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Interim Director

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Ground Water Rule, DPH-09-007

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Public Health will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: 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 & Safety Code, div. 104, pt. 12, ch. 4, § 116270 et seq). Pursuant to 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). H&S 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.

The Department proposes to adopt the federal regulations which provide 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.).

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>.

AUTHORITY: Sections 116350, 116375, 131052 and 131200, Health and Safety Code.

REFERENCE: Sections 116325 and 116350, Health and Safety Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on May 16, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By mail to: Office of Regulations and Hearings, California Department of Public Health, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377; or hand-delivered to: 1616 Capitol Avenue, Sacramento, CA 95814. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-5747; or
3. By email to regulations@cdph.ca.gov (it is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH -09-007" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael McKibben of Drinking Water & Environmental Management, at (619) 525-4023.

~~All other inquiries concerning the action described in this notice may be directed to Linda M. Cortez, Office of Regulations and Hearings, at (916) 440-7683, or to the designated backup contact person, Marylyn Willis, at (916) 440-7807.~~

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-09-007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations and Hearings, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations and Hearings.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7683 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations and Hearings at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations and Hearings at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: None

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, 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.

- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

The proposed regulations require water systems to report results of their water quality tests to the California Department of Public Health. This is necessary for the health, safety, or welfare of the people of the state that the reporting requirement applies to businesses, to the extent applicable.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. For individuals with disabilities, should a public hearing be scheduled, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, audiocassette, or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

To request such services or copies of materials in an alternate format, please write to Linda M. Cortez, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, or call (916) 440-7683, or use the California Relay Service by dialing 711.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

DPH-09-007

Date: **MAR 10 2011**

March 16, 2011



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