

INITIAL STATEMENT OF REASONS

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action.

Summary of Proposal

The California Department of Public Health (Department) proposes removing the requirement to test for and maintain combined-chlorine concentrations at 0.4 parts per million (ppm). Since the public pool regulations in Title 22 were revised, the Centers for Disease Control and Prevention's (CDC's) Model Aquatic Health Code (MAHC) has changed. 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.

In addition, many California water purveyors introduce chloramine in their drinking water substantially 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.

Policy Statement Overview

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.

Consistency and Compatibility with Existing State Regulation

The Department has evaluated whether the proposed regulations are inconsistent or incompatible with existing State regulations. This evaluation included a review of the Department's laws and specifically those statutes and regulations related to public pool sanitation and health and safety.

No known statute or regulation conflicts with this proposed regulatory update. The Department determined that no other State regulation addressed the same subject matter and that this proposal was not inconsistent or incompatible with other State regulations. Therefore, the Department has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing State regulations.

Duplication or Conflict with Federal Regulations

The Department has made a determination that the proposed regulations are not duplicative or in conflict with federal regulations.

Specific Discussion of Proposed Regulations

The Department proposes to amend the following sections to implement the regulations needed to address combined chlorine, as follows:

Section 65523. Operation Records

Subsection (c): Eliminate the requirement to monitor for combined chlorine for public swimming pools. Removing this requirement is consistent with the MAHC.

Subsections (d) through (f): Amend these sections to subsections (c) through (e). This is necessary for clarity purposes and to maintain alphabetical sequencing in the code.

Section 65529. Public Pool Disinfection

Subsection (e): Remove the requirement that a chlorine test kit must be capable to test for combined chlorine. The proposed amendment in 65523 aims to eliminate the requirement to test for combined chlorine; therefore there is no need for a test kit to measure for something that is not required.

Section 65530. Public Pool Water Characteristics

Eliminate the requirement for a pool operator to maintain combined chlorine concentrations in a public swimming pool between 0 and 0.4 parts per million. Removing this requirement is consistent with the MAHC.

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>.

Statement of the Economic Impact

As to these proposed regulations, the Department has made an initial determination that no reasonable alternative considered or otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost effective to affected private persons, or as effective in implementing the intent of the HSC sections 116035, 116050, and 131200 that regulate sanitation, healthfulness, and safety at public pools in California.

Economic Impact Assessment

Economic Impact on Business

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.

Based on the economic impact analysis, the Department has determined that the regulation would not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The proposed regulations eliminate a current public-pool-monitoring requirement that due to the state of existing technology cannot be implemented. As such, the current monitoring requirement has never been implemented, and the removal of such a requirement will not create or eliminate jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The proposed regulations eliminate a current public-pool-monitoring requirement that due to the state of existing technology cannot be implemented. As such, the current monitoring requirement has never been implemented and the removal of such a requirement will not create new businesses or eliminate existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California. The proposed regulations eliminate a current public-pool-monitoring requirement that due to existing technology cannot be implemented. As such, the current monitoring requirement has never been implemented and the removal of such a requirement will not expand 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 states 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 by eliminating an unnecessary and unimplementable requirement that would waste water resources without providing any measurable public health benefit.

Statement of Determinations

Local Mandate Determination

The Department has determined that the regulation 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 Estimate

1. Fiscal Impact on Local Government:
The Department is not aware of any cost impacts that a local government agency would necessarily incur in reasonable compliance with the proposed action.
2. Fiscal Impact on State Government:
The Department is not aware of any cost impacts that State government would necessarily incur in reasonable compliance with the proposed action.
3. Fiscal Impact on Federal Funding of State Programs:
The Department is not aware of any cost impacts that would necessarily incur in reasonable compliance with the proposed action.
4. Fiscal Impact on Private Persons or Businesses Directly Affected:
The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
5. Other Nondiscretionary Cost or Savings Imposed on Local Agencies:
There are no known costs or savings imposed on local agencies in connection with this proposed regulatory package.

Housing Cost Determination

The Department has determined that the proposed regulations will not have a financial impact on housing.

Reasonable Alternatives

To assess reasonable alternatives to the proposed regulations, the Department researched current industry standards and reviewed public health research publications

for updated information on pool sanitation.

In accordance with Government Code section 11346.5(a)(13), the Department has determined that no reasonable alternative considered 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.

In accordance with Government Code subsection 11346.2(b)(4)(B), the Department has not identified any reasonable alternative that would lessen any adverse impact on small business because the Department believes the proposed regulations will not negatively affect small businesses.

Significant Adverse Impact on Business

Because this proposed regulation eliminates an unimplementable requirement that has never been enforced, there is no significant adverse impact. These proposed amendments make the public swimming pool regulations consistent with existing federal Model Aquatic Health Code (MAHC) requirements. These regulations are in response to a change made by the Centers for Disease Control and Prevention 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 CDC’s actions with respect to the MAHC demonstrate that the existing requirement that is being eliminated is not implementable and therefore it will be no significant adverse impact on businesses to eliminate the requirement. No other facts, evidence, documents, testimony, or other evidence of any significant adverse economic impact on business have been identified.

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 for on a daily basis by eliminating the combined-chlorine monitoring requirement.