

# **Request for Delegation of Rulemaking to Amend Chapters 246-260 (Water Recreational Facilities) and 246-262 WAC (Recreational Water Contact Facilities)**

October 2009



## **Introduction**

On December 18, 2008, the federal Pool and Spa Safety Act, also known as the Virginia Graeme Baker Pool and Spa Safety Act, took effect and established significant safety improvements for private and public water recreation facilities. Of importance was the establishment of new design standards for pool and spa drains and requirements for entrapment prevention systems.

In Washington State, the State Board of Health sets health and safety requirements for public facilities through two chapters of administrative code. These chapters are: WAC 246-260 Water Recreational Facilities and WAC 246-262 Recreational Water Contact Facilities. Suction entrapment prevention has been a key element of these rules for many years.

## **Proposal**

The department is requesting the board's delegation of rule making authority to amend Chapters 246-260 and 246-262 WAC. This proposed rule amendment will be narrowly focused to replace existing state technical design standards with reference to the federally-imposed ASME A112.19.8 - 2007 design standard, where existing state standards conflict.

## **Why**

Some segments of the state rule relating to the design of main drains and suction outlets are now in conflict with the federal statute. This conflict has contributed to inconsistent application of safety standards across the state. At least one local health jurisdiction (LHJ) is limiting their enforcement activity to the state rule without consideration of the preemptive nature of the federal statute when reviewing and approving plans for new and remodeled facilities.

## **Who is affected and how**

Water recreation facility designers, builders, operators, owners, and LHJs will be affected by this proposed rule amendment. These stakeholders will benefit from updated state rules that are clearly consistent with federal statute.

## **Conformance with the State Board of Health Delegation Criteria**

The board "Policy for Considering Delegation of Rule to the Department of Health" provides the following elements for consideration.

***The extent to which the proposed rule revision is expected to include editorial and/or grammatical changes that do not change the substance of the rule:*** Limited editorial changes will be necessary to improve clarity and ensure consistency with the federal statute.

***The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion:*** The federal statute establishes a national design standard for pool and spa main drains, a standard that preempts design requirements established in state health and safety code. This proposed rule amendment will eliminate inconsistencies between state and federal requirements.

***The extent to which the proposed rule may make significant changes to a policy or regulatory program:*** Changes to the state regulation will be limited to those required by the federal Pool and Spa Safety Act. No significant changes will be proposed.

***The extent to which the rule revision process would benefit from the board's role as a convener of interested parties:*** The department does not expect the rule revision to be controversial or contentious. Stakeholders will be fully involved through program activities to seek input on proposed amendments and the public hearing. The draft rule will be made available through the department's website and email notification to stakeholders and interested parties. The department will distribute the proposed rule to stakeholders and post it on the department's rules comment website during the formal public comment period.

For the past year the Water Recreation Program has been working extensively to integrate the existing state rules with the new federal statute. The program has developed guidance materials, expanded its website, provided training to members of the water recreation community and LHJs, and communicated with representatives of the Consumer Product Safety Commission, the federal agency responsible for implementing the federal statute. Through these efforts the water recreation community and LHJs are well aware of the conflicts that exist between the state rules and the federal statute and the need to revise the rules.

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