



KAREN L. SMITH, MD, MPH
Director and State Public Health Officer

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



EDMUND G. BROWN JR.
Governor

NOTICE OF PROPOSED RULEMAKING
Title 22, California Code of Regulations

DPH-15-001 Public Pools
Notice Published: May 27, 2016

PUBLIC PROCEEDINGS

The California Department of Public Health (Department) is conducting a 45-day written public proceeding 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 the Informative Digest/Policy Statement overview section of this notice.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on July 11, 2016, 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 email: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "**DPH-15-001 Public Pools**" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission: (916) 440-5747;
3. By Postal Service: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814;



4. Hand-delivered: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier, “**DPH-15-001 Public Pools,**” author’s name and mailing address.

AUTHORITY AND REFERENCE

The Department is proposing to amend the proposed regulation under the authority provided in California Health and Safety Code sections 116025, 116035, and 116050. This proposal implements, interprets and makes specific California Health and Safety Code sections 116025, 116035, 116040, 116043, 116050, 116053, 116055, 116060, and 116063.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department is authorized to establish public swimming pools regulations pursuant to California Health and Safety Code sections 116025 to 116068. The existing public pool regulations in Title 22, California Code of Regulations establish minimum operational and standards for public pools. The Department is proposing an amendment to existing public swimming pool regulations that is consistent with existing Model Aquatic Health Code (MAHC) requirements. In October 2013, the Department proposed rulemaking, which, in part, established a requirement for a pool operator to test for combined chlorine and maintain it below 0.4 ppm in order to minimize pool user discomfort in accordance with Centers for Disease Control and Prevention’s (CDC’s) and World Health Organization's recommendations. That rulemaking was finalized in October 2014.

The Department proposes removing the requirement to test for and maintain combined-chlorine concentrations at 0.4 parts per million (ppm). This proposed change is in response to a change made by the CDC to the MAHC in August 2014. The Annex to the MAHC states that 0.4 ppm combined chlorine is an “action level,” not a true MAHC standard because it is currently impossible for field tests to differentiate between organic and inorganic chloramines. Organic and inorganic chloramines show up in field test kits as combined chlorine, and, until a test becomes available that can test for one and not the other, the CDC has stated it will not introduce a combined-chlorine concentration requirement into the MAHC. The proposed regulatory action amends public pool operation and maintenance regulations that affect public pool sanitation, health, and safety practices in California. This action is necessary to incorporate the change of CDC’s requirement regarding combined-chlorine monitoring and to effectuate the Department’s statutory mandate to supervise the sanitation, healthfulness, and safety of public pools pursuant to California Health and Safety Code sections 113035 and 116050.

In addition, many California water purveyors introduce chloramine in their drinking water well above 0.4 ppm in order to kill microorganisms and keep the water safe. For instance, San Francisco has an average 2.2 ppm chloramine concentration in its tap water. Public pool operators would have a difficult time complying because pools are

filled with tap water. Thus, it would make little sense to impose a stricter standard for public pools than for tap water.

The Department proposes removing all mentions of combined-chlorine maximum concentrations.

Problem Statement: In August 2014, the CDC's MAHC was changed in a way that contradicts a requirement imposed in the Department's October 2014 Public Pools rulemaking.

Objective: The broad objective of this proposed regulatory action is to effectuate the Department's statutory mandate to effectively supervise sanitation, healthfulness, and safety of public pools by updating public swimming pool operational standards to meet current nationally recognized public health recommendations.

Benefit: In municipalities where the combined-chlorine concentration of the drinking water is higher than the current regulation, pool operators would be required to drain and fill their pools daily in order to comply if the regulation is not adopted. This results in a dramatic waste of precious water without an observable public health benefit. There is not a significant public health benefit to the current combined-chlorine concentration requirement because it is stricter than for drinking water, which is consumed, whereas pool water is not.

The proposed repeal of the combined-chlorine concentration requirement will result in the conservation of water during a time in which California is facing one of the most severe droughts on record. In addition, the repealing of this requirement follows the CDC's repeal of the requirement in their MAHC and will not affect the safety or healthfulness of pool water.

EVIDENCE SUPPORTING THAT THE PROPOSED REGULATORY ACTION IS COMPATIBLE WITH EXISTING STATE REGULATIONS

The Department has evaluated this proposal as to whether the proposed regulations are inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect public pools, the Department has concluded that no known statute or regulation conflicts with this proposed regulatory action.

MANDATED BY FEDERAL LAW OR REGULATIONS

Currently, there are no existing federal regulations or statutes applicable to the regulations.

FORMS INCORPORATED BY REFERENCE

None.

OTHER STATUTORY REQUIREMENTS

None.

BUSINESS REPORTING REQUIREMENT

Businesses operating a public pool are required to maintain records of certain public pool daily and monthly water quality and operation data. This proposal would lessen the daily water quality monitoring burden but still protect the health, safety, and welfare of the people of the State. The Department finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation which requires a report apply to businesses.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Department has made an initial determination that the proposed 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. Thus, there will be no significant adverse economic impact on California businesses.

LOCAL MANDATE

The Department has determined that this regulatory action 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.

FISCAL IMPACT ASSESSMENT

- A. Cost to Any Local Agency or School District:** The Department anticipates that there will be no cost to local government or school districts that operate public pools. The cost to comply with amending the proposed sections will provide a cost savings to the regulated community. The proposed regulatory requirement and standards for local government are the same as for State agencies and businesses operating public pools in California.
- B. Cost or Savings to Any State Agency:** The Department anticipates that there will be no cost to California agencies or departments that operate public pools.
- C. Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** None
- D. Cost or Savings in Federal Funding to the State:** None

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a represented private person or business would necessarily incur in reasonable compliance with the proposed action. The Department anticipates that there will be no cost to private persons or businesses in California that operate public pools.

EFFECT OF HOUSING

The Department has determined that the regulations will not have an impact on housing costs. The amended language lessens the burden on the regulated community by eliminating the requirement to test for combined chlorine in a public swimming pool.

EFFECT ON SMALL BUSINESS

The Department has determined there are approximately 4,000 small businesses that operate public pools in California. The Department has further determined that this proposed regulatory action would not affect small businesses that own or operate public pools other than to reduce their regulatory burden. Existing regulations require public pool owners or operators to test and record several pool water quality parameters on a daily basis. This proposed amendment would reduce the amount of water quality testing public pool owners or operators are required to monitor on a daily basis by eliminating the combined chlorine monitoring requirement.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Department has determined that it is not likely the regulations would 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.
4. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations are reasonably necessary to protect the health and welfare of California residents who use public swimming pools.

CONSIDERATION OF ALTERNATIVES

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 this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

Centers for Disease Control and Prevention, *The Model Aquatic Health Code, the Annex*. Available at <http://www.cdc.gov/healthywater/pdf/swimming/pools/mahc/Complete-First-Edition-MAHC-Annex.pdf>. Page 232.

San Francisco Public Utilities Commission, *Annual Water Quality Report 2013*. Available at <http://sfwater.org/index.aspx?page=634>.

CONTACT PERSON

Inquiries regarding the subject matter in this notice may be directed to Eric Trevena, Department's Environmental Management Branch (916) 449-5695.

Inquiries regarding the regulatory process described in this notice should be directed to Dawn Basciano, Office of Regulations, at (916) 440-7367, or to the designated backup contact person, Linda Cortez (916) 440-7807.

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, 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 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) 558-1710 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, 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 at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

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.

Date:

Karen L. Smith, MD, MPH
Director and State Health Officer