

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH**

**REGARDING THE CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2, CHAPTER 31B
PUBLIC POOLS**

The California Department of Public Health (Department) is authorized to establish public swimming pool regulations pursuant to Health and Safety Code Sections 116025 – 116068. The existing public swimming pool regulations in Chapter 31 B, Part 2, Title 24, California Code of Regulations (California Building Standards Code), establish minimum building and construction standards for public swimming pools.

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS:

This public pool regulation proposal seeks to correct editorial inaccuracies, clarify existing requirements and update references to current industry performance standards.

During the adoption process for these proposed public pool regulations two public comment periods were held. The initial 45-day public comment period was from April 25 to June 9, 2014. At the end of this initial 45-day public comment period it was determined that nonsubstantive revisions would be made based on comments received. A 15-day public comment period was then held from June 11 to June 26, 2014 to present the revisions to the public.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The California Department of Public Health has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

The following is a summary of the comments received during the initial 45-day and 15-day comment period.

45-Day Comment Period

COMMENTER: Debra Carlton, Senior Vice President Public Affairs, California Apartment Association.

and

Robert E. Raymer, PE, Senior Engineer/Technical Director, California Building Industry Association. May 14, 2014

COMMENT: The commenter requested on behalf of the California Apartment Association (CAA) and the California Building Industry Association (CBIA) that a modification be made to the CDPH's 45-Day Express Terms. Specifically, to include an informative "NOTE" on the cover-page to Chapter 31B that would clarify the application (or lack thereof) of these building standards to existing public pools.

RESPONSE: CDPH repealed the proposed NOTE in Section 3120B that applied to required signs at a public pool and provided an informative NOTE in the front of Chapter 31B under the "SCOPE", Section 3101B to clarify to the code reader that the existing law limits application of all requirements in Chapter 31B. The repealed NOTE to Section 3120B and the proposed NOTE to section 3101B was included in the 15-day language.

COMMENT: The commenter stated that this clarification was suggested at the March 18th Building Standards Commission Ad Hoc Code Advisory Committee.

RESPONSE: In the 45 day language CDPH included an informative NOTE in Section 3120B to accommodate the Committees suggestion. After it was brought to CDPH's attention by the commenter that the proposed informative NOTE in Section 3120B was too narrow in its application and inconsistent with the Ad Hoc Code Advisory Committee suggestion, CDPH moved the NOTE from Section 3120B to the Scope Section 3101B to inform the code reader that the existing law limits application of the requirements specified in the entire Chapter 31B.

COMMENT: The commenter provided justification as to why the placement of such a NOTE in the front of Chapter 31 B is more appropriate than where a similar NOTE was proposed applicable only to Section 3120 B in the 45 day express terms.

RESPONSE: CDPH agrees with the commenter and accommodated this comment in the 15-day language by moving the note from Section 3120B to Section 3101B.

COMMENT: The commenter stated that the current note lacks clarity needed and claims that it is highly unlikely that most code users involved in pool construction will be familiar with or fully understand the content of the Health and Safety Code 116050.

RESPONSE: CDPH edited the language in the NOTE after it was moved from Section 3120B to Section 3101B in the 15-day language in an attempt to provide clarity and consistency with existing statutory language. The reference to Health and Safety Code 116050 remains.

COMMENT: The commenter requested that language in the NOTE be easy for the code-user to understand and offered the following suggested language for inclusion in the NOTE.

"Note: Building standards contained herein do not retroactively apply to any public pool that has been constructed prior to the effective date of these regulations. For further clarity on the application of building standards to new and existing public pools and related facilities, please refer to Health & Safety Code Section 18938.5 and 116050".

In addition, the commenter requested on behalf of the CBIA and CAA that CDPH and the Building Standards Commission consider alternative language that is more informative and provides clear guidance that CDPH's public pool building standards "do not retroactively" to existing pools and ancillary facilities.

RESPONSE: The language suggested by the commenter is not entirely accurate with respect to the language in the Health and Safety Code section 116050. However, the suggested language was used as a basis for the proposed language in the NOTE to section 3101B. CDPH feels that

the language in Health and Safety Code is 116050 is clear and easy for the code reader to understand.

COMMENT: The commenter also described a problem that resulted after revisions to Chapter 31B took effect in September 2012 when local health officials applied the signage revisions to all public swimming pools regardless of when those pools were constructed.

RESPONSE: This comment is irrelevant as it speaks to revisions to Chapter 31B that took effect in September of 2012.

15-Day Comment Period

**COMMENTER: Jim Nichol, SEHS, REHS, San Bernardino Department of Public Health.
June 19, 2014**

COMMENT: I agree the change detailed in the attachment is an improvement.

RESPONSE: CDPH interprets this comment in that it applies to the inclusion of the NOTE in Section 3101B included in the 15-day language. CDPH acknowledges the comment and thanks the commenter.

COMMENT: I am wondering why the initial change was requested in the first place.

RESPONSE: CDPH interprets this comment in that it applies to the inclusion of the NOTE in Section 3101B in the 15-day language. The note is included as a suggestion by the Building Standards Commission Ad Hoc Code Advisory Committee in an effort to inform the code reader that the existing law limits application of the requirements specified in the entire Chapter 31B

COMMENT: I believe both TACs, in the majority; felt that the new sign requirement should apply to in ALL pools, not just on new construction. It makes no sense to require new signage only on new pools. I believe the intent of the new signs was to apply to ALL pools. I would rather have seen a move to make the signage retroactive in code, rather than justify the opposite.

RESPONSE: Despite what the majority of the TACs and the commenter feel or what they believed was the intent with respect to signage requirements at public swimming pools in Section 3120B, existing law in Sections 116050 and 18938.5 of the Health and Safety Code limits application of the requirements specified in Chapter 31B.

COMMENT: My preference would be to remove any reference to the Health and Safety Code. I believe it only causes confusion.

RESPONSE: CDPH interprets this comment in that it applies to the inclusion of the NOTE in Section 3101B in the 15-day language. CDPH disagrees with the commenter and believes that it is important to point the code reader in the direction of existing law that limits the application of the requirements specified in the entire Chapter 31B.

**COMMENTER: William Harvey, Oreq Corporation.
June 20, 2014**

COMMENT: The commenter expressed concerns over the general signage requirements in Section 3120B.1.

RESPONSE: These comments are irrelevant as they are not directed at the proposed language modifications in the 15-day language.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

CDPH has determined that no alternatives considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. This determination is based in part that there are not alternatives that are similar in breadth and scope to the public pool construction standards in the State of California.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

No alternatives were identified to lessen the adverse impact on small businesses since no adverse impact is anticipated from these changes including the benefits of the proposed regulation per section 11346.5 (a)(3).