

NOTICE OF PROPOSED RULEMAKING

**TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL
WATER QUALITY CONTROL BOARDS
CHAPTER 27. REGULATIONS FOR IMPLEMENTATION OF THE
ENVIRONMENTAL QUALITY ACT OF 1970**

NOTICE IS HEREBY GIVEN that the State Water Resources Control board (SWRCB) proposes to adopt, amend, or repeal the regulations described below after considering all comments, objections, and recommendations regarding this proposed action.

PROPOSED REGULATORY ACTION

The SWRCB proposes to amend California Code of Regulations, title 23, division 3, chapter 27 (commencing with section 3720) relating to the implementation of the California Environmental Quality Act (CEQA) of 1970.

PUBLIC HEARING

The SWRCB will hold a public hearing beginning at 9:00 am on Wednesday, February 17, 2010 at 1001 I Street, Sacramento, in the second floor Coastal Hearing Room. The building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed regulatory action described in the Informative Digest. The SWRCB requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The SWRCB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulations. The SWRCB will not accept oral statements subsequent to the public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The comments must be submitted in writing and received by the SWRCB before the written comment period in order to be considered by the SWRCB before it adopts, amends, or repeals the proposed regulations. The written comment period closes at noon, Pacific Standard Time, on Monday, February 15, 2010. Comments may be submitted by U.S. mail to:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Comment letters may also be submitted to the Clerk to the Board via email at commentletters@waterboards.ca.gov (if less than 15 megabytes in total size) or by fax at (916) 341-5620. Please indicate in the subject line: **“Comment Letter – Proposed CEQA Regulations.”** Hand and special deliveries should also be addressed to Clerk to the Board at the address above. Couriers delivering comments must check in with the lobby security and have them contact Jeanine Townsend at (916) 341-5600.

To be added to the electronic mailing list for this rulemaking, and to receive notification of updates of this rulemaking, please email Roni Dickerson at rdickerson@waterboards.ca.gov and give your name, address, and telephone number. If you would like to be notified electronically, please so indicate in the voicemail message and give your email address in addition to the other information requested. Individuals who receive this notice by electronic mail are already on the electronic mailing list.

AUTHORITY AND REFERENCE

The SWRCB has the authority to adopt, amend, or repeal these regulations pursuant to section 21082 of the Public Resources Code. References to specific code sections are identified in the proposed amendments to the CEQA regulations.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The California Environmental Quality Act of 1970 (CEQA) authorizes the Secretary for Natural Resources to certify that State regulatory programs that meet certain environmental standards are exempt from CEQA Chapters 3 and 4 – the requirements for preparing environmental impact reports, negative declarations, and initial studies. Under Chapters 3 and 4, a lead agency is required to prepare an initial study to determine if a project will have a significant effect on the environment, and then prepare an environmental impact report if it finds significant effects, a negative declaration if there are no significant effects, or a mitigated negative declaration if the project has significant effects, but revisions would avoid or mitigate those effects. Each certified regulatory program (CRP) must still undergo a meaningful review of its cumulative environmental effects; however, the relevant substitute environmental documentation (SED) is prepared under the lead agency’s own regulations, which courts have deemed the “functional equivalent” of the traditional CEQA process for environmental review and public comment.

With respect to the State and Regional Water Boards, the Secretary for Natural Resources has approved the Water Quality Control (Basin)/208 Planning Program as a CRP, which includes all water quality control plans, state policies for water quality control, and all components of California’s water quality management plan as defined in Code of Federal Regulations, title 40, sections 130.2(k) and 130.6. The State Water Board has determined that it is appropriate to amend its existing CEQA regulations, including those that concern CRPs, to ensure consistency with (1) statutory revisions to CEQA that have occurred since the regulations were last updated; and (2) various court decisions that have further interpreted CEQA with respect to CRPs. Moreover, these regulatory amendments help eliminate ambiguity and provide additional clarity such that they are easier and more efficient for staff of the State and Regional Water Boards to implement. The principal substantive changes to the existing regulations include clarifying the

roles among the State and Regional Water Boards when acting as lead or responsible agency; requiring early public consultation prior to the review of draft SED; and setting forth the processes for preparing a draft SED, the submittal of public comments on the draft SED, agency approval of a final SED, and the issuance of a notice of decision. In addition, the State Water Board is revising the suggested Environmental Checklist to make it more consistent with the checklist adopted by the Secretary for Natural Resources.

FISCAL IMPACT ESTIMATES

Mandate on Local Agencies or School Districts: The SWRCB has determined that the proposed amendments would not impose a mandate on local agencies or school districts. Additionally, the SWRCB has determined that the proposed amendments will not result in any additional costs or savings to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code.

Cost or Savings to any State Agency: The SWRCB has determined that there is no additional cost or savings imposed on state agencies as a result of the proposed amendments.

Other Non-discretionary Cost or Savings Imposed on Local Agencies: The SWRCB has determined that there is no cost or savings imposed on local agencies as a result of the proposed amendments.

Cost or Savings in Federal Funding to the State: The SWRCB has determined that there is no cost or savings in Federal funding to the State as a result of the proposed amendments.

ECONOMIC IMPACT ESTIMATES

Statement of Significant Statewide Adverse Economic Impact Directly Affecting Business: The SWRCB has made the initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on Creation or Elimination of Jobs within California: The SWRCB has determined that the proposed action will have no effect on the creation or elimination of jobs within California.

Cost Impacts on Representative Persons or Businesses: The SWRCB is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Creation of New Businesses or Elimination of Existing Businesses: The SWRCB has determined that the proposed regulatory action will have no effect on the creation of new businesses or the elimination of existing businesses within California.

Effect on the Expansion of Businesses Currently Doing Business within California: The SWRCB has determined that the proposed action will have no effect on the expansion of businesses currently doing business in California.

Effect on Small Businesses: The SWRCB has determined that the proposed action will have no effect on small businesses because the proposed amendments do not impose any new burdens or benefits. The proposed amendments merely set forth procedures for environmental review of and public comment on actions taken by the State and Regional Water Boards for implementing CEQA, including their certified regulatory programs.

Consideration of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), the SWRCB must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention 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.

The SWRCB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the public hearing on February 17, 2010 or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The SWRCB has prepared an Initial Statement of Reasons for the proposed action. The Initial Statement of Reasons includes the specific purpose of each amendment proposed for adoption and the rationale for the SWRCB's conclusion that each amendment is reasonably necessary to carry out the purpose for which the regulation is proposed. The Initial Statement of Reasons, the express terms of the proposed regulations and all information on which the proposals are based are available from the agency contact person named in this notice.

The rulemaking file is available for inspection and copying throughout the rulemaking process at the State Water Board Office of Chief Counsel, 1001 I Street, 22nd floor, Sacramento, California. As of the date that this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations, a comparison document showing the changes made to the existing regulations, and the Initial Statement of reasons.

The rulemaking file will also be published and made available on the SWRCB's internet website. This website address is: http://www.swrcb.ca.gov/laws_regulations.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the SWRCB may adopt the proposed regulations as originally proposed, or with nonsubstantial or grammatical modifications. If the SWRCB makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15)

days before the SWRCB adopts the regulations as modified. A copy of any modified regulations may be obtained by contacting Sarah Olinger, the primary contact person identified below. The SWRCB will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the website mentioned above.

CONTACT PERSONS

Primary Contact Person:
Sarah Olinger, Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
Phone: (916) 322-4142
Email: solinger@waterboards.ca.gov

Alternate Contact Person:
Phil Wyels, Assistant Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
Phone: (916) 341-5178
Email: pwelys@waterboards.ca.gov