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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD#: (608) 264-8777

Jim Doyle, Governor
Jack L. Fischer, A.I.A., Secretary

August 19, 2008

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 08-056

RULE NO.: Chapter Comm 90

RELATING TO: Design and Construction of Public Swimming Pools and Water Attractions

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron Olver".

Aaron Olver
Deputy Secretary

August 19, 2008

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Mike Huebsch
Speaker of the Assembly
Room 215 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Huebsch:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 08-056

RULE NO.: Chapter Comm 90

RELATING TO: Design and Construction of Public Swimming Pools and Water Attractions

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,



Aaron Olver
Deputy Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 08-056

Rule No.: Chapter Comm 90

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

Contact person for substantive questions:

Contact person for internal processing:

Name Lynita Docken

Name Norma Sampson

Title Program Manager

Title Communications Specialist

Telephone Number 608-785-9349

Telephone Number 608-267-7907

1. Basis and purpose of the proposed rule.

The basis of the proposed rule is ss. 101.02 and 145.26, Stats. The purpose of the proposed rule is to update chapter Comm 90 to reflect the most current editions of the American National Standards Institute/International Aquatics Foundation (ANSI/IAF) requirements for public swimming pools and aquatic recreation facilities.

2. How the proposed rule advances relevant statutory goals or purposes.

Sections 101.02 and 145.26, Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective standards for the design, construction, alteration or reconstruction of public swimming pools, water attractions and associated equipment. To fulfill this responsibility, the Department has promulgated chapter Comm 90 that consists of minimum requirements for the design and construction of public swimming pools and water attractions.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No changes were made to the rule analysis or fiscal estimate that was prepared for public hearing.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 90
Amendment No. if Applicable

Subject

Design and Construction of Public Swimming Pools and Water Attractions

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

None

Assumptions Used in Arriving at Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing rules relating to the design, construction, alteration or reconstruction of public swimming pools, water attractions and associated equipment. The proposed rules are based upon the latest edition of the American National Standards Institute/International Aquatics Foundation (ANSI/IAF) requirements for aquatic recreation facilities (swimming pools and water attractions) and clarify existing technical requirements. The division does not anticipate that the proposed rules will increase its workload and the workload can be accommodated with current resources.

The proposed rules will not have a fiscal effect on other state agencies or local governments.

The proposed rules will not increase the effect from what the current rules impose on small businesses that own or are involved in the design, construction, alteration or reconstruction of public swimming pools and water attractions.

Long-Range Fiscal Implications

No long-range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/Lynita Docken
608-785-9349

Authorized Signature/Telephone No.

Ann D. Ock 6-8976

Date

5-29-08

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 90

Amendment No.

Subject
 Design and Construction of Public Swimming Pools and Water Attractions

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS	0	-0
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	0	-0
SEG/SEG-S		-
TOTAL State Revenues	\$ 0	\$ 0-

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS \$ _____ \$ _____
 NET CHANGE IN REVENUES \$ 0 _____ \$ 0 _____

Agency/Prepared by: (Name & Phone No.)
 Commerce/Lynita Docken, 608-785-9349

Authorized Signature/Telephone No.
Ann D. Oh 6-8976

Date
 5-29-08

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 08-056

RULE NO.: Chapter Comm 90

RELATING TO: Design and Construction of Public Swimming Pools and Water Attractions

Final regulatory flexibility analysis not required. (Statement of determination required.)

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the proposed rules to update chapter Comm 90 by referencing the latest edition of the American National Standards Institute/International Aquatics Foundation (ANSI/IAF) and modifying these standards, where necessary, to reflect any Wisconsin statutes or to improve clarity will not have a significant impact on a substantial number of small businesses.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

(Continued on reverse side)

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 90 DATE: Tuesday, July 8, 2008
RELATING TO: Design and Construction of Public Swimming Pools and Water Attractions TIME: 1:00 p.m.
LOCATION: Human Resources Conference Room (First Floor) CITY: Madison, WI
201 W. Washington Ave.

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
No one appeared at or attended the public hearing.					

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 08-056		Hearing Location: Madison, WI	
Rule Number: Chapter Comm 90		Hearing Date: July 8, 2008	
Relating to: Design and Construction of Public Swimming Pools and Water Attractions			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		The Department did not receive any comments or recommendations on the proposed rules for Chapter Comm 90 relating to the design and construction of public swimming pools and water attractions.	





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **08-056**

AN ORDER to repeal and recreate chapter Comm 90, relating to the design and construction of public swimming pools and water attractions, and affecting small business.

Submitted by **DEPARTMENT OF COMMERCE**

06-02-2008 RECEIVED BY LEGISLATIVE COUNCIL.

06-20-2008 REPORT SENT TO AGENCY.

RNS:WF

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-056

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

Section 145.26 (6), Stats, which provides for public swimming pool and water recreation attraction plan reviews, states that persons who violate the statute or the rules promulgated under it may be fined not less than \$100 nor more than \$5,000. Section Comm 90.07 states that any person who violates ch. Comm 90 shall be fined not less than \$25 nor more than \$250. The department should either revise s. Comm 90.07 to be consistent with the statute or explain why it believes there is statutory authority for s. Comm 90.07.

2. Form, Style and Placement in Administrative Code

a. Section Comm 90.02 (1) states that ch. Comm 90 applies to all “new” public swimming pools, water attractions and associated slides and to the reconstruction or alteration of any such “existing” facilities. This statement is ambiguous because, after the rule is promulgated, “new” and “existing” will be meaningless. It is suggested that the applicability of ch. Comm 90 to the construction, reconstruction or alteration of facilities be tied to the effective date of the rule. [See s. 1.01 (9) (b), Manual.]

b. The note following s. Comm 90.03 (7) is substantive and should either be deleted or worked into the text of the definition—“...but does not include backwash piping.”

c. In s. Comm 90.03 (31), “as defined under sub. (21)” should be deleted.

d. In s. Comm. 90.05 (2) (c), the introductory material should be numbered subd. 1. and the subsequent subdivisions should be renumbered. [See s. 1.03 (8), Manual.] A similar change

is needed in s. Comm 90.05 (2) (d) (intro.). Similarly, s. Comm 90.14 (3) (intro.) should end with a colon.

e. References in the rule to "the department of health and family services" should be changed to refer instead to "the department of health services." For example, see the note to s. Comm 90.02 (1) and s. Comm 90.11 (5) (c).

f. The acronyms ANSI, NSF and ETL, as used in s. Comm 90.10 (7) should be defined. [See s. 1.01 (8), Manual.] In addition, the use of slashed alternatives, such as ANSI/NSF, is improper. [See s. 1.01 (9), Manual.] All of Clearinghouse Rule 08-056 should be reviewed to eliminate the use of slashed alternatives.

g. It is suggested that the phrase "but are not limited to" be deleted from s. Comm 90.10 (9) (b). [See s. 1.01 (7) (c), Manual.]

3. Conflict With or Duplication of Existing Rules

There are a number of cross-references in ch. HFS 172 to specific provisions of ch. Comm 90. Since ch. Comm 90 is being repealed and recreated, there are significant numbering changes. The department should suggest to the department of health and family services that it review all of the references in ch. HFS 172 and correct them if necessary.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. It is suggested that s. Comm 90.01 list s. 101.02, Stats., as authority for ch. Comm 90.
- b. It is suggested that "chapter" be substituted for "code" in s. Comm 90.05 (2) (f).
- c. The word "subsection" should be substituted for "section" in s. Comm 90.06 (3) (c).
- d. It is suggested that "under sub. (5)" be inserted after "stair" in s. Comm 90.12 (7) (c).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In repealing and recreating ch. Comm 90, is the department also repealing the appendix to the chapter? This should be clarified. If the appendix is not being repealed, cross-references in the appendix should be reviewed to ensure that they are accurate.

b. The department should consider deleting s. Comm 90.02 (2) from Clearinghouse Rule 08-56. This subsection conflicts with s. Comm 90.02 (1) because ch. Comm 90 does apply to reconstruction or alteration of public swimming pools, water attractions and associated slides that exist prior to the effective date of the rule.

c. The phrase "or local board of health" should be deleted from s. Comm 90.02 (3). Local boards of health do not have the authority to enact ordinances.

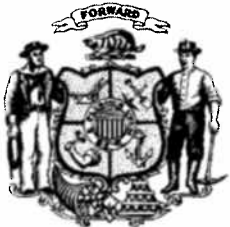
d. The term "assertions" in s. Comm 90.04 (4) (c) appears to be a typographical error.

e. The word "a" should be substituted for the third occurrence of "the" in s. Comm 90.05 (1) (a) 1.

- f. The second comma should be deleted from s. Comm 90.05 (3) (a).
- g. "If" should be substituted for the word "When" in s. Comm 90.05 (3) (e).
- h. "Table" should be substituted for "Tables" in s. Comm 90.11 (9) (a).
- i. The word "may" should be substituted for "shall" in s. Comm 90.12 (2).
- j. The phrase "may not" should be substituted for the phrase "not to" in s. Comm 90.12 (4) (b) 8.
- k. The word "consists" should be substituted for "consisting" in s. Comm 90.13 (2) (e) 1.
- l. In s. Comm 90.14 (13) (a) 3., the hyphens should be deleted.
- m. The word "periods" is misspelled in s. Comm 90.16 (3) (a).
- n. Section Comm 90.20, 90.21 and 90.22 specify requirements for wading pools, whirlpools and cold soak pools, and interactive play attractions that are "in addition to or in exception from" other requirements of ch. Comm 90. Clearinghouse Rule 08-056 should be revised to specifically indicate those provisions of ch. Comm 90 that are superseded by these three sections.
- o. The hyphen should be deleted from s. Comm 90.31 (2) (g) 2.
- p. The amount of the fee or a reference to where the amount of the fee may be determined should be included in s. Comm 90.40 (2) (a) 2.



WISCONSIN STATE LEGISLATURE



RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 08-056

RULE NO.: Ch Comm 90

RELATING TO: Design and Construction of Public Swimming Pools and Water Attractions

Agency contact person for substantive questions.

Name: Lynita Docken

Title: Project Manager

Telephone No. 608-785-9349

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

COMMENTS ON LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Clearinghouse Rule No. 08-056

Rule No.: Chapter Comm 90

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

2. Form, Style and Placement in Administrative Code

a. After removing the words "new" and "existing" from s. Comm 90.02 (1) and changing "any" to "all," the statement becomes strong and is applicable to the construction, reconstruction and alternation of facilities. The Department prefers not to have ch. Comm 90 tied to an effective date.

f. The national organizations being referenced in ch. Comm 90, routinely refer to themselves with slashes, for example ANSI/NSF. Also, the official name of the standards referenced is ANSI/NSF. Therefore, the Department prefers to allow the use of ANSI/NSF throughout ch. Comm 90.

3. Conflict With or Duplication of Existing Rules

The Department is in contact with the department of health services as it updates ch.HFS 172. Also, both departments serve together on code councils when revising chs. Comm 90 and HFS 172.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department is repealing and recreating the appendix to ch. Comm 90.

b. The department prefers to keep s. Comm 90.02 (2) for retroactive clarification purposes because the rule does not apply to pre-existing public swimming pools and water attractions that are not altered.

d. The correct term is "assertions."