

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (DOH), pursuant to the authority set forth in section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, as amended, effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code § 2-1801.04), section 4902 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code §7-731 (2002 Supp.)), and Mayor's Order 2001-111 dated August 6, 2001, hereby gives notice of his intent to adopt amendments to Chapter 32 of Title 16 of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the proposed rulemaking is to establish a Civil Infractions Schedule of Fines for the DOH, Environmental Health Administration's Public Swimming Pool and Spa regulations found at 22 DCMR Chapter 64. Further, these rules shall not become effective until approved by the Council of the District of Columbia, or sixty (60) days after submission, if the Council has not disapproved the regulations.

16 DCMR Chapter 3216 is amended by inserting new sections 3216.9 - 3216.11 to read as follows:

**3216 DEPARTMENT OF HEALTH- FOOD PROTECTION
DIVISION INFRACTIONS**

3216.9 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22 DCMR §6400.2 (failure to submit construction documents for approval before constructing, installing or enlarging a swimming pool or appurtenances thereto);
- (b) 22 DCMR §6400.5 (a) (failure to obtain a license to operate a swimming pool or spa);
- (c) 22 DCMR §6400.5 (d) (failure to obtain a pesticide operator or pesticide applicator license, permit or certificate before operating a swimming pool or spa);
- (d) 22 DCMR §6400.7 (employing a person at a swimming pool or spa having a disease in a stage which is communicable or likely to become so);
- (e) 22 DCMR §6400.11 (failure to secure an unopened pool by a locked gate, fence or door);

- (f) 22 DCMR §6401.1 (failure to have a swimming pool or spa operator on duty at the facility or able to reach the facility within thirty (30) minutes);
- (g) 22 DCMR §6401.2 (failure to have a valid swimming pool or spa operator permit before serving as a swimming pool or spa operator);
- (h) 22 DCMR §6402.1 (failure to provide an adequate number of lifeguards);
- (i) 22 DCMR §6402.4 (failure to follow an approved Swimming Pool Child Safety Plan);
- (j) 22 DCMR §6402.5 (failure to follow an approved Spa Pool Child Safety Plan);
- (k) 22 DCMR §6402.11 (failure to keep bathers out of the water during the lifeguard's absence);
- (l) 22 DCMR §6403.2 (a)-(b) (failure to post required warning signs for bathers);
- (m) 22 DCMR §6408.17 (operating a swimming pool that is contaminated);
- (n) 22 DCMR §6411.3 (operating a swimming pool or spa that has not passed inspection by the Department); or
- (o) 22 DCMR §6411.6 (operating a swimming pool or spa for which the operating license has been summarily suspended).

3216.10 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 22 DCMR §6401.4 (failure to have swimming pool or spa operator permits readily accessible to the Department);
- (b) 22 DCMR §6402.13 (failure to have evidence of the on-duty lifeguard's qualifications readily accessible to the Department);
- (c) 22 DCMR §6403.1 (a)-(h) (failure to post required rules for admission to the swimming pool);
- (d) 22 DCMR §6403.3 (a)-(j) (failure to post required rules for admission to the spa);

- (e) 22 DCMR §6403.5 (failure to provide a clock or other time-keeping device for bathers using a spa);
- (f) 22 DCMR §6404.3 (failure to provide minimum bather preparation facilities);
- (g) 22 DCMR §6404.4 (failure to provide appropriate water temperature at showerheads);
- (h) 22 DCMR §6404.5 (failure to provide water for cleaning or personal hygiene from the District of Columbia public water system);
- (i) 22 DCMR §6404.6 (failure to provide soap in a non-glass dispenser unit);
- (j) 22 DCMR §6404.7 (failure to provide an unbreakable mirror over each lavatory or a supply of toilet tissue at each toilet);
- (k) 22 DCMR §6404.9 (failure to provide the required feminine hygiene products);
- (l) 22 DCMR §6404.10 (failure to provide clean and dry bathing suits and towels to bathers that are stored in a sanitary manner);
- (m) 22 DCMR §6405.1 (failure to separate eating and drinking areas from the swimming pool or spa);
- (n) 22 DCMR §6405.2 (failure to provide food and beverages in nonbreakable containers);
- (o) 22 DCMR §6405.3 (failure to provide for adequate garbage and refuse collection at a facility housing a swimming pool or spa);
- (p) 22 DCMR §6406.1 (a)-(q) (failure to meet minimum equipment and facility safety standards);
- (q) 22 DCMR § 6407.1 (a)-(h) (failure to have the required first aid and lifesaving equipment available on the premises);
- (r) 22 DCMR §6408.2 (failure to maintain adequate turnover of the swimming pool or spa waters);
- (s) 22 DCMR §6408.4 (failure to maintain adequate filtration of the swimming pool or spa waters);

- (t) 22 DCMR §6408.5 (failure to maintain adequate overflow facilities for the swimming pool or spa);
- (u) 22 DCMR §6408.6 (failure to maintain adequate swimming pool or spa water temperatures);
- (v) 22 DCMR §6408.7 (failure to maintain sufficient clarity of the swimming pool or spa waters);
- (w) 22 DCMR §6408.8 (failure to prevent the presence of sunken debris, algae dirt, filter media or filter aids in the swimming pool or spa);
- (x) 22 DCMR §6408.10 (failure to maintain sufficient acidity/alkalinity of the swimming pool or spa waters);
- (y) 22 DCMR §6408.11 (failure to use disinfectant and chemical feeders at swimming pools or spas);
- (z) 22 DCMR §6408.12 (use of products in a swimming pool or spa that are not approved by the United States EPA or the Mayor);
- (aa) 22 DCMR §6408.13 (failure to use a pesticide in a manner that is consistent with the labeling of the pesticide or consistent with the restrictions imposed on the use of the pesticide by the United States EPA or the Mayor);
- (bb) 22 DCMR §6408.15 (failure to maintain the appropriate residuals for cyanuric acid, if used);
- (cc) 22 DCMR §6408.18 (failure to close a facility for a minimum of twenty (20) minutes to allow for proper disinfection after fecal matter is introduced into the swimming pool or spa);
- (dd) 22 DCMR §6409.1 (failure to use a chemical test kit);
- (ee) 22 DCMR §6409.2 (a)-(o) (failure to record required information on operational logs);
- (ff) 22 DCMR §6409.6 (failure to report to the Director, within three (3) days of the incident, injury at a swimming pool or spa that results in death or that requires resuscitation or admission to a hospital);
- (gg) 22 DCMR §6409.7 (failure to report waterborne illness contracted at a swimming pool or spa to the Director within

twenty-four (24) hours of management's knowledge of the incident);

- (hh) 22 DCMR §6410.1 (making an unapproved direct mechanical connection between the potable water supply and the swimming pool or spa that is not protected against backflow and back-siphonage in a manner approved by the Mayor); or
- (ii) 22 DCMR §6410.3 (failure to discharge backwash or drainage waters of a swimming pool or spa into a sanitary sewer through an approved air gap or other means approved by the Mayor).

3216.11 Violation of any provision of the swimming pools and spas regulations, 22 DCMR Chapter 64, which provision or rule is not cited elsewhere in this section, shall be a Class 4 infraction.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication in the D.C. Register. Comments should be filed with the Department of Health, Environmental Health Administration, Office of Enforcement, Compliance & Environmental Justice, 51 N Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of this proposed rulemaking may be obtained from the Office of Enforcement, Compliance and Environmental Justice at the address stated above.

