

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Health

Regulation/Package Title: Public Swimming Pools, Public Spas, and Special Use Pools

Rule Number(s): 3701-31-01 through 3701-31-05.1

Date: December 23, 2016

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulations in plain language.

As required by Chapter 3749. of the Ohio Revised Code, the rules set forth in Chapter 3701-31 establish the state requirements pertaining to swimming pools, public spas, and special use pools in Ohio. The primary intent of these rules is to protect the health and safety of the public while utilizing public swimming pools, spas, and special use pools. These rules provide a consistent set of requirements for every operator in the state to follow. The key provisions of these rules that protect the health and safety of the public include, but are not limited to, the submission of new construction/substantial alteration plans to the Department of Health for review and approval, licensure, and sanitation and maintenance requirements for licensees.

Revisions have been made to:

3701-31-01 – The rule sets forth the definitions used throughout the Chapter including, but not limited to, licensee, licensor, public spa, and public swimming pool. Revisions have been made to the definitions section for clarification based on stakeholder recommendations by the entire committee and changes to formatting were made to improve the flow of information within the paragraphs. Citations to vacuum device safety requirements were updated to the 2011 ANSI/APSP-16, updates were made to various incorporated materials, and the Association for Pools and Spa Professionals was included as providing publicly available reference materials. The definition of “substantial alteration” was moved from 3701-31-05 to this section was requested by industry and local health departments.

3701-31-02 – The rule sets forth the responsibilities of the Director. These responsibilities include, but are not limited to, approving forms to be used by the department and licensors for plan approvals; ensuring fees are collected and used for the administration of the program; review of plans within thirty days of receipt; and maintaining lists of approved pool tile colors and automatic chemical controllers for pools. The rule is being amended to make general formatting changes throughout and removed outdated language referencing past fees. The rule is being further amended to require the Director to issue a letter to the pool owner and the licensor when a plan has been reviewed and approved; add the requirement that a plan may be disapproved if an applicant fails to respond to a request for additional information within forty-five days of a date of request; and require the Director to maintain a list of approved training in accordance with paragraph (B) of rule 3701-31-04.

3701-31-03 – The rule sets forth the responsibilities of the licensor during the pool licensing process. These responsibilities include, but are not limited to, determining that plans have been approved by the Director of health prior to issuing a license; utilizing the cost methodology specified in rule 3701-36-14 of the Ohio Administrative Code to set fees; annually inspecting all licensed pools; and collecting and transmitting fees to the Treasurer of State. The rule is being amended to make formatting and grammatical changes throughout the rule for clarity; clarify that a fee shall be set by the licensor for a public swimming pool license and other types of fees, such as government operated pools; and remove the ability of a licensor to allow a longer turnover rate for a swimming pool that is consistently in violation of the water circulation, water quality, or in the event of a water circulation system or its parts are replaced.

3701-31-04 – The rule sets forth the responsibilities of the licensee (pool operators). These requirements include, but are not limited to, making application for and maintaining a license; allowing the licensor access to the pool and associated area and equipment for inspecting purposes maintaining the pool to set safety and sanitation standards; and ensuring that personnel are appropriately trained. The rule is being amended to require the operator to have a person present at the swimming pool to prevent unauthorized access to the pool if a perimeter barrier is not maintained in accordance to established requirements or be deemed to have posed an imminent health hazard. The rule is further amended to require training approved by the director, within three years of the effective date of this rule, for an authorized representative of the pool; to add daily testing of disinfectant, chlorine, and pH to the water quality information that is to be recorded; to require that all injuries be reported to the director on a prescribed form within seventy-two hours; and eliminate the use of cyanuric acid and stabilized chlorine at indoor pools four years from the effective date of the rule amendments. Finally, general formatting and grammatical changes have been made throughout the rule for clarity.

3701-31-05 – The rule sets forth the requirements pertaining to the submission of public pool, public spa, and special use pool plans to the Department of Health for review and approval prior to construction or substantial alteration. These requirements include, but are not limited to, fees for plan review set by size and type, documents required, drawings, and supplemental information determined necessary for a decision to be made. The Director is required to issue a letter of approval, granting of a waiver or variance, an extension of an approval plan approval period, or disapproval. The rule also requires a person requesting construction approval to contact the director and the director shall have two working days from the time of notification of the request to verify the construction or alteration. The rule is being amended to remove outdated references to past fee structures; remove a definition of “substantial alteration” that has been moved to rule 3701-31-01; allow for electronic transmission of documents and payment of fees; and to make general formatting and grammatical changes throughout the rule for clarity.

3701-31-05.1 – The rule sets forth the design requirements for public swimming pools. These requirements include, but are not limited to, a design that ensures the circulation of water, the water supply to the pool must meet established private or public water supply requirements, drainage, and filtration systems. The rule is being amended to specify that filters, feeders, chemical controllers, and skimmers shall be approved and listed by the National Sanitation Foundation or another organization that approves public pool equipment. Additional amendments have been made to update references to the American National Standards Institute/Association of Pool and Spa Professionals guidance documents; provide clarifying language for underwater seats, benches, and shelves; and clarify perimeter fencing requirements. Finally, make grammar and formatting changes throughout the rule to provide consistency and clarity.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

Section 3749.02 Ohio Revised Code

3. Do the regulations implement a federal requirement? Are the proposed regulations being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Not applicable

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules implement the statutory requirements of section 3749. Of the Revised Code and are necessary to ensure the health and safety of Ohio’s citizens. Public pools, public spas, and special use pools present a number of environmental concerns, including sanitation, physical safety, and maintenance. These regulations are necessary to reduce transmission of disease and to protect the health and safety of the public.

6. How will the Agency measure the success of these regulations in terms of outputs and/or outcomes?

The success of this regulation will be measured by a reduction in pool related injuries and fatalities as well as disease outbreaks and will be ensured by the routine inspection practices of the licensors.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulations.

The following is a list of individuals contacted for development and review of the draft regulations:

Amanda Sines, Ann Hollingsworth, Anthony Imbody, Art Daniels, Barry Grisez, Bob Romeyn, Brian J. Miller, Charles Kunsman, Charlie Lambert, Chip Hanawalt, Corey Schwab, Mary Clifton, Duane Stansbury, Dustin Ratliff, Elissa James, Eric Zgodzinski, Selina Jackson, Jeff Blume, Robert Jennings, Jerry Bingham, Jim Bagent, Joe Harrod, Joe Savarise, Joshua Sanders, Kelly Thiel, Kevin Clause, Laura Swanson, Michael Evans, Mike Vartorella, Pam Bauer, Pat Brennan, Paul Scaglione, Gene Phillips, Mahjabeen Qadir, Rich Zingale, Eric Roberts, Steve Truax, Tim Flury, Tim Patterson, Todd Whitlock, Tyler Pigman, William Plessinger, Zachary Skinner.

These individuals were initially contacted and placed on an email distribution list for further communications. The stake holders were emailed notices of upcoming meeting, copies of working documents for review, proposals for discussion at committee meetings. With the exception of Pat Brennan (who was added to the list on October 15, 2015) and Kevin Clause (who was added on October 28, 2015), the individuals named above have been involved and notified of the meeting dates listed below.

August 26, 2014; September 16, 2014; October 14, 2014; November 18, 2014; January 13, 2015; February 10, 2015; March, 6, 2015; March 25, 2015; April 13, 2015; October 14, 2015; October 19, 2015; October 30, 2015; November 12, 2015; December 15, 2016

8. What input was provided by the stakeholders, and how did that input affect the draft regulations being proposed by the Agency?

3701-31-01 – Revisions have been made to the definitions section for clarification based on stakeholder recommendations by the entire committee.

3701-31-02 – The additions to this rule were requested by Local Health Departments on the committee to be better informed of project status. The entire committee requested the addition of the approved trainings so operators and regulators can easily reference all training opportunities. Date related content was removed as it was obsolete.

3701-31-03 – Changes were made by committee recommendation for clarification purposes. The change to the fee categories were supported by local health as this will simplify the issuance of licenses as well as reduce the time need to calculate fees associated conducting the program.

3701-31-04 – Changes to the section were made to reflect national performance standards published by the Centers for Disease Control within the Model Aquatic Health Code (MAHC). The Model Aquatic Health Code (MAHC) is a voluntary guidance document based on science and best practices that can help local and state authorities and the aquatics sector make swimming and other water activities healthier and safer. States and localities can use the MAHC to create or update existing pool codes to reduce risk for outbreaks, drowning, and pool-chemical injuries. The MAHC guidelines address the design, construction, operation, maintenance, policies, and management of public aquatic facilities. It was noted that the Ohio Campground Owners Association originally had reservations about some of the changes as they relate to the facility perimeter barriers although national statistics verify that properly installed and maintained barriers are a key tool in the prevention of accidental drowning nationwide. The presented language was agreed to be sufficient by all representatives through discussion and compromise.

3701-31-05.1 - Changes to this section are related to construction standards with many of them being requested by industry to better clarify design standards. Changes to design standards were brought forward by the industry that reflect nationwide standards and to better match other regulating entities to help eliminate conflicts and discrepancies between different codes. These members were the driving force for much of the change reflected.

9. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

ODH is required to implement and monitor compliance with the licensing provisions mandated by ORC section 3749. and these rules reflect ODH's experience with regulating public pools, spas, and special use pools as well as the direct input of stakeholder.

10. Did the Agency specifically consider performance-based regulations? Please explain.

Performance-based regulations were not deemed appropriate for these regulations. ODH rules contain both structural (process) and performance (outcome) based requirements. When there is a bad outcome, ODH can then look to ensure that the requirements of the rule were implemented properly and can identify break-downs in the process through surveys to provide opportunities for the operators to correct their identified deficiencies and meet the quality and safety standards required by statute.

11. What measures did the Agency take to ensure that these regulations do not duplicate an existing Ohio regulation?

A thorough review of the Ohio Administrative Code and the Ohio Revised Code was conducted to ensure that no duplication would exist.

12. Please describe the Agency's plan for implementation of these regulations, including any measures to ensure that the regulations are applied consistently and predictably for the regulated community.

Ongoing training is provided to ODH staff and will be provided through regional meetings and survey of local health districts throughout the state to ensure the equitable implementation of these regulatory requirements. The ultimate success of this Chapter will be measured by the prevention of drowning related deaths and a reduction in disease transmission and outbreaks ensured through the consistent inspection practices by the licensors. Further evidence of success would be represented by the number of complaints received and the number of validated complaint surveys. ODH maintains a database that enables staff to track violations and target corrective measures appropriately.

Adverse Impact to Business

13. Provide a summary of the estimated cost of compliance with these rules. Specifically, please do the following:

a. Identify the scope of the impacted business community:

All public swimming pools, public spas, and special use pools that meet the definitions as provided in this rule set.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time
time
For compliance); and**

An adverse impact was not identified for every rule in this Chapter. In general, these rules do not represent costs that are independent of those already obligated to pool and spa providers by virtue of their participation in the industry, including property, water systems, and construction. The costs associated with these rules include, but are not limited to, license fees, inspection fees, and plan review fees. Additional costs are associated with personnel, training, equipment, water testing, facility maintenance, record keeping, and the reading of these rules. Any person can own or operate a public pool or spa and it does not require specific education, training, or occupational licensure that would establish a wage and hour estimation.

c. Quantify the expected adverse impact from the regulation:

Fee Category	Current Fee
Primary License	\$80
Additional License	\$55
Plan Review for pools <2,000 sq. ft.	\$1,662
Plan Review for pools ≥2,000 sq. ft.	\$2,578
Plan Review for Special Features	\$1,662
Plan Review for Projects with a total cost <\$5,000	\$832
Equipment Replacement Notification	\$50
Construction Inspections not included with plan review	\$373
Substantial alteration plan verification	\$50

Time to read the rules: 30 minutes

Cost of engineer to design pool – *Engineers all other -\$40.30 per hour dependent on size of pool and features

Time to complete application and compile required documents for plan review and approval will vary dependent upon the design, size, and whether there are special features of the pool or spa:

- Plan review application and data sheets are both two pages long and may take approximately one hour to complete.
- The equipment replacement notification is two pages long and may take approximately 30 minutes to complete; this form is required when equipment is being replaced or installed that was not part of an original plan review.

Time necessary to conduct required training of personnel is dependent on the size and type of pool/spa

Time necessary to maintain records

Time necessary to conduct periodic water quality testing – 10 minutes

Time to report injuries on the prescribed form within seventy-two hours to the Director – 10 minutes: can be done via email.

Costs associated with automatic chemical controller -\$2500- \$3500 dependent on size of pool

Costs associated with test kit – \$25 - \$50 depending on type

Costs associated with employing a lifeguard where required – minimum wage for allotted hours of operation and numbers are dependent on the size of pool

Costs associated with elevated lifeguard chairs where required - \$200

Costs associated with signage – signs do not have to be of a specific material may be self-printed

*All figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2015, using the codes for Engineers, All Others (17-2199).

14. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

ODH is required by Chapter 3749. of the Revised Code to maintain state requirements pertaining to swimming pools, public spas, and special use pools in Ohio. Furthermore, drowning is the number one cause of accidental death in children under the age of four and the number two cause of accidental death in children under the age of ten. Recreational water illness poses a serious public health threat and has been significantly increasing in incidence over the last decade. Regulations are necessary in order to ensure the health and safety of Ohio's citizens. The incorporation of components of the national Model Aquatic Health Code and state regulatory requirements enables ODH and the local health districts to utilize public health resources to support

recreational water safety to effectively decrease preventable illness, injury, and deaths associated with recreational water facilities.

Regulatory Flexibility

15. Does the regulation provide any exemptions or alternative means of compliance for small businesses?

Yes. Existing pools can request a variance for any of the operation requirement stated in 3701-31-04. The Local Boards of Health, with the approval of the director, may grant a variance from the requirements of rule 3701-31-04 of the Administrative Code that will not be contrary to the public interest, where a licensee shows to the satisfaction of the licensor that there is good cause for the issuance of a variance and that the variance will not result in any adverse effect on the public health and safety.

Pools that are being newly constructed or substantially altered may request a variance from any of the requirements of rules 3701-31-01 to 3701-31-05.1 of the Administrative Code that are considered during plan approval. The director may grant such a variance if it is not contrary to Chapter 3749. of the Revised Code and if the applicant for the variance has shown to the satisfaction of the director that there is good cause for the variance and that the variance will not result in any adverse effect on the public health or safety.

16. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODH's Regulatory Ombudsman has set forth a policy for ODH to follow regarding the waiver of fines and penalties for paperwork violations and first-time offenders. ODH implements this policy as part of its business process. Information regarding this policy can be found online at: <http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>.

17. What resources are available to assist small businesses with compliance of the regulation?

The technical staff at the Ohio Department of Health Recreation Programs is available to assist any business or government agency with compliance of Ohio Administrative Code 3707-31. Information is available at:

<http://www.odh.ohio.gov/odhprograms/eh/swim/swim1.aspx>