed or would be as effective and less burdensome to affected private persons.

Statements of Determination - Federally Mandated Regulations Identical and Not Identical to Federal Regulations

Business Impact

Regardless of whether California adopts a parallel GWR regulation, applicable water system are required to comply with the federal GWR and will incur its resulting associated costs. Therefore, there are no additional costs to the regulated community associated with the adoption of this regulation. Adoption of this regulation merely provides California's regulatory agencies with the authority to enforce the regulations, which would otherwise be enforced by the U.S. EPA.

The Department has determined that the proposed regulations would not have a significant adverse impact on businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any significant change in water system or regulatory personnel needed for compliance with the new requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the adoption of this proposed regulation would not result in the creation or elimination of water systems. The impact of the proposed regulations would be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the regulations would not affect small business because Government Code chapter 3.5, article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

Local Mandate Determination

The proposed regulation would not impose a mandate on local agencies that require state reimbursement because the proposed regulation implements a federal mandate for which the regulated community is already required to comply with, regardless of the adoption of this regulation. As a result, local agencies will not incur costs that result from the adoption of this regulation.

Local agencies currently incur costs in their operation of public water systems. These costs are not the result of a “new program or higher level of service” within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs is required.

Local regulatory agencies also currently incur costs for their responsibility to enforce federal regulations related to small public water systems (under 200 service connections) that they regulate. The Department determined that local regulatory agency costs resulting from the adoption and enforcement of this regulation would be insignificant. Furthermore, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems (H&S Code section 101325). Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required, Government Code section 17556(d).

Business Reporting

The Department has determined that the proposed regulations require reports from businesses, and it is necessary for the health, safety, or welfare of the people of California that the proposed regulations apply to businesses.