

Statement of Scope

Department of Safety and Professional Services

Rule No.: Chapters SPS 390, 390 Appendix, and SPS 302, 305, 361 to 364, and 380-387.

https://docs.legis.wisconsin.gov/code/register/2016/725A4/register/ss/ss_038_16/ss_038_16

Relating to: Design and Construction of Public Swimming Pools and Water Attractions

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable

2. Detailed description of the objective of the proposed rule:

The objective of this rule revision is to comprehensively review and update chapters SPS 390 and 390 Appendix, "Design and Construction of Public Swimming Pools and Water Attractions". The department may, if needed, also review provisions related to pools and water attractions found in SPS 380 to 387, "Wisconsin Plumbing Code", and SPS 361 to 364, "Commercial Building Code," as well as fees and administrative processes in SPS 302 and 305. The revision will determine whether and to what extent SPS 390 should be revised to include the most recent interpretations issued by the federal Consumer Product Safety Commission (CPSC) related to the Virginia Graeme Baker Pool and Spa Safety Act. Finally, the project will evaluate whether SPS 390 should include recent modifications to national energy standards related to swimming pools. The department will establish and consult with an advisory committee to review these rules.

This rule revision will ensure Wisconsin continues to protect the health and safety of people who use the state's numerous public swimming pools and water attractions.

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

The primary goal of this rule revision is to update SPS 390. SPS 390 was last revised in 2009 and includes several outdated standards. For example, the rule incorporates the 2001 version of American National Standards Institute/National Sanitation Foundation (ANSI/NSF) 50 related to circulation system components for swimming pools. ANSI/NSF 50 was most recently updated in 2015.

The department will consult with the SPS 390 Advisory Committee to review the most recent CPSC interpretations of the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act). The VGB Act, which became effective December 19, 2008, was designed to prevent suction entrapment in pools and spa drains and prevent child drowning. Since the VGB Act was first enacted, the CPSC has issued new interpretations for unblockable drains, as well as approved a new successor standard for drain covers.

The department, in consultation with the SPS 390 Advisory Committee, will review energy standards for public swimming pools and water attractions. Federal and state law requires the department to review the state's building codes to determine whether the codes meet or exceed the energy standards found

in the most recent versions of the International Energy Conservation Code (IECC) and ASHRAE (American Society of Heating, Refrigerating, and Air-Conditioning Engineers) Standard 90.1. The department is in the process of adopting 2015 International Energy Conservation Code (IECC), along with an option for using ASHRAE 90.1-2013 as an alternative to the IECC, as part of a revision to the Wisconsin Commercial Building Code. The department will consult with the SPS 390 Advisory Committee to review items contained in the 2015 IECC related to swimming pools to determine whether and to what extent these national energy standards should be incorporated into SPS 390.

Finally, the department will consult with the SPS 390 Advisory Committee to clarify language, and make any other revision, as needed, to bring Wisconsin's administrative rules in alignment with current swimming pool and water attraction design and construction practices.

Without this rule revision, Wisconsin's public swimming pool and water attraction rules might not remain consistent with nationally-recognized design and construction standards.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

101.02 (15) (j), Stats. – “The department shall ascertain, fix and order such reasonable standards or rules for constructing, altering, adding to, repairing, and maintaining public buildings and places of employment in order to render them safe.”

101.027 (2), Stats. – “The department shall review the energy conservation code and shall promulgate rules that change the requirements of the energy conservation code to improve energy conservation.”

145.02 (2)(a), Stats. – “The department shall have general supervision of all such plumbing and shall after public hearing prescribe and publish and enforce reasonable standards therefor which shall be uniform and of statewide concern so far as practicable. Any employee designated by the department may act for the department in holding the public hearing required under this subsection. To the extent that the historic building code applies to the subject matter of these standards, the standards do not apply to a qualified historic building if the owner elects to be subject to s. [101.121](#).”

145.26 (5), Stats. – “The department shall promulgate rules establishing all of the following:

- (a) The definition of "water attraction".
- (b) The amounts of fees to perform review of plans and specifications as specified in sub. (2).”

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

This rule revision will take an estimated 600 hours, including reviewing current codes and related national standards, drafting the rule, consulting and meeting with the SPS 390 Advisory Committee and other rulemaking activities.

6. List with description of all entities that may be affected by the proposed rule:

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

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

[16 CFR 1207](#), “*Safety Standard for Swimming Pool Slides*” - The CPSC establishes requirements under [16 CFR 1207](#) for the manufacture and construction of swimming pool slides.

[16 CFR 1450](#), “*Virginia Graeme Baker Pool and Spa Safety Act*” and subsequent CPSC interpretations -The VGB Act established requirements designed to prevent deaths and injuries caused by the hidden hazards of drain entrapments and eviscerations in pools and spas. The law requires the drain covers on all public pools and spas to be compliant with certain performance standards and to have a secondary anti-entrapment system installed when there is a single main drain other than an unblockable drain. Wisconsin’s administrative rules incorporated provisions adopting the VGB Act. Since the last revision of SPS 390, the CPSC has issued new interpretations for unblockable drains and approved a successor standard for drain covers that will be reviewed as part of this rule revision.

[21 CFR 1250.89](#), “*Swimming Pools*” - Under [21 CFR 1250.89](#), the Food and Drug Administration establishes requirements for the circulation, replacement, and filtration of water in swimming pools, as well as standards for suitable levels of chlorination in pools.

[42 USC 6833](#), “*Updating State Building Energy Efficiency Codes*” – [42 USC 6833](#) requires states to certify to the U.S. Department of Energy (DOE) that they have reviewed and determined whether to revise their building codes so that they meet or exceed the most recent and the International Energy Conservation Code (IECC) and ASHRAE (American Society of Heating, Refrigerating, and Air-Conditioning Engineers) Standard 90.1. The IECC contains provisions specifically related to pools, including energy standards for heaters, time switches, and covers.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Public swimming pool and water attractions in Wisconsin already must meet standards outlined in chapters SPS 390 and 390 Appendix. Changes to this rule are not expected to result in significant additional costs and are unlikely to have a negative economic impact on small businesses. Changes to the rule will ensure Wisconsin’s public swimming pools and water attractions design and construction standards meet current standards for protecting public health and safety.

Contact Person: Sandra Cleveland, Administrative Rules Coordinator, sandy.cleveland@wisconsin.gov, (608) 266-0797.