

# Section 1

Commissioner's letter

Any further correspondence

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH



Jewel Mullen, M.D., M.P.H., M.P.A.  
Commissioner

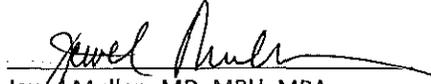
Dannel P. Malloy  
Governor  
Nancy Wyman  
Lt. Governor

Office of the Commissioner

I, Jewel Mullen, MD, MPH, MPA, Commissioner of the Department of Public Health, an Agency of the State of Connecticut, hereby certify that:

- (1) On June 16, 2009, the Agency gave notice by mail to each joint standing committee of the general assembly having cognizance of the subject matter of the proposed regulations.
- (2) On July 7, 2009, the Agency gave notice in the Connecticut Law Journal of its intention to amend regulations concerning *Public Swimming Areas*. A true copy of the notice is attached in section 6.
- (3) On September 5, 2013, the Agency gave a second notice on the Regulations of Connecticut State Agencies website of its intention to amend regulations concerning *Public Swimming Areas*. A true copy of the notice is attached in section 6.
- (3) The Agency gave notice by mail to those persons who requested advance notice of regulation-making proceedings.
- (4) The Agency provided a copy of the proposed regulations to those persons requesting it.
- (5) Following publication of the notice in the Connecticut Law Journal, the Agency prepared a fiscal note, including an estimate of the cost or of the revenue impact on the state or any municipality of the state. A true copy of the fiscal note is attached in section 4.
- (6) All interested persons were given until 4:30 p.m., October 15, 2013 to submit data, views or arguments concerning the proposed regulations and to inspect and copy the fiscal note referred to in paragraph 5.
- (7) On November 15, 2013, the Agency mailed to all persons who submitted data, views or arguments in writing, and to all persons who made statements or oral argument at the hearing held and who requested notification, notice that the Agency has decided to take action on the proposed regulation, and that it has made available for copying and inspection: (a) the final wording of the proposed regulation; (b) a statement of the principal reasons in support of its intended action; and, (c) a statement of the principal considerations in opposition to its intended action as urged in written or oral comments on the proposed regulation and its reasons for rejecting such considerations.
- (8) On January 2, 2014, the Agency gave notice electronically to each joint standing committee of the general assembly having cognizance of the subject matter of the proposed regulations.
- (9) On January 2, 2014, the Agency gave notice electronically to the Secretary of State for posting on the Regulations of Connecticut State Agencies website of its intention to take action on the proposed regulation.

1/9/2014  
Date

  
Jewel Mullen, MD, MPH, MPA  
Commissioner



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# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH  
Office of Government Relations

## Notice of Decision to Take Action on Proposed Regulations

In accordance with the provisions of Section 4-168(d) of the *General Statutes of the State of Connecticut (CGS)*, as amended, the **Department of Public Health** hereby gives notice that it has decided to proceed with proposed regulations concerning Public Swimming Areas. Notice of intent to adopt, amend, or repeal these regulations was posted to the regulations webpage of the Secretary of the State on September 5, 2013.

As required by the Freedom of Information Act and CGS Section 4-168(d), the following items are available for copying at the address specified below, and, if applicable, by the alternate methods detailed:

- (A) The final wording of the proposed regulation;
- (B) A statement of the principal reasons in support of this intended action;
- (C) A statement of the principal considerations in opposition to this intended action;
- (D) A statement of the agency's reasons for accepting or rejecting such considerations.

Copies of the above information can be obtained by contacting the Department at:

Suzanne Blancaflor, Regulatory Services Branch  
Connecticut Department of Public Health  
P.O. Box 340308  
410 Capitol Avenue, MS#  
Hartford, CT 06106-0308  
e-mail: [Suzanne.blancaflor@ct.gov](mailto:Suzanne.blancaflor@ct.gov)



Phone: (860) 509-7269, Fax: (860) 509-7100  
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# The Connecticut General Assembly

## Legislative Regulation Review Committee

Senator Joan V. Hartley  
Co-Chair



Representative T.R. Rowe  
Co-Chair

June 24, 2010

Subject: Proposed Regulation 2010-021

J. Robert Galvin, Commissioner  
Department of Public Health  
410 Capitol Avenue/MS#13COM  
CT, 06106

Dear Commissioner Galvin;

### *Proposed Regulation*

2010-021 Department of Public Health "PUBLIC SWIMMING AREAS" Regulations of Connecticut State Agencies are amended repealing Sections 19-13-B34 & 19-13-B36 and Adding Section 19a-13-B36 (CLJ Notice Date: 7/7/2009 A.G. Approval Date 4/8/2010 - Bearing a Deadline Date of 7/9/2010).

The above captioned regulation was **Rejected Without Prejudice** by the Legislative Regulation Review Committee on 6/23/2010. The action was based on the recommendations of the Legislative Commissioners' Office. The necessary corrections are listed on the attached pages.

The regulation should be corrected and then resubmitted to the Legislative Regulation Review Committee with a summary of the changes listed by paragraph. If this is a mandated regulation then the regulation must be resubmitted to this office no later than the 1<sup>st</sup> Tuesday of the second month following the regulation's rejection.

Sincerely,

A handwritten signature in cursive script that reads 'Pamela B. Booth'.

Pamela B. Booth, Administrator  
Legislative Regulation Review Committee

Enclosures (2)

# The Connecticut General Assembly

## Legislative Commissioners' Office

Max S. Case  
Commissioner  
Edwin J. Maley, Jr.  
Commissioner

Larry G. J. Shapiro  
Director



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## Memorandum

**To:** Legislative Regulation Review Committee  
**From:** Legislative Commissioners' Office  
**Committee Meeting Date:** June 22, 2010

<b>Regulation No:</b>	2010-21
<b>Agency:</b>	Department of Public Health
<b>Subject Matter:</b>	Public Swimming Areas
<b>Statutory Authority:</b> (copy attached)	19a-36

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

### For the Committee's Information:

#### Substantive Concerns:

1. On page 1, the introductory language is incorrect and confusing. It appears that the department's intent is to repeal section 19-13-B34 in its entirety and replace all of the language currently found in section 19-13-B36 with new language. However, the intent is not entirely clear because (1) there is no bracketing or underscoring used to reflect changes to existing language, and (2) the replacement section has been designated as section *19a-13-B36 (emphasis added)* as opposed to section 19-13-B36. It is unlikely that the

department intends to designate the new language in this regulation as section 19a-13-B36 because the surrounding sections of those regulations concern licensure of health care professionals and are completely unrelated to regulation of public swimming areas. A more likely scenario is that the department intended to replace all of the existing language in section 19-13-B36 with this new language. Under this scenario, the introductory language should read:

"Section 1. Section 19-13-B36 of the Regulations of Connecticut State Agencies is amended to read as follows:" Thereafter, the department should then bracket all of the existing text in section 19-13-B36 and show all new language as underscored.

A section that repeals an entire section of existing regulation is always the last section of the proposed regulation. Thus, in these regulations, the repeal of section 19-13-B34 should appear as the last section of regulations and would read:

"Sec. \_\_\_\_\_. Section 19-13-B34 of the Regulations of Connecticut State Agencies is repealed."

In addition, because the department is repealing an existing section of regulation, the department needs to complete a search of all of the Regulations of Connecticut State Agencies to ensure that all internal references to the repealed section are corrected and then included with the submission of the regulations to the Legislative Regulation Review Committee. There are five references to section 19-13-B34 in existing regulations; each of these should be in a separate section showing the necessary correction needed, if said section is to be repealed.

2. On page 1, the language appearing in section 19a-13-B36(b) is problematic for a number of reasons. (1) The first sentence begins with the phrase, "No new public swimming area shall be constructed..." This sentence is drafted in the passive voice and fails to identify the actor who is prohibited from engaging in such construction. (2) The use of the word "new" is subjective and requires further clarification. As used in the sentence, "new" presumably refers to a public swimming area constructed on and after the date these regulations are filed with the Secretary of State. In such a case there is no need to include an effective date and thus the word "new" should be eliminated. (3) As defined in these regulations, "public swimming area" includes ponds, lakes, streams, tidal water or other bodies of fresh or salt water used for swimming. It is difficult to reconcile the use of the word "constructed" with the defined term of "public swimming area"; *i.e.* how does one construct a naturally occurring body of water that is then designated as a public swimming area? (4) The term "director of health", which is defined elsewhere in the public health code, should be defined in these regulations for clarity. (See for example, sections 19-13-B42(a)(5) and 19-13-B48(a)(4) of the Regulations of Connecticut State Agencies where "director of health" is defined as "the director of a local health department or district health department approved by the commissioner as specified in Connecticut General Statutes sections 19a-200 and 19a-242.")

Taking all of these concerns into consideration, a revised version of this subsection might read:

"(b) **General requirements.** No city, town, borough, institution, person, firm corporation or other entity shall designate or construct a public swimming area until the director of health for the municipality in which the public swimming area is located has approved the location for such public swimming area. A city, town, borough, institution, person, firm corporation or other entity operating or maintaining a public swimming area shall comply with the following requirements:"

3. On page 1, section 19a-13-B36(b)(6)(A) provides: "When no lifeguard service is provided, a notification system and a warning sign(s) shall be posted in a visible location(s)." The second sentence of this subparagraph describes the content requirements of the warning sign but makes no reference to the notification system. The requirement that both a notification system and warning signs be posted in a visible location is not readily understood. The inclusion of "notification system" and "warning signs" in this sentence suggests that the utilization of a notification system is a separate and distinct requirement from the posting of warning signs. However, upon reviewing the definition of "notification system", it is not clear how one would post such a system. In section 19a-13-B36(b)(8), the term "notification system" is again used but includes additional requirements concerning notice to the Department of Public Health that are not included in the defined term. The department should reconcile the definition with the use of the term in the regulations.

4. On page 1, section 19a-13-B36(b)(6)(C)(2) prescribes that "there shall be a raised stand for the lifeguard, so placed that all areas of the bathing area are visible for the lifeguard on duty." The reference to "bathing area" seems misplaced in this section and is in conflict with section 19a-13-36B(b)(9)(C) which specifically prohibits the washing of persons and articles. In all likelihood, the reference to "bathing area" should be replaced with "public swimming area"; further clarification from the department is required. Likewise, there are several references to "bather" or "bathers" in the regulation. In this regulation the term "bather" would not include one who takes a bath. The department should either include a definition of "bather" or substitute a term or terms that would be more readily understood in this context of this regulation, such as "swimmer" or "member of the public", as the case may be. In addition, although the regulation references the necessity for a raised stand, the section fails to specify a minimum height requirement for the raised stand. The lack of such a requirement in this section is in contrast to the requirement concerning lifeguard stands at public swimming pools. Section 19-13-B33b(c)(2) prescribes that "[w]hen a lifeguard is on duty, there shall be a raised stand 4 feet minimum height for the lifeguard, located at pool side adjacent to the deep end of the pool, so that all areas of the pool are visible to the lifeguard." Presumably the minimum height requirement for lifeguard stands at public swimming pools would be equally applicable to other public swimming areas; further clarification from the department is required.

### Technical Corrections:

1. On page 1, in section 19a-13-B36(a), "Definitions, as used in this section:" should be "Definitions. As used in this section:" for proper formatting and punctuation.
2. On page 1, in section 19a-13-B36(a)(1), the definition of "Public swimming area" should read: "Public swimming area" means a designated location, together with any buildings, toilet facilities, the water and the land area used in connection therewith, at a natural or artificial pond, lake, stream, tidal water or other body of fresh or salt water that is: (1) Used for swimming with the express or implied permission or consent of the owner or lessee of the premises, (2) operated for a fee or other consideration, or (3) openly advertised as a place for swimming. Public swimming area does not include any state owned or operated swimming areas." for clarity.
3. On page 1, section 19a-13-B36(a)(2) should be followed with a period to maintain consistency in the punctuation used in the subsection.
4. On page 1, in section 19a-13-B36(a)(3), "Notification System" should be "Notification system"; "with regards to" should be "regarding" and "of swimming area" should be "of a public swimming area" for proper form and added clarity.
5. On page 1, in section 19a-13-B36(b)(1), the first occurrence of "Director of Health" should be "director of health" for proper form and consistency, and "They" should be "Toilets" for clarity.
6. On page 1, in section 19a-13-B36(b)(5), the two occurrences of "must" should be "shall" in accordance with the committee's directive regarding mandates; "(A)" should be inserted before the first occurrence of "For diving boards..." for proper form; clause indicators "(A), (B) and (C)" should be "(i), (ii) and (iii)" for proper form; the second occurrence of "For diving board" should be "(B) For diving boards" for proper form; and "(D), (E) and (F)" should be "(i), (ii) and (iii)" for proper form. Finally, the hyphen in "one-meter" should be removed in both occurrences of the words, for proper form.
7. On page 1, in section 19a-13-B36(b)(6)(A), "a warning sign(s)" should be "one or more warning signs" and "a visible location(s)" should be "one or more visible locations" for proper form. Likewise, on page 2, in section 19a-13-B36(b)(7), "a visible location(s)" should be "one or more visible locations" for proper form.
8. On page 1, in section 19a-13-B36(b)(6)(C), "(1) the appropriate life saving equipment, included but not limited to a rescue tube, in which the lifeguard has been trained to use, shall be provided to each lifeguard on duty; and, (2)" should be "(i) Appropriate lifesaving equipment including, but not limited to, a rescue tube that the lifeguard has been trained to use, shall be provided to each lifeguard on duty; and (ii)" for proper form.
9. On page 2, in section 19a-13-B36(b)(8), "per the requirements of Section 19a-13-B36" should be "pursuant to the provisions of this subsection" for proper form and "follow the

following notification system" should be "comply with the following requirements" for clarity.

10. On page 2, in section 19a-13-B36(b)(8)(A), clause indicators "(1)" and "(2)" should be changed to "(i)" and "(ii)"; "a sign(s) in a conspicuous location(s)" should be "one or more signs in one or more conspicuous locations"; the comma after "and" should be removed; "notify the Department of Public Health, Recreation Program, of such closure within one business day" should be "notify the Department of Public Health Recreation Program of such closure, the reason for the closure and the swimming area affected by such closure not later than one business day following the date of such closure"; and "The following information concerning the closure shall be reported: reason for closure and affected swimming area." should be deleted.

11. On page 2, in section 19a-13-B36(b)(8)(B), clause indicators "(1)" and "(2)" should be changed to "(i)" and "(ii)"; the comma after "and" should be removed; and "notify the Department of Public Health, Recreation Program, within one business day of the reopening" should be "notify the Department of Public Health Recreation Program not later than one business day following the date of reopening", all for proper form and clarity.

12. On page 2, in section 19a-13-B36(b)(10)(A) and (B), "these regulations" should be "the provisions of this subsection" for proper form.

13. On page 2, in section 19a-13-B36(b)(10)(B), "warning(s)" should be "warnings" for proper form and consistency; and in section 19a-13-B36(b)(10)(B)(i), ", or;" should be "; or" and "condition(s)" should be "conditions" for proper form.

14. On page 2, in section 19a-13-B36(b)(10)(C)(i), "Section 19a-13-B36(b)(10)(B), or;" should be "this subdivision;" for proper form.

15. On page 2, in section 19a-13-B36(b)(10)(C)(ii), "when" should be deleted for proper form and ", or;" should be "; or" for proper form.

16. On page 2, in section 19a-13-B36(b)(10)(C)(iii), "when" should be deleted for proper form, and "in order" should be inserted after "transmitted" for clarity, and in the last sentence, "determined" should be "director of health determines that the" for clarity.

**Recommendation:**

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part <input checked="" type="checkbox"/> Rejection without prejudice</p>
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**Reviewed by:** William F. O'Shea / Anne Brenman Carroll

**Date:** June 8, 2010

**From 2010 Supplement.**

**Sec. 19a-36. (Formerly Sec. 19-13). Public Health Code. Fees. Swimming pools. Wells: Use, replacement and mitigation.** (a) The Commissioner of Public Health shall establish a Public Health Code and, from time to time, amend the same. The Public Health Code may provide for the preservation and improvement of the public health.

(1) Said code may include regulations pertaining to retail food establishments, including, but not limited to, food service establishments, catering food service establishments and itinerant food vending establishments and the required permitting from local health departments or districts to operate such establishments.

(2) Drainage and toilet systems to be installed in any house or building arranged or designed for human habitation, or field sanitation provided for agricultural workers or migratory farm laborers, shall conform to minimum requirements prescribed in said code.

(3) Said code may include regulations requiring toilets and handwashing facilities in large stores, as defined in such regulations, in shopping centers and in places dispensing food or drink for consumption on the premises, for the use of patrons of such establishments, except that the provisions of such regulations shall not apply to such establishments constructed or altered pursuant to plans and specifications approved or building permits issued prior to October 1, 1977.

(4) The provisions of such regulations (A) with respect to the requirement of employing a qualified food operator and any reporting requirements relative to such operator, shall not apply to an owner or operator of a soup kitchen who relies exclusively on services provided by volunteers, and (B) shall not prohibit the sale or distribution of food at a noncommercial function such as an educational, religious, political or charitable organization's bake sale or potluck supper provided the seller or person distributing such food maintains such food under the temperature, pH level and water activity level conditions that will inhibit the rapid and progressive growth of infectious or toxigenic microorganisms. For the purposes of this section, a "noncommercial function" means a function where food is sold or distributed by a person not regularly engaged in the for profit business of selling such food.

(5) The provisions of such regulations with respect to qualified food operators shall require that the contents of the test administered to qualified food operators include elements testing the qualified food operator's knowledge of food allergies.

(6) Each regulation adopted by the Commissioner of Public Health shall state the date on which it shall take effect, and a copy of the regulation, signed by the Commissioner of Public Health, shall be filed in the office of the Secretary of the State and a copy sent by

said commissioner to each director of health, and such regulation shall be published in such manner as the Commissioner of Public Health may determine.

(7) Any person who violates any provision of the Public Health Code shall be fined not more than one hundred dollars or imprisoned not more than three months, or both.

(b) Notwithstanding any regulations to the contrary, the Commissioner of Public Health shall charge the following fees for the following services: (1) Review of plans for each public swimming pool, seven hundred fifty dollars; (2) review of each resubmitted plan for each public swimming pool, two hundred fifty dollars; (3) inspection of each public swimming pool, two hundred dollars; (4) reinspection of each public swimming pool, one hundred fifty dollars; (5) review of each small flow plan for subsurface sewage disposal, two hundred dollars; and (6) review of each large flow plan for subsurface sewage disposal, six hundred twenty-five dollars.

(c) Notwithstanding subsection (a) of this section, regulations governing the safety of swimming pools shall not require fences around naturally formed ponds subsequently converted to swimming pool use, provided the converted ponds (1) retain sloping sides common to natural ponds and (2) are on property surrounded by a fence.

(d) The local director of health may authorize the use of an existing private well, consistent with all applicable sections of the regulations of Connecticut state agencies, the installation of a replacement well at a single-family residential premises on property whose boundary is located within two hundred feet of an approved community water supply system, measured along a street, alley or easement, where (1) a premises that is not connected to the public water supply may replace a well used for domestic purposes if water quality testing is performed at the time of the installation, and for at least every ten years thereafter, or for such time as requested by the local director of health, that demonstrates that the replacement well meets the water quality standards for private wells established in the Public Health Code, and provided there is no service to the premises by a public water supply, or (2) a premises served by a public water supply may utilize or replace an existing well or install a new well solely for irrigation purposes or other outdoor water uses provided such well is permanently and physically separated from the internal plumbing system of the premises and a reduced pressure device is installed to protect against a cross connection with the public water supply. Upon a determination by the local director of health that an irrigation well creates an unacceptable risk of injury to the health or safety of persons using the water, to the general public, or to any public water supply, the local director of health may issue an order requiring the immediate implementation of mitigation measures, up to and including permanent abandonment of the well, in accordance with the provisions of the Connecticut Well Drilling Code adopted pursuant to section 25-128. In the event a cross connection with the public water system is found, the

owner of the system may terminate service to the premises.