

Title 10
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE

Notice of Proposed Action

[14-012-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulation **.02** under **COMAR 10.01.17 Fees for Community Health Programs**;
- (2) Regulations **.02, .06, .08, .09, and .25** under **COMAR 10.16.06 Certification for Youth Camps**; and
- (3) Regulations **.03, .05, .06, .08, .27, .28, and .53** under **COMAR 10.17.01 Public Swimming Pools and Spas**.

Statement of Purpose

The purpose of this action is to adjust a number of fees and related programmatic content for certain environmental health programs.

Specifically, the revisions to COMAR 10.01.17 will:

- (1) Establish lower fees for certain food processing licenses and plan reviews;
- (2) Establish lower application fees for day and residential youth camps for those in “good standing” with the Department; and
- (3) Establish lower application fees for alterations to and replacements at public swimming pools and spas.

The revisions to COMAR 10.16.06 revise the inspection schedule for day and residential youth camps to include a self-assessment for camps in ‘good standing’ and a provision to authorize camps in ‘good standing’ to pay a lower fee in accordance with COMAR 10.01.17.

The revisions to COMAR 10.17.01:

- (1) Add definitions for “component” and “replacement” for public swimming pools and spas;
- (2) Revise the definitions of “alteration”, “repair”, “public pool”, “public spa”, “recreational pool”, and “semi-public pool”; and
- (3) Establish an application, plan review and approval process for alterations, repairs, and replacements.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The reduction of fees for certain food licenses and plan reviews, youth camp applications, and public swimming pool and spa applications will collectively decrease General Fund revenues, decrease expenditures of the regulated industries, and increase revenues and expenditures for local health departments. This proposal will not affect the Department’s expenditures as the proposal more closely aligns the workload with the current and projected funding levels. See below for additional information summarizing the economic impact of the proposed regulation revisions during year 1.

(1) **COMAR 10.01.17 Fees for Community Health Programs:** The Department will collect less net revenue in the form of annual food processing plant licensing and plan review fees, totaling \$54,000 for year 1 (\$34,600 from license fees and \$19,400 from plan review fees). There is no economic impact on other State agencies or local governments. The regulated industry is expected to benefit from the lower fees, particularly small food processors and manufacturers. The regulated industry’s expenditures will decrease by \$54,000 in year 1 (see II.A./III.A.).

(2) **COMAR 10.01.17 Fees for Community Health Programs and 10.16.06 Certification for Youth Camps:** The Department will collect less revenue through application fees for youth camp certification, totaling \$15,260 for year 1 (\$11,885 from day camp fees and \$3,375 from residential camp fees). The decrease in revenue is due to lower fees for youth camps that meet the ‘good standing’ definition and who will receive a 75 percent reduction in the annual application fee. There is no economic impact on other State agencies or local governments. The proposed changes will have a positive economic impact on the regulated industry with a decrease in expenditures of \$15,260 in year 1 (see II.A./III.A.).

(3) **COMAR 10.01.17 Fees for Community Health Programs and 10.17.01 Public Swimming Pools and Spas:** The Department’s revenue will decrease by \$77,400 in year 1 (\$30,600 from pool/spa alterations and \$46,800 from

pool/spa replacements) due to the establishment of new fee categories that distinguish between a public pool or spa plan review for an alteration, plan review for the replacement of a public pool or spa component, and delegation of responsibility to local health departments for reviewing applications and conducting plan reviews for replacement of a public pool or spa component. The Department will retain the authority to collect a \$50 fee for applications for the replacement of a pool or spa component in the event that a local health department opts not to conduct these reviews. Additional effort will be required by local health departments to assume the responsibility of reviewing applications and completing plan reviews for the replacement of a public pool or spa component, which is estimated to increase local revenue and expenditures by \$19,890 [see II.C.(1)/III.C.(1) and II.C.(2)/III.C.(2)]. The increased expenditures are due to the additional staff time required to complete plan reviews and the assumption that local application fees will be adopted to offset new operating expenses. The regulated industry will benefit from fee reductions of \$77,400 in year 1 as approximately 90 percent of public pool or spa plan reviews are for alterations or replacement of components (see II.A./III.A.).

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R-)	\$146,660
B. On other State agencies:	NONE	
C. On local governments:		
(1)	(R+)	\$19,890
(2)	(E+)	\$19,890
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1)	(+)	\$146,660
(2)	(-)	\$19,890
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. COMAR 10.01.17 Fees for Community Health Programs: All food plant processing fees are received by the Department on a rolling basis due to a variety of external factors (e.g. different operating seasons, various opening dates, failed inspections, etc.) The anticipated revenue reduction due to the proposed fee changes are based on the estimated number of licensed food processing plants for annual licensure fees and historical number for plan reviews. The change in fee revenue of \$54,000 annually is calculated by multiplying the expected number of licenses and plan reviews by the difference in fee amount (see Table 1, Sections A and B).

Additionally, note that certain proposed revisions to food processing plants are not included in Table 1 because there is no associated fee change and no fiscal impact. For license fees, the seasonal food manufacturing plant will be renamed and moved with no change in fee amount. For plan review fees, the seasonal food manufacturing plant, on-farm home processing plant, and producer mobile farmer’s market unit will be established with no correlating fee. The removal of the retail water plant license and plan review fees will not have a fiscal impact on this proposal because the Department has not been collecting these fees for over four years as this type of facility is currently regulated through and housed in another retail facility (e.g. grocery store).

COMAR 10.01.17 Fees for Community Health Programs and 10.16.06 Certification for Youth Camps: The Department creates a definition of ‘good standing’, based on a camp’s record of compliance with critical health and safety requirements, the application process, and reporting requirements. Camps that meet the ‘good standing’ criteria will be required to conduct one self-assessment annually, in lieu of an annual inspection, that could be valid for up to three years. Twenty-five percent of the camps in ‘good standing’ will be selected at random for inspection each year, but all camps in ‘good standing’ will be inspected at least once every 4 years. Camps in ‘good standing’ pay 25 percent of the standard application fee annually (including the year in which they are inspected by the Department). The estimated percentage of camps that will achieve ‘good standing’ for year 1 is estimated to be 5 percent (based on previous inspection data from the Department) with an estimated increase of 5 percentage points each year up to an estimated maximum of 70 percent over 14 years. Any camp, whether in ‘good standing’ or not, can be inspected at any time in response to complaints, substantial changes in operation, other health or safety concerns, or as necessary for

enforcement. A camp found to have a critical violation will lose its 'good standing' status and must pay the applicable standard application fee. The change in fee revenue of \$15,260 is calculated by multiplying the expected number of applications for each and residential camper day level (based on current estimates) by the difference in fee amount (see Table 1, Section C).

COMAR 10.01.17 Fees for Community Health Programs and 10.17.01 Public Swimming Pools and Spas: The Department proposes to modify the categories for public swimming pool and spa applications and plan reviews based on the complexity of the modifications required. The simplest modification (a repair involving the substitution of an identical component) would not require approval; more complex modification (a replacement involving the substitution of a similar but not identical equipment) would be completed by local health departments via delegation agreements (the Department would retain responsibility for application reviews not delegated to a local health department); and the most complex modification (an alteration involving changes of the equipment room, bath house, component or configuration) would continue to be completed by the Department, as would pool or spa construction. As a result of these changes, the Department will collect less revenue in the form of public pool and spa application fees. Of the approximately 300 estimated applications reviewed annually, the Department estimates (based on current number of applications) that 153 (51%) would be alterations, 117 (39%) would be replacements under the proposed regulation, and 30 (10%) would be construction. The estimated revenue to the State for public swimming pool and spa applications is \$120,000 (300 applications multiplied by \$400 fee). As shown in Table 1 Section D, the anticipated reduction in General Fund revenue from this change would be \$77,400. This is calculated by multiplying the expected number of applications by the difference in fee amount.

Table 1. Proposed Fee and Revenue Changes to COMAR 10.01.17, 10.16.06, and 10.17.01

	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Annual Number of Licenses/Plan Reviews/Applications</u>	<u>General Fund Change</u>
A. Annual license fees for food processing plants				
1). Replace the current shellfish plant license with the following:				
a). Shucking/ packaging/ repackaging plant license	\$400	\$400	31	\$0
b). Shellstock shipping/ reshipping plant license	\$400	\$200	95	(\$19,000)
c). Seasonal shellstock shipping/ reshipping plant license	\$400	\$100	32	(\$9,600)
2). Food warehouse or distribution center that distributes:				
a). Potentially hazardous food	\$400	\$400	20	\$0
b). Only non-potentially hazardous food	\$400	\$200	30	(\$6,000)
Subtotal – Food Plant License Fees			208	(\$34,600)
B. Plan review fees for food processing plants				
1). Shucking/ packaging/ repackaging plant	\$400	\$400	1	\$0
2). Shellstock shipping/ reshipping plant	\$400	\$0	20	(\$8,000)
3). Seasonal shellstock shipping/ reshipping plant	\$400	\$0	10	(\$4,000)
4). Food manufacturing plant*	\$400	\$400	30	\$0
5). Food manufacturing plant - operating within another licensed food establishment	\$400	\$200	12	(\$2,400)
6). Hazardous Analysis and Critical Control Points (HACCP) – all food processing plants	\$400	\$200	25	(\$5,000)
Subtotal – Food Plan Review Fees			98	(\$19,400)

C. Annual application fees for youth camps***				
1). Day camps:				
a). 1 to 500 camper days	\$200	\$50	7	(\$1,050)
b). 501 to 2,000 camper days	\$525	\$130	13	(\$5,135)
c). 2,001 to 5000 camper days	\$700	\$175	7	(\$3,675)
d). Greater than 5,000 camper days	\$900	\$225	3	(\$2,025)
2). Residential camps:				
a). 1 to 700 camper days	\$500	\$125	2	(\$750)
b). 701 to 5,000 camper days	\$1,000	\$250	2	(\$1,500)
c). 5,001 to 16,000 camper days	\$1,500	\$375	1	(\$1,125)
d). Greater than 16,000 camper days	\$2,000	\$500	0	\$0
Subtotal – Youth Camp Application Fees			35	(\$15,260)
D. Application fees for pools and spas				
1). Construction	\$400	\$400	30	\$0
2). Alterations	\$400	\$200	153	(\$30,600)
3a). Replacement (DHMH responsibility)	\$400	\$50	0**	
3b). Replacement (LHD responsibility)	\$400	**	117	(\$46,800)
Subtotal – Pool/Spa Application Fees			300	(\$77,400)
Grand Total – General Fund Revenue Impact			641	(\$146,660)

Notes: * Food manufacturing plants are either freestanding or housed within another licensed food establishment. The “food manufacturing plant” category is included (as a freestanding facility) to illustrate that this proposal establishes a new category (“food manufacturing plant- operating within another licensed food establishment”) and reduces its fee from \$400 to \$200.

** Although this proposal authorizes DHMH to collect a \$50 fee for pool/spa replacement plan reviews, this proposal assumes all LHDs will accept the delegation of this responsibility. General Fund revenue will decrease by \$46,800.

*** The Department assumes all residential youth camps will have submitted their application fee to the Department within the first 6 months of this proposal; therefore, only the day youth camps will increase during the second 6 month period of year 1. This increase is expected to be approximately 25%.

C(1). The Department assumes that there will be an increase in revenues of \$19,890 for local health departments due to the delegation of the pool and spa replacement plan review process. This assumes local health departments will charge \$170/application (estimated in consultation with a local health department) to offset their increase in expenditures.

C(2). The Department assumes that there will be an increase in expenditures of \$19,890 for local health departments due to the delegation of the pool and spa replacement plan review process. This assumes it will cost a local health department approximately \$170/application (estimated in consultation with a local health department), which is multiplied by the estimated 117 replacement applications done by local health departments to calculate this estimate.

D(1). There are benefits to certain regulated entities arising from this proposal that include a fee savings of \$146,660 from reductions in fees during year 1. Since certain food plant processing license and plan review fees were raised in 2012, the Department has received many complaints from processors about the burden of increased fees. Shellfish plants, small prepackaged food warehouses, and other small food processing plants in particular will receive the most savings due to the proposed fee reductions. The Department has responded to a series of requests from the youth camp industry that the Department recognize the performance of well-operated camps by creating a self-assessment process for those camps. This has been achieved in this proposal in COMAR 10.16.06, which recognizes self-assessments for camps in good standing. The Department estimates that there will be a positive economic impact on 5 percent of the members of the regulated industry who meet the ‘good standing’ definition, with an estimated increase of 5 percentage

points annually up to an estimated maximum of 70 percent. This proposal authorizes a 75 percent reduction in the annual application fee for those camps that qualify. This is an incentive for the regulated industry to achieve and maintain a record of compliance with critical health and safety standards. The pool industry will benefit from the clarification regarding alterations and repair and replacement of pool components, as expressed in meetings the Department has held with the affected industry.

D(2). The Department also assumes that there will be an increase in cost to the pool industry resulting from the delegation of the swimming pool and spa replacement plan review process to local health departments. This assumes that local health departments will charge \$170/application, which is estimated to cost the industry \$19,890 (see III.C.) during year 1.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

The Department assumes that there will be a positive economic impact on the members of the regulated industry totaling \$146,660 annually. The Department also assumes that because a majority of the regulated entities (food processors and manufacturers, day and residential youth camp owners and operators, and public swimming pool and spa owners) are small businesses in Maryland, these savings will disproportionately impact small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 10, 2014. A public hearing has not been scheduled.

Subtitle 01 PROCEDURES

10.01.17 Fees for Community Health Programs

Authority: Health-General Article, §§2-104, 14-403, 21-301, 21-308, 21-309, 21-309.1, and 21-812, Annotated Code of Maryland

.02 Fees.

The following fees are established by the Secretary:

A. (text unchanged)

B. [A certificate or letter of compliance application fee, based on camper days, that is, the estimated cumulative number of campers enrolled each day multiplied by the number of days a camp may operate during a season, for:] *Annual youth camp application fee based on estimated camper days, that is, the estimated average number of campers enrolled each day multiplied by the estimated number of days a camp intends to operate during a camp season, for:*

(1) *Except as specified in §B(2) of this regulation:*

[(1)](a) Day camp:

[(a)](i)—[(d)](iv) (text unchanged)

[(2)](b) Residential camp:

[(a)](i)—[(c)](iii) (text unchanged)

[(d)](iv) Greater than 16,000 camper days — \$2,000; or

(2) *For a youth camp that is in good standing as defined in COMAR 10.16.06.02:*

(a) Day camp:

(i) 1 to 500 camper days — \$50;

(ii) 501 to 2,000 camper days — \$130;

(iii) 2,001 to 5,000 camper days — \$175; and

(iv) Greater than 5,000 camper days — \$225; and

(b) Residential camp:

(i) 1 to 700 camper days — \$125;

(ii) 701 to 5,000 camper days — \$250;

(iii) 5,001 to 16,000 camper days — \$375; and

(iv) Greater than 16,000 camper days — \$500.

C. Annual license fee for:

(1) Food processing plants:

(a)—(e) (text unchanged)

(f) Shellfish [plant— \$400;]:

(i) Shucking, packing, or repacking plant — \$400;

(ii) Shipping or reshipping plant — \$200; or

(iii) Seasonal shellstock shipping or reshipping plant — \$100;

- (g) (text unchanged)
- (h) [Food] *Effective January 6, 2014, food warehouse or distribution center* [— \$400] *that distributes:*
 - (i) *Potentially hazardous food*— \$400; or
 - (ii) *Only non-potentially hazardous food* — \$200;
- (i) (text unchanged)
- [(j) Retail water plant — \$400;]
- [(k)] (j)—[(l)] (k) (text unchanged)
- (l) *Seasonal food manufacturing plant* — \$35;
- (m)—(n) (text unchanged)
- (2) (text unchanged)
- [D. Seasonal food license fee — \$35;]
- [E.] D. Except for a local subdivision with delegated authority, plan review fee for [:
 - (1) Pool — \$400;
 - (2) Spa — \$400; and]
- [(3) Food] *food processing plants:*
 - [(a)](l)—[(e)](5) (text unchanged)
 - [(f)](6) Shellfish [plant — \$400;]:
 - (a) *Shucking, packing, or repacking plant* — \$400;
 - (b) *Shipping or reshipping plant* — no fee; or
 - (c) *Seasonal shellstock shipping or reshipping plant* — no fee;
 - [(g)] (7)—[(i)] (9) (text unchanged)
 - [(j) Retail water plant — \$400;]
 - [(k)] (10) Frozen food manufacturing plant — \$400; [and]
 - (11) *Seasonal food manufacturing plant* — no fee;
 - (12) *On-farm home processing plant* — no fee;
 - (13) *Producer mobile farmer’s market unit* — no fee; and
 - (14) *Food manufacturing plant operating in another licensed food establishment* — \$200;
- [F.] E. Plan review fee for a food service facility that is a *retail chain* or a franchise operation planning to construct two or more facilities in the State from a single uniform set of plans — \$400[.];
 - F. *Food process or hazard analysis critical control point plan review in a retail facility or a food processing plant* — \$200; and
 - G. *Except for a local subdivision with delegated authority, application review fee for:*
 - (1) *Construction of a public pool or spa* — \$400;
 - (2) *Alterations at a public pool or spa* — \$200; and
 - (3) *Replacements at a public pool or spa* — \$50.

Subtitle 16 HOUSING

10.16.06 Certification for Youth Camps

Authority: Health-General Article, §§2-104, 14-402(d), and 14-403; Family Law Article, §§5-704, and 5-705, Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(11) (text unchanged)
 - (11-1) “*Critical violation*” means failure to comply with:
 - (a) *Regulation .21 of this chapter;*
 - (b) *Regulation .22A(1) and (2) of this chapter;*
 - (c) *Regulation .23A of this chapter;*
 - (d) *Regulation .23B and D of this chapter;*
 - (e) *Regulation .27A—C of this chapter;*
 - (f) *Regulation .34A of this chapter;*
 - (g) *Regulation .35 of this chapter;*
 - (h) *Regulation .46A(1) and (2) of this chapter;*
 - (i) *Regulation .47C and F(6)—(9) of this chapter;*
 - (j) *Regulation .48D(1) of this chapter;*
 - (k) *Regulation .49C of this chapter;*
 - (l) *Regulation .50B of this chapter;*
 - (m) *Regulation .51B of this chapter;*
 - (n) *Regulation .52A(1) and B(1) of this chapter;*
 - (o) *Regulation .53A(1) and (2) of this chapter; or*

- (p) Regulation .54 of this chapter.
- (12)—(16) (text unchanged)
- (16-1) “Good standing” means:
 - (a) Compliance with the:
 - (i) Annual report and self-assessment submission requirements as specified in Regulation .06 of this chapter; and
 - (ii) Application procedure and fee requirements as specified in Regulation .08 of this chapter; and
 - (b) A camp that in the previous calendar year paid the application fee as set forth in COMAR 10.01.17.02; and
 - (c) Had no critical violations of this chapter found by the Department during an inspection:
 - (i) In the last 2 calendar years; or
 - (ii) For a camp in good standing, in the last calendar year that an inspection took place.
- (17)—(41) (text unchanged)

.06 Annual Report and Self-Assessment.

[An operator shall file within 2 weeks of the end of camp an annual report with the Youth Camp Safety Advisory Council stating:]

A. An operator of a program or activity that complies with Regulation .03 or .04 of this chapter and an operator of a youth camp shall submit an annual report, on a form prescribed by the Department, within 4 weeks of the end of the program, activity, or camp to the Department stating:

[A. The number of campers that attended during the past calendar year; and]

(1) The actual camper days, that is, the sum total of the actual number of campers who attended camp each day during a camp season;

(2) The number of injuries and illnesses that required an operator to submit a report to the Department under Regulation .25 of this chapter; and

[B.] (3) (text unchanged)

B. An operator of a camp that paid the reduced fee for a camp in good standing as set forth in COMAR 10.01.17.02B(2) shall:

(1) Complete a self-assessment on a form prescribed by the Department by the end of the first week of camp operation each year; and

(2) Submit the same form to the Department within 4 weeks of the end of the camp.

.08 Application Procedures and Fees.

A. (text unchanged)

B. For a camp that was issued a certificate or a letter of compliance by the Department in the previous calendar year and wishes to renew its certificate or letter of compliance for another year, an operator shall:

(1) (text unchanged)

(2) Except as provided in §§D and E of this regulation, pay to the Department the *required* fee as set forth in COMAR 10.01.17.02 at the time of application;

[(3) Submit documentation that verifies compliance with:

- (a) Regulation .20 of this chapter;
- (b) Regulation .22A(1) of this chapter;
- (c) Regulation .23 of this chapter;
- (d) Regulation .36B(1)—(2), C, or D of this chapter;
- (e) Regulation .37A(1)—(2), B, C, or D of this chapter;
- (f) Regulation .39B of this chapter;
- (g) Regulation .42B of this chapter; and

(h) When a new specialized activity or a new location for a specialized activity is added to the camp’s program, Regulation .47—.52 of this chapter.]

(3) When a new specialized activity or a new location for a specialized activity is added to the camp’s program, submit documentation that verifies compliance with Regulations .47—.52 of this chapter; and

(4) When a camp changes location, submit documentation that verifies compliance with:

- (a) Construction or alteration of a camp facility as specified in Regulation .20 of this chapter;
- (b) Water supply as specified in Regulation .36B(1)—(2), C, or D of this chapter;
- (c) Sewage disposal as specified in Regulation .37A(1)—(2), B, C, or D of this chapter;
- (d) Food service as specified in Regulation .42 of this chapter; and
- (e) Fire and electrical code safety as specified in Regulation .46A or B of this chapter.

C.—H. (text unchanged)

.09 Inspections.

A. The Department shall:

(1) (text unchanged)

(2) Inspect the camp *at least every fourth year* or as necessary for the enforcement of this chapter.

B.—D. (text unchanged)

.25 Required Reports.

An operator shall ensure that:

A. (text unchanged)

B. An injury or illness that requires care by a physician, dentist, or nurse and results in the camper being treated at a medical facility, having a laboratory analysis performed, or undergoing an x-ray, is reported:

(1) (text unchanged)

(2) To the Department within [2] 4 weeks of the end of camp on a form that meets the requirements of Regulation .26 of this chapter;

C.—E. (text unchanged)

Subtitle 17 SANITATION

10.17.01 Public Swimming Pools and Spas

Authority: Health-General Article, §§2-104, Annotated Code of Maryland, and U.S.C. §8003

.03 Previously [Approved] Constructed Pools and Spas.

A. Except as provided in [§§D and E] §C of this regulation, the owner of a pool or spa that was [approved by the Secretary for construction] *constructed* before [the adoption of this chapter] *February 10, 1997* is exempt from bringing the [previously approved] pool or spa into compliance with:

(1)—(2) (text unchanged)

[B. The owner of a pool or spa that was approved by the Secretary for construction before the adoption of this chapter shall maintain the pool or spa including appurtenant structures and equipment as originally approved and may complete a repair that restores the pool or spa to its original condition before damage or deterioration without complying with the requirements of this chapter, except for Regulations .06C and .28 of this chapter, when the repair:

(1) Costs less than 25 percent of the replacement value of the pool or spa, including appurtenant structures and equipment;

(2) Consists of the same or equivalent materials and components having the same specifications, operating characteristics, and certifications as the original construction; and

(3) Does not create a danger or allow a danger to continue that threatens the health and safety of an individual using the pool or spa.

C. The owner of a pool or spa that was approved by the Secretary for construction before the adoption of this chapter shall ensure that a repair complies with all applicable provisions of this chapter when completing a repair that:

(1) Costs more than 25 percent of the replacement value of the pool or spa, including appurtenant structures and equipment; or

(2) Alters the materials or components of the original construction.]

B. Except for Regulation .28 of this chapter, the owner of a pool or spa that was constructed before February 10, 1997:

(1) Shall maintain the pool or spa, including appurtenant structures and equipment as originally constructed; and

(2) May complete a repair according to Regulation .06P that restores the pool or spa to its original condition before damage or deterioration without the component complying with the requirements of this chapter.

[D. The] C. For a pool or spa that was constructed before February 10, 1997, the exemptions in [§§A and B] §A of this regulation do not apply if:

(1) [The previously approved] *The* pool or spa has a condition that jeopardizes the health or safety of the public, in which case the owner shall ensure that the condition is corrected to meet the requirements of this chapter;

(2) An owner intends to alter the [previously approved] pool or spa, including appurtenant structures and equipment, in which case the owner shall ensure that the alteration complies with the requirements of this chapter; or

(3) A suction outlet is not in compliance with Regulation .28 of this chapter, in which case the owner shall ensure that the suction outlet is [repaired or] altered to meet the requirements of Regulation .28 of this chapter for suction entrapment prevention.

[E. Notwithstanding the exemptions set forth in §A of this regulation, a previously approved pool or spa is not exempt from Regulations .16C, .17D, .22A(2), .26A, .26D, .26G, .27A, .27C, .27E, .28D, .40C(1), .40F(1), and .40F(2) of this chapter.]

.05 Definitions.

A. (text unchanged)

B. Terms Defined.

[(1) Alter.

(a) “Alter” means to:

(i) Change, modify, or rearrange a facility’s structural parts or design;

- (ii) Enlarge a structure;
- (iii) Move a structure from one location or position to another;
- (iv) Change a circulation system component;
- (v) Replace a piping system; or
- (vi) Install a new structural part or circulation system component that was not part of the original structure or system.

(b) "Alter" does not include repairing an existing, previously approved facility.]

(1) *Alteration.*

(a) "Alteration" means to:

- (i) Change or modify an equipment room, a bathhouse, a component, or the configuration of a pool or spa;
- (ii) Move a component from one location or position to another; or
- (iii) Install a new component.

(b) "Alteration" does not include a repair or replacement.

(2)—(4) (text unchanged)

(4-1) "Component" means:

- (a) A piece of pool or spa equipment;
- (b) A deck;
- (c) A barrier;
- (d) One or more skimmers;
- (e) One or more filters, including piping and valves;
- (f) A ventilation system;
- (g) Lighting provided for water, deck, and walkways; or
- (h) Pipe material for pool or spa water.

(5)—(17) (text unchanged)

(18) Public Pool and Public Spa.

(a) (text unchanged)

(b) "Public pool" includes a:

- (i)—(ii) (text unchanged)
- (iii) Semipublic pool, as defined in [§B(22)] §B(23) of this regulation.

(c) "Public spa" includes a semipublic spa, as defined in [§B(22)] §B(23) of this regulation.

(19) "Recreational pool" means a pool that:

(a) Is not a limited public-use pool, private pool, or semipublic pool, as defined in [§§B(7), (17), and (22)] §§B(7), (17), and (23) of this regulation;

(b)—(e) (text unchanged)

(f) Is provided by, or used by a:

- (i)—(iv) (text unchanged)

(v) An apartment complex, housing subdivision, or mobile home park with more than ten units, except as provided in [§B (22)(a)(v)] §B(23)(a)(v) of this regulation; or

(g) (text unchanged)

(20) Repair.

[(a) "Repair" means the replacement of existing work with the same kind of materials for the purpose of maintenance and the replacement of a previously approved piece of equipment with an equivalent unit having the same specifications, operating characteristics, and certifications.

(b) "Repair" does not include alterations, installation of additional equipment, or work that requires local building, electrical, or plumbing approval.]

(a) "Repair" means substituting a component having the same make and model as the previously approved component for the previously approved component.

(b) "Repair" does not include:

- (i) Replacements;
- (ii) Alterations;
- (iii) Installation of additional equipment; or
- (iv) Substitutions involving a component which do not meet the requirements of this chapter.

(20-1) Replacement.

(a) "Replacement" means substituting a component, which has a different make or model but has the same operating characteristics and certifications as the previously approved component, for the previously approved component.

(b) "Replacement" does not include:

- (i) Repairs;
- (ii) Substitutions involving a pump;
- (iii) Substitutions involving a suction outlet sump or cover;
- (iv) Alterations;
- (v) Installation of additional equipment; or

(vi) *Substitutions involving a component which do not meet the requirements of this chapter.*

(21)—(22) (text unchanged)

(23) “Semipublic pool” and “semipublic spa” mean a pool or spa at a facility that:

(a) (text unchanged)

(b) Has a pool or spa that is not:

(i) Open for admission to the general public, except as provided in [§B(22)(a)] §B(23)(a) of this regulation;

(ii)—(v) (text unchanged)

(24)—(38) (text unchanged)

.06 Construction, Alteration, and Replacement Permits for Recreational Pools, Semipublic Pools, and Public Spas.

A. An owner who intends to construct or alter a recreational pool, semipublic pool, or public spa *or replace a public pool or spa component* shall obtain a construction, *alteration, or replacement* permit from the Secretary before beginning construction [or], *alteration, or replacement work*.

B. An owner may not construct or alter a recreational pool, semipublic pool, or public spa *or replace a public pool or spa component* without a construction, *alteration, or replacement* permit.

[C. For repairs at a previously approved recreational pool, semipublic pool, or public spa, an owner:

(1) May repair previously approved structures and equipment in accordance with Regulation .03 of this chapter without obtaining a construction permit; and

(2) Shall notify the Secretary, within 10 days, of a repair that results in the replacement of a circulation system component, except when the component is replaced with the exact same model and make as the previously approved component.]

[D.] C. To obtain a construction, *alteration, or replacement* permit, an owner shall submit to the Secretary:

(1) An application for a construction, *alteration, or replacement* permit on an application form provided by the Secretary that includes:

(a) The full names and addresses of the owner and authorized agents of the owner who may act on the owner’s behalf during the construction *or alteration* of the pool or spa, *or the replacement of the public pool or spa component*;

(b) A statement saying “I hereby acknowledge that all items either listed or shown in these plans and specifications as not in contract [(NIC)], by others, or equivalent, are my responsibility. I also realize that this entire project must be completed in accordance with the approved plans and specifications and all conditions listed in the construction, *alteration, or replacement* permit *and meet the requirements of this chapter* prior to the issuance of an operating permit by the Secretary[.]”; and

(c) The owner’s signature[,], which [indicates]:

(i) *Indicates* the owner has supplied the correct information on and with the application; and [is]

(ii) *Is* in agreement with the statement set forth in [§D(1)(b)] §C(1)(b) of this regulation; and

(2) Plans and specifications for the construction [or], *alteration, or replacement* which:

(a) Are prepared by a licensed or certified professional engineer, architect, draftsman, or a person with extensive experience in the design of pools and spas[.];

(b) Are drawn to scale, in a professional and accurate manner, with sufficient clarity and detailed dimensions to show the nature and character of the work to be performed[.]; and

(c) (text unchanged)

[E. An] D. *Except for an alteration or replacement, an owner shall ensure that the plans and specifications required in [§D] §C of this regulation include the following [, except that for an alteration, the owner shall submit only the information that pertains to the alteration]:*

(1)—(18) (text unchanged)

E. *An owner shall ensure that, for an alteration or replacement, the plans and specifications required in §C of this regulation include the information that pertains to the alteration or replacement.*

F. An owner shall obtain necessary local zoning approval and building, electrical, plumbing, and other applicable local permits before beginning construction or alteration of a recreational pool, semipublic pool, or public spa *or replacement of a public pool or spa component*.

G. Before issuing a construction, *alteration, or replacement* permit, the Secretary may require changes in the design of the facilities if the design does not meet the criteria set forth in this chapter.

H. Upon an owner’s compliance with the provisions of this chapter, the Secretary shall approve the plans and specifications and issue a construction, *alteration, or replacement* permit, which is valid for the start of the construction, *alteration, or replacement* for 1 year from the date of issue and for 1 additional year from the date construction, *alteration, or replacement* begins.

I. The local county health officer may not approve a local building permit for recreational pool, semipublic pool, or public spa construction, *alteration, or replacement* until the plans and specifications for pool or spa construction *or alteration, or the replacement of a public pool or spa component* have been approved by the Secretary.

J. The Secretary shall review the plans and application and shall approve or deny issuance of a construction, *alteration, or replacement* permit within 30 days of receipt of the application.

K. If plans are submitted that are not in compliance with the requirements of this chapter, the Secretary shall disapprove the plans and deny the issuance of a construction, *alteration or replacement* permit.

L. An owner may not deviate from the approved plans and specifications [in the construction or alteration of] *for construction, alteration, or replacement* at a recreational pool, semipublic pool, or public spa unless revised plans are submitted to and approved in writing by the Secretary.

M. If a recreational pool, semipublic pool, or public spa is not being constructed or altered *or components are not being replaced* in accordance with the approved plans, the Secretary may revoke the construction, *alteration, or replacement* permit for the construction [or], *alteration, or replacement* and the owner immediately shall cease construction [or], *alteration, or replacement*.

N. If the Secretary denies the issuance of a construction, *alteration, or replacement* permit as set forth in §K of this regulation, or revokes a construction, *alteration, or replacement* permit as set forth in §M of this regulation, the Secretary shall notify the owner in writing:

(1)—(3) (text unchanged)

O. An owner shall ensure that a construction, *alteration, or replacement* permit is posted in a conspicuous location at the site of construction [or], *alteration, or replacement*.

P. An owner may make a repair to a previously approved structure, component, or piece of equipment in accordance with this chapter without:

(1) *Obtaining a construction, alteration or replacement permit from the Secretary; or*

(2) *Notifying the Secretary.*

.08 Approval After Construction [or], Alteration, or Replacement.

A. After [the construction, or alteration of] *construction, alteration, or replacement of a component* at a recreational pool, semipublic pool, or public spa is completed, the owner shall contact the Secretary for approval of the pool or spa *within 30 days*.

B. (text unchanged)

C. *A person may operate or permit the use of a recreational pool, semipublic pool, or public spa for 30 days after completing the replacement of a public pool or spa component without receiving a final inspection and written approval from the Secretary.*

[C.] D. The Secretary shall conduct an inspection or inspections to ensure that a recreational pool, semipublic pool, or public spa is constructed or *altered, or that a public pool or spa component is replaced* according to the approved plans *and meets the requirements of this chapter*, and shall:

(1) Grant written approval for the pool or spa if it was constructed or altered, *or a public pool or spa component was replaced* according to the approved plans, *meets the requirements of this chapter*, and the owner has received local approval for any building, electrical, plumbing, or other work that requires a local permit; or

(2) Deny approval for the pool or spa if it was not constructed or altered, *or a public pool or spa component was not replaced* according to the approved plans, *does not meet the requirements of this chapter*, or the owner has not received local approval for any building, electrical, plumbing, or other work that requires a local permit.

[D.] E. The Secretary shall grant written approval or deny approval of the completed construction, [or] *alteration, or replacement of a public pool or spa component* within 30 days of receipt of notice of completion from the owner.

[E.] F. If minor items that do not affect the health or safety of the public need to be corrected, the Secretary may issue a partial approval for the pool or spa after construction, [or] *alteration, or replacement of a public pool or spa component* pending full compliance according to the following conditions:

(1)—(2) (text unchanged)

[F.] G. If the Secretary does not grant approval for the pool or spa after it is constructed or altered, *or a public pool or spa component is replaced*, the Secretary shall notify the owner in writing:

(1)—(3) (text unchanged)

.27 Diving Area and Equipment.

An owner of a public pool shall ensure that:

A.—E. (text unchanged)

F. A starting block:

(1) (text unchanged)

(2) At a [previously approved] pool *constructed before February 10, 1997*, is located so that a swimmer dives into a minimum of:

(a)—(b) (text unchanged)

.28 Suction Entrapment Prevention.

To prevent a suction entrapment hazard, an owner shall ensure that:

A.—E. (text unchanged)

F. A [previously approved] pool or spa *constructed before February 10, 1997* is provided by June 1, 2002, with:

(1)—(3) (text unchanged)

G. As an interim measure, until a [previously approved] pool or spa *constructed before February 10, 1997* is in compliance with §F of this regulation:

(1)—(2) (text unchanged)

H.—I. (text unchanged)

.53 Variances.

A. An owner who has been granted a variance by the Secretary before [the adoption of this chapter] *February 10, 1997* may continue to operate under that variance.

B.—E. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.
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