NEW HAMPSHIRE

RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

ROOM 219, STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312
Tel. (603) 271-3680
Fax (603) 271-7871
Website: www.gencourt.state.nh.us/rules/index.html
TDD Access:
Relay NH 1-800-735-2964

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TABLE OF CONTENTS

		Page No.
1.	OFFICE OF LEGISLATIVE SERVICES	
	a. List of Notices of Proposed Rules NN 2020-80	ii
	b. Notice of Proposed Rules	1

NOTE: POSSIBLE RULE EXTENSION
If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

2. COMMITTEE (JLCAR)

CONTINUED MEETING Previously Scheduled for September 3, 2020 Has Been Cancelled

REGULAR MEETING: **Thursday, September 17, 2020 9:00 a.m.**
This remote meeting will take place as a Zoom webinar, with further instructions on Page 5 of this Register, and at http://gencourt.state.nh.us/rules/default.htm.

CONTINUED MEETING: **Thursday, October 1, 2020 9:00 a.m.**
This remote meeting will take place as a Zoom webinar, with further instructions TBA.

See 2020 JLCAR Meeting dates and deadlines on page i.

JLCAR MEETING DATES AND RELATED FILING DEADLINES SEPTEMBER-DECEMBER, 2020

The JLCAR has voted to hold its regularly scheduled monthly meetings for September through December, 2020 on the third Thursday of the month as listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. **But the deadline will change on September 27, 2020 to a 21-day deadline pursuant to 2020, 37:73 and 77, affecting filings for the October, November, and December regularly scheduled meetings as shown below.** The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
September 3	**September 17**	October 1
September 24 (not Oct. 1)	**October 15**	November 5
October 29 (not Nov. 5)	**November 19**	December 3
November 30* (not Dec. 3)	**December 17**	None

* **NOTE**:

The new 21-day deadline to file for the December 17 meeting falls on Thanksgiving, November 26. Pursuant to RSA 541-A:16, IV, it is automatically extended to Monday, November 30.

However, if a proposed interim rule is filed with a rulemaking notice for publication in the *Rulemaking Register*, be aware that Wednesday, November 25 remains the filing deadline under the *Drafting and Procedure Manual for Administrative Rules* to have the rulemaking notice published the following week. That is important because, pursuant to 2020, 37:73, effective September 27, 2020, the minimum notice period prior to a regular JLCAR meeting for publication of an interim rulemaking notice changes from a 7-day notice period to a 14-day notice period. **Therefore, filing the interim rulemaking notice together with the proposed interim rule no later than Wednesday, November 25 would assure that both the 21-day deadline for filing the rule for the December 17 JLCAR meeting and the 14-day period for notice publication in the *Rulemaking Register* would be met**.

Notices of Proposed Rules

Notice Number	Rule Number	Agency and Short Title of Rule	Page No.
2020-80	Env-Wq 1100	Department of Environmental Services Water Quality and Quantity Programs Public Bathing Places	1

Notice Number	**2020-80**	Rule Number	**Env-Wq 1100**

1. Agency Name & Address:

Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

2. RSA Authority: RSA 485-A:6, X; RSA 485-A:26, III; RSA 485-A:26-a,**X** III; RSA 541-A:16, I
3. Federal Authority: n/a
4. Type of Action:

Adoption	**X**
Amendment	
Repeal	
Readoption	
Readoption w/amendment	**X**

5. Short Title: **Public Bathing Places**

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-Wq 1100, implement RSA 485-A:26, II & III, relative to public bathing places by establishing the criteria and procedures for reviewing and approving the design and installation of public bathing places including public bathing facilities (PBFs), identifying standards to protect water quality and the health and safety of persons using public bathing places, and ensuring that public bathing places are maintained and operated safely for patrons. This proposal adopts new rules and readopts with amendments existing rules in Env-Wq 1100 to address legislation enacted in the 2019 legislative session, specifically new provisions in RSA 485-A:26, II(b) relative to registration of PBF establishments, RSA 485-A:26-a relative to PBF compliance self-certification, RSA 485-A:27, II relative to emergency closures, and RSA 485-A:27-a relative to certified pool operators. At the same time, provisions are proposed to require the Department to be notified of transfers of ownership of PBFs, to establish requirements for air handling systems for indoor PBFs, to require the turn-over rate to be improved in older pools that undergo substantial modification if they cannot consistently meet water quality requirements, and to clarify RSA 485-A:26, IV relative to equivalent municipal programs. Additional changes are proposed to add definitions and clarify existing requirements.

In addition to clarifying many existing requirements, the following changes are proposed:

- The rules would allow for electronic submission of applications and certifications, in anticipation of an e-portal being created for them;
- The application for approval of a PBF must include the name, mailing address, license number, license expiration date, email address, and daytime telephone number of the professional engineer responsible for the plans;
- The requirement for spa users to not use a public spa for longer than a 10-minute immersion without a break period for cooling off would be eliminated; and
- A pre-2014 pool that is substantially modified on or after the 2020 effective date of this chapter will have to have a minimum circulation flow rate of one pool water turnover every 6 hours if it cannot consistently meet water quality standards.

New requirements also would be created to:

- Implement the newly-enacted requirements relative to registration of PBFs, PBF compliance self-certification, emergency closures, and certified pool operators;
- Require air handling systems for indoor PBFs;
- Require the prior owner and new owner to notify the Department when ownership of a PBF is transferred;

- Require the pool operator of a common interest bathing facility that does not use automated chemical controllers to test for temperature, pH, and disinfectant residual prior to opening the PBF and every 4 hours during operation;
- Specify design standards for underwater shelves, including swim-outs, sun shelves, Baja shelves, tanning ledges, and tanning shelves; and
- Establish a process whereby municipalities can become approved to sample and analyze their own PBFs as well as other PBFs in their municipalities and can become approved to conduct full inspections of their own PBFs as well as other PBFs in their municipalities.

6. (b) Brief description of the groups affected:

The rules impact any person that owns or operates a public bathing facility in New Hampshire.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-Wq 1100 (see also specific parts below)	RSA 485-A:26 through 27-a
Env-Wq 1104	RSA 485-A:26, II(b)-(d)
Env-Wq 1105	RSA 485-A:26-a
Env-Wq 1106	RSA 485-A:27-a
Env-Wq 1114	RSA 485-A:27, II
Env-Wq 1115	RSA 485-A:26, IV
Env-Wq 1116	RSA 541-A:22, IV

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Ted Diers
Title: Administrator, Watershed Management Bureau

Address: Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-3289
Fax#: (603) 271-7894
E-mail: Theodore.Diers@des.nh.gov

The rules also can be viewed in PDF at http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, October 23, 2020**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING

☒Fax ☒E-mail ☐Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, October 8, 2020 at 10:00 AM**

Place: **This will be a virtual hearing via WebEx. Contact Ted Diers at Theodore.Diers@des.nh.gov to obtain the link, meeting number, and password.**

You also may call in to the meeting: Call in Number: +1-415-655-0001

Access Code: 277-137-565

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 20:060 , dated 07/14/2020:

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**
   When compared to the existing rules the proposed rules may increase costs to certain State citizens, political subdivisions and independently owned businesses. Not applicable to Env-Wq 1103.13 and 1103.14, and Env-Wq 1104, Env-Wq 1105, Env-Wq 1106, Env-Wq 1108.21, Env-Wq 1114 and Env-Wq 1115 which are new rules.

2. **Cite the Federal mandate. Identify the impact on state funds:**
   Section 1404 of the Virginia Graeme Baker Pool and Spa Safety Act (PL 110-140; 15 U.S.C. § 8003) requires conformance with ANSI pool and spa drain cover standards. No impact on state funds.

3. **Cost and benefits of the proposed rule(s):**
   Costs related to registration of Public Bathing Facilities (PBF), PBF compliance self-certification, emergency closures, and certified pool operators are attributable to the statute. RSA 485-A:26, II, requires (1) new public bathing places to be approved by the Department prior to being "installed, operated or maintained"; (2) a fee of $100 for a pool 400 square feet in area and an additional $25 for every additional 100 square feet to be paid to the Department for review of the plans and specifications for the public bathing place; and (3) the Commissioner to adopt rules relative to safety standards to protect persons using PBFs. The details of the application for approval and the health and safety standards that must be met are specified in the rules. The federal VGBA establishes certain anti-entrapment requirements for pools and spas. Therefore, the costs associated with applying for approval are partly attributable to the statute, partly attributable to the rules, and partly attributable to federal requirements, while the costs associated with operating and maintaining a PBF are attributable to the rules. For most of the rules, there is no difference in the costs that are attributable to the rules. The proposed rules will result in the following new costs to political subdivisions of the state that own PBFs, citizens of the State that own common interest in PBFs and independently owned businesses that own PBFs:

- Env-Wq 1109.09 - Modifying a pre-2014 pool to have a minimum circulation flow rate of one pool water turnover every 6 hours if the pool cannot consistently meet water quality standards. This would likely entail replacing the pump and could entail replacing all the piping associated with the pump system. Depending on what needs to be upgraded, additional costs could run from $5,000 to $20,000 or more.

- Env-Wq 1108.21 - Air handling systems for indoor PBFs - applies to new PBFs and PBFs in establishments that are modified to an extent that making changes is possible. For new PBFs, the costs would be included in the HVAC costs. For existing establishments that are renovated to make such changes possible, it could be as simple as replacing a fan or could be as complicated as creating new venting systems, and so could run from $10,000 to $50,000 or more depending on the circumstances.

- Env-Wq 1107.03 - Testing at common interest PBFs that do not use automated chemical controllers for temperature, pH, and disinfectant residual prior to opening the PBF and every 4 hours during operation. A good quality test kit for pH and disinfectant residual costs around $50 to $100, and a thermometer costs around $10. Reagents for the test kit are likely to run not more than $100 per season.

- Env-Wq 1103.13 and 1103.14 – Transfer of PBF Ownership. The Department indicates there is no fee associated with ownership transfer so no additional costs would be incurred for either the prior owner or the new owner.

Any cost or benefit associated with the following new rules are attributable to the statutes listed and not the rules.

Rule	Subject	RSA
Env-Wq 1104	PBF Registration	485-A:26, II b-d
Env-Wq 1105	PBF Compliance Self-Certification	485-A:26-a
Env-Wq 1106	Certified Pool Operator Training Requirement	485-A:27-a
Env-Wq 1114	PBF Emergency Closure Procedure	485-A:27-a
Env-Wq 1115	Equivalent Programs	485-A:26, IV

A. To State general or State special funds:
None.

B. To State citizens and political subdivisions:
See #3 above.

C. To independently owned businesses:
See #3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The costs attributable to modifying a pre-2014 pool to have a minimum circulation flow rate of one pool water turnover every 6 hours would only apply to a political subdivision if the political subdivision's pool was not consistently meeting water quality standards, meaning that multiple violations would have been occurring. The costs attributable to modifying an air handling system for an indoor PBF would only apply if the political subdivision had an indoor pool and elected to make other structural changes that made installing or upgrading the system (if necessary) possible. The rules thus do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the N.H. Constitution.

REMOTE REGULAR MEETING
LOGIN INSTRUCTIONS

THURSDAY, SEPTEMBER 17, 2020 @ 9:00 A.M.

The Regular Meeting of the Joint Legislative Committee on Administrative Rules (JLCAR) on September 17, 2020 will be held as a Zoom webinar.

Committee and staff members will receive secure Zoom invitations by e-mail.

Members of the public and state agency personnel who plan to attend the meeting do not have to pre-register, but if they wish to speak they should contact Cheryl Walsh in the Administrative Rules office at cheryl.walsh@leg.state.nh.us. This makes it easier to keep track of how many persons may have to be upgraded in the meeting as participants and therefore to ensure participation by agency staff and the public.

Members of the public and state agency personnel may attend using one of the following alternatives:

1. Join the webinar: https://zoom.us/j/96467054129

2. iPhone one-tap:
US: +13126266799,,96467054129# or +19292056099,,96467054129#

3. Telephone:
Dial (for higher quality, dial a number based on your current location):
US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782
Webinar ID: 964 6705 4129
International numbers available: https://zoom.us/u/adQ2uZO3Km

The following e-mail address will be monitored throughout the meeting by JLCAR staff who can assist with and alert the JLCAR to any technical issues: cheryl.walsh@leg.state.nh.us or call 603-271-6647.