

Publication Date: December 15, 2008
Effective: December 15, 2008 through May 13, 2009
Hearing Date: January 8, 2009
Extension Through: July 12, 2009

DEPARTMENT OF COMMERCE
EMERGENCY RULE RELATING TO
PUBLIC SWIMMING POOL AND WATER ATTRACTION
PLAN REVIEW AND INSPECTION FEES

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.
2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.
3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.
4. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.
5. The department believes that a temporary fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper.

The Wisconsin Department of Commerce adopts an order to amend Comm 2.68 Tables 2.68-1 and 2.68-2 relating to fees for plan review and inspection of modifications for public swimming pools and water attractions and affecting small business.

Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: ss. 101.19 and 145.26, Stats.

2. Statutory Authority

Statutory Authority: ss. 101.19 and 145.26, Stats.

3. Related Statute or Rule

Statutes: none

Administrative Rules: Chapter Comm 90

4. Explanation of Agency Authority

Chapters 101 and 145, Stats., grant the department general authority for the purpose of protecting public health, safety and welfare by establishing standards and regulatory oversight programs for the construction and maintenance of buildings, structures and dwellings, public swimming pools and water attractions. These programs are administered by the Safety and Buildings Division. Sections 101.19 and 145.26, Stats., grant the department authority to promulgate rules to fix and collect fees that reflect the cost of administering the public swimming pool and water attraction program.

5. Summary of Proposed Rules

The rules temporarily roll back the fees for plan review and inspection of modifications to public swimming pools and water attractions to those amounts charged prior to December 1, 2008. The temporary reduction is occurring in light of the implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act which necessitates most existing public

swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The reduction in fees reflects the department's expected costs to review and inspect modifications.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

An internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to public swimming pool and water attraction plan review or inspection fees. The federal Consumer Product Safety Commission's implementation of the Virginia Graeme Baker Pool and Spa Safety Act necessitates the modification of existing pools to address entrapment at suction outlets.

7. Comparison with Rules in Adjacent States

An Internet-based search for the states of Illinois, Iowa, Michigan and Minnesota found the following:

Illinois: No information was found indicating that Illinois regulates public swimming pools and water attractions at the state level.

Iowa: The reconstruction plan review fee charged by the Iowa Department of Public Health is \$250 for each swimming pool, spa or bathhouse altered in the reconstruction.

Michigan: The permit fee established by the Michigan Department of Environmental Quality for a modification of an existing pool is \$298.

Minnesota: The Minnesota Department of Health's plan review and inspection fee is \$400 for pool and spa alterations that do not involve alteration of the shape or size.

8. Summary of Factual Data and Analytical Methodologies

Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The department estimates that 3,700 existing pools and water attractions will need to undergo some type of modifications. The current plan review fees reflect the estimated average time and costs to provide the service. For types of pool and attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the fee structure of section Comm 2.68.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008. The department estimates approximately 80% of the existing 3,700 public swimming pools and water attractions will be able to take advantage of the reduced plan review fees. The plan review fees for pool and water attraction modifications are reduced by 33%. The reduction will save pool and water attraction owners \$60 to \$325 per plan submittal.

An economic impact report has not been required to be prepared.

10. Agency Contact.

Robert DuPont, Bureau Director, robert.dupont@wisconsin.gov, (608) 266-8984

11. Public Hearing Comments.

The hearing record on this emergency rule will remain open until January 16, 2009. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

SECTION 1. Comm 2.68 Tables 2.68-1 and 2.68-2 are amended to read:

Table 2.68-1

Plan Review and Inspection Fees for Public Swimming Pools, Water Attractions and Associated Slides Where Department Staff Perform Construction Inspections

Type of Pool, Water Attraction or Equipment	Fee Type		
	Initial Construction	Modification	Revision to Previously Approved Plans
1. Pool Slide, Drop Slide or Water Slide, functional requirements ^{a, b}	\$400.00	\$180.00 <u>120.00</u>	\$180.00
2. Pool Slide, Drop Slide or Water Slide, structural requirements ^c	\$450.00	\$180.00 <u>120.00</u>	\$180.00
3. Public Swimming Pool, gutter type	\$1,350.00	\$750.00 <u>500.00</u>	\$180.00
4. Public Swimming Pool, skimmer type	\$1,125.00	\$750.00 <u>500.00</u>	\$180.00
5. Water Attraction (including interactive	\$1,350.00	\$750.00 <u>500.00</u>	\$180.00

play attractions)			
6. Public Whirlpool	\$1,125.00	\$750.00 <u>500.00</u>	\$180.00
7. Alternate and Experimental Design	\$1,575.00	\$1,000.00 <u>675.00</u>	\$225.00

a No additional fee required if submitted with public swimming pool or water attraction.

b Fee required per submittal of pool slides or drop slides.

c Applies to pool slides over 6 feet (1.8 m) in height measured from the slide entrance to the deck of the pool or water attraction.

**Table 2.68-2
Plan Review Fees For Public Swimming Pools, Water Attractions and Associated Slides
Where Department Staff Do Not Perform Construction Inspections**

Type of Pool, Water Attraction or Equipment	Fee Type		
	Initial Construction	Modification	Revision to Previously Approved Plans
1. Pool Slide, Drop Slide or Water Slide, functional requirements ^{a, b}	\$400.00	\$180.00 <u>120.00</u>	\$180.00
2. Pool Slide, Drop Slide or Water Slide, structural requirements ^c	\$450.00	\$180.00 <u>120.00</u>	\$180.00
3. Public Swimming Pool, gutter type	\$900.00	\$300.00 <u>200.00</u>	\$180.00
4. Public Swimming Pool, skimmer type	\$675.00	\$300.00 <u>200.00</u>	\$180.00
5. Water Attraction	\$900.00	\$300.00 <u>200.00</u>	\$180.00
6. Public Whirlpool	\$675.00	\$300.00 <u>200.00</u>	\$180.00
7. Alternate and Experimental Design	\$1,125.00	\$560.00 <u>375.00</u>	\$225.00

a No additional fee required if submitted with public swimming pool or water attraction.

b Fee required per submittal of pool slides or drop slides.

c Applies to pool slides over 6 feet (1.8 m) in height measured from the slide entrance to the deck of the pool or water attraction.

EFFECTIVE DATE

Pursuant to s. 227.24, Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper. **(Note: Publication Date, December 15, 2008)**