



Minnesota  
Department  
of Health

PROTECTING, MAINTAINING AND IMPROVING THE HEALTH OF ALL MINNESOTANS

Delivered Electronically

February 22, 2016

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Re: In The Matter of the Proposed Rules of the Department of Health Governing Pool Water Conditions, *Minnesota Rules*, 4717.1750; Notice of Intent to Adopt Rule Amendments Without a Public Hearing; Revisor's ID Number 4295

Dear Librarian:

The Minnesota Department of Health intends to adopt rules Governing Pool Water Conditions, *Minnesota Rules*, 4717.1750. We plan to publish a Notice of Intent to Adopt Rule Amendments Without a Public Hearing in the February 22, 2016 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rule Amendments Without a Public Hearing.

If you have questions, please contact me by either phone at 651-201-5792 or by email at [linda.prail@state.mn.us](mailto:linda.prail@state.mn.us).

Yours very truly,

/s/

Linda Prail, Rule Developer  
Minnesota Department of Health  
Food, Pools, and Lodging Services Section  
625 Robert Street N.  
St. Paul, MN 55164-0975  
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Enclosure: Statement of Need and Reasonableness

Minnesota Department of Health  
Environmental Health Division

**STATEMENT OF NEED AND REASONABLENESS**

**Proposed Amendments to Rules Governing Pool Water Conditions, *Minnesota Rules*,  
4717.1750; Revisor's ID Number 4295**

**INTRODUCTION**

The Minnesota Department of Health (MDH) is proposing to amend *Minnesota Rules* 4717.1750. It is a revision of the existing state standard governing the water chemistry operational ranges for all public swimming pools and spa pools (referred to below as pools). The proposed rule amendments are about pool water conditions, specifically disinfectant residuals and allowable pH levels. This revision language will:

- increase the minimum required disinfectant residual for some pools;
- increase the maximum allowable disinfectant residual for all pools; and
- decrease the maximum allowable pH for some pools

These proposed rule amendments will assist in making swimming environments healthier and making pool operation easier. Some swimming pool operators and inspectors requested this change.

**ALTERNATIVE FORMAT**

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact:

Linda D. Prail  
Food, Pools, and Lodging Services Section  
Environmental Health Division  
Minnesota Department of Health  
Freeman Building  
625 Robert Street North  
P. O. Box 64975  
St. Paul, Minnesota 55164-0975  
[linda.prail@state.nm.us](mailto:linda.prail@state.nm.us)  
Office: (651) 201-5792 or Fax: (651) 201-4514

**STATUTORY AUTHORITY**

The statutory authority to adopt the rules is *Minnesota Statutes*, section 144.1222, subdivision 1.

**“144.1222 PUBLIC POOLS; ENCLOSED SPORTS ARENAS.**

Subdivision 1. Public pools. The commissioner of health shall be responsible for the adoption of rules and enforcement of applicable laws and rules relating to the operation, maintenance, design, installation, and construction of public pools and facilities related to them. The commissioner shall adopt rules governing the collection of fees under section 144.122 to cover the cost of pool construction plan review, monitoring, and inspections.”

## REGULATORY ANALYSIS

*Minnesota Statutes*, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the department's response.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

Pool owners and operators will be affected because they are the ones who must implement the code. The change will make it easier to operate the pool by making the requirements for the chemicals operators add to disinfect the water more flexible. To make the water safe these chemicals have to be present in the pool water at all times. The certain minimum amount of sanitizer in the water is called a “residual” in pool operation. Expanding the chlorine operating range from 0.5 to 5.0 parts per million (ppm) to 1.0 to 10.0 ppm will make it easier for pool operators to attain safe residuals. Plus, it provides a higher disinfectant residual to combat today's emerging pathogens such as cryptosporidium.

The general public will have safer public swimming pools. Increasing the minimum disinfectant residual (chlorine or bromine) will put more disinfectant in the water, allowing the chemical to kill off more disease-causing organisms in the water. Decreasing the maximum pH, or alkalinity, will make the disinfectant more efficient. Centers for Disease Control studies have found chemicals used to disinfect swimming pools are affected by pH; the lower the pH the more effective the chemicals are.

Increasing the maximum chlorine and bromine levels will benefit the owners and operators and the public because the higher the level of chemical will allow the pool water to cleanse itself faster after an accident in the pool, such as fecal discharge or blood entering the pool.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

The department will not incur any additional costs due to adopting these amendments. No additional inspection time or significant changes to administering the pool program will be required.

A few state agencies and entities, such as the Minnesota Academies for the Deaf and Blind, Minnesota State Colleges and Universities, and the Minnesota Zoo, own or operate pools regulated under this rule. They might be affected by the proposed amendments. These owner or operators would face the same possible cost increase as discussed in (5) below.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

No, this option is the least costly of various alternatives. There are more costly methods. One alternative is using ultraviolet light to cleanse the water, which is very expensive and requires a

high level of maintenance.

Most pool operators and pool construction companies agree this option is the most cost-effective. During the “Request for Comments” period, the department did not receive any complaints or concerns about the effect of these rule amendments on operating costs.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The other alternatives are more costly and require higher maintenance. Larger pool facilities that currently use ultraviolet light have found the added cost affordable; a low-cost version, however, is not on the market.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

Most pool owners or operators will see no increase in cost because of these rule amendments. Any cost increase depends on the size of the pool and the current levels of chlorine or bromine used and the current pH levels.

Some pools already are operated at 1.0 ppm. We pulled a random sample of 25 pools licensed by MDH and reviewed the most recent inspection report for chlorine and pH levels.

License #	Establishment Name	City	County	Inspection Date	pH	Free Cl
30974	Hampton Inn Hibbing	Hibbing	St. Louis	5/22/2015	7.5	5.0
24879	Minneota Public Pool	Minneota	Lyon	6/4/2014	7.4	2.0
2979	AmericInn	International Falls	Koochiching	12/15/2014	7.2	1.4
14884	Eagle Ridge Condominiums	Lutsen	Cook	5/27/2015	7.2	3.0
9576	Grand Hinckley Inn	Hinckley	Pine	8/4/2014	7.4	1.2
18597	Thumper Pond Resort	Ottertail	Otter Tail	1/18/2015	7.2	1.0
22440	Colonial Villa Apartments	Burnsville	Dakota	7/7/2014	7.4	3.4
2120	Best Western of Thief River Falls	Thief River Falls	Pennington	9/25/2014	7.0	3.0
23520	City of Hayfield	Hayfield	Dodge	6/24/2014	7.0	0.4
15153	Valley Middle School/Southview Elem	Apple Valley	Dakota	6/8/2015	7.4	0.2
15790	Shakopee Junior High School East	Shakopee	Scott	3/4/2015	7.2	5.0
15691	Chokio-Alberta Public School	Chokio	Stevens	3/26/2015	7.2	4.8
22990	The Woods of Burnsville	Burnsville	Dakota	6/5/2014	7.2	4.4

21472	Wentworth Apartments	West St Paul	Dakota	4/7/2015	7.2	8.6
14926	The Grove-Aquatic/Fitness Center	Inver Grove Heights	Dakota	9/5/2014	7.6	4.6
27367	City of Morgan - Morgan Swimming Pool	Morgan	Redwood	6/25/2014	7.3	1.0
27752	The Wilderness Park Homeowners Association	Motley	Cass	6/17/2014	7.4	6.0
17510	Sugar Point Resort	Federal Dam	Cass	6/16/2014	7.2	3.8
22799	Best Western Plus Spirit Mountain Duluth	Duluth	St. Louis	2/24/2015	7.4	2.0
22197	Monument Ridge, LLC	Inver Grove Heights	Dakota	7/17/2014	7.4	4.4
17583	Americas Best Value Inn Walker	Walker	Cass	4/1/2014	7.8	0.7
16087	Tracy Aquatic Center	Tracy	Lyon	6/9/2015	7.6	1.6
21514	City of Spring Valley	Spring Valley	Fillmore	6/23/2014	7.8	3.0
24257	West Hills Fitness & Tennis	Owatonna	Steele	9/25/2014	7.2	5.0
21531	Albert Lea Aquatic Center	Albert Lea	Freeborn	6/24/2014	7.6	6.0

The chart shows most of the sample pools operating at or above 1.0 ppm for chlorine. There are two pools, City of Hayfield and Valley Middle School/Southview Elementary, out of compliance with the current rule with chlorine levels below 0.5 ppm. One pool, American Best Value Inn Walker, was operating below the proposed 1.0 ppm and would have to raise the level under the proposed revision.

There may be a slight increase in cost of less than 1% for owners or operators who currently operate pools below 1.0 ppm free chlorine. We did a calculation using the example of 324,000 gallon pool. We asked how much does it cost to raise the free chlorine from 0.5 to 1.0 ppm. Using the pool calculator, ([http://poolcalculator.com/?utm\\_source=www.poolcalculator.com&utm\\_medium=redirect&utm\\_campaign=redirect/](http://poolcalculator.com/?utm_source=www.poolcalculator.com&utm_medium=redirect&utm_campaign=redirect/)), we found the pool will need 34 ounces of 65% Calcium Hypochlorite. Calcium Hypochlorite currently sells for \$2.00/pound. The calculation is  $(34/16) * 2 = \$ 4.25$ . This pool currently spends \$15,288 a season on Cal-hypo, so there would a 0.028% increase in order to comply with the revision.

Using the same pool and the pool calculator, we calculated how much will it cost this same pool to lower the pH from 8.0 to 7.8, we found the pool will need 149 fluid ounces of 20 Baume Muriatic Acid, which currently sells for \$4.00/gallon. The calculation is  $(149/128) * \$4 = \$4.66$ . This same pool spends \$3,822 a season on Muriatic Acid, so there would be a 0.12% increase to achieve the required result.

Operational costs may decrease due to earlier re-opening of a pool after a fecal release and hyper-chlorination event; because the operator will not have to de-chlorinate the pool from 10

ppm to 5 ppm.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

If these rule amendments are not adopted, the public will continue to face avoidable risks to health. Costs for pool owners or operators may increase because of a continued rise in outbreaks associated with swimming and spa pools. Outbreaks may be very costly for an owner or operator if found liable. Also, the regulatory authority must spend time tracing the source of the outbreak, an unnecessary use of scarce resources. The pool is closed during this investigation period, which means a loss in business and revenue for the owner or operator.

The delegated agencies may incur costs if they have to update their ordinances to contain the new rule language. Many agencies’ ordinances just refer to the Minnesota Pool Code or incorporate the Minnesota Pool Code by reference. These agencies would not need to revise their ordinances. Other delegated agencies with more complex or specific ordinances would have to complete a revision. Based on past history, the costs for these revisions should be minimal. MDH has heard no concerns from the delegated agencies about the cost of this rule.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

There are no existing federal laws or regulations governing the subject matter of these rule amendments. The federal government does not have a comprehensive pool law or pool regulations.

There is a federal law entitled the *Virginia Graeme Baker Pool and Spa Safety Act (P&SS Act)*, enacted in 2007 regulating some pool drain covers and other drain-related items. This Act does not regulate the same subject matter as the proposed rule amendments. These rule amendments will bring the Minnesota Pool Code in conformance with some portions of the new national pool guideline, the Model Aquatic Health Code (MAHC).

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time”**

These proposed rule amendments add no increased regulatory burden to pool owners or operators. The amendments are adjustments to levels of disinfecting chemicals already used in pool operation and to the required pH level. No cumulative effect will occur from the adoption of these amendments.

## **RULE AMENDMENTS AFFECT ON FARMING OPERATIONS**

Pool operation has no bearing on Minnesota farming operations, so the proposed amendments will not affect farming operations.

## **PERFORMANCE BASED RULES**

*Minnesota Statutes* (sections 14.002 and 14.131) require the department to describe how in developing these proposed rule amendments, it considered and possibly incorporate performance-based standards in the amendments. (The performance-based standards must emphasize superior achievement in meeting the regulatory objectives and maximum flexibility for the regulated party and department in meeting those goals.)

A true performance-based rule would establish specific outcome(s) and the regulated party would be able to select the approach or manner to achieve the outcome(s). In much of public health regulation, this is not possible without putting the public's health in danger.

The objective of the Pool Code is to provide a safe swimming environment in pools throughout Minnesota. MDH considered performance-based standards but could not reconcile setting this goal for pool owners or operators and allowing them to select approaches or manners to achieve this goal with the more important need to protect public health. Pool chemistry is complicated and is not a subject many pool owners or operators know well. Experimentation with pool chemicals has too much potential for allowing for significant risks to swimmers from high bacteria concentrations in the pool or health problems from too much of a chemical such as chlorine in the pool. Plus, these changes are few and simple.

The Pool Code does allow some flexibility in the choice of testing kits. The owner or operator may select which type or brand or test kit to be used. MDH and the delegated agencies care about the results of the test(s); not the type or brand or test kit used.

## **ADDITIONAL NOTICE**

The department mailed (via the Post Office) the Request for Comments (RFC) to:

- the department rulemaking list (Attachment 1),
- all pools licensed by the department; and
- a list of pool construction companies and pool supply companies

We also emailed the RFC to all of the local units of government delegated to administer the licensing and inspection of pools.

The RFC and the draft proposed rule amendments were posted on the department's website (<http://www.health.state.mn.us/divs/eh/pools/rulerevision.html>).

MDH presented and discussed proposed draft amendments at Regulatory Breakfast meetings. (Attendees at these meetings include inspectors and other regulatory staff from MDH and local units of government delegated to administer the licensing and inspection of pools and other food

and lodging programs.) They also were discussed at Minnesota Recreational Water Advisory Council (MRWAC). (The Minnesota Recreational Water Advisory Council (MRWAC), is an unofficial, voluntary, open to the public, group of aquatic professionals, builders, suppliers and regulators meeting bi-monthly.) MRWAC has fully endorsed this proposed rule change.

Our Notice Plan also includes giving all of the notice required by statute. We will mail the rule amendments and Notice of Intent to Adopt to everyone who has registered to be on the department's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a.

- We also will mail the rule amendments and Notice of Intent to Adopt (via the Post office) to all pools licensed by the department and a list of pool construction companies and pool supply companies.
- We also will mail the Notice of Intent to Adopt to all of the local units of government delegated to administer the licensing and inspection of pools.
- The Notice of Intent to Adopt and the draft proposed rule amendments were posted on the department's website (<http://www.health.state.mn.us/divs/eh/pools/rulerevision.html>).
- The amendments and Notice of Intent to Adopt will be presented and discussed at a Regulatory Breakfast meeting.
- The amendments and Notice of Intent to Adopt will be presented and discussed at a MRWAC meeting.

We will also give notice to the Legislature per *Minnesota Statutes*, section 14.116. Our Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per *Minnesota Statutes*, section 14.111.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by *Minnesota Statutes*, section 14.131, the department has consulted with Minnesota Management and Budget (MMB). Before publishing the Notice of Intent to Adopt, we sent to the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR to MMB for review. A copy of the cover correspondence and MMB's response is included as Attachment A.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

The delegated local units of government are not required by either statute or rule to adopt ordinances or regulations governing pools. No local unit of government will have to adopt or amend an ordinance or other regulation to comply with the proposed amendments. Some delegated local units of government may revise their ordinance(s) to match the revised rule; however, they are not required to do so.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

The probable costs due to these amendments has been discussed in (5) above. Based on the information collected from discussions at the MRWAC meetings and during the comment period, we do not know of any small business or city that will have a cost of complying with these proposed amendments in an amount exceeding \$25,000.



**RULE-BY-RULE ANALYSIS**

**4717.1750, Subp. 3. Disinfectant residual, Items A, B and D**

A minimum disinfectant residual of 1.0ppm chlorine and 2.00ppm bromine is necessary because CDC data shows these minimums can effectively disinfect the water of most pathogens. The proposed additional minimum disinfectant residual will make the pool water safer for swimmers because the higher the disinfectant residual the more effective the chemical will be at killing disease-causing microorganisms present in the pool water. All disinfectant levels should be consistent with label instructions of the disinfectant. All pool disinfectants must be registered by the U.S. Environmental Protection Agency under the *Federal Insecticide, Fungicide and Rodenticide Act (7 USC 136)*.

MDH chose an upper limit of 10 ppm chlorine and 20ppm bromine to ensure operators can still reasonably measure the disinfectant residual. Most test kits for measuring chlorine and bromine have an upper limit to how high they can measure the chemical. Most standard kits measure to this level. Available data suggests there is not a health risk from higher levels of chlorine and bromine. The cities of Minneapolis, Bloomington and Richfield have used these levels for several years with no ill health effects or swimmer complaints.

(<https://www.bloomingtonmn.gov/environmental-health-division/public-swimming-pools-and-spas>)

**4717.1750, Subp. 5. pH**

The proposed reduced pH allowable range in all pools is needed because the disinfectant residual is dramatically more effective with this lower pH level of the pool water. At higher pH levels, the water simply does not make pathogens inactive, a severe effect. Maintaining pH between 7.2 and 7.8 is reasonable because it allows the disinfectant residual to be more effective and the swimmer more comfortable. The State of Wisconsin pool code also requires this pH allowable range. ([http://docs.legis.wisconsin.gov/code/admin\\_code/dhs/110/172/II/14](http://docs.legis.wisconsin.gov/code/admin_code/dhs/110/172/II/14))

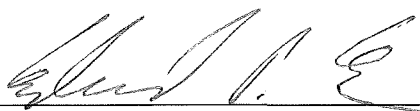
**AGENCY WITNESSES**

MDH does not expect this uncontroversial rule to have a hearing. If we were to have a hearing, the department expects that Steven Diaz, Section Manager, Food, Pools, and Lodging Services Section (FPLSS), MDH; Pamela Steinbach, Unit Supervisor, FPLSS, Steve Klemm, P.E., Public Health Engineer, FPLSS and Linda Prail, Rule Developer, FPLSS would testify for MDH.

**CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

2/9/06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Edward P. Ehlinger, M.D., M.S.P.H.  
Commissioner

1.1 **Department of Health**

1.2 **Proposed Permanent Rules Relating to Pool Water Conditions**

1.3 **4717.1750 POOL WATER CONDITION.**

1.4 Subpart 1. **Maximum water temperature.** The water temperature in a pool must  
1.5 not be more than 104 degrees Fahrenheit.

1.6 Subp. 2. **Test kits.** Each pool must have the testing equipment specified in this  
1.7 subpart:

1.8 A. a DPD (Diethyl-P-Phenylene Diamine) test kit to measure the concentration  
1.9 of disinfectant in water, accurate within 0.1 parts per million;

1.10 B. a phenol red pH testing kit accurate to the nearest 0.2 pH unit;

1.11 C. a test kit to measure alkalinity using the methyl orange or equivalent method;  
1.12 and

1.13 D. where cyanuric acid is used, a test kit to test cyanuric acid concentration.

1.14 Subp. 3. **Disinfection residual.** When in use, a pool must be continuously  
1.15 disinfected with a chemical that imparts an easily measured, free available residual.

1.16 A. When chlorine is used, a free chlorine residual of at least ~~0.5~~ 1.0 parts per  
1.17 million must be maintained throughout the pool.

1.18 B. When bromine is used, a bromine residual of at least ~~1.0~~ 2.0 parts per million  
1.19 must be maintained throughout the pool.

1.20 C. ~~The minimum free residual for chlorine must be 1.0 parts per million and 2.0~~  
1.21 ~~parts per million for bromine when any of the following conditions exist:~~

1.22 (1) ~~cyanuric acid exceeds 30 parts per million;~~

1.23 (2) ~~the pH exceeds 7.7;~~

1.24 (3) ~~the water temperature exceeds 84 degrees Fahrenheit; or~~

2.1 ~~(4) the pool is a wading pool.~~

2.2 ~~D. C.~~ The disinfectant concentration in an operating pool must not exceed ~~five~~  
2.3 ten parts per million for chlorine and ~~ten~~ 20 parts per million for bromine.

2.4 ~~E. D.~~ If other halogens are used, residuals of equivalent disinfectant strength  
2.5 must be maintained.

2.6 ~~F. E.~~ If the concentration of combined chlorine residual exceeds 0.5 parts per  
2.7 million, the pool must be superchlorinated or treated to reduce the concentration of the  
2.8 combined chlorine residual to not exceed 0.5 parts per million.

2.9 ~~G. F.~~ Where a cyanuric acid compound is used to stabilize chlorine, the  
2.10 concentration of cyanuric acid in the pool must not exceed 100 parts per million.

2.11 Subp. 4. **Disinfection of spa pools.** The disinfectant residual in a spa pool must  
2.12 be at least 2.0 parts per million for free chlorine and 4.0 parts per million for bromine  
2.13 throughout the pool when in use.

2.14 Subp. 5. **pH.** Water in the pool must be maintained with a pH of not less than 7.2  
2.15 and not more than ~~8.0~~ 7.8.

2.16 Subp. 6. **Alkalinity.** The alkalinity of the water in the pool must be at least 50  
2.17 parts per million.

2.18 Subp. 7. **Water clarity.** Whenever the pool is open for use, the pool water must be  
2.19 clear enough so the bottom drain is easily visible.

2.20 Subp. 8. **Use of nontoxic chemicals; chemical container security.** Chemicals used  
2.21 to control water quality must not impart toxic properties to the water. All containers used  
2.22 for chemicals must be kept in a secure location, inaccessible to pool users, and properly  
2.23 labeled and stored according to the manufacturer's instructions.

2.24 Subp. 9. **Bacteriological samples.** When bacteriological sampling is done, no  
2.25 sample collected may:

3.1           A. exceed 200 bacteria per milliliter as determined by the heterotrophic plate  
3.2 count; or

3.3           B. indicate the presence of total coliform organisms in a 100 milliliter sample  
3.4 by any of the following methods:

3.5                 (1) multiple tube;

3.6                 (2) membrane filter; or

3.7                 (3) the Minimal Medium ONPG-MUG test described in Code of Federal  
3.8 Regulations, title 40, part 141.

3.9           All samples must be collected, dechlorinated, and examined according to the  
3.10 American Public Health Association's "Standard Methods for the Examination of Water  
3.11 and Wastewater."

3.12           Subp. 10. **Bacteriological treatment.** Where sampling indicates that the standards  
3.13 in subpart 9 are exceeded, the pool must be treated to effectively reduce biological  
3.14 concentration to a complying level.

# Minnesota Department of Health

## Environmental Health Division

### NOTICE OF INTENT TO ADOPT RULE AMENDMENTS WITHOUT A PUBLIC HEARING

#### Proposed Amendments to *Minnesota Rules*, 4717.1750, POOL WATER CONDITIONS; Revisor's ID Number 4295

**Introduction.** The Department of Health (MDH) intends to adopt rule amendments without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28.

**Department Contact Person.** The department contact person is: Linda D. Prail, Food, Pools, and Lodging Services Section, Environmental Health Division, Minnesota Department of Health, Freeman Building, 625 Robert Street North, P. O. Box 64975, St. Paul, Minnesota 55164-0975; e-mail: [linda.prail@state.mn.us](mailto:linda.prail@state.mn.us); telephone: (651) 201-5792; fax: (651) 201-4514.

**Subject of Rule Amendments and Statutory Authority.** The department proposes to amend its rule, *Minnesota Rules* 4717.1750 about pool water conditions, specifically disinfectant residuals and allowable pH levels. The amendments revise the existing state standard governing the water chemistry operational ranges for all public swimming pools and spa pools (referred to below as pools) to do the following:

- increase the minimum required disinfectant residual for some pools;
- increase the maximum allowable disinfectant residual for all pools; and
- decrease the maximum allowable pH for some pools.

These proposed rule amendments will assist in making swimming environments healthier and making pool operation easier. Some swimming pool operators and inspectors requested this change.

*Minnesota Statutes*, section 144.1222, subdivision 1, authorizes MDH to adopt rules for public pools.

The draft rule amendments and this notice are posted at <http://www.health.state.mn.us/divs/eh/pools/rulerevision.html>. They also are available free of charge from the department contact person.

**Comments.** You have until **4:30 p.m. on Monday, March 28, 2016** to submit written comment in support of or in opposition to the proposed amendments. Your comment must be in writing and submitted to the Office of Administrative Hearings (OAH) at <https://minnesotaoah.granicusideas.com> or 600 North Robert Street, P. O. Box 64620, St. Paul, Minnesota 55164-0620. The department encourages comments. Your comment should identify

the portion of the proposed rule amendments addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you have about the legality of the proposed rule amendments must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the department hold a hearing on the rule amendments. Your request must be in writing and sent to the department contact person so that she receives it by 4:30 p.m. on Tuesday, March 15, 2016. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule amendments that you object to or state that you oppose the entire set of rule amendments. Any request that does not comply with these requirements is not valid and the department cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule amendments. **Note: submitting a request for a hearing to OAH or posting it on the website for comments as described in the Comments paragraph above does *not* meet these requirements and will not be counted.**

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the department will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the department must give written notice of this to all persons who requested a hearing, explain the actions the department took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the department will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format.** To obtain this information in a different format, please call (651) 201-4500.

**Modifications.** The department may modify the proposed rule amendments as a result of public comment. The modifications must be supported by comments and information submitted to the department, and the adopted rule amendments may not be substantially different than these proposed rule amendments, unless the department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rule amendments affect you in any way, the department encourages you to participate in the rulemaking process.

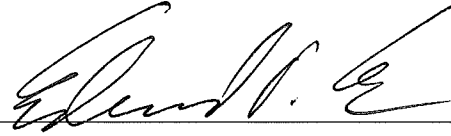
**Statement of Need and Reasonableness.** The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rule amendments, including a description of who will be affected by the proposed rule amendments and an estimate of the probable cost of the proposed rule amendments. The SONAR is posted at <http://www.health.state.mn.us/divs/eh/pools/rulerevision.html>. It also is available from the department contact person. You may review it or obtain copies for the cost of reproduction by contacting the department contact person.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Adoption and Review of Rule Amendments.** If no hearing is required, the department may adopt the rule amendments after the end of the comment period. The department will then submit the rule amendments and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rule amendments to the office. If you want to be so notified, or want to receive a copy of the adopted rule amendments, or want to register with the department to receive notice of future rule proceedings, submit your request to the department contact person listed above.

2/9/14

Date



Edward P. Ehlinger, M.D., M.S.P.H.  
Commissioner

**Date:** December 11, 2015

**To:** Linda D. Prail  
Rule Developer  
Minnesota Department of Health

**From:** Paul Moore  
Executive Budget Officer  
Minnesota Management & Budget

**Subject:** M.S. 14.131 Review of Proposed Rules of the Department of Health Governing Pool Water Conditions, Minnesota Rules, part 4717.1750

### Background

The Minnesota Department of Health (MDH) proposes amendments to Minnesota Rules, part 4717.1750, relating to pool water conditions. MDH has authority to make rules relating to public pools under Minnesota Statutes 2015, section 144.1222. Pursuant to Minnesota Statutes 2015, section 14.131, MDH has requested Minnesota Management & Budget evaluate the proposed amendments for fiscal impact and fiscal benefits on units of local government.

### Evaluation

On behalf of the commissioner of Minnesota Management & Budget, I have reviewed the proposed rules and the Statement of Need and Reasonableness (SONAR).

The amendments would result in the following changes: 1. an increase to the minimum required disinfectant residual—applicable to all pools—to an amount currently required of only some pools meeting certain conditions; 2. an increase to the maximum allowable disinfectant residual for all pools; and 3. a decrease to the maximum allowable pH for all pools. Raising the acceptable disinfectant residual range will allow for more disinfectant in the pool water, while lowering the acceptable pH range contributes to the disinfectant being more effective. The goals of these changes are safer public pools that are better able to combat infectious agents and more streamlined standards.

MDH estimates that a very small percentage—perhaps one percent—of pools that otherwise meet current standards would need to adjust their practices to meet the proposed requirements. Because cities and counties in Minnesota operate public pools, these small costs may be incurred by units of local government. A random sample featuring the most recent inspection reports for 25 pools, as provided by MDH in the SONAR, showed that none of these pools would need to lower pH levels and only one would need to adjust its disinfectant residual (not including two others that are noncompliant with current standards). MDH also demonstrates in the SONAR that for a pool using chlorine—by far the most commonly-used disinfecting agent—raising levels from the current minimum standard to the proposed minimum standard would likely result in an additional cost of under



\$20 annually. Lowering the pH level would likely result in a similar cost increase. As only an estimated one percent of pools use bromine as a disinfecting agent, MDH did not calculate these costs in its SONAR, but the agency has communicated that any compliance costs associated with the proposed bromine standards would be similar in size.

MDH has the authority to delegate pool water testing to units of local government. Currently, 33 cities, counties, or multi-jurisdictional groups of counties act as delegated agencies. These delegated agencies may face costs related to updating ordinances in accordance with the rule changes. According to MDH, some delegated agencies' ordinances refer to the "Minnesota Pool Code" or reference the associated rule number. In these instances, this proposal would not necessitate any revisions. Other delegated agencies use the specific rule language, as currently written, in their ordinances; these units of local government would need to revise their ordinances. Costs associated with these revisions are likely to come from the use of legal staff (either in house or contracted out), which is common in ordinance development, as well as publication of the proposed ordinance in a newspaper of record, a step many units of local government require. The number of delegated agencies that would need to revise their ordinances is unknown.

cc: Pete Bernardy, Minnesota Management & Budget