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Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 17 SWIMMING POOLS AND SPAS

10.17.01 Public Swimming Pools and Spas

Authority: Health-General Article, §§2-104 and 20-303, Annotated Code of Maryland

Notice of Final Action

[22-076-F]

On May 24, 2022, the Secretary of Health adopted amendments to Regulations .05 and .21 under COMAR 10.17.01 Public Swimming Pools and Spas. This action, which was proposed for adoption in 49:7 Md. R. 473—475 (March 25, 2022), has been adopted as proposed.

Effective Date: October 1, 2022.

DENNIS R. SCHRADER
Secretary of Health

PROPOSAL
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Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 17 SWIMMING POOLS AND SPAS

10.17.01 Public Swimming Pools and Spas

Authority: Health-General Article, §§2-104 and 20-303, Annotated Code of Maryland

Notice of Proposed Action

[22-076-P]

The Secretary of Health proposes to amend Regulations .05 and .21 under COMAR 10.17.01 Public Swimming Pools and Spas.

Statement of Purpose

The purpose of this action is to amend the regulations regarding barriers in public pools and spas. The proposed changes bring Maryland's requirements for public pool barriers in line with national standards and building codes and make compliance with COMAR 10.17.01.21 easier for pool owners and operators.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed changes have the potential to have a significant, positive economic impact for public pools and spas which would otherwise be required to undertake costly repairs or renovations to bring their facility into

compliance with COMAR 10.17.01.21. The proposed changes are not expected to have a fiscal or operational impact on the Maryland Department of Health, local health departments, or the regulated industry.

	Revenue (R+/R-)	
II. Types of Economic Impact.	Expenditure (E+/E-) Magnitude	
<hr/>		
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
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D. On regulated industries or trade groups:	(+)	Indeterminable
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.)

D. The Department has identified 170 pools in nine jurisdictions which are not currently in compliance with COMAR 10.17.01.21. Of these noncompliant pools, 65 percent are in Worcester County. The Department estimates that most of these pools will become compliant as a result of the proposed changes and would not be required to undertake costly repairs or renovations. The Department also estimates that no pools currently in compliance with COMAR 10.17.01.21 would become noncompliant as a result of these changes.

Economic Impact on Small Businesses

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

Public pools and spas would be affected by the proposed regulations. Public pools and spas include semi-public pools and spas, such as those at hotels and condominiums which are restricted for use by members or guests. Public pools and spas are licensed and inspected by local health departments. Of 12 jurisdictions that responded to a survey of local health departments, 170 pools with a noncompliant barrier were identified, 65 percent of which were in Worcester County. The Department is unable to estimate how many of these pools are owned or operated by small businesses.

The Department has re-engaged with a pool stakeholder group which originally worked with the Department on a previous successful update to Maryland’s pool regulations. This group includes pool owners, operators, local health department staff, and industry professionals with knowledge and expertise in pool design, construction, maintenance, and operations, some of whom are small businesses. This group was instrumental in developing these proposed changes, and their feedback was solicited and incorporated several times throughout the process. This group includes 252 individuals who signed up to receive email updates on the Department’s efforts to update COMAR 10.17.01

This proposal will have a meaningful, positive impact on many of the pools which are currently noncompliant with COMAR 10.17.01.21. The Department estimates that the proposed changes will result in a significant decrease in the number of noncompliant pools, which would otherwise be required to undertake costly repairs or renovations. The Department does not expect that the proposed changes will cause any pools currently in compliance to become noncompliant with the requirements for public pool and spa barriers.

The proposed changes have the potential to have a significant, positive economic impact for public pools and spas, including those owned and operated by small businesses, which would otherwise be required to undertake costly repairs or renovations to bring their facilities into compliance with COMAR 10.17.01.21.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jourdan Green, Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through April 25, 2022. A public hearing has not been scheduled.

.05 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(3) “Barrier” means [a fence or wall or a combination of a fence and wall that completely surrounds and obstructs access to the pool or spa] *an uninterrupted obstacle intended to prevent direct access from one point to another surrounding and securing a pool or spa.*

(4-1) (text unchanged)

(4-2) “Critical violation” means a violation that results from a product, practice, circumstance, or event that creates a situation that requires immediate correction or cessation of operation to prevent injury, illness, or death based on the number of potential injuries and the nature, severity, and duration of the anticipated injury or illness, or specifically:

(a) Failure to comply with:

(i) (text unchanged)

(ii) For a public pool with a lifeguard on duty, Regulation .21 of this chapter, except for §A(10)(a)[, (b),] and [(d)—(f)] (c)—(e) and B(2);

(iii) For a public pool without a lifeguard on duty, Regulation .21 of this chapter, except for §A(10)[(a) and (d)—

(f)] (c)—(e) and B(2);

(iv)—(x) (text unchanged)

(b)—(J) (text unchanged)

(4-3)—(38) (text unchanged)

.21 Barriers.

A. Except as set forth in §§B, C, and D of this regulation, an owner shall ensure that a recreational pool, semipublic pool, or public spa, including the required deck area, is completely surrounded by a barrier that complies with the following requirements:

(1)—(2) (text unchanged)

(3) Except when [the entrance gate] *a door or gate that allows access to the pool or spa area enclosed by the barrier* is open, an opening in the barrier [and in the] *including in a door or gate* does not allow passage of a sphere 4 inches in diameter;

(4) (text unchanged)

(5) The barrier [does not have openings or footholds that make the barrier easy to climb] *discourages climbing by preventing access to nearby structures to simplify climbing over it, such as light poles, site furnishings, overhanging tree limbs, or other obvious footholds or handholds;*

(6) A barrier with horizontal members less than 45 inches apart measured top to top does not have:

(a) Vertical openings greater than 1-3/4 inches in width; [and] *or*

(b) (text unchanged)

(7)—(9) (text unchanged)

[(10) The barrier main access gate:

(a) Is located toward the shallow end of a pool;

(b) Has a latch release located at least 54 inches from grade level;

(c) Is lockable;

(d) Is hung to open away from the pool or spa;

(e) Has a minimum width of 4 feet; and

(f) Complies with Regulation .37 of this chapter; and

(11) Doors and windows that open into the pool or spa area enclosed by the barrier have locks or latches to prevent unauthorized entry.]

(10) Except as provided in §A(11) and (12) of this regulation, a door or gate that allows access to the pool or spa area enclosed by the barrier shall:

(a) Have the release to open the door or gate located:

(i) At least 54 inches from the floor level; or

(ii) Between 34 and 48 inches from the floor level when an electronic or combination mechanical release device is used to release the door or gate;

(b) Be locked to prevent unauthorized entry to the pool or spa area;

(c) Open away from the pool or spa area;

(d) Have an opening that provides a minimum width of 32 inches between the gate or door stop and the face of the gate or door with the gate or door open 90 degrees; and

(e) Comply with Regulation .37 of this chapter;

(11) A door or gate that allows access to the pool or spa area enclosed by the barrier and is designated as fire egress from a building:

(a) May not be included in any facility approved for construction after May 27, 2022; and

- (b) Is exempt from §A(10)(c) of this regulation;*
- (12) A door or gate used exclusively for maintenance or service access is exempt from §A(10)(a) and (c)—(e) of this regulation; and*
- (13) A window that is a part of the barrier may not be able to be opened more than 4 inches.*
- B. An owner shall ensure that a barrier at a semipublic pool or semipublic spa:
- (1) Has a minimum height of 60 inches; *and*
 - (2) Has a gate that is self-closing and self-latching; *and*
 - (3) Complies with the requirements in §A(2)—(11) of this regulation].
- C. (text unchanged)
- D. An owner shall ensure that a wading pool or infant pool is separated from a pool or spa by a barrier that has:
- (1) (text unchanged)
 - (2) A maximum [2-inch] *4-inch* separation between the deck and the bottom of the barrier;
 - (3)—(4) (text unchanged)
- E. *An owner of a pool or spa with a barrier that includes a door or gate designated as a fire egress from a building shall ensure that whenever a lifeguard is not on duty, the pool or spa is secured:*
- (1) With a cover that has a visible label indicating that it meets ASTM F1346 – 91; or*
 - (2) By following procedures per a variance under Regulation .53 of this chapter.*

DENNIS R. SCHRADER
Secretary of Health