

HEALTH AND SENIOR SERVICES
PUBLIC HEALTH SERVICES BRANCH
DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND
OCCUPATIONAL HEALTH
CONSUMER AND ENVIRONMENTAL HEALTH SERVICES

Public Recreational Bathing

Proposed Readoption: N.J.A.C. 8:26

Authorized By: _____

Heather Howard, Commissioner, Department of Health and Senior
Services, in consultation with the Public Health Council, Herbert
Yardley, MA, Chair.

Authority: N.J.S.A. 26:1A-7 and 26:4A-7.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2009- .

The Department will convene a public hearing on the notice of
proposal at 11:00 a.m. on _____, 2009 at the following
location:

First Floor Auditorium
Health and Agriculture Building
369 South Warren Street (at Market Street)
Trenton, NJ 08608

The official version of any departmental rulemaking activity (notices of proposal or adoption) are published in the *New Jersey Register* or *New Jersey Administrative Code*. Should there be any discrepancies between this document and the official version of the proposal or adoption, the official version will govern.

Persons wishing to be placed on the list of speakers at the public hearing are requested to telephone Ms. _____ at (609) _____ by _____, 2009 and to bring an extra written copy of their remarks for submission to the public record. Speakers will be limited to three minutes. The Hearing Officer will give persons who do not pre-register an opportunity to speak if time permits.

Submit written comments on the proposal by regular mail postmarked on or before _____, 2009 to:

Ruth Charbonneau, Director
Office of Legal and Regulatory Affairs
Office of the Commissioner
Department of Health and Senior Services
PO Box 360
Trenton, NJ 08625-0360

The Department will not accept telefacsimiles or electronic mail messages as official comments on the notice of proposal.

The agency proposal follows:

Summary

The Department of Health and Senior Services (Department) is proposing to readopt N.J.A.C. 8:26 Public Recreational Bathing. The chapter establishes sanitary and safety standards for public recreational

bathing facilities, which are non-private bathing beaches, hot tubs and spas, swimming and wading pools, and lake fronts.

Following is a summary of the regulatory history of the chapter and of changes to the statutory authority for the chapter.

L. 1946, c. 172 (approved April 8, 1946), amended by L. 1947, c.241 (technical amendment) (approval date not found), codified at N.J.S.A. 26:4A-1 through 3, established the obligation of persons operating public swimming pools and swimming places to provide “adequate trained personnel” and proper lifesaving equipment. L. 1946, c. 172, § 2, codified at N.J.S.A. 26:4A-2, established the Department’s rulemaking authority to implement this law. L. 1946, c. 172, § 3, codified at N.J.S.A. 26:4A-3, established penalties for violations.

The Statement accompanying Senate, No. 3293, introduced June 15, 1981, refers to a “swimming pool code,” then in effect, establishing standards for “adequate trained personnel.” The Statement indicates that the swimming pool code required lifeguards at public swimming pools and swimming places to have completed “advanced courses in first aid and lifesaving.” Senate, No. 3293, adopted as L. 1981, c. 216 (approved June 18, 1981), codified at N.J.S.A. 26:4A-1.1, relaxed the requirement of “adequate trained personnel” for operators of public swimming pools and swimming places of less than 1,000 square feet. The 1981 law authorized such operators to meet the requirement of providing “adequate trained

personnel” by providing a person of at least 18 years of age certified in basic rescue, water safety, first aid, and cardiopulmonary resuscitation.

The Public Health Council adopted N.J.A.C. 8:26, Public Recreational Bathing, as Chapter IX of the State Sanitary Code in 1986, pursuant to the authority conferred by N.J.S.A. 26:1A-7, and in consultation with five subcommittees with expertise in the areas of management, technical methods, environmental impact, safety, and maintenance and sanitation. 18 N.J.R. 1040(a) (May 19, 1986), 18 N.J.R. 1576(b) (August 4, 1986). The chapter established safety and sanitary standards enforceable Statewide to govern public swimming pools and natural recreational bathing, superseding the function of two model codes addressing these facilities that the Department had previously made available for enactment as local ordinances by local boards of health, the “Swimming Pool Code of New Jersey—1970” and the Lake Bathing Place Bacteriological, Sanitary and Safety guides. 18 N.J.R. 1040(a), *supra*. The chapter also established, for the first time, safety and sanitary standards applicable to hot tubs and spas, which were then first coming into popular use. *Id.*

Subsections of Subchapters 7, Sampling and Water Quality Criteria, and 8, Enforcement Procedures, that addressed “tidal bathing waters” became operative on August 4, 1986. See 18 N.J.R. 1576(b),

supra, at Operative Date. The balance of the chapter had a delayed operative date of November 4, 1986. Id.

The Public Health Council adopted amendments to the chapter in 1988. 20 N.J.R. 464(a) (March 7, 1988), 20 N.J.R. 1079(a) (May 16, 1988). The Public Health Council proposed, among other substantive changes in that rulemaking, to limit the applicability of certain chapter requirements depending on the ownership of the swimming facility and the relative hardships of compliance to smaller entities such as private nonprofit lake associations and condominiums. 20 N.J.R. 464(a) (March 7, 1988). The Public Health Council ultimately decided against adopting the proposed amendments, stating, “owners and operators of such recreational facilities have a responsibility to address health and safety issues for their membership[s], occupants and invited guests” and that ownership and profit versus nonprofit status were not appropriate criteria “to determine the responsibilities of specific groups to comply with safety, water quality, and sanitation rules” because “the inherent risks associated with the operation of recreational bathing facilities are universal.” 20 N.J.R. 1079(a) (May 16, 1988).

P.L. 1989, c. 61 (approved May 1, 1989, with an expiration date of May 1, 1991) exempted, for a two-year period, hotels, motels, and campgrounds, with swimming pools of 2,000 square feet or less in Cape May County from the lifeguard requirement during the months of May

through September, provided the owner was on site and signage was posted alerting persons that no lifeguard was on duty. The law was in effect for two years, and required the Department to report as to the public safety impact of the law to the legislature by the end of 1990.

P.L. 1989, c. 138 (approved October 1, 1988, with an expiration date of October 1, 1990), exempted “private bathing places” from compliance with all waterfront safety requirements at N.J.A.C. 8:26. The law defined “private bathing places” as private lakes, private community lake associations, and private nonprofit common interest communities that restricted the use of their lake or pool to unit owners and their guests.

P.L. 1989, c. 140 (approved August 2, 1989, with an expiration date of August 2, 1991) exempted, for a two-year period, hotels, motels, campgrounds, mobile home parks, and retirement communities with swimming pools of 2,000 square feet or less in Atlantic, Monmouth, and Ocean counties, from the lifeguard requirement, provided the owner was on site and signage was posted alerting persons that no lifeguard was on duty. The law was in effect for two years, and required the Department to report as to the public safety impact of the law to the legislature by the end of 1990.

In 1991, the Public Health Council readopted N.J.A.C. 8:26 with amendments. 23 N.J.R. 380(a) (February 19, 1991), 23 N.J.R. 1433(a) (May 6, 1991). In that rulemaking, the Public Health Council established,

among other substantive amendments, an alternative means of compliance with the first aid and lifeguard personnel requirements by certain private associations with authority to regulate waterfront access to lakes, rivers, and bays. The amendment exempts these associations' recreational bathing facilities that use other than ocean waters from compliance with the lifeguard requirements provided the associations post signage that alerts users to the lack of a lifeguard and providing other information. *Id.* The rulemaking also establishes limitations on diving in competitive swim meets and practices in swimming pools with depths of less than five feet. *Id.*

P.L. 1991, c.135 (approved May 10, 1991), codified at N.J.S.A. 4A-4 et seq.) established permanent exemptions for "specially exempt facilities," regardless of county in which they were situated, from the first aid and lifeguard personnel requirements at N.J.A.C. 8:26, under certain conditions. P.L. 1991, c.135 at §§2 and 3; N.J.S.A. 4A-5 and 6. P.L. 1991, c.135 at §1 defines "specially exempt facilities" as private associations with authority to regulate swimming pool access and waterfront access to lakes, rivers, and bays, private campgrounds, hotels, motels, mobile home parks, and retirement communities. P.L. 1991, c.135, §5 repealed L. 1946, c. 172 (as amended by L. 1947, c.241); L. 1981, c. 216; P.L. 1989, c. 61; P.L. 1989, c. 138; and P.L. 1989, c. 140.

During the period from 1991 to 1996, the Department and the Public Health Council solicited and compiled comments and recommendations from the regulated community addressing N.J.A.C. 8:26. See 31 N.J.R. 3589(a) at Summary (November 15, 1999). The Department and the Public Health Council thereupon convened an advisory committee to review the chapter and the compiled comments thereon, and to recommend appropriate revisions. *Id.* The advisory committee was comprised of representatives of the Department, the Departments of Environmental Protection and Community Affairs, various local health agencies, the New Jersey Health Officers Association, the New Environmental Health Association. *Id.*

In 1996, the Department and the Public Health Council readopted the chapter without change, to maintain the continued effectiveness of the chapter pending the development of rulemaking to implement the recommendations of the advisory committee. 28 N.J.R. 753(a) (February 5, 1996), 28 N.J.R. 2385(a) (1996).

Thereafter, although the chapter was not to expire until 2001, the Department and the Public Health Council proposed the re adoption of the chapter with amendments in late 1991, to implement certain recommendations of the advisory committee resulting from the review described above. 31 N.J.R. 3589(a) (November 15, 1999). Among other substantive amendments proposed therein were standards requiring the

installation of antivortex drain covers to avoid suction hazards such as hair entanglement, disembowelment, evisceration, and body entrapment at return inlets and suction outlets of the water circulation systems of swimming pools, wading pools, hot tubs, and spas. *Id.* The Department readopted the chapter and adopted the proposed amendments in 2000. 32 N.J.R. 2111(b) (June 5, 2000).

In late 2000, an amendment to N.J.S.A. 4A-4 et seq. added private marinas to the list of “specially exempt facilities” eligible for the exemption from the lifeguard and first aid personnel requirements. P.L. 2000, c. 151, (approved November 9, 2000).

In 2001, another amendment to N.J.S.A. 4A-4 added swimming areas other than swimming pools at private campgrounds to the to the list of “specially exempt facilities” eligible for the exemption from the lifeguard and first aid personnel requirements, and added an exemption for specially exempt facilities that limit use of their swimming areas to “day-use visitors,” in addition to owners, renters, and members, and their invited guests . P.L. 2001, c. 151 (approved July 13, 2001).

Thereafter, although the chapter was not to expire until 2005, the Department and the Public Health Council proposed to readopt N.J.A.C. 8:26 with amendments in 2003. 35 N.J.R. 3005(a) (July 21, 2003).

Amendments proposed in that rulemaking would reflect the amendments to N.J.S.A. 26:4A-4 et seq. established by P.L. 2000, c. 151 and P.L.

2001, c. 151, described *supra*, expanding the statutory exemption from the lifeguard and first aid personnel for specially exempt facilities. *Id.* Another proposed amendment would relate to the technology then available to implement the anti-entrapment standards. *Id.*

Other amendments proposed in that rulemaking would require bathing beaches to test for the presence of enterococci bacteria, to bring the State into compliance with requirements of the United States Environmental Protection Agency implementing the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000, Pub. Law 106-284, 114 Stat. 871, approved October 10, 2000, which amended the Federal Water Pollution Control Act, 33 U.S.C. § 1251. The BEACH Act and the US EPA implementing regulations at 40 CFR Part 131 generally require, as a condition of continued Federal funding, coastal and Great Lakes states and territories to test for the presence of enterococci bacteria to determine the water quality of their coastal recreation waters. Theretofore, fecal coliform had been the biological indicator of choice. In 2004, the Department readopted the chapter and adopted the proposed amendments. 36 N.J.R. 1810(a) (April 5, 2004).

The water testing standards at N.J.A.C. 8:26 are part of New Jersey's implementation of the BEACH Act requirements. N.J.A.C. 7:9B, the Surface Water Quality Standards administered by the Department of

Environmental Protection, represents another aspect of the State's compliance with the BEACH Act.

Reorganization Plan No. 003-2005 (Governor Codey, June 27, 2005), 37 N.J.R. 2735 (a) (August 1, 2005), recast the role of the Public Health Council as being of a consultative and advisory nature in relation to the powers of the Commissioner of Health and Senior Services.

On December 19, 2007, President George W. Bush signed the Virginia Graeme Baker Pool and Spa Safety Act (Baker Act), Pub. L. 110-140 (December 19, 2007), 121 Stat. 1794, codified at 15 U.S.C. 8001 through 8007, and amending the Consumer Product Safety Act, 15 U.S.C. 2051 et seq. The Baker Act is available here:

<http://www.cpsc.gov/pssa.pdf>. The Baker Act charges the Consumer Product Safety Commission (CPSC) with the administration and enforcement thereof. Baker Act at §1404(a) and (c)(3); 15 U.S.C. 8003(a) and (c)(3).

According to the CPSC, there are annual averages "of 283 drowning deaths (2003-2005) and 2,700 emergency room-treated submersion injuries (2005-2007) involving children younger than five in pools and spas. In addition, from 1997-2007, there were 74 reported incidents associated with suction entrapment, including nine deaths and 63 injuries. The [Baker Act] is aimed at reducing these deaths and injuries by making pools safer, securing the environment around them, and

educating consumers and industry on pool safety.” “Staff Interpretation of Section 1404: ‘Federal Swimming Pool and Spa Drain Cover Standard,’” CPSC (June 18, 2008) (“§1404 guidance document”), available at <http://www.cpsc.gov/businfo/vgpsa.pdf>.

The Baker Act requires establishes drain entrapment prevention standards to prevent drowning, near-drowning, and eviscerations in pools and spas. The Baker Act at §1404(b), 15 U.S.C. 8003(b), requires that by December 19, 2008, the following be installed in public pools and spas: (1) drain covers compliant with ASME/ANSI standard A112.19.8-2007, and (2) when there is only a single main drain, a second anti-entrapment system. The §1404 guidance document, *id.*, contains a more specific description of the required apparatuses.

On December 15, 2008, the CPSC issued an enforcement position statement expressing its “expectation” that pools and spas that operate year-round are to be in compliance by December 19, 2008, and that seasonal public pools and spas that are currently closed must comply with the law on the day that they reopen in 2009. “Virginia Graeme Baker Pool and Spa Safety Act CPSC Enforcement Position” (Enforcement Position document) (December 15, 2008), available at <http://www.cpsc.gov/businfo/pssaenforce.html>.

The Baker Act at §§1405 and 1406, 15 U.S.C. 8004 and 8005, requires as a condition of certain Federal grant funding that states

establish minimum standards that meet or exceed the Baker Act pool and spa technical standards. In September 2008, CPSC Staff issued revised draft technical guidance for the minimum state law requirements, with respect to which it accepted public comment until October 2008. “CPSC Staff Draft Technical Guidance on Section 1406: Minimum State Law Requirements” (§1406 guidance document) (September 2008). See www.cpsc.gov/pssa1406.pdf and www.cpsc.gov/pssa1406.html. The §1406 guidance document states that the comments therein “are those of CPSC staff, have not been reviewed or approved by, and may not necessarily reflect the views of, the [Consumer Product Safety] Commission.” *Id.* The §1406 guidance document further notes, “Section 1405 of the ... Baker ... Act specifies that the Commission shall establish a grant program for each of fiscal years 2009 and 2010. However, Congress has not yet appropriated funds for this program.” *Id.*

As stated above, the Department initially enacted anti-entrapment drain standards in 2000. 31 N.J.R. 3589(a) (November 15, 1999), 32 N.J.R. 2111(b) (June 5, 2000). The Department is reviewing the Baker Act technical standards and comparing them to the existing anti-entrapment and other standards at N.J.A.C. 8:26. The purpose of this review is to ascertain whether rulemaking to amend N.J.A.C. 8:26, to establish or amend other chapters of Title 8 of the New Jersey Administrative Code, and/or to recommend legislative action, are

necessary to ensure that State standards meet or exceed, and are not inconsistent with, the Baker Act technical standards.

If rulemaking is necessary, it would assist the regulated community in compliance, and would ensure that the State is eligible for Federal grant funding available pursuant to the Baker Act at §1405, if and when Congress appropriates funds for the program. The completion of the Department's review of the Baker Act's impact on State law may need to abide the CPSC's issuance of final technical guidance after its consideration of public comments on the draft guidance documents, to ensure efficiency and prevent duplication of effort. It will also require consideration of a CPSC opinion letter issued May 6, 2008, addressing the preemptive effect of the Baker Act on states' regulation of pools and spas, available here: http://www.cpsc.gov/volstd/pools/gcletter_fl.pdf.

In the meantime, operators of pools and spas subject to the Baker Act must comply therewith, and be guided by the CPSC's enforcement priorities and expectations, as stated in the Enforcement Position document. The CPSC indicates in the Enforcement Position document its cognizance that the regulated community's compliance with the Baker Act is affected by factors such as the availability of equipment, such as drains, necessary to retrofit existing pools and spas, and personnel, such as professional divers, with the required expertise to install required equipment, and the approval of work plans by local officials. See

Enforcement Position document, *supra*. However, to the extent Baker Act requirements are consistent with existing requirements of N.J.A.C. 8:27, the Department will expect entities subject to N.J.A.C. 8:27 to be in compliance.

As an aid to the equipment aspects of compliance, the CPSC has posted to its website a list of companies that “manufacture pool and spa drain covers of various sizes and have represented to CPSC staff that their covers meet the ASME/ANSI A112.19.8-2007 standard,” as the Baker Act requires. The list is available here:

<http://www.cpsc.gov/businfo/draincman.html>. The CPSC indicates that it will post additional technical information and guidance documents relating to compliance with the Baker Act as it becomes available, here:

<http://www.cpsc.gov/whatsnew.html#pool>.

Pending the completion of the Department’s review and any associated rulemaking as described above, if a member of the regulated community identifies a specific conflict or impediment to compliance with the Baker Act and this chapter, the Department will review these matters on a case-by-case basis and exercise its waiver authority as appropriate, pursuant to N.J.A.C. 8:26-1.4.

Subject to the ongoing review for compliance with the Baker Act described above, the Department, in consultation with the Public Health Council, has reviewed N.J.A.C. 8:26 and determined that the chapter

remains necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which it was promulgated. Therefore, the Department, in consultation with the Public Health Council, has determined to readopt the chapter without change.

Following is a summary of the chapter.

Subchapter 1, Purpose, Scope and Definitions, contains the purpose and scope of the chapter, the definitions of terms as used therein, and waiver provisions.

N.J.A.C. 8:26-1.1 states the purpose of the chapter.

N.J.A.C. 8:26-1.2 identifies the agencies with authority to enforce the chapter.

N.J.A.C. 8:26-1.3 defines terms used in the chapter.

N.J.A.C. 8:26-1.4 states procedures for waiver of chapter provisions.

Subchapter 2, Administration, contains public recreational bathing facility application and approval standards.

N.J.A.C. 8:26-2.1 establishes health authority jurisdiction to review and approve specifications, plans, and reports for public recreational bathing facilities.

N.J.A.C. 8:26-2.2 establishes procedures to obtain health authority prior approval to establish public recreational bathing facilities.

N.J.A.C. 8:26-2.3 establishes procedures to obtain health authority prior approval to alter public recreational bathing facilities.

N.J.A.C. 8:26-2.4 establishes procedures for health authority denial of approval for the location, construction, or alteration of a public recreational bathing place.

N.J.A.C. 8:26-2.5 requires health authority preoperational inspection of public recreational bathing facilities.

N.J.A.C. 8:26-2.6 establishes requirements for obtaining, maintaining, and displaying health authority license or permit for public recreational bathing facilities.

Subchapter 3, Swimming Pools, establishes physical design standards applicable to public swimming pools.

N.J.A.C. 8:26-3.1 establishes the swimming pool general layout and design standard.

N.J.A.C. 8:26-3.2 establishes the swimming pool construction material standard.

N.J.A.C. 8:26-3.3 establishes the swimming pool dimensional design standard.

N.J.A.C. 8:26-3.4 establishes the swimming pool diving area design standard.

N.J.A.C. 8:26-3.5 establishes the swimming pool bottom slope construction standard.

N.J.A.C. 8:26-3.6 establishes the swimming pool wall construction standard.

N.J.A.C. 8:26-3.7 establishes the swimming pool offset ledge construction standard.

N.J.A.C. 8:26-3.8 establishes the swimming pool underwater seat bench standard.

N.J.A.C. 8:26-3.9 establishes the swimming pool surface skimming system construction standard.

N.J.A.C. 8:26-3.10 establishes the swimming pool deck and walkway construction standard.

N.J.A.C. 8:26-3.11 establishes the swimming pool ladder and stair construction standard.

N.J.A.C. 8:26-3.12 establishes the swimming pool fencing and enclosure standard.

N.J.A.C. 8:26-3.13 establishes the swimming pool electrical, illumination, and ventilation standard.

N.J.A.C. 8:26-3.14 establishes the swimming pool diving stand, diving board, slide, and float construction standard.

N.J.A.C. 8:26-3.15 establishes the swimming pool circulation system standard.

N.J.A.C. 8:26-3.16 establishes the swimming pool return inlet and suction outlet standard.

N.J.A.C. 8:26-3.17 addresses protection of potable water at swimming pools.

N.J.A.C. 8:26-3.18 establishes the wading pool standard.

N.J.A.C. 8:26-3.19 establishes the standard for water slides at swimming pools.

N.J.A.C. 8:26-3.20 establishes the standard for authorization of rope drops.

N.J.A.C. 8:26-3.21 prohibits floats and fixed platforms in swimming and wading pools.

N.J.A.C. 8:26-3.22 establishes the swimming and wading pool water disinfection standard.

N.J.A.C. 8:26-3.23 establishes the swimming pool depth marking standard.

N.J.A.C. 8:26-3.24 establishes the applicability of N.J.A.C. 8:26-3.1 through 18 to swimming and wading pools existing prior to June 5, 2000.

Subchapter 4, Hot Tubs and Spas, establishes physical design standards applicable to hot tubs and spas.

N.J.A.C. 8:26-4.1 establishes the hot tub and spa general construction and design standard.

N.J.A.C. 8:26-4.2 establishes the hot tub and spa deck design and construction standard.

N.J.A.C. 8:26-4.3 establishes the hot tub and spa heater and temperature standard.

N.J.A.C. 8:26-4.4 establishes the hot tub and spa electrical, illumination, and ventilation standard.

N.J.A.C. 8:26-4.5 addresses protection of potable water at hot tubs and spas.

N.J.A.C. 8:26-4.6 s establishes the hot tub and spa return inlet and suction outlet standard.

N.J.A.C. 8:26-4.7 establishes the hot tub and spa circulation system standard.

N.J.A.C. 8:26-4.8 establishes the hot tub and spa water disinfection standard.

N.J.A.C. 8:26-4.9 establishes the hot tub and spa air induction system standard.

N.J.A.C. 8:26-4.10 establishes the hot tub and spa surface skimming system standard.

N.J.A.C. 8:26-4.11 establishes the hot tub and spa fencing and enclosure standard.

N.J.A.C. 8:26-4.12 establishes the standard for hot tub and spa depth marking.

N.J.A.C. 8:26-4.13 establishes the applicability of N.J.A.C. 8:26 to hot tubs and spas existing prior to, and on or after, June 5, 2000.

Subchapter 5, Waterfront Safety, establishes emergency equipment, operational, and personnel standards to promote safety at public recreational bathing facilities.

N.J.A.C. 8:26-5.1 establishes the waterfront safety standard applicable to specially exempt public recreational bathing facilities.

N.J.A.C. 8:26-5.2 establishes the swimming pool supervision standard.

N.J.A.C. 8:26-5.3 establishes the swimming pool emergency equipment standard.

N.J.A.C. 8:26-5.4 establishes bather rules for swimming pools, wading pools, hot tubs, and spas.

N.J.A.C. 8:26-5.5 establishes the standard for diving in swimming pools.

N.J.A.C. 8:26-5.6 establishes the wading pool supervision standard.

N.J.A.C. 8:26-5.7 establishes the water slide standard.

N.J.A.C. 8:26-5.8 establishes the hot tub and spa supervision standard.

N.J.A.C. 8:26-5.9 establishes the hot tub and spa emergency equipment standard.

N.J.A.C. 8:26-5.10 establishes the bathing beach supervision standard.

N.J.A.C. 8:26-5.11 establishes bather rules for bathing beaches.

N.J.A.C. 8:26-5.12 establishes the bathing beach lifesaving equipment standard.

N.J.A.C. 8:26-5.13 establishes the standard for bathing beach diving stands and boards.

N.J.A.C. 8:26-5.14 establishes waterfront restrictions for bathing beaches.

Subchapter 6, General Sanitation and Maintenance, establishes sanitation and maintenance standards to prevent injuries and the spread of disease at public recreational bathing facilities.

N.J.A.C. 8:26-6.1 establishes the general sanitation and maintenance standard for public recreational bathing facilities.

N.J.A.C. 8:26-6.2 establishes the public recreational bathing facility dressing room and bathhouse standard.

N.J.A.C. 8:26-6.3 establishes the public recreational bathing facility shower standard.

N.J.A.C. 8:26-6.4 establishes the public recreational bathing facility water closet and lavatory standard.

N.J.A.C. 8:26-6.5 establishes the public recreational bathing facility wastewater disposal standard.

N.J.A.C. 8:26-6.6 establishes the public recreational bathing facility solid waste disposal standard.

N.J.A.C. 8:26-6.7 establishes the public recreational bathing facility potable water supply standard.

N.J.A.C. 8:26-6.8 establishes the public recreational bathing facility drinking water fountain standard.

N.J.A.C. 8:26-6.9 establishes the public recreational bathing facility food service standard.

N.J.A.C. 8:26-6.10 establishes the public recreational bathing facility plumbing standard.

N.J.A.C. 8:26-6.11 establishes the public recreational bathing facility insect, rodent, and weed control standard.

N.J.A.C. 8:26-6.12 establishes the public recreational bathing facility recreational equipment standard.

Subchapter 7, Sampling and Water Quality Criteria, establishes procedures for water sampling and minimum water quality standards for public recreational bathing facilities.

N.J.A.C. 8:26-7.1 establishes the water source standard for swimming and wading pools, hot tubs, and spas.

N.J.A.C. 8:26-7.2 establishes the public recreational bathing facility microbial sampling standard.

N.J.A.C. 8:26-7.3 establishes the standard for water sample collection from swimming and wading pools, hot tubs, and spas.

N.J.A.C. 8:26-7.4 establishes the standard for disposition of water samples taken from public recreational bathing facilities.

N.J.A.C. 8:26-7.5 establishes the microbiological water quality standard for swimming and wading pools.

N.J.A.C. 8:26-7.6 establishes the procedure for response to a finding that a sample does not meet an applicable microbiological water quality standard.

N.J.A.C. 8:26-7.7 establishes the standard for analysis of swimming and wading pool chemical and physical water quality.

N.J.A.C. 8:26-7.8 establishes the swimming and wading pool chemical water quality standard.

N.J.A.C. 8:26-7.9 establishes the swimming and wading pool physical water quality standard.

N.J.A.C. 8:26-7.10 establishes the standard applicable to salt water swimming and wading pools that use ocean and/or bay water.

N.J.A.C. 8:26-7.11 establishes the hot tub and spa microbiological water quality standard.

N.J.A.C. 8:26-7.12 establishes the hot tub and spa chemical water quality standard.

N.J.A.C. 8:26-7.13 establishes the standard to eliminate the presence of algae standards for hot tubs and spas.

N.J.A.C. 8:26-7.14 establishes the hot tub and spa physical water quality standard.

N.J.A.C. 8:26-7.15 addresses pre-operational assessment of bathing beaches.

N.J.A.C. 8:26-7.16 establishes the standard for water sample collection from bathing beaches.

N.J.A.C. 8:26-7.17 establishes the water sampling technique standard for bathing beaches.

N.J.A.C. 8:26-7.18 establishes the standard for bathing beach microbiological water quality.

N.J.A.C. 8:26-7.19 establishes the standard for bathing beach chemical water quality.

N.J.A.C. 8:26-7.20 establishes the standard for bathing beach physical water quality.

Subchapter 8, Enforcement Procedures, establishes standards for enforcement authority, inspections, reporting, closures, recordkeeping, and fines and penalties.

N.J.A.C. 8:26-8.1 identifies laws in compliance with which public recreational bathing facilities are to operate.

N.J.A.C. 8:26-8.2 establishes the standard for health authority inspection of public recreational bathing facilities.

N.J.A.C. 8:26-8.3 establishes the standard for health authority reporting of public recreational bathing facilities inspections to the Department and anticipated bathing beach closings to the Department and to the Department of Environmental Protection.

N.J.A.C. 8:26-8.4 establishes the standard for public availability of inspection reports made pursuant to the chapter.

N.J.A.C. 8:26-8.5 establishes the general criteria for closure of public recreational bathing facilities.

N.J.A.C. 8:26-8.6 establishes the closure standard applicable to swimming and wading pools.

N.J.A.C. 8:26-8.7 establishes the closure standard applicable to hot tubs and spas.

N.J.A.C. 8:26-8.8 establishes the closure standard applicable to bathing beaches.

N.J.A.C. 8:26-8.9 establishes the recordkeeping standard applicable to public recreational bathing facilities.

N.J.A.C. 8:26-8.10 establishes the reporting standard for deaths and certain injuries.

N.J.A.C. 8:26-8.11 articulates the penalty liability for in the event of chapter violations and provides a cross-reference to the applicable penalty statute.

The Department is providing a 60-day comment period for this

rulemaking proposal. Therefore, the proposal is exempt from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption have protected and would continue to protect the health and safety of patrons and workers by establishing minimum design, operational, and personnel standards to prevent accidents and the spread of disease at public recreational bathing facilities, and by enabling officials with jurisdiction to enforce these standards and to impose corrective and punitive measures in the event of noncompliance.

The rules proposed for readoption have enhanced and would continue to enhance public confidence in the cleanliness and safety of New Jersey's recreational bathing facilities, thereby maintaining and enhancing the State's positive reputation as a wonderful place at which to spend leisure time, and having a direct beneficial effect in promoting the State's tourism industry.

Failure to readopt the rules proposed for readoption would jeopardize the health and safety of patrons and workers at recreational bathing facilities by inviting opportunities for accidents, deaths, and the spread of disease. Failure to maintain water quality standards could result in facility closures due to adverse ecological incidents. In addition to the

inherent harm in the occurrence of these adverse events, public awareness of these adverse events would have a negative impact on the State's leisure and tourism industries by harming the State's reputation as good place to spend a vacation.

Economic Impact

The rules proposed for readoption have had and would continue to have an economic impact on owners and operators of public recreational bathing facilities. Costs of compliance include expenses necessary to comply with design standards, to purchase, install, and maintain required operational and safety equipment, to conduct water quality testing, and to retain professionals and other personnel such as lifeguards and first responders, construction and design professionals, and water quality testing laboratories.

The rules proposed for readoption promote safety and sanitation, and thereby help to impede and prevent accidents, the spread of disease, and the occurrence of negative ecological events, all of which can result in illness, injuries, deaths, and facility closures. Public awareness of the occurrence of such adverse events can harm New Jersey's reputation for clean safe recreational bathing facilities and thereby have a negative impact on the State's leisure and tourism industries, with resulting loss of revenues.

Owners and operators of public recreational bathing facilities who adhere to the chapter's requirements presumably have avoided and would continue to avoid costs of compensating persons who would otherwise be sickened, injured, or die but for that adherence.

Persons who patronize public recreational bathing facilities probably have incurred and would continue to incur membership or attendance fees that reflect owners and operators' costs of compliance. The costs of compliance with the rules proposed for readoption may exceed a particular owner or operator's ability to continue to operate. For example, the downturn in the economy has made it difficult for certain public recreational bathing facilities in State parks to remain operational at taxpayer expense, resulting in possible fee increases or facility closures. If public demand for access to public recreational bathing facilities, as reflecting in taxpayer support and public willingness to pay facility fees, does not meet the costs of compliance with the chapter, some facilities may need to close. The Department believes that the need to impose reasonable standards to protect against the known risks of illness and injury at recreational bathing facilities promotes society's interest in ensuring the continued safe and clean operation and availability of these facilities, and outweighs the interest in cost savings that irresponsibly heighten risk.

As described more fully in the Summary, above, and the Federal Standards Statement, below, the rules proposed for readoption, together with rules of the Department of Environmental Protection at N.J.A.C. 7:9A governing Surface Water Quality Standards, would maintain the State's eligibility for grant funding pursuant to the BEACH and Baker Acts.

Federal Standards Analysis

As described more fully in the Summary, above, the rules proposed for re-adoption comply with but do not exceed the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000, Pub. Law 106-284, 114 Stat. 871, approved October 10, 2000, which amended the Federal Water Pollution Control Act, 33 U.S.C. § 1251, and the implementing regulations at 40 CFR Part 131. The BEACH Act and the implementation regulations generally require, as a condition of continued Federal grant funding, coastal and Great Lakes states and territories to test for the presence of enterococci bacteria to determine the water quality of their coastal recreation waters.

The Virginia Graeme Baker Pool and Spa Safety Act (Baker Act), Pub. L. 110-140 (December 19, 2007), 121 Stat. 1794, codified at 15 U.S.C. 8001 through 8007, and amending the Consumer Product Safety Act, 15 U.S.C. 2051 et seq., requires that by December 19, 2008, the following be installed in public pools and spas: (1) drain covers compliant with ASME/ANSI standard A112.19.8-2007, and (2) when there is only a single main drain, a second anti-entrapment system. The rules proposed for re-adoption meet but do not exceed requirements of the Baker Act. This Department, in consultation with the Public Health Council, makes this determination of nonexceedance by virtue of the availability of waiver procedures pursuant to N.J.A.C. 8:26-1.4. This determination of

nonexceedance, is subject to the Department's pending review of the chapter, described in the Summary, above, for consistency and compliance with the Baker Act, to ensure the State's eligibility for grant funding, if and when Congress determines to appropriate funding to implement the Baker Act.

Subject to the foregoing, the Department does not propose the rules proposed for readoption under the authority of, or in order to implement, comply with, or participate in any program established under, Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Therefore, no Federal Standards Analysis is required.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption would increase or decrease the number of jobs in the State. Failure to readopt the rules proposed for readoption could result in the loss of jobs for lifesaving and first responder personnel and other personnel at public recreational bathing facilities. For the reasons described in the Social and Economic Impact, above, failure to readopt the rules proposed for readoption could harm the State's positive reputation as a tourism and recreation destination, thereby reducing demand for

services in the State's tourism and leisure industries, with a corresponding decrease in demand for personnel to fill jobs in these industries.

Agriculture Industry Impact

The Department anticipates that re-adoption of the rules proposed for re-adoption would have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for re-adoption have imposed, and would continue to impose, reporting, recordkeeping, and compliance requirements on owners and operators of public recreational bathing facilities, and on health and other enforcement agencies of State, county, and local government. Of these, nongovernmental owners and operators of public recreational bathing facilities may be "small businesses" as the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines that term.

There are approximately 3,800 swimming pools licensed to operate in New Jersey. The Department has no figures on the breakdown between those operated by governmental agencies such as municipalities and school districts, and those operated by private entities.

The reporting, recordkeeping, and compliance requirements that the rules proposed for re-adoption impose on owners and operators of

public recreational bathing facilities that are small businesses are the same as those imposed on all owners and operators of public recreational bathing facilities generally. The Summary, above, describes these requirements.

The rules proposed for readoption impose costs on owners and operators of public recreational bathing facilities that are small businesses. These costs are the same as those imposed on all owners and operators of public recreational bathing facilities generally. The Economic Impact, above, describes these costs., Owners and operators that are governmental entities or larger businesses may be able to participate in joint purchasing programs or otherwise take advantage of the economies of scale in negotiating contracts for the purchase of certain commodities, such as pool chemicals, and services, such as laboratory fees, that are necessary for compliance with the chapter. These economies of scale in purchasing presumably are not similarly available to small businesses. In contrast, governmental entities that retain staff personnel to perform services the chapter requires typically incur costs that small businesses do not necessarily incur, such as employee pension and health benefits.

As described in the Summary, above, the rules proposed for readoption have required and would continue to require owners and operators of public recreational bathing facilities to retain the services of professionals to comply. These professionals are design, engineering,

construction and maintenance personnel to ensure facilities comply with design, construction, engineering, operation, and sanitation standards; lifeguards and first responders to oversee and implement adherence to standards for safe facility use; and laboratorians to perform water quality testing and analysis. The costs to small businesses that own or operate public recreational bathing facilities to retain these professionals are the same as the costs to all owners and operators generally. The Economic Impact, above, describes these costs.

A facility owner or operator's business size, commercial motive, and/or nonprofit status, generally do not have little bearing on the minimum measures necessary to ensure safety and sanitation at public recreational bathing facilities. The Department is satisfied that the rules proposed for readoption represent the minimum standards necessary to protect the health and safety of workers and patrons at public recreational bathing facilities. Therefore, the Department proposes no lesser or differing standards for small businesses.

Smart Growth Impact

The Department is not aware that the rules proposed for readoption have had, and does not anticipate that the rules proposed for readoption would have, an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption have not applied and would not apply to housing units. The rules proposed for readoption have not had, and would not have, an impact on the average cost of housing. The rules proposed for readoption would maintain existing standards for the safety and sanitation of recreational bathing facilities and for the establishment of enforcement authority in local and State officials. Therefore, a Housing Affordability Impact analysis is not required.

Smart Growth Development Impact

The rules proposed for readoption have not had, and would not have, an impact on the number of housing units or the availability of affordable housing in the State. The Department is not aware that the rules proposed for readoption have affected, and does not anticipate that the rules proposed for readoption would affect, new construction within Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan. The rules proposed for readoption would maintain existing standards for the safety and sanitation of recreational bathing facilities and for the establishment of enforcement authority in local and State officials. Therefore, a Housing Affordability Impact analysis is not required.

Therefore, a Smart Growth Development Impact analysis is not required.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:26.

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