

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 15-383)**

Overview and Legal and Fiscal Impact

The regulations update the regulation of public swimming pools and spas to include all aquatic facilities and venues, provide more efficient permitting processes, and incorporate new technology, design features, and nationally recognized management practices. The regulations also establish an auditing process for local health departments.

The regulations present no legal issues of concern.

There is no fiscal impact on State government, but there is a potential increase in expenditures for some local health departments (LHDs) to increase the number of annual inspections for aquatic facilities and venues.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Sanitation: Public Swimming Pools and Spas: COMAR 10.17.01.01-.29 and .31-.55

Legal Analysis

Background

The Department of Health and Mental Hygiene is updating the regulations for public swimming pools and spas in response to updated standards recognized by the American National Standards Institute and the development of the Model Aquatic Health Code adopted by the Centers for Disease Control and Prevention. Additionally, the department established a workgroup of public health advocates, industry leaders, and the regulated community that developed regulations for new spray grounds, infinity edge pools, and alternative filtration media. Finally, the department worked with industry leaders to streamline the construction and alteration plan review process.

Summary of Regulations

The department regulates swimming pools and spas under COMAR 10.17.01. The regulations amend the subtitle name from the former “Public Swimming Pools and Spas” to “Aquatic Facilities and Venues” and make corresponding changes to chapter and regulation names and language throughout the subtitle. The regulations make many updates to COMAR 10.17.01.01

through .29 and .31 through .55. Many of the proposed changes are stylistic, or repeal obsolete provisions. A summary of the substantive changes follows.

Purpose, Scope, and Exclusions: In Regulations .01 and .02, the regulations update the purpose and scope of the regulations to include public spray grounds and exclude private spray grounds.

Documents Incorporated by Reference: Regulation .03 incorporates by reference specified sections of the most recent versions of the American National Standard for Public Swimming Pools (ANSI/APSP/ICC-1 2014), the American National Standard for Public Spas (ANSI/NSPI-2 1999), the American National Standard for Residential Inground Swimming Pools (ANSI/APSP/ICC-5 2011), and the American National Standard for Aboveground/Onground Residential Swimming Pools (ANSI/APSP/ICC-4 2012). The regulations add to the list of documents incorporated by reference the Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities (NSF/ANSI 50-2013) and the American National Standard for Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs (ANSI/APSP-16 2011). The regulations also incorporate by reference the Federal Swimming Pool and Spa Drain Cover Standard (15 USC § 8003, as amended).

Definitions: Regulation .04 updates and adds terms used throughout the subtitle. “Aquatic facility” is defined as a physical place that contains one or more aquatic venues and support infrastructure. “Aquatic venue” is defined as an artificially constructed structure or modified natural structure where the general public is exposed to water intended for recreational or therapeutic purpose. The definition of “aquatic venue” includes a public pool, spa, and spray ground but not a private pool, spa, and spray ground.

Previously Constructed Aquatic Facilities and Venues: Regulation .05 provides exemptions from specified regulations for aquatic facilities and venues constructed before February 10, 1997, or that received approval after construction from the Secretary of Health and Mental Hygiene between February 10, 1997, and May 30, 2016. The exemptions vary for the two time periods. Additionally, the regulation requires facilities and venues from both time periods to comply with specified regulations before January 1, 2017, and additional regulations before January 1, 2018. The regulation also establishes minimum turnover rates that facilities and venues from both time periods are required to maintain. Spas or wading pools that were constructed or that received construction approval from the Secretary before May 30, 2016, are exempt from skimmer requirements established under Regulation .26H.

Construction and Alteration Permits: Regulation .06 clarifies that an owner who intends to construct or alter an aquatic facility or venue is required to obtain a construction or alteration permit from the Secretary before beginning the construction or alteration. The regulation establishes a process for resubmitting an application that has deficiencies when originally submitted to the Secretary within 30 days of notification of the deficiencies. The regulation changes from 30 to 20 days the amount of time an applicant has to request a hearing on a department decision.

Replacements and Repairs: Regulation .06-1 authorizes the replacement of a component at an aquatic facility or venue before obtaining approval from the Secretary and Regulation .06-2 authorizes repairs to an aquatic facility or venue without obtaining a permit or notifying the Secretary.

Partial Construction Permits: Regulation .07 simplifies the process for obtaining a partial construction permit.

Approval after Construction, Partial Construction, or Alteration: Regulation .08 reduces from 30 to 15 the number of business days the Secretary has to grant written approval or deny approval after inspecting the completed construction, partial construction, or alteration of an aquatic facility or venue.

Permits for Operation: Regulation .09 clarifies the application deadlines for annual permits and requires an operating permit to be posted in a conspicuous place near the entrance of the aquatic venue.

Suspension or Revocation of an Operating Permit: Regulation .10 authorizes the Secretary to reinstate a suspended operating permit or issue a new operating permit to an owner whose permit was revoked under certain circumstances.

Inspections: Regulation .11 requires the Secretary to conduct a full compliance inspection of an aquatic venue at least once every 12 months or every 30 days if an inspection finds a critical violation of the regulations. Additionally, the regulation requires a full compliance or routine inspection at least once every 90 days unless an aquatic venue had no critical violation in the three previous consecutive inspections.

Standards for Public Spas: Regulation .14 specifies that a shut-off switch for a spa hydrojet circulation system must be located within sight of the spa and at least 5 feet horizontally from the inside walls of the spa.

Standards for Limited Public-Use Pools: Regulation .15 requires that a blood borne pathogen control kit be immediately available at a limited public-use pool.

Standards for Water Recreational Attractions: Regulation .16 requires that a swimming pool slide conform with the manufacturer's installation requirements and establishes requirements for lazy rivers.

Standards for Public Therapy Pools: Regulation .18 adds as an alternative for a transition area between a shallow and a deep area of a public therapy pool, a floor slope that exceeds one foot of drop to three feet of run that is equipped with a protective barrier.

Standards for Spray Grounds: Regulation .18-1 establishes requirements for spray grounds, including (1) compliance with specified regulations and codes; (2) locks for mechanisms that control the operation of a spray ground; and (3) standards for pump reservoir or surge tanks provided for a spray ground circulation pump intake.

User Load and Theoretical Peak Occupancy: Regulation .19 establishes factors for determining theoretical peak occupancy and requires that the owner of an aquatic facility or venue post the user load at the entrance of the facility or venue.

Barriers: Regulation .21 establishes requirements for barriers for spray grounds.

Decks: Regulation .22 changes the requirement that a deck completely surround a pool to require that a perimeter deck surround at least 75 % of a pool or spray ground perimeter. Additionally, the regulation prohibits (1) a perimeter deck at a public pool, spray ground, or public spa from being constructed of wood; (2) a perimeter deck at a public pool or spray ground from being more than 30 inches below the static water level; or (3) a perimeter or pool deck from having carpet installed on it. The regulation also changes the slope requirements for a deck away from an aquatic venue toward points of disposal from not less than one-fourth inch per foot to not less than three-sixteenths inch per foot.

Handholds: Regulation .22-1 requires handholds for an aquatic venue with a water depth that exceeds 24 inches and establishes requirements for the location and thickness of the handholds.

Infinity Edges: Regulation .22-2 establishes length, handhold, material, overflow, wall, and deck requirements for an infinity edge.

Equipment Rooms: Regulation .23 establishes requirements for equipment room doors and specifies requirements for equipment room ventilation and hose bibbs. Additionally, the regulation specifies which requirements for a water-resistant data sheet apply to spray grounds and requires aquatic venues that use salt chlorine generators to include specified information on a water-resistant data sheet.

Pipe Material and Identification: Regulation .24 requires the identification of pipes and valves including directional arrows to indicate flow direction during filtration.

Circulation Systems and Circulation System Components: Regulation .25 specifies maximum turnover times required for different types of aquatic venues, requires piping for outlet for spray grounds to accommodate 100% of the flow, and specifies the requirements that must be met for a recreational pool, semipublic pool, or spa to be constructed with only surface outlets.

Regulation .26 (1) prohibits the use of a chlorine gas feeder for disinfecting an aquatic venue; (2) authorizes use of a spring loaded safety cover for a vacuum fitting provided within a public pool or spa; (3) requires carbon dioxide feeders to be located in a chemical storage area that meet regulations; (4) requires a monitor and alarm for carbon dioxide feeders with carbon dioxide cylinders located indoors; (5) establishes requirements for ozone systems; (6) establishes requirements for skimmers and requires the Secretary to accept skimmers on a recreational pool, semipublic pool, or public spa as meeting circulation system component requirements under certain circumstances; and (6) requires chemical feeders that operate independent of the circulation pump to have an automatic means for being disabled through an electrical interlock.

Diving Area and Equipment: Regulation .27 requires the dimensions of an aquatic venue diving area and the unobstructed clearance for a diving board to be in conformance with the American National Standards for Public Swimming Pools.

Entrapment Prevention: Regulation .28 clarifies that a vacuum line must be equipped with an independent valve, requires the splash zone of a public spray ground to comply with federal regulation, and specifies that an aquatic venue must remain closed as long as it has a submerged suction outlet that does not comply with the regulations. Additionally, the regulation updates the requirements for a comprehensive written maintenance program.

Chemical Storage Area: Regulation .29 establishes requirements for doors and ventilation for chemical storage areas.

Illumination of Water, Deck, and Walkway: Regulation .32 changes lighting requirements from watts and footcandles of light to lumens, specifies that lighting should illuminate the bottom of the entire aquatic venue or facility, and establishes illumination requirements for splash zones and decks.

Ventilation of an Indoor Aquatic Venue: Regulation .33 establishes requirements for the location of exhaust vents and make-up air vents.

Plumbing: Regulation .34 alters the drinking fountain and hose bibb requirements for aquatic venues. Additionally, the regulation establishes requirements for air gap for the installation of fill spouts and automatic water level controllers.

Aquatic Facility and Venue Safety: Regulation .40 specifies supplies that a recreational pool is required to have for first aid and blood borne pathogen control kits and specifies the safety equipment required for a spray ground. Additionally, the regulation updates the telephone requirements for aquatic venues, clarifies lifeguard requirements, and requires a conspicuous sign posted adjacent to the entrance of an aquatic facility prohibiting use of the venue by a person who has an infectious or contagious disease that may be transmitted through water, an open cut, blister, other lesion, or diarrhea.

Aquatic Venue Operator Certification: Regulation .41 updates the requirements for aquatic venue operator certification and limited public-use pool operator certification including requiring that applicants pass certification exams by 75% rather than by 70%. The regulation also limits suspensions of certification cards to six months and authorizes operators to apply for a new certification card after the conclusion of the suspension period and completion of the training requirements.

Approval of Operator's Course: Regulation .42 provides clarification for the criteria for receiving approval by the Secretary for an aquatic venue operator's course and authorizes courses to be conducted online if the written examination is completed in person. Additionally, the regulation authorizes the Secretary to audit an aquatic venue operator's course, the course materials, or the instructor's credentials at any time.

Aquatic Venue Operation: Regulation .43 requires an aquatic venue operator to be available at a public spray ground, clarifies that non-stabilized oxidizer should be added when an aquatic venue is closed, and requires documentation for the addition of chlorine and oxidizer.

Disinfection of an Aquatic Venue: Regulation .44 updates existing requirements for chlorine and bromine levels and establishes new requirements for disinfection that take into account new technology.

Water Chemistry: Regulation .45 requires the Langelier Saturation Index of water be maintained between -0.3 and +0.5 and updates the factor table required for calculating the Langelier Saturation Index. The regulation also establishes standards for the amount of total dissolved solids for an aquatic facility utilizing an electrolytic chlorine generator and requires the starting value of the total dissolved solids for the aquatic venue to be updated whenever the aquatic venue is drained and filled.

Operating Records Required: Regulation .46 alters the intervals at which operating records are required to be maintained, specifies operating records that apply to spray grounds, establishes daily record requirements for spas, and updates the daily inspections required to complete an Aquatic Venue Hazards Checklist.

Test Kits: Regulation .47 specifies that a cyanuric acid test kit is required for a spray ground that uses cyanuric acid and establishes requirements for the documentation of calibrations for oxidation reduction potential and pH meters.

Sanitary Quality of Water and Fecal, Vomit, and Blood Incident Response: Regulations .48 and .48-1 establish requirements for fecal, vomit, and blood incident response. The regulations require immediate closure of the aquatic venue after an incident, require the water to be tested after a fecal or vomit incident, and specify recording requirements. Additionally, the Secretary is authorized to perform bacteriological testing of the water at any time an aquatic venue is in operation.

Water Replacement: Regulation .48-2 establishes requirements for water replacement intervals and specifies factors for determining the intervals.

Chemical Handling and Storage: Regulation .49 establishes requirements for maintaining safety data sheets for chemicals and personal protective equipment.

Incident Reports: Regulation .51 specifies information required to be included in the Aquatic Incident Report Form and the Fecal, Vomit, Blood Incident Response log.

Standardization and Audits of Local Health Departments: Regulation .52 requires each local health department to have one local standardization officer and requires the department to audit local health department aquatic venue programs every four years.

Variations: Regulation .53 requires local health departments to mail a copy of a variance application and response to the department within 60 business days of receiving the application.

Compliance Schedules: Regulation .54 requires local health departments to mail a copy of a compliance schedule application and response to the department within 60 business days of receiving the application.

Bonding: Regulation .55 requires the owner of an aquatic facility to obtain a bonding certification affidavit from a licensed electrician once every five years.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-102, 2-104, 18-102, and 20-303 of the Health – General Article as statutory authority for the regulations. Section 2-102 requires the Secretary to establish guidelines and procedures to promote the orderly and efficient administration of the department. Section 2-104 authorizes the Secretary to adopt regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 18-102 requires the Secretary to adopt regulations necessary to prevent the introduction or spread of an infectious or contagious disease in this State or other disease that endangers public health in this State. Section 20-303 authorizes the Secretary to adopt regulations to govern the character and location of plumbing, drainage, water supply, offensive trades, and disposal of any waste material, including sewage or garbage.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State government, but there is a potential increase in expenditures for some local health departments (LHDs) to increase the number of annual inspections for aquatic facilities and venues.

Agency Estimate of Projected Fiscal Impact

The Department of Health and Mental Hygiene (DHMH) advises that the regulations have no fiscal impact on State government. The Department of Legislative Services concurs. DHMH advises that the regulations may result in increased expenditures for some LHDs. The magnitude of such expenditures is unknown and depends on LHD staffing levels, the number of aquatic facilities and venues in a county, and the number of annual inspections conducted by a county under current practices. The Department of Legislative Services concurs. DHMH advises that several of the larger counties with higher numbers of aquatic venues and facilities already conduct monthly inspections during high-use times. However, some counties only conduct annual

inspections regardless of compliance. Under the regulations, LHDs (with authorization from the Secretary of Health and Mental Hygiene) must conduct a full compliance inspection of aquatic facilities and venues at least once every 12 months and additional full compliance or routine inspections every 30 to 90 days, depending on compliance.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

DHMH advises that the regulations have a meaningful impact on small businesses in the State to implement new requirements and update aquatic facilities and venues. The Department of Legislative Services concurs, in part, that the regulations result in a meaningful impact on some small businesses in the State. However, the Department of Legislative Services notes that the magnitude of the impact depends on factors such as the number, type, and size of renovations required and whether an aquatic facility or venue falls under several listed exemptions. Thus, the regulations likely result in a potential meaningful impact on small businesses in the State. The regulations allow for aquatic facilities and venues to come into compliance with the regulations in phases from fiscal 2016 through 2018. As such, any potential impact is likely staggered.

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