

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Swimming Pool and Bathing Beach

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

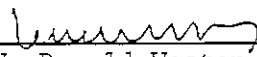
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-5-2(yy), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 22, 1992

  
\_\_\_\_\_  
W. Donald Weston, M.D.  
Acting Secretary

2.90

1 modified by the division of health to meet the objections of the  
2 legislative rule-making review committee and refiled in the state  
3 register on the sixteenth day of May, one thousand nine hundred  
4 ninety-one, relating to the division of health (emergency medical  
5 services), are authorized.

6 (xx) The legislative rules filed in the state register on the  
7 tenth day of September, one thousand nine hundred ninety-one,  
8 modified by the secretary of the department of health and human  
9 resources to meet the objections of the legislative rule-making  
10 review committee and refiled in the state register on the third  
11 day of January, one thousand nine hundred ninety-two, relating to  
12 the secretary of the department of health and human resources  
13 (retail food store sanitation), are authorized.

14 (yy) The Legislature hereby authorizes and directs the  
15 division of health to promulgate the legislative rule relating to  
16 swimming pools and bathing beaches, 64 CSR 16, effective the  
17 fifth day of May, one thousand nine hundred eighty, with the  
18 amendment set forth below:

19 On page five, section 11.3 by striking out the period  
20 following the word "beach" and adding the following: "Provided,  
21 That at hotels, motels, apartment complexes, or condominiums  
22 which have swimming pools of five feet or less in depth at the  
23 deepest point, employment of lifeguards is recommended but not  
24 mandatory, whether or not the establishment charges an admission  
25 fee (gate receipt, annual pass or membership dues). If no

1 lifeguards are employed, the management shall post a sign in a  
2 prominent location near the swimming pool stating "SWIM AT YOUR  
3 OWN RISK - ALL PERSONS UNDER THE AGE OF 14 MUST BE ACCOMPANIED BY  
4 AN ADULT."

5 §64-5-3. Health care cost review authority.

6 (a) The legislative rules filed in the state register on the  
7 twenty-first day of October, one thousand nine hundred  
8 eighty-three, relating to the health care cost review authority  
9 (limitation on hospital gross patient revenue), are authorized.

10 (b) The legislative rules filed in the state register on the  
11 nineteenth day of December, one thousand nine hundred  
12 eighty-three, relating to the health care cost review authority  
13 (freeze on hospital rates and granting temporary rate increases),  
14 are authorized.

15 (c) The legislative rules filed in the state register on the  
16 twenty-first day of December, one thousand nine hundred  
17 eighty-four, relating to the health care cost review authority  
18 (implementation of the utilization review and quality assurance  
19 program), are authorized.

20 (d) The legislative rules filed in the state register on the  
21 fifteenth day of August, one thousand nine hundred eighty-four,  
22 relating to the health care cost review authority (hospital cost  
23 containment methodology), are authorized.

24 (e) The legislative rules filed in the state register on the  
25 twenty-fifth day of November, one thousand nine hundred

TITLE 64  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

SERIES 16  
SWIMMING POOL AND BATHING BEACH

**§64-16-1. General.**

1.1. Scope. -- This rule establishes the rules and requirements for swimming pools and bathing beaches.

1.2. Authority. -- W. Va. Code §16-1-7.

1.3. Filing Date. -- April 22, 1992.

1.4. Effective Date. -- April 22, 1992.

**§64-16-2. Application and Enforcement.**

2.1. Application - This rule applies to the owners or operators of public swimming pools and bathing beaches.

2.2. Enforcement - The enforcement of this rule is vested with the director of the West Virginia department of health or his designee.

**§64-16-3. Definitions.**

3.1. Bathing Beach - A public bathing place located on a natural stream, pond or lake, or on an artificial pond or lake which is formed by impounding a natural water.

3.2. Director - Director of the state department of health or his designee.

3.3. Operator - A person responsible for the operation of a swimming pool, wading pool or bathing beach.

3.4. Permit - A written document issued by the director giving a designated person permission to construct, alter or renovate a swimming pool, wading pool or bathing beach or to operate such facility.

3.5. Person - Individual, city, town, partnership, association, company, corporation, governmental corporation, institution,

department, division, bureau, agency, apartment, motel, country club, camp, or any other entity recognized by law.

3.6. Swimming Pool - Any artificial basin, chamber, or tank used or intended to be used by the public for swimming, diving or recreational type bathing. It does not include baths where the main purpose is cleaning the body, nor individual type therapeutic tubs or tanks. Swimming pools are classified according to the following:

(a) Recirculation Type - A pool from which the water is withdrawn, treated, and returned to the pool.

(b) Fill and Draw Type - A pool to which water is added, used for a period, then discarded.

(c) Flow Through Type - A pool to which water is added continuously thereby replacing and causing water to overflow to waste.

3.7. Wading Pool - Any artificial basin, chamber, or tank constructed of an impervious material used or intended to be used by the public for wading, particularly by small children.

**§64-16-4. Prohibited Pools.**

4.1. On or after May 5, 1980, no swimming or wading pool of the fill and draw type shall be permitted.

4.2. On or after May 5, 1980, no swimming or wading pools of the flow through type shall be constructed unless an assured continuous flow of an approved water is available to fill the pool in eight (8) hours or less.

**§64-16-5. Submission of Plans and Specifications for Construction Permit.**

5.1. On or after May 5, 1980, no person shall establish, construct or renovate any swimming pool, wading pool or bathing beach within the State of West Virginia without first obtaining a construction permit from the director.

5.2. Four (4) sets of completed applications, plans and specifications shall be submitted to the director for approval at least forty-five (45) days prior to the date on which a construction permit from the director is desired.

5.3. An application for the permit shall be made to the director on forms prescribed by the director and shall be accompanied by, but not limited to, vicinity and site plans, detailed construction drawings, water source and treatment details, and specifications concerning filtration, chlorination, testing equipment and any other pertinent factors necessary for a complete operative system.

5.4. In addition to meeting all applicable requirements of this rule, all swimming pools and wading pools constructed or renovated after May 5, 1980, shall be in accordance with Design Standards for Swimming Pools, 64 CSR 25. 5.5. A permit may be suspended or revoked by the director for failure to comply with any provisions of the permit or this rule.

5.6. The director shall deny a permit if the information on the application form is incomplete, inaccurate, false or misleading, or indicates that the applicable provisions of this rule cannot be met.

#### **§64-16-6. Operating Permits.**

6.1. After May 5, 1980, no person directly or indirectly shall in any manner conduct, control, manage, maintain, or operate a swimming pool, wading pool or bathing beach in the State of West Virginia unless said person has in his possession a valid operating permit issued by the director to operate such specific swimming pool, wading pool or bathing beach.

6.2. An application for an operating permit to operate a swimming pool, wading pool or bathing beach shall be made in writing to the director on a form prescribed by the director signed by the applicant or his authorized agent,

and shall contain such information as may be requested by the director to enable him to determine that the facility and its operation is in compliance with the applicable provisions of this rule.

6.3. The application for an operating permit shall be made at least fifteen (15) days before the actual or proposed operation of said swimming pool, wading pool or bathing beach is to be effected.

6.4. The director shall deny a permit if the information on the application form is incomplete, inaccurate, false, or misleading, or indicates that the applicable provisions of this rule cannot be met.

6.5. Only persons who comply with the applicable provisions of this rule shall be entitled to receive and retain an operating permit.

6.6. Swimming pools, wading pools or bathing beaches in operation on May 5, 1980, and meeting all applicable prior regulations, shall be deemed to be eligible for a permit to operate, provided that any construction or installation taking place after May 5, 1980, shall be in compliance with all applicable provisions of this rule.

6.7. Swimming pools, wading pools or bathing beaches put into operation after May 5, 1980, shall comply in full with all applicable provisions of this rule.

6.8. Permits shall not be transferable or assignable and shall automatically become invalid upon a change of ownership or upon suspension or revocation.

6.9. In the event of an intended change or an actual change in ownership of a swimming pool, wading pool, or bathing beach, an application for an operating permit shall be made to the director by the person concerned at least fifteen (15) days before the proposed or actual change is effected.

6.10. A permit may be suspended or revoked by the director if it is found that the swimming pool, wading pool or bathing beach is

maintained or operated in violation of this rule, or any law, rule, or ordinance applicable thereto, or in violation of the conditions stated on the permit.

6.11. An operating permit shall not be reinstated until an inspection by the director determines that the swimming pool, wading pool or bathing beach is in compliance with all applicable provisions of this rule and any orders, rules or instructions issued by the director.

6.12. Operational permits shall be posted in a conspicuous place at the swimming pool, wading pool or bathing beach facility, and said permit shall be readily available to the director.

6.13. Any person whose application for an operating permit for a swimming pool, wading pool or bathing beach has been denied, or whose permit has been suspended or revoked may petition and shall be granted a hearing on the matter within ten (10) days after the director has received a written petition for such hearing.

#### §64-16-7. Inspections.

7.1. The owner, operator, or person in charge of a swimming pool, wading pool or bathing beach shall provide the director with immediate access to the entire premises for the purpose of inspection, and shall furnish all requested and necessary information to make the inspection complete.

7.2. The director shall conduct a minimum of two (2) complete inspections per year.

7.3. The director shall have the authority to order changes relative to improving the operation and sanitary conditions of the swimming pool, wading pool or bathing beach and if deemed necessary, can immediately order the closing of such facilities until corrective changes have been made.

#### §64-16-8. Water Quality Requirements.

8.1. Disinfection of all swimming pool and wading pool water is mandatory.

8.2. Chlorination of swimming and wading pools shall be accomplished by means of a

continuously operated mechanical chlorinator. Hand batch feeding is prohibited.

8.3. Chlorination shall be practiced in swimming pools and wading pools so as to maintain a free available chlorine residual of four-tenths (0.4) to one (1.0) milligram per liter (mg/l).

8.4. Cyanurate acid, when used as a stabilizer, must be maintained at a level between thirty (30) and one hundred (100) milligrams per liter (mg/l).

8.5. When using chlorinated cyanurates or its chlorinated derivatives as disinfectants, a free chlorine residual shall be maintained between one (1.0) and three (3.0) milligrams per liter (mg/l).

8.6. Other disinfectants, registered by the United States environmental protection agency, may be used with the approval of the director.

#### 8.7. Chemical Requirements.

8.7.1. Swimming pools - Chemical limits shall conform to the chemical limits specified in Public Water Systems, Bottled Water and Laboratory Certification, 64 CSR 3.

8.7.2. Bathing beaches - Chemical limits shall conform to limits prescribed by Chapter 20, Article 5, water resources board "administrative regulations of the State of West Virginia for water quality criteria on inter and intra state streams" for Category A, water contact recreation waters.

#### 8.8. Bacteriological Requirements.

8.8.1. To monitor bacteriological quality of swimming pools, wading pools and bathing beaches, samples shall be collected and submitted for bacteriological analysis by the director.

8.8.2. The presence of the coliform group as indicated by the samples examined shall not exceed the following limits:

(a) Swimming and Wading Pools - When ten (10) milliliter standard portions are

examined, not more than ten percent (10%) in any one (1) month shall show the presence of the coliform group. The presence of the coliform group in three (3) or more ten (10) milliliter portions of a standard sample will not be allowable if this occurs:

(1) In two (2) consecutive samples;

(2) In more than one (1) sample per month when less than twenty (20) are examined per month.

(3) In more than five percent (5%) of the samples when twenty (20) or more are examined per month. When organisms of the coliform group occur in three (3) or more of the ten (10) milliliter portions of a single standard sample, daily samples from the same sampling point shall be collected promptly and examined until the results obtained from at least two (2) consecutive samples show the water to be of satisfactory quality.

When the membrane filter technic is used, the arithmetic mean coliform density of all standard samples examined per month shall not exceed one per hundred milliliters (1/100 ml). Coliform colonies per standard sample shall not exceed three per fifty milliliters (3/50 ml), four per hundred milliliters (4/100 ml), seven per two hundred milliliters (7/200 ml), or thirteen per five hundred milliliters (13/500 ml) in:

(1) Two (2) consecutive samples;

(2) More than one (1) standard sample when less than twenty (20) are examined per month; or

(3) More than five percent (5%) of the standard samples when twenty (20) or more samples are examined per month.

(b) Bathing Beaches - The coliform group is not to exceed one thousand (1,000) per one hundred (100) milliliters as a monthly geometric average value, nor exceed this number in twenty per cent (20%) of the samples examined during any month nor exceed two thousand four hundred (2,400) per one hundred (100) milliliters on any day.

The fecal coliform (either MPN or MF count) shall not exceed two hundred (200) per one hundred (100) milliliters as a thirty (30) day geometric mean based on not less than five (5) samples during any thirty (30) day period nor exceed four hundred (400) per one hundred (100) milliliters in more than ten percent (10%) of all samples during any thirty (30) day period.

#### 8.9. pH Control.

8.9.1. Swimming pools and wading pool - The pH shall be maintained in an alkaline condition as indicated by a pH of not less than 7.2 nor greater than 7.8 at any time the facility is in use.

8.9.2. Swimming pools and wading pools which are equipped with gaseous chlorination feeders, must be equipped with a mechanical chemical feeder to continuously control pH. Hand batch feeding into the pool is prohibited.

8.9.3. Bathing beaches - When the pH is less than 6.5 or greater than 8.5, the beach shall not be used for bathing.

#### §64-16-9. Control Tests and Operational Records.

9.1. All swimming pools and wading pools shall have available at all times, approved testing equipment for making pH, free chlorine residuals, and any other tests as considered necessary by the director.

9.2. Written results of the tests listed under subsection 8.1 of this rule, attendance data, number of hours of equipment operation, and any other information as required by the director shall be maintained by the operator for a period of at least one (1) year.

9.3. Weekly, or as otherwise directed by the director, the operator of a swimming pool, wading pool, or bathing beach shall submit to the director on forms prescribed by or approved by the director, a summary of operation and tests.

9.4. Tests to determine the pH, free chlorine residual, and any other parameters, as directed by the director, shall be conducted by a qualified

operator of a swimming pool or wading pool at least twice daily, and the results recorded on the operating report.

**§64-16-10. Supervision of Bathers.**

10.1. An operator shall be on duty at all times the swimming pool, wading pool or bathing beach is open for swimming.

10.2. The swimming pool, wading pool or bathing beach operator shall be in full charge and have the authority to exclude from the premises any person who does not abide by the safety and sanitation rules which shall include but not limited to:

10.2.1. Spitting, spouting of water, blowing of nose, urination and defecation in the swimming pool, wading pool or bathing beach water shall be strictly prohibited.

10.2.2. Persons having any infectious or communicable disease or open sores shall be excluded from using the swimming pool, wading pool or bathing beach.

10.2.3. All bathers shall shower before entering the swimming pool or wading pool.

**§64-16-11. Safety Requirements.**

11.1. Swimming pool and bathing beaches shall have one (1) unit of life saving equipment for each life guard station which shall be readily accessible for emergency use. Pools without lifeguards shall have a minimum of one (1) unit of life saving equipment available. All equipment shall be kept in good repair.

11.2. Every pool and bathing beach shall be equipped with a standard american red cross twenty-four (24) unit first aid kit or equivalent type kit which shall be kept stocked and ready for use.

11.3. The director shall prescribe the number of life guards required at any pool or bathing beach: Provided, That at hotels, motels, apartment complexes, or condominiums which have swimming pools of five (5) feet or less in depth at the deepest point, employment of lifeguards is recommended but not mandatory,

whether or not the establishment charges an admission fee (gate receipt, annual pass or membership dues). If no lifeguards are employed, the management shall post a sign in a prominent location near the swimming pool stating: "SWIM AT YOUR OWN RISK - ALL PERSONS UNDER THE AGE OF FOURTEEN (14) MUST BE ACCOMPANIED BY AN ADULT."

11.4. Telephone service shall be available at the pool or bathing beach and emergency phone numbers for rescue agencies shall be posted.

**§64-16-12. Routine Maintenance and Operation.**

12.1. Visible debris on the bottom of the pool shall be removed every twelve (12) hours or more frequently as required.

12.2. Visible scum or floating matter on the water surface shall be removed as frequently as required.

12.3. Deck areas, sidewalks and other areas around the pool and bath house shall be hosed and brushed as required to keep them clean.

12.4. Bath house dressing rooms, showers, and toilet areas shall be kept in a clean condition.

12.5. All pools shall be drained as necessary so that the pool can be inspected, cleaned and/or repaired.

12.6. Swimming pool water treatment facilities shall be operated twenty-four (24) hours per day.

**§64-16-13. Bathhouses, Concessions and Other Appurtenant Facilities.**

13.1. Bathhouse, clothing storage facilities, toilet and shower facilities shall be kept in good repair and in a clean and sanitary condition.

13.2. All doors, shower curtains, windows, faucets, drains, or other parts of the building, including plumbing, electrical switches, lighting and controls, shall be kept in good repair and replaced immediately if defective.

13.3. All concession stands shall be operated in accordance with Food Service Sanitation Regulations, 64 CSR 17.

**§64-16-14. Compliance Requirements.**

14.1. The design, construction, installation, alteration, location, and operation of all public swimming pools, wading pools and bathing beaches shall comply with all applicable provisions of this rule.

14.2. The director shall have the authority to immediately close any swimming pool, wading pool, or bathing beach which he or she determines to be unsafe, has not been approved by the director, or have willfully violated any provisions of this rule.

14.3. If any inspection or prescribed water quality test conducted on any pool by the director discloses excessive turbidity (as determined by using a standard clarity sight disc) or a chlorine residual less than that permitted under Sections 8.3 and 8.5 of this rule, the director shall have the authority to immediately close the swimming pool or wading pool until such time as the necessary corrections are effected.

**§64-16-15. Severability**

If any provisions of this rule or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are declared to be severable.

**§64-16-16. Penalties**

Any person who violates any provision of this rule or orders issued pursuant thereto shall be punishable by a fine of not more than two hundred dollars (\$200) or imprisonment for not more than thirty (30) days, or both, as provided under W. Va. Code §16-1-18.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Charleston, WV 25305-0770

RECEIVED

WILLIAM H. HARRINGTON  
Chief of Staff

DEC 14 1992

JUDY COOPER

REGULATORY DEVELOPMENT  
Attive Law

SECTION DONALD R. WILKES

Director, Corporations

(Plus all the volunteer  
help we can get)

TO: Kay Howard

AGENCY: Department of Health

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 11, 1992

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 16 TITLE: 64 Department of Health

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Kay Howard

TITLE OF PERSON SIGNING: Director, Regulatory Development

DATE: December 29, 1992

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.