
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Environmental Laboratory Accreditation Program Fees

Amendments to Title 22 of the California Code of Regulations, Section 64806

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 must 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 Government Code section 11349.6.

Proposed Emergency Action

Health and Safety Code section 100829 requires the State Water Board to set the amount of total revenue collected each year through the fee schedule at an amount equal to the amount appropriated by the Legislature in the annual Budget Act from the Environmental Laboratory Improvement Fund for expenditure, taking into account the reserves in the Environmental Laboratory Improvement Fund. 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.

On September 20, 2016, the State Water Board adopted an emergency regulation amending the Environmental Laboratory Accreditation Program (ELAP) fee schedule in title 22, section 64806 of the California Code of Regulations.

Proposed Text of Emergency Regulation

See the attached proposed text of the emergency regulation.

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

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, much of the ELAP program would be in danger of being shut down.

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))

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))

The fee schedule would increase base or administrative fees paid at the time of initial and renewal application for certification and annually thereafter by 25%. Similarly, fees paid for each certification of each Field of Testing that the laboratory requests in its application will also be increased by 25%.

These increase fees will support the work the ELAP program conducts to accredit laboratories in their ability to conduct analyses on environmental samples for regulatory purposes. The fees are consistent with existing state laws and regulations. Ensuring that laboratories are able to meet minimum requirements for the operation and maintenance of laboratories 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 mandate a new program or a higher level of service of an existing program. 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 base or administrative fees at the time of initial and renewal application for certification and annually thereafter, and fees for each Field of Testing for which the laboratory has requested in its application that it be certified. There is however, no cost to any local agency or school district for which reimbursement is required. There is no cost or savings to any state agency laboratories because such laboratories are considered reference laboratories and are exempt from ELAP fees.

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