

Publication Date: January 1, 2010
Effective Dates: January 1, 2010 through May 30, 2010

DEPARTMENT OF COMMERCE

**EMERGENCY RULE RELATING TO PUBLIC SWIMMING POOL AND WATER ATTRACTION
PLAN REVIEW AND INSPECTION FEES**

Basis for Issuance of Emergency Rules

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. As of December 1, 2009, approximately 1,800 pool modifications have been submitted to the department for review and approval.
4. There are claims that the availability of parts to make the necessary modifications is limited.
5. 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.
6. The department believes that a 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 (1) (c), Stats., this rule is adopted as an emergency rule to take effect on January 1, 2010.

The Wisconsin Department of Commerce adopts an order to create Comm 2.68 (3) (a) relating to fees for plan review and inspection of 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 adjust the plan review and inspection fees for public swimming pools and water attractions. The rules create a separate plan review and inspection fee for modifications to existing swimming pools and water attractions that are necessary in order to comply with the federal Virginia Graeme Baker Pool and Spa Safety Act. The federal Virginia Graeme Baker Pool and Spa Safety Act requires most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

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: The Illinois Department of Public Health provides for the inspection and licensing of all public swimming pools, spas, waterslides, wading pools, and bathing beaches. Effective February 2003, the Department reviews all plans and specifications before construction can begin. The state's permit for the construction, development, major alteration or installation of each swimming facility is \$50, and must accompany any application.

Iowa: The Iowa Department of Public Health Swimming Pool Program regulates the construction and reconstruction of swimming pools and spas. Plan Review fees range from \$165 for swimming pools less than 500 square feet to \$825 for pools 4000 square feet or greater which may include a water slide. Water slides with a dedicated plunge pool have a plan review fee of \$550 with a fee of \$165 for each additional water slide. The plan review fees for spas range from \$165 for a spa less than 500 square feet to \$385 for a spa of 1000 square feet or greater. The reconstruction plan review fee is \$250 for each swimming pool, spa, or bathhouse altered in the reconstruction.

Michigan: The Michigan Department of Environmental Quality Water Bureau regulates public swimming pool construction permits and licensing fees, which range from \$596 for a new pool 500 square feet or less to \$1,951 for a new pool more than 4000 square feet in area. The permit fee for modification of an existing pool is \$298.

Minnesota: The Minnesota Department of Health regulates swimming pool and spa pool plan review. Plan review and inspection fees are \$800 each for swimming pools, wading pools, therapy pools, spray decks and interactive water features; \$500 each for spa pools and a request for variance; \$400 for slides and alterations not altering shape or size; and \$75 for a disinfection system change.

8. Summary of Factual Data and Analytical Methodologies

The changes are necessary in order to bring revenues in line with the cost of providing the services for public swimming pools and water attractions. The department is statutorily directed to establish and collect fees which should, as closely as possible, equal the cost of providing those services.

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 fee 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 plan review and inspection fees for these types of pool and water attraction modifications are reduced by 50 to 67%. The reduction will save pool and water attraction owners \$200 to \$650 per plan submittal. The department estimates there are still approximately 1,900 existing public swimming pools and water attractions in Wisconsin needing to submit plans for the necessary federally mandated modifications. The department estimates that 90% of the future plan submittals, 1,710, will fall under the category involving department inspections and 10% of the future plan submittals, 190, will fall under the category where the department does not conduct the inspections. Under this assumption, the department will not realize \$703,000 in plan review and inspection revenue from these plan submittals under the rules.

The Department believes that the rules will have a minimal direct impact on small business in that most businesses would utilize the plan review and inspection services on an infrequent basis and are typically a one time occurrence. These types of fees would not be significant to the overall operation of the business in comparison to overall expenses.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this emergency rule will remain open until January 29, 2010. 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 (3) (a) is created to read:

Comm 2.68 (3) (a) Virginia Graeme Baker alterations. 1. Fees for the review and approval of modifications to existing pools involving circulation systems or submerged suction outlets for the sole purpose of complying with the federal Virginia Graeme Baker Consumer Product Safety Commission rules shall be one of the following:

- a. Three hundred fifty dollars, if the installation inspection is performed by department staff.
- b. Two hundred dollars, if the installation inspection is not performed by department staff.

2. Additional installation inspections, beyond one, performed by department staff for modifications to existing pools involving circulation systems or submerged suction outlets for the sole purpose of complying with the federal Virginia Graeme Baker Consumer Product Safety Commission rules shall be assessed in accordance with s. Comm 2.04 (2).

END

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule on January 1, 2010.