

STATEMENT OF SCOPE

Department of Commerce

Rule No. : Chapter Comm 90

Relating to Public Swimming Pools and Water Attractions
:

1. Description of the objective of the rule.

The objective of the potential rulemaking project is to clarify and update the department's administrative rules, Chapter Comm 90, relating to public swimming pools and water attractions. This update may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

A specific objective is to reflect in Comm 90 the most recent national standards including the current interpretations by the Consumer Product Safety Commission (CPSC) of the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act). The federal requirements outlined in the VGB Act serve as minimum standards.

The purpose of the rulemaking project is to have a clearly understood code that reflects the application of current construction and remodeling practices, products, standards, model codes and materials. To ensure the health, safety and welfare of Wisconsin citizens using public swimming pools and water attractions, it is important that the code and adopted standards are viable and current.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

Chapter Comm 90 applies to the design and construction of public swimming pools and water attractions. The last update of chapter Comm 90 began in 2005 and became effective April 1, 2009. The current rules relating to water attractions are based on the 2005 edition of the American National Standards Institute/National Spa and Pool Institute (ANSI/NSPI) standards for aquatic recreation facilities (ANSI/NSPI – 9). The public swimming pool portion of the code was revised to reflect the 2004 edition of ANSI/NSPI – 1 Public Swimming Pools standard.

ANSI/NSPI updates their national standards on a 3-year cycle. Working with the Pool Advisory Code Council, the department will review the most current national standards and base revisions of chapter Comm 90 upon them. In addition, the council and department will correct code clarity problems, incorporate code interpretations that have developed since the last code change, include new technology and options for design and installation, and integrate new code requirements into one or more rule packages.

The alternative of not updating the rule would result in chapter Comm 90 not being current with nationally-recognized standards and federal requirements such as the recent interpretations by the CPSC of the VGB Act. Continuing to use the code as it stands now would create confusion among designers, builders, installers and local inspectors about which drain covers and safety vacuum release systems required by the VGB Act are compliant and how other materials and standards should be regulated and applied.

The CPSC is looking to Wisconsin and other states to assist with the enforcement of the VGB Act by passing pool and spa barrier and anti-entrapment rules that will help prevent children's drownings and submersion injuries.

3. Statutory authority for the rule.

The statutory authority for chapter Comm 90 is contained in section 145.26, Stats.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule.

The staff time needed to develop the rule is expected to be about 600 hours, depending upon the associated complexity. This time includes reviewing the current codes and related national standards, conducting other research as needed, drafting the rules, consulting and meeting with the Pool Advisory Code Council and processing the rules through public hearings, legislative review and adoption. There are no other resources necessary to develop the rules.

5. Description of all of the entities that will be affected by the rule.

This rule will affect any entity involved in the public swimming pool and water attraction industry in Wisconsin. Entities involved in the industry include municipal governments, schools, colleges, universities, hotels, motels, tourist inns and resorts, bed and breakfasts, recreational facilities, fitness centers and campgrounds.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

An Internet-based search of the *Federal Register* found that the Consumer Product Safety Commission (CPSC) issued interpretations of the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act) in the March 10, 2010 (Vol. 75, No. 49) and the April 27, 2010, (Vol. 75, No. 80) publications.

An Internet-based search of the *Code of Federal Regulations* (CFR) found the following existing federal rules that impact public swimming pools and water attractions:

- USC Title 16, Volume 2, Chapter II, Part 1207 – The CPSC revises the safety standard for swimming pool slides relating to the installation, maintenance and intended use in all pools as of January 1, 2010.
- USC Title 21, Volume 8, Chapter I, Subpart E – The Food and Drug Administration revises the recirculation and filtration standards for all pools as of April 1, 2010.

Approved for publication in the Wisconsin Administrative Register at Madison, Wisconsin, this date: _____

DEPARTMENT OF COMMERCE

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DEPARTMENT OF COMMERCE

Paul F. Jadin, Secretary

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