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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

SUBJECT: Public Pools (DPH-03-017A)

PUBLIC PROCEEDINGS:

Notice is hereby given that the California Department of Public Health will conduct written 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.

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 October 21, 2013 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 to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-03-017A" in the subject line to facilitate timely identification and review of the comment; or
2. By fax transmission: (916) 440-5747; or
3. By mail to: Office of Regulations, California Department of Public Health, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377; or
4. 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.

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.

PUBLIC HEARING:

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 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 the public hearing. To request such services or copies of materials in an alternate format, please write to Dawn Basciano, Office of Regulations, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, or call (916) 440-7367, or use the California Relay Service by dialing 711.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

This proposed regulatory action amends public pool operation and maintenance regulations that affect public pool sanitation, health and safety practices in California. The California Department of Public Health (CDPH) last updated these regulations in 1986. Since then, public health researchers have developed a clearer understanding of public pool sanitation, health and safety. Public health research and recommendations, new technology and updated pool industry practices have changed. This proposed regulatory action is necessary to incorporate these changes and to effectuate CDPH's statutory mandate to supervise the sanitation, healthfulness and safety of public pools pursuant to Health and Safety Code (H&S Code) sections 116035 and 116050.

The existing regulations that make specific, interpret and implement the broad public pool sanitation, health and safety statutes are located in CCR Title 22. This proposed regulatory action would update the CCR Title 22, sections 65501 through 65551 regarding public pool operation, maintenance, health, sanitation and safety regulations in accordance with public health recommendations primarily by the Centers for Disease Control (CDC) and the World Health Organization (WHO). This regulatory action is necessary to protect public health and safety. It is also necessary for clarity and for consistent enforcement of public pool standards statewide. The proposed action repeals certain existing and outdated Title 22, California Code of Regulations (CCR Title 22) that pertain to public swimming pool construction because those regulations are

duplicative of provisions in CCR, Title 24, Chapter 31B, Part 2 (Title 24, California Building Code) in 2012.

BROAD OBJECTIVES AND BENEFITS:

The broad objectives and anticipated benefits, including nonmonetary benefits, from this proposed regulatory action are:

- To effectuate CDPH's statutory mandate to effectively supervise the sanitation, healthfulness and safety of public pools by updating operation and maintenance standards to meet current public health recommendations, incorporate new technology and testing procedures, and mandate better safety practices.
- To enable enforcing agents to hold appropriate persons responsible for healthful, sanitary and safe public pool operation and maintenance through clear and updated standards.
- To implement standardized fecal, vomit, diarrhea and drowning incident response procedures, diarrhea signage and record keeping requirements at all public pools to protect public health and safety.
- To repeal some existing CCR Title 22 regulations that pertain to public pool construction standards because those regulations are duplicative of provisions in Title 24, California Building Code.
- To reduce confusion for regulation users by updating existing unclear and antiquated regulatory language in CCR Title 22.
- To protect the health and safety of public pool users and workers by ensuring all public pools, water quality systems, safety equipment and procedures, ancillary facilities, and all aspects of public pool operation and maintenance meet up-to-date public health standards and recommendations.

AUTHORITY AND REFERENCE CITATIONS:

CDPH is authorized to make and enforce regulations pertaining to public swimming pools pursuant to H&S Code sections 116035 and 116050. CDPH is proposing to adopt, amend, or repeal public swimming pool sanitation, health and safety operation and maintenance regulations in accordance with H&S Code sections 116025 through 116068. The statutory authority cited for this regulatory proposal is found in H&S Code sections 116035, 116048, 116050, 131052 and 131200 and Civil Code sections 54, 54.1 and 54.2. The references cited in this regulatory proposal are H&S Code sections 115950, 115952, 116025, 116028, 116035, 116040, 116043, 106050, 116053 and 116055, 116060 and 116063.

This rulemaking action implements, interprets, and makes specific the public pool sanitation, health and safety statutes by adopting new regulatory sections 65530, 65534, 65540 and 65546; amending sections 65501, 65503, 65511, 65521, 65523, 65525, 65527, 65529, 65531, 65533, 65535, 65537, 65539, 65541, 65545 and 65551; and repealing sections 65505, 65507, 65509, 65543, 65547 and 65549, CCR Title 22.

ADVISORY GROUP OR OTHER AGENCY COMMENT, CONSULTATION AND/OR APPROVAL, INCLUDING CALIFORNIA CONFERENCE OF LOCAL HEALTH OFFICERS:

This regulation proposal will be submitted to the California Conference of Local Health Officers for review and written comment. The California Conference of Directors of Environmental Health was instrumental in the development of the regulation amendments and the proposal will be submitted to them for written review and comment.

FORMS INCORPORATED BY REFERENCE: None.

MANDATED BY FEDERAL LAW OR REGULATIONS: No.

OTHER STATUTORY REQUIREMENTS: None.

DISCLOSURES REGARDING THE PROPOSED ACTION

CDPH has made the following initial determinations:

LOCAL MANDATE DETERMINATION:

CDPH 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 ESTIMATE:

A. Fiscal Effect on Local Government: CDPH anticipates that there may be minor costs to local governments that operate public pools. Most large public pools already meet most or all of these proposed standards. If they do not currently operate in accordance with this proposed regulatory action, CDPH anticipates local governments will incur some minor additional costs. CDPH anticipates that these additional costs are insignificant in light of the existing regulatory requirements and the current overall costs to own, operate and maintain a public pool. The proposed regulatory requirements and standards for local government are the same as for State agencies and businesses operating public pools in California.

B. Fiscal Effect on State Government/Costs or Savings to Any State Agency: CDPH anticipates that there may be costs to California agencies or departments that operate public pools. Most large State-owned pools already meet most or all of these proposed standards. If they do not currently operate in accordance with this proposed regulatory action, CDPH anticipates the State agency will incur some additional costs. CDPH anticipates that these additional costs are insignificant in light of the existing

regulatory requirements and the current overall costs to own, operate and maintain a public pool.

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

D. Fiscal Effect on Federal Funding of State Programs: None.

HOUSING COSTS:

CDPH has determined that the regulations *will* have an impact on housing costs although those costs will not be significant. CDPH has determined that the proposed regulations will only have a financial impact on multi-unit housing with a public pool or spa. Current regulations require public pool operators to provide safety equipment and signs, test and record pool water quality and contaminant levels, maintain water treatment systems and comply with numerous public pool health, safety and sanitation regulations. The proposed regulations will add an initial, one-time cost for multi-unit housing with a public pool to install a diarrhea sign. There might be a minor increase in costs for public pool operators in the State who use cyanuric acid and for pool operators who do not meet current best pool industry standards and the existing public pool regulations. CDPH anticipates that these additional costs are insignificant in light of the existing regulatory requirements and the current overall costs to own, operate and maintain a public pool.

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

CDPH 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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS:

Based on the economic impact analysis, CDPH has determined that it is likely 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.
4. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. The Department has made a determination that the proposed regulations would benefit California residents' health and welfare and the state's environment by ensuring public pools, water quality systems and ancillary facilities are clean, sanitary and free from disease with no adverse impacts to worker safety.

SMALL BUSINESS DETERMINATION:

CDPH has determined that there are approximately 4,000 small businesses that operate public pools in California. CDPH has further determined that this proposed regulatory action would affect small businesses that own or operate public pools. Existing regulations require public pool operators to provide safety equipment and signs, test and record pool contaminant levels, maintain water treatment systems, and comply with numerous public pool health, safety and sanitation requirements. The proposed regulations should have a small financial impact on small business owners operating public pools in the State if the pool operators currently operate and maintain their public pools in compliance with existing health, safety and sanitation regulations. If the small business uses cyanuric acid in its public pool, there will be additional costs to replace water to meet the proposed regulations. If the public pool does not currently have a posted diarrhea sign, this will also add to small business costs.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:

All cost impacts, known to CDPH 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, have been included in the Economic Impact Analysis. CDPH anticipates that there will be costs to private persons or businesses in California that operate public pools. Most large public pools already meet most or all of these proposed standards. If they do not currently operate in accordance with this proposed regulatory action, CDPH anticipates the pool operator will incur additional costs as detailed below. Smaller pools may or may not meet the existing public pool standards. If they currently operate in accordance with existing public pool regulations and standards, CDPH anticipates the costs to comply with these new regulations will be up to \$200 per public pool. This cost is for posting a diarrhea sign and staff costs to test for additional water quality standards and characteristics.

For public pools not in compliance with existing regulations, CDPH anticipates the cost of compliance could be higher. CDPH is not able to determine an average increased cost for noncompliant pools because public pool sizes, shapes, labor and equipment, water costs and volume, and other operation and maintenance costs vary so dramatically from small spas to large Olympic pools.

Public pools without a diarrhea sign will need to purchase and install such a sign. The proposed regulatory action requires that pool operators must clean swim suits, towels, caps and headgear after each use. However, pool operators are not required to provide these items to pool users so this not a mandatory additional cost. The proposed regulations also offer alternative performance based methods of compliance rather than prescriptive standards such as allowing other pool water disinfectants in addition to

chlorine. Changing chemicals might reduce the cost of operating a public pool. If the operator opts for continuing to use chlorine, CDPH anticipates no additional cost. CDPH also proposes that pool operators be permitted to use one of several methods to determine bacteriological quality of pool water. These methods vary in price and may provide a minor cost saving to public pool owners or a minor increase in costs depending on the pool operator's decisions and current practices.

The proposed regulations define the maximum and minimum limits for some chemicals and water characteristics of pool water. There is a potential minor cost to add additional chemicals or water or a minor saving to meet water quality standards. The greatest potential cost is for public pools with high levels of cyanuric acid as these public pools may be required to drain approximately 50% of the pool water and replace that water. Most large pools do not use cyanuric acid, and it is not possible to estimate how many small pools currently use this chemical at a high concentration. Given the overall cost of operating and maintaining a public pool, CDPH anticipates that these additional costs are not substantial.

The proposed regulations require that if lifeguards are on duty, they are restricted to performing only life guard services. These proposed regulations will effectively require other staff to perform non-lifeguard services handled by some lifeguards today. The additional cost to meet this new requirement will be the number of hours of non-lifeguard activities currently performed by lifeguards. A safety manual must also be purchased or written for lifeguard use. Given most public pools already have safety manuals and limit lifeguards to only performing lifeguard duties, the cost to comply with this requirement should be minor and should affect a limited number of public pools.

Finally, the proposed regulations require the operator to test pool water quality and characteristics and record these and responses to fecal, vomit, diarrhea and drowning incidents. Public pools already must take data daily and respond to fecal, vomit, diarrhea and drowning incidents so CDPH anticipates these new requirements will not create a significant cost. The proposed regulations will also require data and incident records to be maintained for two years at the public pool site.

CDPH has determined that these additional costs are insignificant in light of the existing regulatory requirements and the current overall costs to own, operate and maintain a public pool.

BUSINESS REPORTING REQUIREMENT:

Businesses operating a public pool will be required to maintain records of certain public pool daily and monthly water quality and operation data and fecal, vomit, diarrhea and drowning incidents at the public pool site for two years. If multiple diarrhea incidents are reported to the pool operator by lifeguards or pool users, the operator is required to report those incidents to enforcing agents. It is necessary for the health, safety, or welfare of the people of the State that these regulations apply to businesses.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS:

CDPH has determined that this proposed regulatory action is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect public pools, CDPH has concluded that no known statute or regulation conflicts with this proposed regulatory action.

ALTERNATIVES CONSIDERED:

CDPH must determine that no reasonable alternative considered by CDPH or that has otherwise been identified and brought to the attention of CDPH 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 provision of law.

CONTACT PERSON:

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Eric Trevena, Center for Environmental Health, at (916) 449-5695. All other inquiries concerning the action described in this notice may be directed to Dawn Basciano, Office of Regulations, at (916) 440-7367, or to the designated backup contact person, Linda Cortez, at (916) 440-7807.

In any inquiries or written comments, please identify the action by using the CDPH regulation package identifier, DPH-03-017A.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

CDPH 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, 1616 Capitol Avenue, Sacramento, CA 95814, 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 Dawn Basciano at (916) 440-7367, (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 CDPH's Office of Regulations at least 15 days prior to the date on which CDPH adopts, amends, or repeals the resulting regulation.

AVAILABILITY OF FINAL STATEMENT OF REASONS:

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

[Materials regarding the action described in this notice \(including this public notice, the regulation, and the initial statement of reasons that are available via the internet\)](#) 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.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Date:

Ron Chapman, MD, MPH
Director