



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: May 12, 2022

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Amy Millard, Deputy Administrator, Division of Food and Recreational Safety

SUBJECT: **ATCP 76, (Safety, Maintenance, and Operation of Public Pools and Water Attractions)**

PRESENTED BY: Caitlin Jeidy, Program & Policy Analyst, Division of Food and Recreational Safety

REQUESTED ACTION:

At the May 12, 2022, Board meeting, the Department will request approval of a final rule draft, regarding ch. ATCP 76 relating to Safety, Maintenance, and Operation of Public Pools and Water Attractions, in order for the Department to submit the final rule draft to the Governor and the Legislature.

SUMMARY:

The Department conducted a comprehensive review of chapter ATCP 76 with input from industry stakeholders, professional associations, as well as Department and local health department agent representatives. The proposed rule is a reflection of the collaboration between groups to modernize ch. ATCP 76 to include the following:

- A significant overhaul of the definitions sections.
- A proposed licensing model that more clearly reflects the risks and complexity of the pool operation and more accurately reflects the time it takes for the Department to perform its licensing and inspection responsibilities.
- Incorporation of best practices and modern technologies in pool operation.
- Clarification of attendant and lifeguard staffing requirements to be associated with each type of water experience in detail (whirlpool, waterslide, pool slide under six feet, for example), and describes what the requirement is for that type of pool.
- States requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.
- Addresses the risks to ensure health and safety at dog swim events by eliminating time spent on the variance process by pool operators, public health staff, and the Department.

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- Specification of requirements surrounding drain covers and their placement in pools according to the federal Virginia Graeme Baker Act.
- Streamlining and simplification of disinfectant residual requirements to be in line with those of surrounding states, while maintaining more stringent requirements in settings where appropriate.

The Department held six public hearings on the preliminary rule draft. The hearings took place March 29-31, 2022 in Green Bay, Wausau, and Eau Claire. Hearings continued in to April with a virtual hearing held on April 1, 2022 and additional in-person hearings in Wisconsin Dells and Elkhorn on April 7-8, 2022. A total of fifty-five individuals were recorded to have appeared or provided comment during the hearings and public comment period. The Department received comments both orally and in-writing. In general, the Department received positive feedback on the work done to revise the rule and appreciated the effort to include industry engagement and input throughout the virtual meetings, although a point of confusion remains with the included provision regarding limited-use public pools.

On Wednesday, April 20, 2022, the Department received notification from the Joint Committee for the Review of Administrative Rules (JCRAR) of a public hearing and executive session scheduled for April 26, 2022. The purpose of the public hearing was for JCRAR to hear testimony and review the application of the existing Wis. Admin. Code ch. ATCP 76 to tourist rooming houses and to pools made available through short-term rental entities such as VRBO and AirBnB. The purpose of the executive session was for executive action by JCRAR to include any activities related to the suspension of a rule under Wis. Stat. § 227.26, in whole or in part, and introduction of legislation to support the suspension.

After receiving testimony from interest groups, Department staff, and individual property owners, JCRAR adopted a motion to suspend the phrase “a tourist rooming house” in Wis. Admin. Code § ATCP 76.02(1)(a). JCRAR also adopted a motion to introduce LRB-6305/1 and LRB-6311/1 in support of the JCRAR suspension. On May 31, 2022, the Legislative Reference Bureau will publish Wis. Admin. Code ch. ATCP 76 to show partial suspension in ATCP 76.02(1)(a) by JCRAR. The notices of public hearing and executive session, motions, proposed legislation, and partial suspension language are attached.

The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.

The Department received public comments that resulted in providing modifications to the proposed rule text. For example, a comment requested adding a definition of a “feature” and providing examples, clarification on liquid disinfectant and acid containment requirements, and changing “roaming zone” to “walking patrol” in regards to lifeguard patrolling area. The Department also adopted additional criteria outlined in the Model Aquatic Health Code per the suggestions outlined in the comments.

The Department incorporated all technical Legislative Council Rules Clearinghouse recommendations with an exception to the request to change “may refuse to” and “shall refuse to” to “may not”. The Department decided to maintain these terms because the words “may refuse” gives the Department the ability to assess circumstances detailed in that section in which a license may be withheld or released. In the instance of being suggested to change “shall refuse to”, the Department pursued using the wording “shall not” to avoid confusion in the interpretation of this section and to covey circumstances in which a license is withheld.

The Department is requesting Board approval to submit the proposed rule to the Governor and Legislature.

ATCP 76 List of Public Hearing Attendees and Commenters

The following is a complete list of people who attended the public hearings or submitted comments on the proposed rule during the public comment period, their position taken, and whether they provided written or oral comments.

Commenter #	Name and Address	Position Taken (Support or Opposed)	Method of Commenting (Oral or Written)
1.	Jason Hagar Tundra Lodge 865 Lombardi Ave Green Bay, WI 54311 jhager@bayinvestmentcorp.com	No Position	NA
2.	Kevin Stephanie Hawthorne Suites 335 W. Joseph Street Green Bay, WI 54301 greenbay@ipdhospitality.com	No Position	NA
3.	Austin Carter Brown County Public Health 2198 Glendale Ave Green Bay, WI 54303 Austin.carter@browncountywi.gov	No Position	NA
4.	Jason M Davies Pool Envy, LLC Green Bay, WI 54311 poolenvy@poolenvywi.com	Favor Part/ Oppose Part	Written
5.	Bruce Wolf Comfort Suites Hotel 1951 Bond Ct. Green Bay, WI 54303 bwolf@comfordsuitesgb.com	No Position	Oral
6.	Aaron Wolf Comfort Suites Hotel 2779 Prairie Garden Trail Green Bay, WI 54313 awolf@comfordsuitesgb.com	No Position	NA
7.	Brenda Stumpf Village of Sherwood 177879 Ridgeview Ct. Sherwood, WI 54169	No Position	NA
8.	Tom Jack Chairman Park and Rec W4892 Escarpment Terrace Sherwood, WI 54169	No Position	NA

9.	Trista Groth City of De Pere Health Department 225 S. Broadway De Pere, WI	No Position	NA
10.	Tom Mooney American Red Cross CCO Wisconsin	Support	Written
11.	Keith Hendricks Environmental Health Manager Racine County Public Health Division 10005 Northwestern Avenue, Franksville WI 53126 keith.hendricks@racinecounty.com	No Position	Written
12.	Jody Frymire MPH Regulatory Affairs Specialist IDEXX Water One IDEXX Drive, Westbrook, ME 04038 jody- frymire@idexx.com	Supports	Written
13.	Mark Doron Marathon County Parks and Rec 212 River Drive STE. 2 Wausau, WI 54403	No Position	NA
14.	Bradley Mroczenski Marathon County Parks and Rec 900 Parder St Wausau, WI 54401	No Position	NA
15.	Matthew Gillet City of Durand 104 E. Main Street Durand, WI 54736 dwwrpe@nelson-tel.net	No Position	Oral and Written
16.	Joe Stefanyak Ellis & Associates 500 Winderley Pl Maitland, FL 32751-7247 joe.stefanyak@jellis.com	No Position	NA
17.	Jessica Jungenberg Tri-County Environmental Health 428 Underwood Ave, Montello, WI 53949 jessica.jungenberg@co.waushara.wi.us	No Position	NA
18.	Noah Dickemper WILL 725 Kilbourn, Milwaukee, WI, 53202 noah@will-law.org	No Position	NA
19.	Will Yackle Sheraton Madison 300 Marietta St NW #304, Atlanta GA 30313 wyackle@lvmgt.com	No Position	NA
20.	Briana Harter Brown County Public Health	No Position	NA

	2198 Glendale Avenue, Green Bay WI 54303 briana.harter@browncountywi.gov		
21.	Mike Vechinski South Wood County YMCA 601 W Grand Ave Wi Rapids Wi 54495 vechinski@swcymca.org	No Position	NA
22.	Mary Kallin Meadowbrook Condos 2230B Meadowbrook Court msk2230bmb@yahoo.com	No Position	Oral
23.	Madeline Wojciuk UW-Madison Env & Occ Health 21 N Park St, Madison, WI 53715 madeline.wojciuk@wisc.edu	No Position	NA
24.	Zane Hugo University of Wisconsin-Madison Recreation and Wellbeing 797 W Dayton St, Madison, WI 53715 zane.hugo@wisc.edu	No Position	NA
25.	Anthony Gould Amery Hospital & Clinic 220 Keller Ave N Amery, WI 54001 anthony.r.gould@amerymedical.com	No Position	NA
26.	Jean Tretow School district of Belleville 227 N. Grant St, Belleville, WI 53508 tretowj@belleville.k12.wi.us	No Position	NA
27.	Mary Fillinger City of Milwaukee 3480 N Cramer St. Milwaukee, WI 53211Mjung@milwaukee.gov	No Position	NA
28.	Keith Peterson Northhaven condos 3851 Hwy 42 Fish Creek WI 54212	No Position	NA
29.	Nicholas Ullman Baylake Tech Services 5471 Monument Point Rd, Egg Harbor WI, 54209 nick.j.ullman@gmail.com	No Position	Oral
30.	Scott Sloan Sheraton Madison Hotel 706 John Nolen Drive, Madison, WI 53713scottslloan@sheratonmadison.com	No Position	NA
31.	Chez Misko Wisconsin Athletic Club 10840 W Rogers St West Allis, WI 53227 Chez@thewac.com	No Position	NA
32.	Isaac Storandt La Crosse Country Club	No Position	NA

	300 Marcou Rd, Onalaska, Wi 54650 isaac@lacrossecountryclub.com		
33.	Christine Mohr Eau Claire Parks and Recreation 915 Menomonie Street, Eau Claire WI 54703 christine.mohr@eauclairewi.gov	No Position	NA
34.	Steven Pingel Ascension St Elizabeth Hospital N496 Milky Way Appleton, WI 54915 Steven.Pingel@ascension.org	No Position	NA
35.	Kelly Smith 126334 Eau Pleine Road Stratford WI 54484 kcliff76@hotmail.com	No Position	Oral
36.	Joan Ehrlich UW-Madison 21 N Park St, Madison WI, 53715 jmehrlich2@wisc.edu	No Position	NA
37.	Ryan Daum Baraboo Park, Recreation, & Forestry Department 124 2nd Street Ste. 17, Baraboo, WI 53913 rdaum@cityofbaraboo.com	No Position	NA
38.	Shawn Osterbrink Director of Parks, Recreation and Forestry Village of Weston 5500 Schofield, WI 54476 715-359-6114 sosterbrink@westonwi.gov	No Position	Written
39.	Jon Gohlke In Depth Pool Services 187 Commerce St, Wisconsin Dells, WI 53965jon@indepthservicesllc.com	No Position	NA
40.	Brian Purdy Wilderness Properties 511 E Adams St, Wisconsin Dells, WI 53965 brianp@wildernessresort.com	Favor Part/ Oppose Part	NA
41.	Tim Hall Town of Dell Prairie 643 Gem Ave, Wisconsin Dells, WI 53965	No Position	NA
42.	Brad Preissel Blackhawk Motel PO Box 15, Wisconsin Dells, WI 53965 blackhawkmotel@blackhawkmotel.com	Favor Part/ Oppose Part	NA
43	Gary Doudna Buffalo Lake Camping Resort 585 Lake Ave, Montello, WI 53949 info@buffalolakecamping.com I	Favor Part/ Oppose part	
44.	Peter Elftmann Spring Brook Resort	No Position	NA

	240 Trout Rd, Wisconsin Dells, WI 53965 petere@spring-brook.com		
45.	Kevin Turner Midwest Pool Supply 216 12th Ave, Baraboo, WI 53913 kevin@midwestpoolsupply.com	No Position	NA
46.	Reed McRoberts DATCP Reed.mcroberts@wisconsin.gov	No Position	Oral
47.	Sarah E. Koske, DVM, MPH Epidemiologist, Enteric & Waterborne Diseases Unit Communicable Diseases Epidemiology Section Wisconsin Department of Health Services, Division of Public Health Office: (608) 267-9009	No Position	Written
48.	Kyle Koenen Policy Director Wisconsin Institute For Law & Liberty, Inc. 330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141 414-727-WILL (9455) Fax 414-727-6385 www.will-law.org	Oppose	Written
49.	Bill Elliott, CAE WHLA President & CEO Wisconsin Hotel & Lodging Association 125 North Executive Drive, Suite 206, Brookfield, WI 53005 262.782.2851 www.wisconsinlodging.org	No Position	Written
50.	Wisconsin Parks and Recreation Association	Support	Written
51.	Dan Jones 920-980-4058	No Position	Written
52.	Tyler Diers Executive Director, Midwest TechNet PO Box 9497, Springfield IL 62791 tdiers@technet.org	Oppose	Written
53.	Tom Larson Executive Vice President Wisconsin Realtors Association (608) 241-2047 Tlarson@wra.org	No Position	Written
54.	Jennifer Huddleston NetChoice 1401 K ST NW 5th Floor Washington DC 20005 Email: jhuddleston@netchoice.org	Oppose	Written

55.	Cameron Kilberg Head of Government Relations Simply 6425 Weidlake Dr Los Angeles, CA 90068	Oppose	Written
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Public Hearing Comments and Department Responses

As discussed below, the Department on many occasions made substantive changes based on industry and local health department feedback. Those recommendations were incorporated into the revised final rule.

Rule Provision	Public Comment	Department Response
General	Overall, the rule includes important updates regarding pool licensing, maintenance, health and safety. (10)	The department acknowledges the support for the proposed rule.
General	The Red Cross recommends the addition of a definition for "swim instructor," defined as someone who teaches swim lessons to people of all ages and abilities, and be certified by a national training agency, like the American Red Cross or an equivalent, as determined by the agency. (10)	The department acknowledges the comment. The proposed rule does not refer to requirements for a swimming instructor and this additional requirement was not included as part of the scope statement. The proposed rule only addresses the safety, maintenance and operation of public pools. The proposed rule requires that an instructional program is provided with an individual that is certified as a lifeguard and has first aid, CPR and AED certification to address swimmer safety concerns. The department recommends no change.
General	The Wisconsin Park and Recreation Association (WPRA) submits these comments relating to clearinghouse rule 22-021, the repeal and recreation of ATCP 76. WPRA appreciates the opportunity to comment on the draft rule and participate in this process. WPRA is a membership association that represents over 1,300 individuals delivering a broad spectrum of services in Wisconsin. Our members include Park, Recreation, and Aquatic professionals in local, county, state, school district, private and agency	The department acknowledges the support for the proposed rule.

	<p>settings. WPRRA also represents public Park and Recreation Boards and Commissions, students, commercial firms, and Emeritus (retired) members.</p> <p>Overall, the rule includes important industry updates regarding pool licensing, maintenance, health, and safety. WPRRA actively participated in the workgroup for this rule and were able to provide feedback during that process. Therefore, our organization supports the draft rule in its current form and submit these comments to officially indicate our support. (50)</p>	
General	<p>WHLA would like to compliment DATCP on their efforts to modernize the pool code while addressing the needs of keeping our guests safe and also taking into account the needs of pool operators throughout the state. We applaud their efforts to reduce the need to apply for variances, such as swim-up bars and the use of pool technology.</p> <p>We also appreciate DATCP's willingness to work with us to decrease the burden of implementing these new rules on the large majority of lodging pool operators who have a long history of properly maintaining their facilities.</p> <p>The proposal to require operator certification only for pool operators who demonstrate a lack of active managerial control over the pool operation by having two or more reinspections in a 3-year period is a reasonable requirement.</p> <p>We also believe the requirement to retrofit older pools with flow sensor interlocks only if the pool has been involved in a chemical release incident in which the installation of a flow sensor would have prevented the chemical release is also reasonable.</p> <p>WHLA is appreciative of the opportunity we had to bring our voice to this process, and we commend the DATCP staff for</p>	The department acknowledges the comment.

	the hard work on these proposed rules. (49)	
General	<p>We ask that DATCP abandon its efforts to implement Subchapter VII of the proposed rule, primarily because the department lacks the statutory authority to promulgate said regulations. Additionally, this new regulatory scheme would impose significant costs on home owners. If the department continues its efforts to implement these measures, we suggest the scope of them be significantly scaled back. While the Wisconsin Statute §97.67 does authorize DATCP to regulate “public swimming pools,” it does not define “public swimming pool”. However, Wisconsin Statute § 145.26, which gives the Wisconsin Department of Safety and Professional Services (DSPS) authority to impose construction requirements on “public swimming pools” defines “public swimming pools” and clearly eliminates individual residential pools from this definition. We thank you for your attention to this matter. (48), (52), (55)</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>
General	<p>The legislature also took up the issue of short term rentals in 2017 and failed to address residential pool use at such rentals. Their lack of concern over such pool regulations should be (52), (55)</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>
General	<p>The peer-to-peer economy, including pool sharing, benefits both homeowners and consumers – swimmers, instructors, and families; (54)</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>
General	<p>Increased government regulation of private pools offered through sharing platforms creates a dangerous precedent for excessive government limitations on</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools.</p>

	<p>use of private property, especially when there are less restrictive means to protect the public. Combined regulations like those proposed to create Limited-Use Public Pools will restrict the rights of homeowners for merely using their resources for entrepreneurial purposes. A better solution would be to ensure all individual residential pools when constructed meet key safety concerns, and property owners are given yearly and consistent pool safety information. (54), (55)</p>	<p>Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>
General	<p>Short term home rentals with pool access have existed for decades with technology easing the rentals for the last 15 years. This is not a new concept, and until 2021 not only had safety not been raised as a concern (55)</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>
General	<p>The proposed rules are not only vague but they create a bureaucratic system fit for large businesses to comply with rather than an individual property owner sharing their property. Central to this rule is ensuring these residential pools are a form of “public pool”, and thus in theory they would need to be constructed according to Chapter SPS 390, which dictates DSPPS construction standards for public pools; confusion over the definition of a public pool and which regulations apply make it even more important that the legislature clarify. (55)</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>
General	<p>Individuals who rent their homes or pools do so by a wide majority on platforms that allow feedback, ratings, insurance liability coverage, and a complaint system that may then remove unsafe properties from the platform to restrict such rentals. There is already clear and consistent oversight for such properties. A better solution would be to ensure all individual residential pools when constructed meet key safety concerns, and property owners are given</p>	<p>The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.</p>

	yearly and consistent pool safety information.(55)	
ATCP 76.03 (35)	Consider adding a definition of a feature and adding some examples. (46)	<p>The department agrees with the comment and proposes the following language:</p> <p>(29) “Feature” means a pool with a depth greater than 16 feet, a pool with a surface area greater than 20,000 sq. ft., or a physical object permanently installed in a pool that is intended for recreational use including, a pool slide, waterslide, pad walk, basketball hoop, diving board, wave generator, treadmill, vortex pool, climbing wall, current pool, swim-up bar, vanishing edge pool, tethered or nontethered floatable, or a spray feature.</p>
ATCP 76.03 (68) (b)	Consider an exemption that a pool designed for a dog where there’s oversight by an owner/handler/trainer that be set aside. Doesn’t believe ATCP 76 should handle provisions related to dogs. (46)	<p>The department agrees and proposes the following changes:</p> <p>(b) “Public Pool” does not include an inflated mobile structure, basin, chamber, or tank; a swim pond; an individual therapeutic pod, tub, or bath; or a fixed or mobile structure, basin, chamber, or tank that serves fewer than 3 individual residences;. or a fixed or mobile structure, basin, chamber, or tank that is used solely for animal training, therapy, or exercise and the only individuals in the pool are the animal trainer or handler, animal health or wellness professional or the animal’s individual owner.</p>
ATCP 76.06	Concerned about license fee increase, would appreciate if the department looked in to it further. (1), (5)	<p>The department made every effort to minimize the impact on small business by reorganizing the fee model to incorporate, in many cases, a reduction in the number of licenses needed to operate a public swimming pool. The department met over the course of the rule making process with over 35 industry members. The department proposed three different fee models that covered the cost of the department to perform its work. The department took the industry members advise on the fee model that best reflected their operations. The model that was chosen</p>

		<p>had the least impact on small public pool operations.</p> <p>The department recommends no change.</p>
ATCP 76.12 (2) (k)	<p>For new pools constructed after the effective date of the rule, secondary containment is required for liquid disinfectant and acid. We looked up secondary containment for the full capacity of a 55-gallon drum (not just spill containment) and the cost is hundreds of dollars. If you have to purchase containment for a 250 or 500 gallon tank they can cost thousands of dollars for full containment. Please verify if this is supposed to be spill containment or full containment? (38)</p>	<p>The department agrees to remove this as a requirement and place as a “Note” in the rule as a recommendation. The department proposes the following language:</p> <p>Note: For pools with liquid disinfectant and acid it is strongly encouraged to provide secondary containment in the chemical storage area.</p>
76.14 Table A	<p>Bromine concentrations in whirlpools: The range (7 ppm-10 ppm) with the current products for automatic chemical controllers and brominators will be extremely difficult to maintain especially considering it has to be at this range throughout the day. Whirlpools have guest loads that range a lot. Rule change will make it impossible to use a brominator with a chem controller in a whirlpool, especially when you can only effectively guess how many people are going to use the whirlpool. Check out bromine disinfection levels to make sure there is no typo in the proposed rule. (29), (46)</p>	<p>The department acknowledges the comment, but it is incorrect. The department actually lowered the minimum bromine level to 3.0 ppm for pools and 4.0 ppm for whirlpool and wading pools. The maximum is now 10.0 ppm based on manufacturer directions for use. This requirement is consistent with the Model Aquatic Health Code.</p> <p>The department recommends no change.</p>
ATCP 76.16 (3) (b) 1.	<p>Revising the current bacteria indicator of total coliform to Escherichia coli, a more protective indicator of water quality. (12)</p>	<p>The department received guidance from the Wisconsin department of health services, communicable disease section. They recommended that total coliforms should be left in the rule as total coliforms could include bacteria (including <i>E. coli</i>) and that total coliforms is a better measurement for disinfection efficacy.</p> <p>The department recommends no change.</p>
ATCP 76.16 (3) (b) 1.	<p>Revising the following text to: “When bacteriological analysis of total coliforms, Staphylococcus aureus, Pseudomonas aeruginosa or Legionella</p>	<p>The department received guidance from the Wisconsin state lab of hygiene and proposes the following language:</p>

	pneumophila is performed, no target bacteria are present in a 100 mL sample (0 counts/100mL). (12)	ATCP 76.16 (3) (b) 1. When bacteriological analysis of total coliforms, Staphylococcus aureus, Pseudomonas aeruginosa or Legionella pneumophila is performed, no detectable levels are present in a 100 mL sample. ^P Any approved method for each analyte may be reported as either colony forming units or most probable number.
ATCP 76.16 (3) (b) 2.	I think it might be better to state for HPC "...may not exceed 200 colony forming units per milliliter (CFU/mL) in a 100 milliliter sample." If we just say in a one mL sample, that suggests you could just scoop up 1 mL of water and think it's going to be a representative sample when they should be collecting 100mL. (47)	The department agrees and proposes the following language: ATCP 76.16 (3) (b) 2. When bacteriological analysis is performed for the heterotrophic plate count, the total count may not exceed 200 colony forming units per milliliter (CFU/mL) in a 100 milliliter sample. ^{Pf}
ATCP 76.20 (2)	Mandate of operator certification should be a minimum. Believes it is something important for pools, doesn't think the cost and time commitment is unreasonable. (4), (22)	The department consulted with industry members regarding this requirement and industry felt that the requirement was burdensome to smaller operators. Maintaining a safe pool operation is important, the recommendation was to retain the certified operator requirement for water attractions and only require a certified operator for pools operators that fail to maintain active managerial control over their pool operation. The department recommends no change.
ATCP 76.20 (2)	We have licensed and regulated numerous pools for numerous years. Many of these pools are associated with lodging facilities like hotels and motels. Because the responsible supervisor does not have the pool operation knowledge they should, we end up teaching them how to properly operate their pool(s) during our inspections. This lack of knowledge is a significant threat to public health and the safety of the lodging staff themselves. Therefore, we would like to see ATCP 76 amended to require the owner of a pool associated with a lodging facility to have at least one certified pool operator. (11)	The department consulted with industry members regarding this requirement and industry felt that the requirement was burdensome to smaller operators. Maintaining a safe pool operation is important, the recommendation was to retain the certified operator requirement for water attractions and only require a certified operator for pools operators that fail to maintain active managerial control over their pool operation. The department recommends no change.

<p>ATCP 76.20 (2) (a) 3. b.</p>	<p>The certified operator shall be able to respond within 3 hours. What does that mean? Is it physically or by phone? Does it have to be one specific operator, or could it be any certified operator? For example, we have 3 certified operators. (38)</p>	<p>The department acknowledges the comment. The department was trying to provide flexibility for operators that have multiple properties and that contract with a certified operator or employ a certified operator for multiple facilities. The expectation is that certified operator needs to respond physically to the pool within three hours to resolve any pool related issues. To answer the commenter question any of the certified pool operators could respond when called. If there was immediate danger to health, the responsible supervisor would close the pool until the certified pool operator resolved the problem.</p> <p>The department recommends no change.</p>
<p>ATCP 76.21 (1) (b)</p>	<p>The responsible supervisor shall be on the premises or immediately available via a phone number posted by the emergency phone and shall respond to an unsafe or unsanitary condition within 15 minutes, at any time the pool is open for use. What does it mean to respond to an unsafe or unsanitary condition within 15 minutes? Does this mean take care of the issue within that time frame? Or close the pool if necessary? (38)</p>	<p>The department acknowledges the commenters question. The responsible supervisor once contacted, shall provide either direction to someone on the premise or visit the premise, within 15-minutes to resolve the unsafe or unsanitary condition or close the pool</p> <p>The department recommends no change.</p>
<p>ATCP 76.22 (1) (b)</p>	<p>Lifeguards and attendants (b) Plan Criteria: The Red Cross recommends the action plans cover all staffing levels. (10)</p>	<p>The Department acknowledges the comment, but it is unclear what the commenter is referring to. The department only requires the staffing plans to cover lifeguards and attendants since they are the personnel responsible for ensuring order and safety in the pool area.</p> <p>The department recommends no change.</p>
<p>ATCP 76.22 (1) (b) 4.</p>	<p>Under (4) in this section, it is not clear what "roaming zone" means. We recommend it be changed to "walking patrol." Also, we suggest adding language from MAHC stating that the "Owner shall ensure glare conditions are assessed from each position to determine</p>	<p>The department agrees with the comment and proposes the following language:</p> <p>ATCP 76.22 (1) (b) 4. The location of each lifeguard station, lifeguard roaming or walking patrol ensuring that glare conditions are assessed from each</p>

	if the bottom and objects in the pool are clearly visible." (10)	location to determine if the bottom and objects in the pool are clearly visible. ^{Pf}
ATCP 76.22 (1) (b) 7.	Staffing plans are really important to get guards, attendants to where they need to be to keep patrons safe to prevent injury or death from occurring. As the course of a day that goes by at a pool, sometimes the use of a pool changes. Recommend looking at language that would look at expanding plans based on the use of a pool at a particular time. (46)	The department agrees that clarity is helpful and proposes the following language: ATCP 76.22 (1) (b) 7. Diagrams shall be provided with the following information for each use of the pool, for both average and maximum capacity: <ul style="list-style-type: none"> a. The placement of attendants. ^{Pf} b. The placement of lifeguards. ^{Pf} c. Location of lifeguard roaming area or walking patrol. ^{Pf} d. Location of lifeguard chairs or stations. ^{Pf} e. Location of each obstruction. ^{Pf}
ATCP 76.22 (2) (a) and (b)	ATCP 76.22 Lifeguards and attendants (2) QUALIFICATIONS: We suggest clarifying that certifications required be "current" and from a national training agency, like the language (b) Water attraction lifeguard requirements. Red Cross requests these requirements also be added to the general qualifications section. (10)	The department has moved away from listing courses in the rule for lifeguarding, first aid and CPR/AED, as these frequently change, and instead indicates the certification obtained must meet the criteria outlined in the Model Aquatic Health Code or as approved by the department. The department will maintain a list of approved certification courses that is available to operators. The department recommends no change. The department agrees with the addition of the word "current" and proposes the following change: ATCP 76.22 (2) QUALIFICATIONS. A lifeguard shall be required to have current certifications in all of the following:
ATCP 76.22 (2) (a) 3.	CPR with AED certification: we suggest this be clarified to ensure that it covers care for individuals of all ages: "Adult and Pediatric CPR/AED" or "CPR with AED certification for adults, children and infants." (10)	The department agrees with the commenter and this is addressed under the definition of a lifeguard where certifications for a lifeguarding, first aid, and CPR/AED must meet the criteria outlined in the Model Aquatic Health Code. The department recommends no changes.

<p>ATCP 76.22 (2) (b)</p>	<p>76.22 (2) b. Water attraction lifeguard requirements. Hard enough to recruit lifeguards to be able to fully staff a pool this makes it even harder. We think this requirement should be changed. Is one lifeguard with this particular certification at the entire facility really affecting how the facility operates? (38)</p>	<p>The department agrees with the commenter and this is addressed under the definition of a lifeguard where certifications for a lifeguarding, first aid, and CPR/AED must meet the criteria outlined in the Model Aquatic Health Code. The department agrees the additional certification is no longer needed.</p> <p>The department has removed this section from the proposed rule.</p>
<p>ATCP 76.23 Table B.</p>	<p>If facility only has one diving board, does there need to be an extra or separate lifeguard to attend to that diving board, or can the regular lifeguards that are on staff based on the patron load cover this? (15)</p>	<p>The department acknowledges the comment. The proposed rule indicates that a lifeguard is required if there are two or more diving boards or platforms. No lifeguard is required for this activity when only one diving board or platform is present.</p> <p>The department recommends no change.</p>
<p>ATCP 76.23 Table B.</p>	<p>If the facility were to install a climbing wall: Is there a special lifeguard required, or is just an attendant acceptable to monitor it? Can the facility use regular lifeguards that are on staff based on the patron load to address this requirement? (15), (46)</p>	<p>The department acknowledges the comment. Climbing walls or rock walls are required to have a lifeguard assigned to that activity. The department proposes the following clarification to the proposed rule:</p> <p>Added to ATCP 76.23 Table B.</p> <p>Pool with a At least one lifeguard is climbing wall. required.</p>
<p>ATCP 76.26 (2) (c)</p>	<p>The phone is inside this clubhouse which is adjacent to the pool. With the advent of cell phones, why is the rule for a hard-wired phone still needed? It's an unreasonable cost to pay for the phone 12-months out of the year as the phone company won't allow them to suspend the contract during the months when the pool is not in operation. Believes there should be a change to the rule. (22)</p>	<p>The department agrees with comment and the proposed rule was updated to reflect that a hardwired phone connection is not necessary and that other alternatives are acceptable. Cellular technology is acceptable if the cellular device has a constant power supply and reliable service connection.</p> <p>The department recommends no change.</p>
<p>ATCP 76.29 (1) (f)</p>	<p>Breath holding is a dangerous activity happening in pools. Consider "no breath holding" as a rule. (46)</p>	<p>The department agrees with the comment and proposes the following new language:</p>

		ATCP 7629 (1) (f) <i>Breath holding; prohibition.</i> The operator of a pool shall provide signage or otherwise communicate to patrons that activities involving prolonged breath holding are prohibited.
ATCP 76.29 (1) (b) 1. h.	Children under the age of 12 shall be supervised by an adult. Feel like this new rule is not necessary and that each facility should be able to set their own rule regarding age/supervision, due to the various types of pools this code regulates. (38)	The department acknowledges the comment and suggests clarification in the proposed rule to focus on pools where no lifeguard is present. The department proposed the following changes: ATCP 76.29 (1) (c) <i>Supervision of children under the age of 12.</i> For a non-lifeguarded pool, a statement indicating that children under the age of 12 shall be supervised by an adult shall be added the signage requirements in par. (b)
ATCP 76.30 (1)	Propose adding closing criteria and clarify when a pool can be reopened after a water sample shows a bacteria positive test. (46)	The department agrees and proposes the following changes: ATCP 76.16 (3) (b) 3. If a pool is closed due to a water sample that contains total coliforms pursuant to ATCP 76.30 (1) (b), the pool can be reopened when the pool system is properly working, the disinfectant or sanitizer concentration is maintained pursuant to ATCP 76.14 Table A, and any fecal accidents have been treated pursuant to ATCP 76.31.
ATCP 76.34 (5) (e)	We think that this should be kept as it currently is stated in the code. The previous code seems to allow sand in the pool enclosure if there are controlled entrances and provided with showers. The new proposed rule does not accommodate for this. Sand/water play areas and sand volleyball courts are traditional items to be placed inside pool enclosures. Putting barriers around them seems impractical and an additional expense. Not sure that it will serve the purpose of keeping sand out of the pool/filter system as patrons will still have access to both the sand and the pool. (38)	The department agrees with the comment and it was not the intent to remove that language. The department proposes adding back the deleted language as following: ATCP 76.34 (5) (e) Sand may not be located within a pool enclosure unless the sand area is made inaccessible from the pool area by a barrier that is at least 42 inches high. Alternatively there may be controlled entrances to the pool area if the entrances are controlled and provided with showers.

ATCP 76.40	We suggest a less restrictive regulatory scheme that focuses on correcting compliance problems. This could be addressed by doing the following: Replace pool licensure with a basic registration requirement. This would limit the need for pre-inspections and licensing fees and would instead focus compliance on addressing pool safety complaints from users. The proposed licensing process is also problematic. By requiring a pre-inspection before a license is granted, homeowners will likely be left waiting for inspectors to complete that initial inspection before their pool could be rented out. And the annual date for license expiration (which is also the renewal deadline) on June 30 is in the middle of the peak rental season. (48), (53), (55)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.40	Short-Term Rental operators are already subject to an existing state licensing system. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) requires all lodging facilities in Wisconsin to hold a current license, and the licensing process includes inspection requirements to address public health and safety concerns. The lodging license addresses many of the concerns the limited-use public pool license would require, including facility cleanliness. (52), (55)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.40	Your proposed ordinance I think it's still overly restrictive. I would like to just point out I am glad that these rules are being reviewed. That being said to me the proper way to deal with pools and hot tubs at tourist rooming houses/ vacation rentals is to inform your county health department that you have a pool or hot tub and continue having the county do their yearly inspections. This coupled with proof of insurance seems to be more than sufficient. (51)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.41	Many of us do this as part-time income, so the fees associated with your proposed rule when taking into context other the fees, taxes and costs associated with	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the

	running a vacation rental are also burdensome. (51)	department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.45	We suggest a less restrictive regulatory scheme that focuses on correcting compliance problems. This could be addressed by doing the following: Set simple, easy-to-understand pool chemistry and safety standards for homeowners to comply with. These regulations should not be overbearing and should mirror manufacturer recommendations to the greatest extent possible. (48), (53)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.48 (1)	Limited-use pools for short-term rentals: There was talk about someone checking pool chemicals every day and to keep a log. The limited-use pools sections applies to properties that someone is renting out when they're not home, vacation properties, or businesses. There isn't someone there every single day to manually check the pool chemicals. Hoping to have proposal modified to allow for Weekly testing or electronic monitoring of some of the chemicals. Also hoping to allow for the ability to keep electronic logs. (35) (48)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.49 (5)	If a homeowner fails to meet any one of these or the dozens of other requirements laid out in the rule, it could be grounds for the state denying a pool license. Many short-term rental owners are families trying to earn extra income, and these burdensome requirements could be make-or-break differences for many of them. (48)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.50	I would like to hereby request that all short term residential pool owners be required to obtain CPO or equivalent certification and be required to have their pools inspected regularly prior to renting their swimming pool on short term websites. By not taking steps to protect the public with private rental pools, the department is inadvertently placing more restrictive and difficult burdens on	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.

	commercial pool operators. Thereby, contributing to unfair practices; allowing a home owner to operate a pool that violates VGBA law, while a commercial pool operator must follow provisions in ATCP 76. It would put the public at risk, and likely increase the frequency of accidents. (4)	
ATCP 76.50 (d)	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: A specific pre-rental checklist. (48)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.54 (3)	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: Emergency blankets to be readily available. (48)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.55	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: Pool furniture that is clean and in good repair. (48)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.
ATCP 76.56 (1)	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: Registration log of all principal renters with a requirement to maintain for a minimum of three years. (48)	The department acknowledges the comment. At this time the department is removing the section in the proposed rule related to limited-use public pools. Based on industry feedback, the department will propose a new scope statement to specifically address limited-use public pools and engage greater industry feedback and participation.

THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION'S
PROPOSED ORDER TO ADOPT PERMANENT RULES

PROPOSED ORDER

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order to *repeal and recreate* ch. ATCP 76, *relating to* the Safety, Maintenance, and Operation of Public Pools and Water Attractions and affecting small business.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) proposes an order to repeal and recreate Wis. Admin. Code ch. ATCP 76 Safety, Maintenance, and Operation of Public Pools and Water Attractions and affecting small business. This new rule, if adopted, will bring Wisconsin into substantial accord with the current industry technology, innovations, and pool patron experiences.

Statutes Interpreted

Statutes Interpreted: Sections 93.07 (1), 93.07 (24) (e), 97.65, 97.67 (1) and (4), 93.06 (7) and (8), 97.71, and 97.12 (3), Stats.

Statutory Authority

Statutory Authority: Sections 93.06 (7) and (8), 93.07 (1), 93.07 (24) (e), 97.65, 97.67(1) and (4), 97.71, Stats.

Explanation of Statutory Authority

The department has broad general authority, pursuant to s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The department has specific authority, pursuant to s. 93.07 (24) (e), Stats., to enforce the laws for the maintenance and operation of public pools, and the department has authority pursuant to ss. 97.67 (1) and (4), Stats., to adopt rules for public pools dealing with fees; license issuance, pre-licensing inspection fees, reinspection fees, fees for operating without a license, and late fees for untimely license renewal. The department has authority pursuant to ss. 93.06 (7) and (8), and 97.71, Stats., to set conditions on a license, suspend a license, or void a license. The department may also issue a special order requiring corrections before a public pool resumes operations, pursuant to s. 97.65 (2), Stats.

Related Statutes and Rules

Since the transfer of several programs from the Wisconsin department of health service's food safety and recreational licensing section in July of 2016, the department has regulated public pools and water attractions. A public pool operator is responsible for safely operating and maintaining a pool pursuant to ch. 97, Stats.

Reference to Wisconsin department of safety and professional services rules can also be found in ch. ATCP 76 for new pool construction or pool modifications plan approval pursuant to ch. SPS 390.

Rules enforced by the Wisconsin department of natural resources are referenced in ch. ATCP 76, pursuant to chs. NR 108, 811 and 812 for water supply standards.

Plain Language Analysis

A revised ch. ATCP 76 is needed because new technologies and trends within the pool and water attraction industry need to be acknowledged and addressed. In addition, in using the existing ch. ATCP 76, industry, inspectors, and the general public continually note places within the code where clarification is needed to facilitate understanding of the rule and its intent. Because of the need for clarification, many new definitions are needed.

The pool industry encompasses a broad variety of businesses from small motels and campgrounds, to homeowner associations, schools, healthcare, and municipal and resort waterparks. In order to ensure development of a rule that considers all the various niches within industry, robust representation from within the pool industry, public health, and the Wisconsin department of safety and professional services pool plan review was sought in rule development. Also included in the pool industry are limited-use public pools that now are rented to the general public in a residential environment.

After receiving public comment and based on Joint Committee for the Review of Administrative Rules (JCRAR) action, the department removed subchapter VII, relating to limited-use public pools. On April 26, 2022, JCRAR adopted a motion under s. 227.26 (2) (d), Stats., that suspended s. ATCP 76.02 (1) (a) in part as it applies to a tourist rooming house. In response, the department has also removed tourist rooming houses and bed and breakfast establishments from s. ATCP 76.02 (1) (a).

Sections have been added and formatted to align with other retail and recreational rules.

The process for assigning a pool license fee has relied on a licensing structure that is complicated to understand and implement. The license fee has not kept pace with the department's costs for issuing a license and conducting an inspection. The State has not had a license fee increase for pools and water attractions since 2007. In the revised ch. ATCP 76, a pool is licensed using a modernized three-tier risk and complexity model that acknowledges the risks of the pool operation and the associated features. The proposed licensing model more clearly reflects the risks and complexity of the pool operation and more accurately reflects the time it takes for the department to perform its licensing and inspection responsibilities. This licensing model will promote fairness to small business owners by having the license fee reflect inspection time, and risk associated with their facilities. License fees will not be based on a one-size-fits-all model.

Significant input was received from industry and public health partners related to methods for the operation of a pool's recirculation system and methods for chemical testing. Much of the language is outdated,

including references that are no longer accurate or relevant. The input received ensured that the rule is updated to allow for new materials that perform more effectively in filtering pool water, and potentially newer water testing kits that employ technologies that may be more accurate or more efficient than the traditional approach. In these sections, the language of the rule has been intensively reviewed and clarified so that it is more easily understood by industry and regulators alike.

Supervision and staffing of pools is key to safely operating the pool as well as addressing risks that may require staffing by a lifeguard or attendant. The input received from industry and local health departments was used to revise the rule to address supervision of pools in general, and supervision of the nearly infinite types of features that may be added to a pool. At one time, a pool was a plain rectangle in the ground. Now there are pools that offer experiences such as waves, vortexes, and slide-based rides. It would be impossible to determine an exhaustive list of safety rules that would be applicable to all possible types of water experiences. The tables that describe attendant and lifeguard staffing were clarified so that they cover each type of water experience in detail, including a whirlpool, waterslide, and pool slide under six feet, and describe what the requirement is for that type of pool. The revised rule requires a pool operator and responsible supervisor to develop rules that make sense and accomplish a common goal of safely participating in the water experience.

When a waterborne illness outbreak occurs, early intervention is essential to identify and contain the outbreak. The rule supports expeditious investigation and resolution of any waterborne outbreaks. Sometimes when a suspected outbreak is occurring, it is difficult to know exactly what is expected of pool operators. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

In recent years, there has been an upward trend in demand for dog swims. The revised rule aims at addressing the risks to ensure health and safety at these events by eliminating time spent on the variance process by pool operators, public health staff, and the department.

Federal Virginia Graeme Baker Act requirements are intended to prevent entrapment and evisceration from submerged drains in the pool. These requirements specify ratings for drain covers as well as placement of drain covers. The revised rule clearly states the requirements and aligns with federal regulations.

Input received from pool operators and pool technical service companies has been incorporated into the rule to reflect current technologies and trends.

With this rule revision, the department has sought to eliminate duplication, clarify expectations, and to simplify licensing and align fees with costs.

Wisconsin has a greater variety of requirements for disinfectant levels in order to address the risks and unique chemical environment for each type of pool. The revised rule continues to require higher disinfectant residuals in situations where there is more demand on the free chlorine, such as within whirlpools, where free chlorine disinfectant dissipates relatively rapidly, and within wading pools, where toddlers may be playing and there is a concern to keep the level above the minimum so that it does not rapidly drop below the minimum needed to kill many pathogens that may be present in feces. Some of the disinfectant requirements outside of those where specific requirements are necessary, however, have been streamlined, to make the requirements easier to find and follow. The revised rule streamlines and simplifies disinfectant residual requirements to be in line with those of surrounding states, while maintaining more stringent requirements in settings where appropriate.

In the revised rule, Wisconsin will be the first to address the toxicity of cyanuric acid by recognizing that a level of 300 parts per million (ppm) is toxic to humans, per the National Sanitation Foundation (2019).

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no existing or proposed federal regulations that address the activities to be regulated by this proposed rule as a whole. However, the consumer product safety commission pursuant to 15 United States Code s. 8003 requires specific construction and placement of drain covers.

The United States centers for disease control and prevention, oversees the guidance, Model Aquatic Health Code. This is a comprehensive guidance document for pools, created with input from state health departments and industry partners. The department referred to this guidance document in the revision process.

Summary of Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope

The department held preliminary hearings on the statement of scope (SS 005-20) on February 14, 2020 in Madison and February 17, 2020, in Wausau, with comments open until February 24, 2020. The department received eight oral comments during the preliminary hearings and twelve written comments. The department considered the comments received which included a desire for careful consideration towards adopting the Model Aquatic Health Code, and although it is mandated by federal law, commenters expressed concerns with Virginia Graeme Baker Act and the Americans with Disabilities Act. The commenters also mentioned the importance of involving industry experts throughout the rule revision process.

Comparison with Rules in Adjacent States

Surrounding states have regulations in place for public pools and water attractions. Regulations are similar to those in Wisconsin, though there are a few differences in which rules are enforced by sanitarians, including construction and operation versus only operation, licensing, requirements for disinfection and other chemical levels, dog swims, outbreak response, and other areas.

Surrounding states combine pool construction and operation into one code. In Wisconsin, pool construction and plan review fall under the regulatory authority of the Wisconsin department of safety and professional services and safety and maintenance of pools fall under the regulatory authority of the department.

Illinois: Illinois's pool code, Ill. Admin. Code tit. 77, s. 820, is similar to Wisconsin's, although their code combines construction and operation into one code. Pools at single family residences are not considered 'public' and are not subject to permitting if the intended use is only for owner and guests. Illinois's code does not have specific requirements for the chemical feed to be interlocked with the recirculation pump to prevent accidental chemical feed. Illinois allows cyanuric acid levels up to 100 ppm. One set of chemical parameters (including free chlorine and pH) is defined for all swimming basins. An emergency telephone is required within 300 feet of the pool enclosure. Telephone design (cellular vs. landline) is not described in the code. Pool license fees are based on square footage and range from \$150 to \$650.

Iowa: Iowa's pool rule, 641 IAC Chapter 15, is similar to Wisconsin's, but like Illinois's also combined construction and operation into one code. Residential pools operated for more than a certain number of hours per month are subject to Rule 641, ch.15, while other residential pools offered to the public for fewer

hours per month are subject to a more limited set of rules within Rule 641, ch. 15.4 (6) n. Iowa requires a certified operator, except for smaller condominiums, apartment complexes, and homeowners associations. A telephone is required to be available, but technology and location is not specified. The level for pool closure for cyanuric acid level is 80 ppm. Pool license fees range from \$170 to \$270.

Michigan: In Michigan, sections R 325.2191 through 325.2199 contain regulations for both construction and operation of public swimming pools. Electrical interlock is covered in construction code. Pools in single-family residence are subject to the rule if offered to the public. The cyanuric acid limit is 80 ppm. Michigan requirements for disinfection are based on pH of the pool but are similar for all bodies of water. A telephone must be provided. If it's not in the enclosure, written advice must be provided for how to find the phone, as in Wisconsin's proposed ch. ATCP 76. Telephone technology is not specified. Requirements for disinfection of whirlpools are less specific and are outcome-based. State pool license fees are \$70, but the local health department may charge an additional inspection fee, of approximately \$200 to \$300 more.

Minnesota: Minnesota's pool code, MINN. R. Chapter 4717, provides one set of disinfection parameters. Under subparagraph 11, Minnesota is also phasing-out use of cyanuric acid in indoor pools and sets a limit at 100 ppm. As of February 2022, Minnesota will no longer require a telephone for public pools. Minnesota's lifeguarding requirements are similar to those of Wisconsin, although in Minnesota, a competitive pool would not be required to have a lifeguard, whereas in Wisconsin, the same pool would be required to have a lifeguard due to the size of the pool, and due to the presence of instructional programs. State pool license fees for a pool are \$510.

Summary of Factual Data and Analytical Methodologies

Feedback on ch. ATCP 76 was solicited from industry stakeholders, through a series of virtual public open meetings. Topics that were complex were addressed in virtual open public meetings with individuals from the industry who had a strong interest in the topic. Stakeholder feedback was collected from various public pool and water attraction businesses, pool design, construction and technical service industries, industry professional associations, the department, and local health department agent representatives, as well as the Wisconsin department of safety and professional services. The proposed changes in criteria for license fees were tested by applying the proposed criteria to all state-inspected public pools. The department continually sought feedback on ch. ATCP 76 from industry members to consider ways to minimize adverse impacts on small business.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis.

The rule is not anticipated to have a major economic effect on pool operators since it primarily replaces and updates current rules. Feedback on the rule was solicited from industry members during the rule revision process.

The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. Instead of licensing by activity area, the licensing model in the revised rule is based on assigning complexity based on basic basin characteristics, and assigning add-on fees based on what is added to the basin. This greatly clarifies the licensing process, and brings the fee for the pool into alignment with the time it takes to inspect it and manage the program.

Three fee models were discussed and one was chosen with input from industry. The model chosen with industry feedback contains a lower fee increase for a simple pool. The proposed fee increased from \$150

to \$200 for an annual license. Because almost half of the state-inspected pools are simple in complexity, many operators will benefit from this fee model.

The fee category for moderate complexity, including whirlpools, is now more closely aligned with the time spent by inspectors on enforcement and education, and by the program on consultation and investigation. Whirlpools have more complex chemistry due to their higher water temperatures and the evaporation of chemicals used to control sanitation. Also, whirlpools are more likely than other types of pools to be associated with a Legionella outbreak, if the water chemistry is not carefully controlled. The proposed fee for a moderate pool license is \$300, an increase of \$150. The proposed fee category for a complex pool that includes large pools and water attractions is \$375, an increase of \$225.

The proposed fees are per pool basin and additional fess are applied if the pool basin is also equipped with features. For example, a pool with a larger basin with features such as slides, waves and pad-walks, requires additional inspection time. A leisure river with slides, for example, is currently \$425 per year to license. With the proposed fee structure, it will be complex with features and cost \$507, an increase of \$82.

Although, the department has proposed fee increases in the new rule, the department has also communicated with industry to find alternative methods that will reduce the overall cost to maintain a pool, whirlpool or water attraction. The following are examples of cost savings to pool operators:

By eliminating the need for a variance and allowing flexibility of operation, a pool operator could experience lower operating costs and a direct reduction in cost to operate a pool telephone. A pool operator may now provide a phone with a cellular 911 service option with an approximate \$400 one-time cost compared to the current land line requirement that costs as much as \$1000 to \$1800 per year.

For pool operators who fail to maintain active managerial control of risks at their pool, there would be a proposed cost of \$300 to \$500, to obtain pool operator certification. Failure to maintain active managerial control means that critical or numerous items are found during two inspections in a three year period, making the pool more amenable to illnesses and serious accidents.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

See analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis section, above.

The Department's Regulatory Review Coordinator

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Where and When Comments May Be Submitted

Questions and comments related to this this rule may be directed to:

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RULE TEXT

1 SECTION 1. ATCP 76 is repealed and recreated to read:

2 **Subchapter I**

3 **Administration**

4 **ATCP 76.01 Authority and purpose.** This chapter is promulgated pursuant to ss. 97.67 (1), (4) and 227.11
5 (2) (a), Stats., to prescribe rules for the maintenance and operation of public pools and water attractions for
6 enforcement by the department or its agent to protect public health and safety.

7 **ATCP 76.02 Scope. (1) APPLICABILITY.** This chapter applies to all public pools and water attractions.
8 Unless the context clearly indicates otherwise, references to “pool” in these rules means a public pool, or,
9 water attraction.

10 **(2) VARIANCES.** When it appears to the department that strict adherence to a provision of this chapter
11 is impractical for a particular pool, the department may approve a variance from that provision requested
12 by that pool operator if the operator provides the department with satisfactory proof that the approval of the
13 variance will not jeopardize the public’s health, safety, or welfare.

14 (a) *Procedure for variance request.* 1. Request for modification or waiver of a requirement of this
15 chapter shall be submitted in writing to the department or its agent, along with documentation specified in
16 subd. 4.

17 2. A local inspector shall review the request and forward it to the department with recommendations
18 for approval or disapproval.

19 3. On receipt of a complete variance request as specified in this section, the department shall review
20 the request and grant or deny the request in writing within 30 working days. A variance approved by the
21 department shall be made conditional for a defined period of time or shall expire 5 years from the date of
22 issuance. The department or its agent shall maintain a copy of the variance in the license holder's inspection
23 history file.

24 4. Documentation justifying a proposed variance from the requirements of this chapter shall include all
25 the following information: a. A statement of the proposed variance from this chapter requirement citing
26 relevant chapter location numbers.

27 b. The rationale for how the potential public health hazards and nuisances addressed by the relevant
28 chapter section will be alternatively addressed by the proposed variance.

29 (b) *Conformance with an approved variance.* If the department grants a variance as specified in sub.
30 (2), the license holder shall do all of the following: 1. Comply with the department's conditions for the
31 variance approval. ^P

32 2. Maintain a copy of the approved variance at the pool.

33 (c) *Transferability.* An approved variance is not transferable to any other pool, entity, or licensee.

34 (d) *Reissuance.* A license holder who wishes to continue a variance after its expiration shall do all of
35 the following: 1. File a request with the department for reissuance of the variance at least 30 days prior to
36 its expiration, unless permission for a later date has been granted by the department.

37 2. When a license holder has made timely and sufficient application for the reissuance of a variance in
38 reference to any activity of a continuing nature, the existing waiver does not expire until the application has
39 been finally acted upon by the department.

40 **Note:** To obtain a form for requesting a variance, email datcpdfsrec@wisconsin.gov or contact the bureau
41 of food and recreational businesses at (608) 224-4702 or PO Box 8911, Madison, Wisconsin 53708-8911.

42 **ATCP 76.03 Definitions.** In this chapter:

43 (1) “AED” means automated external defibrillator.

44 (2) “Active managerial control” means that the risks at the pool are being managed so that the pool is
45 in compliance pursuant to ch. ATCP 76, or conditions are monitored so that corrections necessary for
46 compliance are in progress.

47 (3) “Activity pool” means a water attraction with a depth greater than 24 inches or 61 centimeters
48 designed primarily for play activity that uses constructed features and devices, including pad walks,
49 flotation devices, and similar attractions.

50 (4) “Administrative follow-up” means validation of a corrective action by the operator of a violation
51 through electronic or other effective means by the department or its agent.

52 (5) “Adult” means a person 18 years of age or older.

53 (6) “Agent” means the city, county, or village designated by the department pursuant to s. 97.615 (2),
54 Stats., and ch. ATCP 74, to issue licenses to and make investigations or inspections of public pools and water
55 attractions.

56 (7) “Analyte” means a substance that a test is used to detect.

57 (8) “Approved” means acceptable to the department, based on its determination of conformance with this
58 chapter and good public health practices.

59 (9) “Attendant” means a person trained to control patrons in a safe and orderly manner.

60 (10) “Barrier” means a fence, wall, or similar structure meeting the requirements pursuant to s. SPS
61 390.18 (4).

62 (11) “Basin” means any vessel constructed of manmade materials designed to hold or receive water,
63 including the splash zone of an interactive play attraction, or a run-out slide.

64 (12) “Breakpoint chlorination” means to create a hygienic environment in the pool by raising the free

65 available chlorine level to 10 times the combined chlorine level to achieve the destruction of chloramines.

66 (13) “CPR” means cardiopulmonary resuscitation.

67 (14) “Certified operator” means an operator who is certified by successful completion of at least one of
68 the following training courses:

69 (a) The Pool and Hot Tub Alliance certified pool operator course.

70 (b) The National Recreation and Park Association aquatic facility operator course.

71 (c) An equivalent course approved by the department.

72 (15) “Change of operator” means an existing license holder that sells or otherwise transfers ownership
73 or operation of a pool to another person.

74 (16) “Children’s slide” means a slide that has a maximum height of 4 feet or 1.2 meters as measured
75 vertically from the slide entrance to slide terminus and is located in less than 24 inches or 61 centimeters of
76 water.

77 (17) “Cold soak pool” means a pool that uses cold water for therapy.

78 (18) “Combined chlorine” means the combination of free chlorine with other substance in the water.

79 (19) “Core item” means all of the following: (a) A provision in this rule that is not designated as a
80 priority item or a priority foundation item.

81 (b) An item that usually relates to general sanitation, operational controls, sanitation standard operating
82 procedures, facilities or structures, equipment design, or general maintenance.

83 (20) “Current pool” means a pool that creates a current for the purpose of exercise.

84 (21) “Death, injury, or illness report” means the written record of all facts regarding an incident
85 resulting in bodily harm that requires assistance from emergency medical personnel for a pool or its
86 associated buildings and structures, including a locker room, equipment room, deck, shower, and toilet
87 facilities.

88 (22) “Deck” means the approved, unobstructed walking surface immediately adjacent to a pool.

89 (23) “Deep portion” means a portion of a pool having a design water depth greater than 5 feet or 1.5

90 meters.

91 (24) “Department” means the Wisconsin department of agriculture, trade and consumer protection.

92 (25) “Drop slide” means a slide where the terminus is located 20 inches or 50.8 centimeters or more
93 above the water level.

94 (26) “Electrical interconnection” means, in connection with a pool, where the recirculation pump and
95 the chemical feed unit are interconnected in such a way that when the recirculation pump power is
96 interrupted or lost, the power to the chemical feed unit is also disabled.

97 (27) “Enclosure” means the area within the barrier that separates the pool or water attraction area from
98 other areas of the building or premises.

99 (28) “Engineer” means a registered professional engineer licensed in Wisconsin.

100 (29) “Entry access point” means the area in which a patron enters a water attraction.

101 (30) “Equipment” means all the necessary items for the operation of a public pool.

102 (31) “Erosion feeder” means a chemical feed device that contains powder, tablets, briquettes, or sticks
103 and allows a water stream to pass through it that erodes and dissolves the chemical.

104 (32) “Exercise pool” means a pool of 5 feet or 1.5 meters in depth or less that can operate with or without
105 a current.

106 (33) “Existing pool” means a pool operating with a license first issued by the department or its agent
107 on or before June 30, 2023.

108 (34) “Feature” means a pool with a depth greater than 16 feet, a pool with a surface area greater than
109 20,000 sq. ft., or a physical object permanently installed in a pool that is intended for recreational use
110 including, a pool slide, waterslide, pad walk, basketball hoop, diving board, wave generator, treadmill,
111 vortex pool, climbing wall, current pool, swim-up bar, vanishing edge pool, tethered or nontethered
112 floatable, or a spray feature.

113 (35) “Filter aid” means finely powdered diatomaceous earth or similar approved material used to coat
114 a septum type filter.

115 (36) “Flow Sensing” means an automatic safety mechanism designed to disable chemical delivery
116 equipment in the event of a significant decrease, or lack of, a return water flow required for the proper
117 dispersal of a chemical related to water disinfection.”

118 (37) “Flume” means that part of a slide within which sliding takes place.

119 (38) “Free chlorine residual” means the portion of the total available chlorine that is not “combined
120 chlorine” and is primarily present as hypochlorous acid or HOCl-, hypochlorite ion or OCl-, or Cyanurate-
121 bound available chlorine.

122 (39) “General public” means any person who patronizes a public pool.

123 (40) “Imminent health hazard” means a condition that presents a substantial likelihood to cause severe
124 adverse health consequences or death.

125 (41) “Instructional Program” means an activity occurring in the water that is led by a person teaching
126 a participant how to do an exercise, movement, skill, or similar activity, including a swimming class, an
127 exercise class, or a water aerobics class.

128 (42) “Interactive play attraction” means a water attraction, including manufactured devices using
129 sprayed, jetted, or other water sources contacting patrons and not incorporating standing or captured water
130 as part of the patron activity area.

131 **Note:** Splash pads and spray pads are examples of interactive play attractions.

132 (43) “Leisure river” means a channeled flow of water of near-constant depth in which the water is moved
133 by pumps or other means of propulsion to provide a river-like flow that transports patrons over a defined
134 path.

135 (44) “Lifeguard” means a person holding a current certificate from a course that meets the criteria for
136 lifeguarding, first aid, CPR, and AED training and certification set forth in the 2018 Model Aquatic Health
137 Code or as approved by the department.

138 **Note:** A listing of approved courses may be obtained by contacting the department. Email
139 datcpdfsrec@wisconsin.gov or contact the Bureau of Food and Recreational Businesses at (608) 224-4702
140 or PO Box 8911, Madison, Wisconsin 53708-8911.

141 (45) “Lifeguard and attendant staffing plan” means a written description about how lifeguards and
142 attendants will be used at pools.

143 (46) “Maximum flow” means the highest flow rate attainable by the pump without friction from the
144 recirculation system.

145 (47) “NSF” means National Sanitation Foundation.

146 (48) “New pool” means a pool operating with a license first issued by the department or its agent on or
147 after July 1, 2023.

148 (49) “Nontethered floatable” means a floatation device added to a pool that is not tethered to the pool
149 basin, allowing movement of the device around the water, including floating pads or other similar items. A
150 “Nontethered floatable” does not include a rubber tube in a leisure river or swim wings.

151 (50) “Operator” means the owner of a pool or the person responsible to the owner for the operation of a
152 pool, including the mechanical systems operations of the pool.

153 (51) “Oxidizer” means a chemical that can take away electrons from a molecule or atom, thereby
154 destroying organic matter.

155 (52) “Owner” means the state, a political subdivision of the state, corporation, company, association,
156 firm, partnership, or individual owning or controlling any pool.

157 (53) “Pad walk” means a tethered floatable under rope and netting in an activity pool that allows a
158 patron to cross the water using his or her hands.

159 (54) “Pathogen” means a microbial organism capable of causing disease.

160 (55) “Patron” means a human user of a pool.

161 (56) “Patron load” means the number of patrons in a body of water of a pool.

162 (57) “Peak flow” means the highest flow rate attainable by the pump within the pool’s recirculation
163 system.

164 (58) “Person” means an individual, partnership, association, firm, company, corporation, municipality,
165 county, town or state agency, whether tenant, owner, lessee, or licensee, or the agent, heir, or assignee of
166 any of these.

167 (59) “Plunge pool” means a pool with a depth of greater than 24 inches or 61 centimeters, located at the
168 exit end of a waterslide flume and intended and designed to receive a patron emerging from the flume.

169 (60) “Pool and water attraction area” means, in an indoor or outdoor facility, the pool or water attraction
170 and the area within a continuous enclosure.

171 (61) “Pool or water attraction” means a public pool or water attraction if it serves or is installed for use
172 by the state, a political subdivision of the state, a motel, a hotel, a resort, a camp, a campground, a club, an
173 association, a housing development, an apartment complex with 3 or more dwelling units, a condominium
174 complex, or a housing complex having a homeowners’ association, a school, a religious, charitable or youth
175 organization, or an educational or rehabilitative facility.

176 (62) “Pool slide” means any slide where the drop from the slide terminus to water is less than 20 inches
177 or 50.8 centimeters into greater than 24 inches of water and the flume carries less than 100 gallons of water
178 per minute.

179 (63) “Priority foundation item” means all of the following: (a) A provision in this rule whose
180 application supports, facilitates, or enables one or more priority items.

181 (b) An item that requires the purposeful incorporation of specific actions, equipment, or procedures by
182 the operator such as personnel training, infrastructure, documentation, or record keeping.

183 (c) An item that is denoted in this rule with a superscript Pf^{-Pf}.

184 (64) “Priority item” means all of the following: (a) A provision in this rule directly related to health and
185 safety that if not met or is missing could significantly contribute to an increased risk for injury or illness.

186 (b) An item that is denoted in this rule with a superscript P^{-P}.

187 (65) “Public Pool” (a) Means a structure, basin, chamber, or tank, and appurtenant buildings and
188 equipment, used for wading, swimming, diving, water recreation, or therapy, including an exercise pool,
189 mobile pool, whirlpool, cold soak pool, or water attraction.

190 (b) “Public Pool” does not include an inflated mobile structure, basin, chamber, or tank; a swim pond;
191 an individual therapeutic pod, tub, or bath; a fixed or mobile structure, basin, chamber, or tank that serves
192 fewer than 3 individual residences; or a fixed or mobile structure, basin, chamber, or tank that is used solely

193 for animal training, therapy, or exercise and the only individuals in the pool are the animal trainer or handler,
194 animal health or wellness professional or the animal’s individual owner.

195 (66) “Responsible supervisor” means a person designated by the operator to maintain compliance with
196 regulations governing safety and sanitation of a pool.

197 (67) “Reverse flow pool” means a pool type that has a recirculation system, where surface water is
198 drawn from the pool basin through the gutter system, skimmer, or similar device and is filtered, disinfected
199 and returned to the basin through the main drain or floor water inlets.

200 (68) “Run-out slide” means a waterslide where the rider does not exit into a plunge pool, but has a
201 deceleration area that permits the patron to stop before exiting the slide flume.

202 (69) “Safety data sheet” means written information that details the hazards associated with a chemical
203 and gives information related to its safe use.

204 (70) “Shallow portion” means the part of the pool that is 5 feet or 1.5 meters in depth or less.

205 (71) “Slide terminus” means the last 10 feet or 3.1 meters of a slide flume discharging into a pool.

206 (72) “Spectator area” means a designated area for people to observe or watch an activity in a pool.

207 (73) “Splash zone” means the area where water falls on the floor of an interactive play attraction.

208 (74) “Superchlorination” means the addition of an oxidizing product such as chlorine to pool water to
209 raise the level of oxidizer to at least 10 ppm. “Superchlorination” is sometimes referred to as superoxidation.

210 (75) “Swim-up bar” means an area of a pool that includes barstool type seating, a countertop, and often
211 a serving area where patrons can order a beverage without leaving the pool.

212 (76) “Swim wings” means hollow, ring-shaped pieces of plastic, filled with air, that a patron wears on
213 their arms while in the water to help them to float.

214 (77) “Tethered floatable” means a play item or floatation device that is affixed to the basin of a pool to
215 restrict movement of the item.

216 (78) “Unauthorized access” means the entrance of a person into a restricted area without permission of
217 the operator or the operator’s designated representative.

218 (79) “Therapy pool” means a pool used for professionally administered physical therapy.

219 (80) “Turnover time” means the time for a given volume of water to pass through the recirculation
220 system.

221 (81) “Vanishing edge pool” means a pool where the water flows over one or more edges, producing a visual
222 effect of water with no boundary.

223 (82) “Vortex pool” means a water attraction that is equipped with a method of transporting water in the
224 basin for the purpose of propelling patrons at speeds dictated by the velocity of the moving stream.

225 (83) “Wading pool” means a pool having a shallow portion that is a maximum depth of 24 inches or 61
226 centimeters and intended for children’s play.

227 (84) “Water attraction” means a pool with design and operational features that provide a patron
228 recreational activity other than conventional swimming that involves partial or total immersion of the body,
229 including an activity pool, interactive play attraction, leisure river, plunge pool, vortex pool, vanishing
230 edge pool, waterslide, run-out slide, drop slide, pool slide, wave pool, zero-depth entry pool, and any public
231 pool with features except wading pools.

232 (85) “Waterslide” means a slide where a water flow of 100 gallons of water per minute or more is
233 intended to carry a rider down a flume.

234 (86) “Wave pool” means a water attraction designed to simulate breaking or cyclical waves for the
235 purposes of surfing or general play.

236 (87) “Whirlpool” means a small pool, sometimes called a “spa,” which uses higher temperature water
237 than other pools and may include a water agitation system.

238 (88) “Zero-depth entry pool” means a water attraction having a sloped entrance to where the water depth
239 is 0 inches at the shallowest point.

240 **ATCP 76.04 Plans and specifications for pools. (1) APPROVAL REQUIRED.** An operator shall submit
241 pool plans for new construction and obtain approval from the Wisconsin department of safety and
242 professional services pursuant to ch. SPS 390. After July 1, 2023, the following documents shall be kept
243 onsite and made available to the department or its agent upon request. (a) Approved pool plans.

244 (b) Engineering statements and reports, when applicable.

245 (c) Compliance declaration, if applicable.

246 (d) Conditional Wisconsin department of safety and professional services approvals, if applicable.

247 (e) Final Wisconsin department of safety and professional services inspection approval.

248 (f) Wisconsin department of safety and professional services or department variances, if applicable.

249 **(2) MODIFICATIONS.** An operator shall submit pool modification plans to the Wisconsin department
250 of safety and professional services pursuant to ch. SPS 390. Documentation shall be made available to the
251 department or its agent upon request as required under sub. (1).

252 **(3) CHANGE OF OPERATOR.** For a pool constructed prior to July 1, 2023, pool construction plans
253 are not required when a change of operator occurs and a new license is required pursuant to s. ATCP 76.05
254 (1).

255 **ATCP 76.045 License holder qualifications.** To qualify for a license, an applicant shall do all of the
256 following: **(1) OWNER.** Be an owner of the pool or an officer of the legal entity owning the pool.

257 **(2) PAYMENT OF FEES.** Pay the applicable license fees at the time the application is submitted.

258 **ATCP 76.046 License holder responsibilities.** Upon acceptance of the license issued by the department
259 or its agent, the license holder shall do all of the following in order to retain the license: **(1)** Allow an
260 authorized representative of the department or its agent access to the pool and provide any required
261 information to that authorized representative.

262 **(2)** Comply with the provisions of this chapter.

263 **(3)** Follow reporting requirements to the department or its agent, as applicable, as outlined in this
264 chapter.

265 **(4)** Immediately discontinue operations directly related to an imminent health hazard and notify the
266 department or its agent.

267 **(5)** Replace existing facilities and equipment that no longer comply with the criteria set forth in this
268 chapter.

269 (6) Comply with directives of the department or its agent, including deadlines for taking corrective
270 actions specified in inspection reports, notices, orders, warnings, and other directives issued by the
271 department or its agent for the license holder's pool or in response to community emergencies.

272 (7) Accept notices issued and served by the department or its agent according to law.

273 (8) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure
274 to comply with this chapter, and any other directive of the department or its agent, including deadlines for
275 corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

276 **ATCP 76.05 License to operate a pool. (1) LICENSE REQUIRED.** A license is required for a public
277 pool if it serves or is installed for use by the state, a political subdivision of the state, a motel, a hotel, a
278 resort, a camp, a campground, a club, an association, a housing development, an apartment complex with
279 3 or more dwelling units, a condominium complex, or a housing complex having a homeowners'
280 association, a school, a religious, charitable or youth organization, or an educational or rehabilitative
281 facility.

282 (a) *Conditions requiring a license.* No person may operate a pool without a license from the department
283 or its agent, except as provided under sub. (c) 2. A separate license is required for each pool basin.

284 (b) *Pool modification.* A pool for which a license has been issued and is later modified into a different
285 pool type shall require a new license and the operator shall pay all applicable fees.

286 (c) *Transfer of ownership.* 1. If a license holder sells or otherwise transfers ownership or operation of a
287 pool to another person, a new license is required pursuant to s. 97.67 (2) (a), Stats., and the pool may not
288 be opened to the public until the department or its agent issues a new license.

289 2. Pursuant to s. 97.67 (2) (b) and (c), Stats., an individual may transfer a license to an immediate family
290 member if the individual is transferring operation of the pool. A sole proprietorship that reorganizes as a
291 business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole
292 proprietorship or a different type of business entity, may transfer a license to the newly formed business
293 entity or sole proprietorship if the pool remains at the location for which the license was issued and at least
294 one individual who had an ownership interest in the sole proprietorship or business entity to which the

295 license was issued has an ownership interest in the newly formed sole proprietorship or business entity.

296 3. Except as provided in this paragraph, no license issued under this chapter is transferable from one
297 premise to another or from one person or entity to another.

298 4. An operator who wishes to transfer a license under sub. (c), shall notify the department or its agent
299 prior to the transfer of the operation of the pool.

300 **Note:** To notify the department of a transfer of ownership, call (608) 224-4923 or send an email to
301 datcpdfslicensing@wi.gov.

302 (d) *Preinspection required.* Before the department or its agent may issue a license to operate a pool
303 under sub. (1), the department or its agent shall conduct a preinspection. A preinspection is not required for
304 a transfer of a license under par. (c) 2.

305 (2) LICENSE DURATION AND RENEWAL. (a) *Expiration.* Each license issued under this chapter
306 expires on June 30, except that a new pool license issued during the period beginning on April 1 and ending
307 on June 30 expires on June 30 of the following year.

308 (b) *Annual Renewal.* Each existing pool license shall be renewed annually as provided in sub. (4).

309 (3) NEW LICENSE. (a) *Application.* To apply for a new pool license, the applicant shall apply on an
310 application form provided by the department or its agent. The completed application shall be accompanied by
311 all of the following: 1. The applicable fees pursuant to s. ATCP 76.06 Table B or C, and any fees previously
312 due to the department or its agent.

313 2. Proof that the Wisconsin department of safety and professional services, pursuant to s. SPS 390.04
314 (1), has approved plans and specifications for the pool, including modifications.

315 3. The completed final inspection report and approval from the Wisconsin department of safety and
316 professional services authorized inspector.

317 4. A statement from a supervising construction contractor, architect, or engineer who worked on the pool
318 indicating that it was completed in accordance with the pool's construction plan pursuant to s. SPS 390.05
319 (1) (c).

320 5. Information, as determined by the department or its agent, indicating that the pool will be maintained
321 and operated in compliance with applicable federal and state laws and that rules have been implemented for
322 the operation of the pool that will protect the health, safety, and welfare of the public.

323 **Note:** To obtain a copy of the pool operator license application form, or to determine which agent to
324 contact for an application form, call (608) 224-4923 or send an email to datcpdfslicensing@wi.gov.

325 (b) *Requests for preinspection.* The operator shall contact the department or its agent and arrange a time
326 for the preinspection pursuant to s. ATCP 76.05 (1) (d), before operating a new pool open to the general
327 public.

328 **Note:** To obtain a copy of the pool license application form, or to arrange for a preinspection, call (608)
329 224-4923 or send an email to datcpdfslicensing@wi.gov.

330 (4) LICENSE RENEWAL. (a) *Renewal fee.* To renew an existing pool license, the operator shall pay
331 the department or its agent the applicable license fee pursuant to s. ATCP 76.06 Table B or C, before the
332 license expires. If payment to renew a license fee is not received by the department or its agent before the
333 expiration date of the license, the late fee pursuant to s. ATCP 76.06 Table B or C, shall be paid in addition
334 to the license fee. An application for a renewal license is not required.

335 **Note:** Pursuant to s. 97.615 (2) (d), Stats., a local health department can establish and collect fees for a
336 license. For a license issued by a local health department, contact the local health department for its license
337 fee schedule.

338 (b) *Department action on a license renewal.* 1. The department or its agent may refuse to renew a new
339 pool license as provided under sub. (5) (a).

340 2. The department or its agent shall not renew an existing pool license as provided under sub. (5) (b).

341 (5) DEPARTMENT OR AGENT ACTION ON LICENSE APPLICATION. (a) *Department decision*
342 *on a license.* The department or its agent may not issue a new pool license or renew an existing pool license
343 unless all of the following conditions are met: 1. The operator has corrected a condition for which the
344 department or its agent has issued a written health or safety related order.

345 2. The operator, applicant, or license holder has provided the department or its agent with the
346 information required under sub. (3) (a) 2. to 5.

347 3. The department or its agent has determined that the operator, applicant, or license holder is not in
348 violation of ch. 97, Stats., or has only a minor violation as defined in s. 227.04 (1) (a), Stats.

349 (b) *License prohibited.* The department or its agent shall refuse to issue a new pool license or renew an
350 existing pool license under any of the following circumstances: 1. A fully and accurately completed, signed,
351 and dated application has not been received by the department or its agent.

352 2. The department or its agent has not conducted the preinspection pursuant to s. ATCP 76.05 (1) (d).

353 3. The department or its agent has not received pool documentation pursuant to s. ATCP 76.04.

354 4. The operator has not paid all of the applicable fees pursuant to s. ATCP 76.06 Table B or C.

355 5. The operator has modified, repaired, or maintained the pool in a manner that is not in accordance
356 with what the department or its agent recognizes as safe practice as outlined in this chapter.

357 (c) *Conditional license.* Except as provided in s. 93.135, Stats., the initial issuance, renewal, or
358 continued validity of a license may be conditioned upon the requirement that the license holder correct a
359 violation of this chapter, s. 97.67, Stats., or ordinances adopted pursuant to s. 97.615 (2) (g), Stats., within
360 a specified period of time. If the condition is not satisfied within the specified time or after an extension of
361 time approved by the department or its agent, the license is void. No person may operate a pool after a
362 license has been voided. Any person who does so shall be subject to a penalty pursuant to s. 97.72, Stats.,
363 an injunction pursuant to s. 97.73, Stats., and fees pursuant to s. ATCP 76.06 (3) (e). An operator whose
364 license is voided under this paragraph may appeal the decision pursuant to s. ATCP 76.09.

365 (d) *Granting or denial of a license.* 1. The department or its agent shall issue or deny a new pool license
366 or shall renew an existing pool license within 30 days after the applicant meets all of the requirements
367 pursuant to sub. (3) or (4), as applicable.

368 2. If the department or its agent denies an application for a license, the applicant shall be given reasons,
369 in writing, for the denial and information regarding appeal rights pursuant to s. ATCP 76.09.

370 (6) VOIDED LICENSE FOR FAILURE TO PAY FEES. (a) *Payment time frame.* If an applicant or
371 operator fails to pay all applicable fees, late fees, and processing charges pursuant to s. ATCP 76.06, within
372 45 days after the expiration of the license, the license is void.

373 (b) *Notice of insufficiency.* If the department or its agent receives a notice of an insufficiency pursuant
374 to s. ATCP 76.06 (4), the applicant or operator shall have 15 days after receipt of notice from the department
375 or its agent of the insufficiency to pay all applicable fees and processing charges or the license is void.

376 (c) *Appeal rights.* An operator whose license is voided under this subsection may appeal the decision as
377 pursuant to s. ATCP 76.09. The burden is on the license applicant or operator to show that all applicable
378 fees, late fees, and processing charges have been paid. During any appeal process concerning a payment
379 dispute, operation of the pool is deemed to be operation without a license and is subject to the fees pursuant
380 to s. ATCP 76.06 (3) (e), in addition to the fees otherwise due, unless the applicant or owner meets its burden
381 of proof under this subsection.

382 (7) LICENSE POSTING. A license shall be posted in a place visible to the public. A license may not
383 be altered or defaced.

384 **ATCP 76.06 Department fees. (1) FEE SCHEDULE.** Pursuant to s. 97.67 (5), Stats., no license may be
385 issued until all applicable fees have been paid. Fees specified under s. ATCP 76.06 Table B or C, apply to
386 pool licenses issued by the department or its agent under this chapter for each basin.

387 **Note:** Pursuant to s. 97.615 (2) (d), Stats., a local health department can establish and collect fees for a
388 license. For a license issued by a local health department, contact the local health department for its license
389 fee schedule.

390 (2) LICENSE CATEGORY ASSIGNMENT. (a) *Criteria.* 1. The department or its agent shall assign a
391 pool basin to a license category by evaluating the complexity of the pool basin based on the criteria pursuant
392 to s. ATCP 76.06 Table A, in this section.

393 2. The department or its agent shall assign a pool basin with a point value that is 0 to 2, to the simple
394 license category.

395 3. The department or its agent shall assign a pool basin with a point value that is greater than 2, but not
396 more than 3, to the moderate license category.

397 4. The department or its agent shall assign a pool basin with a point value that is 3.5 or greater, to the
398 complex license category.

399 5. If the department or its agent orders a pool closed because of a confirmed waterborne illness outbreak
400 or chemical release incident, associated with the operation of the pool, the department or its agent shall
401 immediately assign the pool to the complex category for the current and following licensing year. If no
402 further outbreaks or closures occur, the department or its agent may reduce the license to the appropriate
403 license category assignment.

404 (b) *Point values for determining factors for assigning a pool license category.*

405 **ATCP 76.06 Table A**

406	Determining Factors for Pool License Category (per Basin)	Point Value
407	A. Basin	1.0
408	B. The pool type is a whirlpool or therapy pool	1.0
409	C. Choose the applicable recirculation system	
410	1. Recirculation system is designated to a single pool basin	1.0
411	2. Recirculation system is shared with another pool basin	0.5
412	D. The basin is greater than 1999 square feet in area	1.0
413	E. The pool is defined as a water attraction	1.0

414 (c) *Fee schedule tables.*

415 **ATCP 76.06 Table B Fee Schedule — SFY 2023**

416 **For licenses issued April 1, 2023 through June 30, 2025**

417	Type of	License	Preinspection	First	Second and	Late
418	Facility	Fee	Fee	Reinspection	Subsequent	Fee
419				or	Reinspection or	
420				Administrative	Administrative	
421				Follow-Up Fee	Follow-Up Fee	
422						

423	Simple pool	\$200	\$200	\$100	\$150	\$40
424						
425	Simple pool	\$332	\$332	\$100	\$150	\$66
426	with features					
427						
428	Moderate pool	\$300	\$300	\$100	\$150	\$60
429						
430	Moderate pool	\$432	\$432	\$100	\$150	\$86
431	with features					
432						
433	Complex pool	\$375	\$375	\$100	\$150	\$75
434						
435	Complex pool	\$507	\$507	\$100	\$150	\$101
436	with features					
437						

438 **ATCP 76.06 Table C Fee Schedule — SFY 2025**

439 **For licenses issued on or after April 1, 2025**

440	Type of	License	Preinspection	First	Second and	Late
441	Facility	Fee	Fee	Reinspection	Subsequent	Fee
442				or	Reinspection or	
443				Administrative	Administrative	
444				Follow-Up Fee	Follow-Up Fee	
445						
446	Simple pool	\$208	\$208	\$100	\$150	\$42
447						
448	Simple pool	\$345	\$345	\$100	\$150	\$69
449	with features					
450						
451	Moderate pool	\$312	\$312	\$100	\$150	\$62
452						
453	Moderate pool	\$450	\$450	\$100	\$150	\$90
454	with features					
455						
456	Complex pool	\$390	\$390	\$100	\$150	\$78
457						
458	Complex pool	\$527	\$527	\$100	\$150	\$105
459	with features					
460						

461 **(3) TYPES OF FEES.** (a) *Preinspection fee.* The operator shall pay the applicable preinspection fee
462 pursuant to s. ATCP 76.06 Table B or C, to the department or its agent before a new license is issued
463 pursuant to s. ATCP 76.05 (3).

464 (b) *License fee.* The operator shall pay the applicable license fee pursuant to s. ATCP 76.06 Table B or
465 C, to the department or its agent for each pool for which the operator applies for a new or renewal license.

466 (c) *Late fee.* If the license fee for a license renewal is not paid before the expiration date of the license,
467 the operator of the pool shall pay to the department or its agent the late fee pursuant to s. ATCP 76.06 Table
468 B or C, and pursuant to s. 93.21 (5) (b), Stats., in addition to the renewal license fee.

469 (d) *Reinspection or administrative follow-up fee.* If the department or its agent conducts a reinspection
470 or administrative follow-up of a pool pursuant to s. ATCP 76.07 (1) (b) 1. or 4., the operator shall pay to the
471 department or its agent the applicable reinspection or administrative follow-up fee pursuant to s. ATCP
472 76.06 Table B or C. The department or its agent shall assess an additional fee pursuant to s. ATCP 76.06
473 Table B or C, for any second or subsequent reinspection or administrative follow-up conducted pursuant to
474 s. ATCP 76.07 (1) (b) 4.

475 (e) *Fees for operating without a license.* If a pool is found to be operating without a license, the operator
476 shall pay to the department or its agent a fee of \$749.00, in addition to all applicable fees and any processing
477 charges under sub (4).

478 **Note:** Anyone operating a pool without a license is also subject to a penalty pursuant to s. 97.72, Stats., and
479 an injunction pursuant to s. 97.73, Stats.

480 (f) *Duplicate license.* The department or its agent may charge the operator of a pool \$15.00 for the
481 request of a duplicate license.

482 (g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly
483 related to the department or its agent responsibilities for issuing licenses, the department or its agent shall
484 charge the operator or the entity requesting the inspection or consultation \$175.00.

485 **Note:** Pursuant to s. 97.615 (2) (d), Stats., a local health department can establish and collect fees. For a fee
486 issued by a local health department, contact the local health department for its fee schedule.

487 **(4) PENALTIES FOR INSUFFICIENCY OF PAYMENT.** If the payment for a new or renewal license
488 is by check or other draft drawn upon an account containing insufficient funds, the applicant or operator
489 shall, within 15 days after receipt of notice from the department or its agent of the insufficiency, pay all
490 applicable fees under sub. (1), and the financial institution's processing charges by cashier's check, other

491 certified draft, or money order.

492 **ATCP 76.07 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) Inspections.**

493 Pursuant to ss. 97.615 (2) and 97.65 (1), Stats., an authorized employee of the department or its agent, upon
494 presenting proper identification, may enter any pool or equipment area, and any other associated area at
495 any reasonable time, for any of the following purposes: 1. To inspect the pool.

496 2. To determine if there has been a violation of this chapter or s. 97.67, Stats.

497 3. To determine compliance with previously written violation orders.

498 4. To secure samples or specimens.

499 5. To examine and copy relevant documents and records related to the operation of the pool.

500 6. To obtain photographic or other evidence needed to enforce this chapter.

501 (b) *Reinspections or administrative follow-up.* 1. The department or its agent may perform a
502 reinspection or administrative follow-up of a pool whenever an inspection or the investigation of a complaint
503 reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or
504 employees of the pool.

505 2. A reinspection or administrative follow-up shall be scheduled to allow the operator a reasonably
506 sufficient amount of time to correct the deficiencies.

507 3. The department or its agent shall assess a reinspection or administrative follow-up fee for the
508 reinspection or administrative follow-up pursuant to s. ATCP 76.06 Table B or C.

509 4. If an additional reinspection or administrative follow-up is required because a violation has not been
510 corrected in the scheduled period of time, the department or its agent shall assess a second or subsequent
511 reinspection or administrative follow-up fee pursuant to s. ATCP 76.06 Table B or C, as authorized pursuant
512 to s. ATCP 76.06 (3) (d), and the department or its agent may order the operator to show just cause why the
513 license should not be suspended or revoked pursuant to s. ATCP 76.08.

514 **(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) Written orders.** If upon inspection of a
515 pool, the department or its agent finds that the pool is not designed, constructed, equipped, or operated

516 pursuant to ch. SPS 390 and this chapter, the department or its agent shall issue a written order to correct the
517 violation. The order shall specify the correction needed for compliance and the time period within which the
518 correction shall be made. The time period specified in the order may be extended at the discretion of the
519 department or its agent as specified in par. (c).

520 (b) *Failure to correct a violation.* 1. If a violation is not corrected by the expiration of the time period
521 stated in the order given under par. (a), or any extension of time granted under par. (c), the department or
522 its agent may issue an order pursuant to s. ATCP 76.08, to suspend or revoke the license to operate the pool.
523 An order for suspension or revocation shall take effect pursuant to s. ATCP 76.08.

524 2. Pursuant to s. 97.12 (5), Stats., any person who fails to comply with an order of the department or its
525 agent shall forfeit \$50 for each day of noncompliance after the order is served upon or directed to that
526 person. A person may appeal a forfeiture pursuant to s. ATCP 76.09.

527 (c) *Requests for an extension to correct a violation.* 1. The department or its agent may extend the time
528 period to correct a violation based on a determination of the seriousness of the violation, the operator's
529 progress towards correcting the violation, and the operator's previous history of compliance.

530 2. To request an extension to correct a violation, the operator shall submit a written request to the
531 department or its agent before the date specified in the written order to correct the violation. The operator
532 shall provide information that demonstrates to the department or its agent that corrective action has been
533 initiated, but additional time is needed to fully correct the violation.

534 (3) TEMPORARY ORDERS. (a) *Conditions for a temporary order.* Pursuant to s. 97.65 (2) (a),
535 Stats., whenever, as a result of an inspection under sub. (1), the department or its agent has reasonable cause
536 to believe that an immediate danger to health or safety exists, the department or its agent may issue a temporary
537 order without advance notice or hearing to do any of the following: 1. Prohibit the continued operation or
538 method of operation of specific equipment.

539 2. Require the premises or affected areas within the premises to cease operations and close until
540 remedies are applied that eliminate the immediate danger to health or safety.

541 (b) *Duration of a temporary order; actions prohibited.* 1. A temporary order shall take effect upon

542 delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall
543 remain in effect for 14 days from the date of its delivery, but a temporary order may be reissued for one
544 additional 14 day period if necessary to complete any analysis or examination of samples, specimens, or
545 other evidence.

546 2. No operation or method of operation prohibited by the temporary order may be resumed without the
547 approval of the department or its agent until the order has terminated or the time period specified in subd. 1.,
548 has expired, whichever occurs first, unless as provided under par. (c), the department or its agent provides
549 a notice that an immediate danger to health or safety is present. If, upon completed analysis or examination,
550 the department or its agent determines that construction, sanitary condition, operation, or method of operation
551 of the premises or equipment does not constitute an immediate danger to health or safety, the department
552 or its agent shall immediately notify the owner, operator, or responsible supervisor in writing and the
553 temporary order shall terminate upon receipt of the written notice.

554 (c) *Notice of findings upon analysis or examination.* If the analysis or examination under sub. (1), shows
555 that the construction, sanitary condition, operation, or method of operation of the premises or equipment
556 constitutes an immediate danger to health or safety, the department or its agent, within the effective period
557 of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner,
558 operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a
559 final decision is issued pursuant to s. ATCP 76.09. The notice shall include a statement that the facility has a
560 right to request a hearing pursuant to s. ATCP 76.09, within 15 days after issuance of the notice.

561 (d) *Failure to comply with a temporary order.* Any person who fails to comply with a temporary order
562 issued by the department or its agent shall forfeit \$50 for each day of noncompliance after the order is served
563 upon or directed to them pursuant to s. 97.12 (5); and, pursuant to s. 97.65 (5) (a), Stats., may be fined not
564 more than \$10,000 or imprisoned not more than one year in the county jail, or both. A person may appeal
565 a forfeiture or penalty pursuant to s. ATCP 76.09.

566 (4) ACTION PLANS. (a) When required by the department or its agent, the operator shall develop, on
567 a form provided by the department or its agent, an action plan for compliance. The action plan shall include
568 all of the following: 1. A description of the violation and code citation.

569 2. The steps the operator will take to correct the violation.

570 3. The date compliance will be achieved.

571 (b) The pool is placed on a conditional license pursuant to s. ATCP 76.05 (5) (c).

572 (c) The department or its agent shall void the pool license pursuant to s. ATCP 76.05 (5) (c), if the
573 operator continues to be out of compliance or fails to meet the objectives outlined in the action plan past
574 the date provided in the action plan.

575 **ATCP 76.08 Suspension or revocation of license.** The department or is agent may, by summary order and
576 without prior notice or hearing, suspend a license issued under this chapter if the department or its agent
577 finds that there has been a substantial failure to comply with the applicable requirements of this chapter and
578 that the continuation of the violations constitutes a serious danger to public health. The order shall be in
579 writing, have the force and effect of an order issued pursuant to s. 93.18, Stats., and is subject to right of
580 hearing before the department or its agent, if requested within 10 days after date of service.

581 **ATCP 76.09 Appeals of actions by the department.** If requested in writing within 10 days after date of
582 the service of an order, a hearing shall be conducted pursuant to ch. ATCP 1. Enforcement of the order
583 shall not be stayed pending action on the hearing. A request for hearing does not automatically stay or
584 modify a summary special order.

585 **Note:** A request for hearing shall be submitted to the DATCP Secretary via email at
586 datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin
587 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718. The hearing may be
588 conducted by the department secretary or designee.

589 **ATCP 76.10 Appeals of actions by agent health departments.** If an agent issues a license under this
590 chapter, the operator shall appeal enforcement action to the agent health department.

591

Subchapter II

592 **Standards for Pools**

593 **ATCP 76.105 Qualifications of an authorized representative conducting inspections.** An authorized
594 representative of the department or its agent who inspects a pool or conducts a plan review for compliance
595 pursuant to ch. ATCP 76 shall meet the staffing qualification requirements pursuant to s. ATCP 74.08.

596 **ATCP 76.106 Inspections (1) REFUSED INSPECTION; PROCESS.** If a person denies access to the
597 department or its agent to the licensed pool, the department or its agent shall inform the person of all the
598 following: (a) *Department access.* The license holder is required to allow access to the department or its
599 agent pursuant to s. 97.65 (1), Stats.

600 (b) *License condition.* Access is a condition of the acceptance and retention of a pool license pursuant
601 to s. ATCP 76.046 (1).

602 (c) *Denied access.* If the pool license holder denies access to an authorized representative of the
603 department or its agent, the department or its agent may apply for an inspection warrant to allow access
604 pursuant to s. 66.0119, Stats.

605 **(2) REPORTING OF REFUSED ACCESS.** If the person in charge continues to refuse access after the
606 department or its agent presents credentials, provides the explanation in sub. (1), and makes a final request
607 for access, the department or its agent shall document details of the denial of access on an inspection report
608 form.

609 **(3) FREQUENCY OF INSPECTION.** The department or its agent shall inspect a pool at least once
610 during the licensing period or as approved by the department.

611 **(4) INSPECTION DOCUMENTATION.** The department or its agent shall document all of the
612 following on an inspection report form: (a) *Establishment information.* Administrative information about
613 the pool's legal identity, street and mailing addresses, type of establishment and operation, inspection date,
614 and other information such as type of water supply and sewage disposal, status of the license, and personnel
615 certificates that may be required at the pool.

616 (b) *Inspection findings.* The conditions or other violations from this chapter that require corrective
617 action by the license holder. An accompanying narrative shall contain all of the following: 1. A factual
618 description of the violation observed, including location of the observed violation.

619 2. Citation and a brief description of the statute, administrative rule, or local ordinance for the observed
620 violation.

621 3. A statement indicating what corrective action the license holder has taken, or shall take, to regain
622 compliance with the administrative rule, statute, or local ordinance.

623 4. Unless otherwise indicated on the inspection report, each violation shall have a corrective action
624 deadline. The corrective action deadline shall be based on the following criteria: a. The nature of the
625 potential hazard involved and the complexity of the corrective action needed. The department or its agent
626 may agree to or specify additional time, not to exceed 72 hours after the inspection, for the license holder
627 to correct violations of a priority item.

628 b. The license holder has a maximum time of 10 calendar days after the inspection for the license holder
629 to correct violations of a priority foundation item.

630 c. The license holder shall correct core items by a deadline agreed to or specified by the department or
631 its agent, but no later than 90 calendar days after the inspection. The department or its agent may approve
632 a written compliance schedule that extends beyond 90 calendar days, if the license holder submits a written
633 schedule of compliance and no health hazard exists, or will result, from allowing an extended schedule for
634 compliance.

635 (5) **ISSUING A REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT.** At the
636 conclusion of the inspection, an authorized representative of the department or its agent shall sign the
637 completed inspection report. The department or its agent shall then perform an exit interview and obtain a
638 signature on the inspection report from the license holder's designated person in charge. A copy of the
639 inspection report shall be left with the person in charge at the completion of the inspection, emailed, or
640 otherwise presented within 2 business days after completion of the inspection.

641 (6) REFUSAL TO SIGN INSPECTION REPORT. If the license holder's designated person in charge
642 refuses to sign the inspection report, the department or its agent shall do all of the following: (a) *Receipt of*
643 *inspection report*. Inform the person who declines to sign the inspection report that a written
644 acknowledgment of receipt is not an agreement with findings.

645 (b) *License holder's obligation*. Inform the person that refusal to sign the inspection report will not
646 affect the license holder's obligation to correct the violations noted in the inspection report by the deadlines
647 specified.

648 (c) *Refusal documentation*. Document the refusal to sign in the inspection report.

649 (7) POSTING OF INSPECTION REPORTS. The department or its agent shall make inspection reports
650 available to the public on the internet.

651 **Subchapter III**

652 **Water Treatment Systems and Water Quality**

653 **ATCP 76.11 Recirculation system. (1) GENERAL.** Each pool shall have a water recirculation system with
654 disinfection treatment and filtration equipment consisting of overflow gutters or skimmers, main drains,
655 inlets, pumps, piping, holding tanks, and filters. The system shall be operated continuously except for
656 seasonal closing or during periods of necessary maintenance. ^P

657 **Note:** See s. SPS 390.14 for design requirements for the recirculation system.

658 (2) SKIMMERS AND RECIRCULATION FLOW. Skimmers and recirculation flow shall meet all of
659 the following: (a) *Skimmer flow*. 1. The flow through each skimmer shall be adjusted as often as necessary
660 to maintain a vigorous skimming action at each skimmer. ^{Pf}

661 2. The pool water level shall be maintained at an elevation so that continuous effective surface
662 skimming is accomplished through skimmers or over the gutter lip. ^{Pf} a. For gutter pools, approximately 75
663 percent of the required recirculation flow shall be through the gutter and 25 percent through the main drain
664 during normal operation. ^{Pf}

665 b. For pools with skimmers, approximately 80 percent of the recirculation flow shall be through
666 skimmers and 20 percent through the main drain. ^{Pf}

667 c. For reverse flow pools, 100 percent of the required recirculation shall be through the gutter or
668 skimmer. ^{Pf}

669 (b) *Skimmers maintained.* 1. Skimmers, skimmer weirs, and overflow gutters and drains shall be
670 maintained so that they are clean.

671 2. Skimmers, skimmer weirs, and overflow gutters shall be repaired or replaced as needed.

672 3. Skimmer covers shall be securely seated on deck.

673 (c) *Inlets.* Inlets shall be checked and adjusted to ensure that the rate of flow through each inlet is such
674 that a uniform distribution pattern is established. Inlets in pools with surface skimmers shall be directed as
675 necessary to ensure that there is effective skimming in all areas. ^{Pf}

676 (d) *Strainer baskets or screens.* 1. Strainer baskets or screens shall be continuously in use and maintained.

677 2. Clean spare strainer baskets or screens shall be available.

678 3. Strainer baskets for skimmers and pump strainers shall be cleaned at least daily.

679 (3) SURGE TANKS. Surge tanks shall be operated within designed water levels.

680 (4) PUMPS. Pump operation shall meet all of the following: (a) *Operational specification.* The pump
681 manufacturer's maintenance and operating instructions shall be followed. ^{Pf}

682 (b) *Continuous operation.* Recirculation pumps shall continuously achieve the designed pool water
683 recirculation rate except during maintenance operations. ^{Pf}

684 (c) *Turnover rate.* The turnover time for pools shall be pursuant to s. ATCP 76.11 Table A and B. ^{Pf}

685 (d) *Alternative pool type; turnover rate.* If a pool is used as an alternate type of pool including a
686 whirlpool used as a pool, the recirculation shall follow the stricter turnover time.

687 **s. ATCP 76.11 Table A Maximum Turnover Time by Pool Type**

688 Pool Type	Turnover Time (in hours)
689 Swimming	6
690 Diving	6
691 Lap Lanes	6

692	Activity	2
693	Interactive play attraction	0.5
694	Leisure river	2
695	Plunge	1
696	Runout slide	1
697	Vortex	1
698	Wading pool	1
699	Whirlpool	0.5
700	Therapy and Exercise pools	See s. ATCP 76.11 Table B
701	Cold soak	4

702 **s. ATCP 76.11 Table B Maximum Turnover Time for Therapy and Exercise**

703	Pool Temperature in	Load (gals/person)	Maximum
704	°F. (°C.)	Turnover Time (hours)	
705			
706	<72–93 (22–33 °C.)	> 2,500	4
707	<72–93 (22–33 °C.)	> 450	2
708	<72–93 (22–33 °C.)	< 450	1
709	>93–104 (33–40 °C.)	N/A	0.5

710 N/A = not applicable.

711 FLOWMETERS, VALVES, AND GAUGES. Flowmeters, valves, and gauges shall be all of the
712 following: (a) *Maintained*. Maintained in operating condition.

713 (b) *Installed*. Installed per manufacturer instructions or as verified by the pump curve. ^{Pf}

714 **(5m) PIPING**. Piping shall comply with all of the following: (a) *Identification*. Water treatment system
715 piping shall have permanent labels, numbered tags, or a color coding system that identifies valves, piping,
716 and the direction of water flow.

717 (b) *Readable chart*. Labels, tags, or color coding shall correspond to a conspicuously posted, easily

718 read chart that explains the system.

719 (5) FILTERS. (a) *General requirements*: 1. The manufacturer's data plate shall be visible on all filters.

720 2. Filter shells and appurtenances shall be maintained in operating condition. ^{Pf}

721 3. The backwash procedure shall follow the filter manufacturer's written directions.

722 4. Backwash procedures shall be conspicuously posted in the filter area on an easily read chart.

723 5. Filter media shall be inspected annually and cleaned or replaced when necessary.

724 (b) *Sand filters*. The following types of sand filters shall be backwashed as recommended by the
725 manufacturer: 1. Rapid-rate sand filters. ^{Pf}

726 2. High-rate sand filters. ^{Pf}

727 3. Vacuum sand filters. ^{Pf}

728 (c) *Diatomaceous earth filters*. Diatomaceous earth filters shall meet all of the following:

729 1. Pressure and vacuum type diatomaceous earth filters shall be backwashed as recommended by the
730 manufacturer. ^{Pf}

731 2. Septum covers shall be removed, cleaned, or replaced when they no longer provide effective filtration
732 or create a friction loss preventing maintenance of the required recirculation rate. ^{Pf}

733 3. Diatomaceous earth wastewater separation tanks, where installed, shall be cleaned according to
734 manufacturer instructions. ^{Pf}

735 4. Positive displacement feeder suction intake shall meet all of the following: a. Suspended at least 6
736 inches above any sludge layer in the solution tank. ^P

737 b. In labeled tanks for mixing and distribution of slurry.

738 c. Mixing and distribution tanks shall be covered with a screened vent.

739 d. Installed and maintained to prevent backflow of water into the tanks and to prevent the slurry from
740 being siphoned out of the tanks into the pool recirculation system. ^P

741 5. Diatomaceous earth slurry feeders shall meet all of the following: a. The lowest effective
742 concentration of solution shall be used in a diatomaceous earth slurry feeder.

743 b. The concentration of solution may not exceed 5 percent by weight. ^{Pf}

744 c. The diatomite slurry feeder head and lines shall be flushed as recommended by the manufacturer to
745 assure proper and continuous operation. ^{Pf}

746 d. Water from the discharge side of the recirculation pump may be used.

747 e. If connection is to a potable water supply line, the supply line shall be equipped with an approved
748 backflow or backsiphonage prevention device. ^P

749 f. Diatomite slurry tank agitators shall run continuously. ^{Pf}

750 (d) *Cartridge filters*. Cartridge filters shall meet all of the following:

751 1. Removed and cleaned as recommended by the manufacturer. ^{Pf}

752 2. Replaced when plugged or damaged. ^{Pf}

753 3. A duplicate set of replacement cartridges shall be available on-site and used when removing a soiled
754 cartridge from the filter for cleaning. ^{Pf}

755 (e) *Activated filter media, filter ball media, and glass filter media*. Activated filter media, filter ball
756 media, and glass filter media shall be maintained and backwashed according to the manufacturer
757 specifications. ^{Pf}

758 (f) *Other media types*. Other media types as approved by the department shall be maintained and
759 backwashed according to the manufacturer specifications. ^{Pf}

760 **ATCP 76.12 Labeling, storing, mixing, and handling chemicals, including gaseous chlorine.** All
761 labeling, storing, mixing, and handling of chemicals must be in compliance with applicable local, state, and
762 federal regulations. ^{Pf} **(1) LABELING.** (a) *Chemical container*. Except as provided in par. (b), all chemicals
763 used in the operation and maintenance of pools, and bulk storage tanks containing the chemicals, shall be
764 conspicuously labeled with all the following information: ^{Pf} 1. Name of the product. ^{Pf}

765 2. Manufacturer's name and address. ^{Pf}

766 3. Active ingredients. ^{Pf}

767 4. Directions for use. ^{Pf}

768 5. Hazardous ingredient warning. ^{Pf}

769 6. For chemicals used for the primary purpose of controlling microbial or algal growth, the United
770 States environmental protection agency registration number. ^{Pf}

771 (b) *Erosion Feeders*. For chemicals used with erosion feeders, only the name of the chemical need be
772 provided on the label.

773 **(2) CHEMICAL STORAGE AND CHEMICAL STORAGE AREAS**. Chemical storage and chemical
774 storage areas shall meet all of the following: (a) *Original container*. Chemicals shall be stored in the original
775 or a properly labeled container. ^{Pf}

776 (b) *Location*. Chemicals shall be covered and kept in a clean, dry, well ventilated, and locked area away
777 from flammables, incompatible chemicals, and heat sources. ^P

778 (c) *Separation*. Oxidizers shall be stored separately from acids. ^P

779 (d) *Access*. Only authorized personnel shall have access to a chemical storage area. ^P

780 (e) *Chlorine gas*. Chemicals shall not be stored in a chlorine gas storage area. ^P

781 (f) *Food*. Food may not be stored in a chemical storage area. ^{Pf}

782 (g) *Smoking*. Smoking is prohibited in a chemical storage area. ^P

783 (h) *Ventilation*. Ventilation in chemical storage areas shall comply pursuant to ch. SPS 364, as enforced
784 by the Wisconsin department of safety and professional services. ^{Pf}

785 (i) *Doors*. Doors to chemical storage areas shall be locked and marked to indicate entry is for authorized
786 personnel only. ^{Pf}

787 (j) *Emergency telephone numbers*. A list of emergency telephone numbers shall be in the chemical
788 storage area or be readily accessible. ^{Pf}

789 **Note:** For pools with liquid disinfectant and acid it is strongly encouraged to provide secondary containment
790 in the chemical storage area.

791 **(3) MIXING OF CHEMICALS**. The mixing of chemicals shall meet all of the following: (a) *Added to*
792 *water*. A chemical solution shall be added to water, not by adding water to the chemical. ^P

793 (b) *Separately added*. Each chemical or chemical solution shall be separately added to the water. ^P

794 (c) *Restriction of patrons*. Patrons shall not be in the pool when chemicals are added directly into the

795 pool basin. ^P

796 (4) HANDLING OF CHEMICALS. (a) *Smoking*. Smoking by anyone handling chemicals or by
797 anyone within the immediate vicinity of chemicals being mixed is prohibited. ^P

798 (b) *Safety data sheet*. 1. For each chemical used, a safety data sheet shall be readily accessible to staff
799 and the department or its agent. ^{Pf}

800 **Note:** For example, the operator may keep the safety data sheet in a binder or on a computer as long as the
801 operator or designated representative has immediate access to the information without leaving the pool area.

802 2. A paper back-up of the safety data sheet shall be available for rapid access in the case of a power
803 outage or other emergency. ^{Pf}

804 3. Staff shall be trained in the use of the safety data sheet and where they are located. ^{Pf}

805 **ATCP 76.13 Chemical feeders and filter aid equipment. (1) GENERAL.** Chemical feeders and filter aid
806 equipment shall be all of the following: (a) *Installed*. Installed according to the manufacturer's directions.

807 (b) *Used*. Chemical feeders shall only be used with the disinfectant or sanitizer recommended by the
808 manufacturer and be all of the following: ^{Pf} 1. Automatic. ^{Pf}

809 2. Easily adjustable. ^{Pf}

810 3. Capable of providing the required chemical residuals. ^{Pf}

811 (c) *Interlocked*. All recirculation systems shall be equipped with a chemical feed interlock pursuant to
812 ch. SPS 390.17 (2) (c) and (d), as enforced by the Wisconsin department of safety and professional services.

813 1. The interlock device shall meet all of the following requirements: a. If power to the recirculation
814 pump is interrupted, the chemical feed stops. ^{Pf}

815 b. Except as provided in subd. 5., if flow in the recirculation system is interrupted, the chemical feeds
816 stops. ^{Pf}

817 2. The operator or their designee shall demonstrate knowledge to the department or its agent on the
818 pools interlock system in all the following areas: a. Describes the location of chemical feed connections
819 and system flow sensing interlocks in the recirculation system. ^P

820 b. Describes how the chemical feeder electrical interlock functions. ^P

821 c. Describes how the system flow sensing interlock functions, if applicable. ^P

822 d. Describes how monthly testing is performed. ^P

823 e. Describes what safety measures that must be employed during monthly testing. ^P

824 3. Once monthly, challenge testing of the chemical feeder system shall be conducted to assess the
825 interlock pursuant to subd. 1. ^P

826 4. A log of the monthly test shall be kept and meet all of the following: a. Documented with the date,
827 results, and the name of the person performing the test. ^P

828 b. Made available to the department or its agent upon request.

829 5. The system flow sensing interlock requirement does not apply to pools constructed before February
830 2009, unless the pool has been involved in a chemical release incident in which the installation of a flow
831 sensing interlock would have prevented the chemical release.

832 **(2) EQUIPMENT MAINTENANCE.** (a) *Maintenance hazards.* All maintenance that presents a danger
833 to the patrons, including changing chlorine gas tanks and testing interlocks, shall be performed when the
834 pool is not in use or is closed to public use. ^P

835 (b) *Maintenance signage.* When access to a pool or pool area cannot be restricted, signage shall be in
836 place indicating that the pool is closed, and the area shall be monitored to ensure the pool is not in use. This
837 would include a pool area that contains more than one pool, but not all of the pools are closed. This applies
838 to hotels with pools built before February 1, 2017, with access to the pool area through the guest room. ^P

839 **(3) REPAIRS.** Only personnel trained and licensed in handling gas chlorine by a certifying agency such
840 as the federal occupational health and safety administration may repair gas chlorinators. ^{Pf}

841 **(4) EVACUATION DURING CHEMICAL FEED INCIDENT.** If the interlock is activated stopping
842 flow from the chemical feeders, or the water recirculation pump is stopped manually or unexpectedly for
843 any reason and duration, including power outages, all patrons shall be evacuated from the pool until manual
844 evaluation of the cause for interlock activation or recirculation pump interruption is completed by the
845 responsible supervisor or pool operator. ^P

846 **ATCP 76.14 Disinfectant or sanitizer feeding and residuals. (1) GENERAL.** Each pool in use shall be
847 automatically and continuously disinfected by means of disinfectant or sanitizer and feeding equipment that
848 is in compliance with this section and s. ATCP 76.13. ^P

849 **(2) CHEMICAL USE REQUIREMENTS.** (a) *Disinfectant or sanitizer-producing chlorine and*
850 *bromine and other chemicals.* Disinfectant or sanitizer—producing chlorine or bromine and any supplemental
851 or alternative chemical used shall meet all the following requirements: 1. Registered with the United States
852 environmental protection agency as a disinfectant or sanitizer, except algaecides shall be registered as
853 algaecide. ^{Pf}

854 2. The product label is registered with the department. ^{Pf}

855 3. Has an effective residual that can be measured easily and accurately by an approved field test
856 procedure. ^{Pf}

857 4. Is compatible for use with other chemicals normally used in the water treatment or is clearly identified
858 as having a use limitation. ^{Pf}

859 5. Does not impart toxic properties to the patrons in the water when used according to the
860 manufacturer's directions. ^P

861 6. Does not create an undue safety hazard when handled, stored, or used according to the
862 manufacturer's directions. ^P

863 (b) *Bromine.* Bromine may not be used in a waterslide, pool slide, plunge pool, or wave pool without
864 the department's approval.

865 (c) *Cyanuric acid.* Cyanuric acid-containing disinfectant or sanitizer may not be used at an indoor pool,
866 therapy pool, or whirlpool, beginning 2 years after the [LRB inserts effective date].

867 **(3) GAS CHLORINATION CYLINDERS.** Gas chlorination cylinders shall be all the following:

868 (a) *Upright.* A cylinder shall be in an upright position and other container types shall be placed
869 per manufacturer's instructions. ^{Pf}

870 (b) *Chained.* A cylinder shall be chained or strapped to a rigid support. ^{Pf}

871 (c) *Moving cylinders*. Cylinders may not be moved unless the protection cap is secured over the valve.

872 Pf

873 (d) *Tagged*. An empty cylinder shall be tagged to indicate they are empty. Pf

874 (e) *Valve*. The cylinder valve shall be closed when in storage or empty. Pf

875 (4) CHEMICAL FEEDING. Disinfectant or sanitizer and filter aid feeding shall be conducted as
876 follows: (a) *Positive displacement disinfectant or sanitizer feeding*. 1. Liquid chemicals shall be fed into
877 water circulation piping or a surge tank or vacuum filter by means of a positive displacement feeder either
878 at full strength or diluted.

879 2. A 2-tank system shall be used, if calcium hypochlorite or another chemical that forms a residue is
880 used. One tank shall be used for mixing the solution and settling the precipitate. The clear liquid shall be
881 decanted or siphoned into the second tank for distribution. Pf

882 (b) *Flow-through feeders*. The chemical used, the manner of usage, and the quantity used in a flow-
883 through feeder shall be as recommended by the feeder manufacturer. Pf

884 (c) *Dry feeders*. Feeders used for feeding dry chemicals into water circulation piping, a surge tank, or
885 vacuum filter shall be maintained for proper operation. Pf

886 (5) CHEMICAL CONCENTRATIONS AND RESIDUALS. (a) *Minimum disinfectant or sanitizer*
887 *residuals*. Minimum disinfectant or sanitizer residuals shall meet the requirements pursuant to s. ATCP
888 76.14 Table A. P

889 (b) *Cyanurates*. All the following apply: 1. The water cyanuric acid concentration may not exceed 30
890 ppm. Pf

891 2. The pool shall be closed pursuant to s. ATCP 76.30 (1) (j), if the cyanuric acid level is above 300
892 ppm. P

893 (c) *pH control*. The water's pH shall be maintained within a range of 7.2 to 7.8. P

894 (d) *Alkalinity*. The total alkalinity of pool water shall be maintained between 60 and 180 ppm as calcium
895 carbonate unless it can be shown by the operator that another level of total alkalinity produces chemically
896 balanced water based on calculations approved by the department. Pf

897 (e) *Combined chlorine*. 1. The operator shall develop and implement a plan to minimize combined
898 chlorine in the pool. ^{Pf}

899 2. The plan shall contain all the following components: ^{Pf} a. The combined chlorine action level, taking
900 into account monochloramine in the source water.

901 **Note:** It is recommended that an action level of 0.4 ppm be used for combined chlorine for either breakpoint
902 chlorination or water replacement or a combination of both to occur.

903 b. Volume of pool.

904 c. Range of volume of fresh source water added to pool each day.

905 d. Description of showering requirements and how communicated to patrons.

906 e. A record shall be maintained documenting combined chlorine test results, date and times breakpoint
907 chlorination was performed, and any complaints of eye or respiratory irritation.

908 (f) *Maximum chlorine residual*. The maximum chlorine residual in any pool may not exceed 10 ppm.

909 ^P

910 (g) *Maximum total bromine*. The maximum total bromine in a pool may not exceed 10 ppm. ^P

911 **s. ATCP 76.14 Table A**

912 **Minimum disinfectant or sanitizer residuals in parts per million (ppm)**

913 Swimming and Activity Pools	914 Minimum Free Chlorine Residual	915 Total Bromine
916 Swimming and Activity Pool	1.0 ppm	3.0 ppm
917 Swimming and Activity Pool with Stabilizer	2.0 ppm	N/A
918 Swimming and Activity Pool with Electronic Monitoring Devices Present and Properly Functioning	1.0 ppm (with or without stabilizer)	3.0 ppm
919		
920		
921		
922		
923		
	Wading Pools	
924 Wading Pool	2.0 ppm	4.0 ppm
925 Wading Pool with Stabilizer	4.0 ppm	N/A
926 Wading Pool With Electronic Monitoring Devices Present and Properly Functioning	1.0 ppm (with or without stabilizer)	3.0 ppm
927		

928		Whirlpool, Exercise, Therapy Pools	
929	Whirlpool, Exercise, or Therapy Pool	3.0 ppm	4.0 ppm
930	Whirlpool, Exercise, or Therapy Pool	6.0 ppm	N/A
931	with Stabilizer		
932			
933	Whirlpool, Exercise, or Therapy Pool	3.0 ppm (with or without stabilizer)	4.0 ppm
934	with Electronic Monitoring Devices		
935	Present and Properly Functioning		
936	Water Attractions Other Than Those Specified		
937	Water Attraction Other Than Those Specified	1.0 ppm	3.0 ppm
938			
939	Water Attraction Other Than Those Specified	2.0 ppm	N/A
940	with Stabilizer		
941			
942	Water Attraction Other Than	1.0 ppm (with or without stabilizer)	3.0 ppm
943	Those Specified with Electronic		
944	Monitoring Devices Present and		
945	Properly Functioning		
946			
947	Plunge Pools and Wave Pools		
948			
949	Plunge and Wave Pool	2.0 ppm	3.0 ppm
950			
951	Plunge and Wave Pool with Stabilizer	4.0 ppm	N/A
952			
953	Plunge and Wave Pool with Electronic	1.0 ppm (with or without stabilizer)	3.0 ppm
954	Monitoring Devices Present and Properly		
955	Functioning		
956			
957	Interactive Play Attractions		
958			
959	Interactive Play Attraction	2.0 ppm	3.0 ppm
960			
961	Interactive Play Attraction with Stabilizer	4.0 ppm	N/A
962			
963	Interactive Play Attraction with Electronic	1.0 ppm (with or without stabilizer)	3.0 ppm
964	Monitoring Devices Present and Properly		
965	Functioning		
966			
967	Waterslides and Pool Slides		
968			
969	Waterslides and Pool Slides	2.0 ppm	3.0 ppm
970			
971	Waterslides and Pool slides with Stabilizer	4.0 ppm	N/A

972
973 Waterslides and Pool Slides with Electronic 1.0 ppm (with or without stabilizer) 3.0 ppm
974 Monitoring Devices Present and Properly
975 Functioning

976 (6) ELECTRONIC MONITORING DEVICES. (a) *Water potential*. When oxidation potential
977
978 controllers are used the water potential shall be kept between 650–900 mV. In addition to the requirements
979 pursuant to s. ATCP 76.18 (3), if the water potential reads below 650 mV or above 900 mV, the operator
980 shall manually test the pool water with an approved test kit. ^{Pf}

981 (b) *Free chlorine, or bromine*. For a pool equipped with an approved and properly maintained electronic
982 monitoring device to control the disinfectant or sanitizer level and pH, the available disinfectant or sanitizer
983 residual shall meet the minimum requirements pursuant to s. ATCP 76.14 Table A, and be tested pursuant
984 to s. ATCP 76.18 (3). ^{Pf}

985 **ATCP 76.15 Alternative or supplemental disinfection systems.** Any one of the following alternative or
986 supplemental systems may be added to a pool if an automated disinfection system is in place and on line to
987 maintain the disinfectant or sanitizer residuals pursuant to s. ATCP 76.14 Table A. ^{Pf}

988 (1) CHLORINE GENERATORS. (a) *NSF 50*. Chlorine generators, including salt systems, shall be
989 certified and installed to NSF 50 and manufacturer instructions. ^{Pf}

990 (b) *Disinfectant system on line*. An additional disinfection system shall remain on line and able to
991 automatically provide the capacity to superchlorinate the water and maintain the required sanitizer residual.
992 ^P

993 (2) OZONE GENERATORS. (a) *Maximum concentration*. Ozone generators shall provide a
994 concentration of ozone in the return line to the pool not to exceed 0.1 mg/L. ^P

995 (b) *Electrically interlocked*. The ozone generator shall be electrically interlocked with the recirculation
996 pump to prevent the feeding of ozone when the recirculation pump is not operating. A flow sensor controller
997 may also be used to turn off the feeder when flow is interrupted. ^P

998 (c) *Maximum ambient ozone level*. Off-gassing of ozone may not result in ozone levels in the equipment
999 room or pool area exceeding 0.1 ppm. ^P

1000 (3) ULTRAVIOLET LIGHT. Ultraviolet light units shall be certified to NSF 50, and tested and
1001 approved for use in water disinfection systems and installed pursuant to NSF 50 requirements. ^P

1002 (4) OTHER TECHNOLOGIES. Other technologies that inactivate or kill pathogens shall be certified
1003 and installed pursuant to NSF 50, manufacturer instructions, and have an EPA registration number, if
1004 applicable. ^P

1005 **ATCP 76.16 Water quality. (1) GENERAL REQUIREMENT.** Pool water shall be free of chemical,
1006 physical, and microbial substances known to be, or suspected of being, capable of creating toxic reactions
1007 or skin or membrane irritations. ^P

1008 (2) WATER CLARITY. Pool water shall be transparent and free from cloudiness. The main drain
1009 grating shall be readily visible from the pool deck, including the outline of the main drain and the main
1010 drain cover pattern. ^P

1011 (3) WATER SAMPLING. (a) *Sample collection and analysis.* The department or its agent may collect
1012 samples of pool water for microbiological analysis in evaluating water quality. The analysis of water samples
1013 shall be performed by a laboratory accredited by the department. These monitoring activities may be
1014 supplemented with additional microbiological analysis, which shall be performed by an accredited
1015 laboratory certified in those methods. ^{Pf}

1016 **Note:** A list of accredited laboratories may be obtained by calling the department at (608)224-4712 or by
1017 email at www.datcp.state.wi.us.

1018 (b) *Bacteriological standards.* Water quality shall be maintained to meet the following standards:

1019 1. When bacteriological analysis of total *coliforms*, *Staphylococcus aureus*, *Pseudomonas aeruginosa*
1020 or *Legionella pneumophila* is performed, no detectable levels are present in a 100 milliliter sample. ^P Any
1021 approved method for each analyte may be reported as either colony forming units or most probable number.

1022 2. When bacteriological analysis is performed for the heterotrophic plate count, the total count may not
1023 exceed 200 colony forming units per milliliter (CFU/mL) in a 100 milliliter sample. ^{Pf}

1024 3. If a pool is closed due to a water sample that contains total *coliforms* pursuant to s. ATCP 76.30 (1)
1025 (b), the pool can be reopened when the pool system is properly working, the disinfectant or sanitizer

1026 concentration is maintained pursuant to s. ATCP 76.14 Table A, and any fecal accidents have been treated
1027 pursuant to s. ATCP 76.31.

1028 (4) ALGAE CONTROL. An algaecide may be used in a pool pursuant to ss. ATCP 76.14 (2) and 29.50
1029 (4) (b) 1., according to the manufacturer's label directions. ^P

1030 **ATCP 76.17 Water test kits. (1) APPROVED.** A test kit of a type approved by the department shall be
1031 maintained for testing the pool water pH; the disinfectant or sanitizer residual; the combined chlorine level,
1032 when chlorine is used; the total alkalinity; and the cyanuric acid concentration. The test kits shall meet the
1033 following specifications, as described in s. ATCP 76.17 Table A. ^{Pf}

1034 **s. ATCP 76.17 Table A Required Test Kit Accuracy and Increment**

	Minimum Accuracy ^{Pf}	Maximum Increment ^{Pf}
1036 Chlorine and combined chlorine	+/- 0.2 ppm	0.2 ppm
1037 pH	+/- 0.2 pH unit*	0.2 units
1038 Alkalinity	+/- 25 percent	10 ppm
1039 Cyanuric	+/- 20 percent	20 ppm
1040 Bromine	+/- 10 percent	0.5 ppm

1041 **Note:** *Operators who do not want to use a pH meter and are using a test kit with a pH accuracy of +/- 0.2
1042 pH units must be able to maintain the pH within a range of 7.4 to 7.6. Due to a common degree of error in
1043 many available test kits for pH, it is strongly encouraged to use a pH meter, with an accuracy greater than
1044 0.1 or better, to determine the PH reading on the higher and lower end. If the Taylor test kit is used and
1045 natural light is not available, the Taylor light box should be used as instructed in the manufacturer's
1046 directions.

1047 (2) TEST REAGENTS USE AND STORAGE. Test kit reagents shall meet all of the following: (a)
1048 *Stored.* Stored in the original container or per manufacturer directions. ^{Pf}

1049 (b) *Replaced.* Replaced as recommended by the manufacturer. ^{Pf}

1050 (c) *Temperature range.* Stored within the temperature range specified by the manufacturer for storage. ^{Pf}

1051 (d) *Use.* Used and properly disposed of before the expiration date. ^{Pf}

1052 (3) TESTING REAGENT TECHNOLOGIES. The disinfectant or sanitizer testing reagent shall use
1053 one of the following technologies: (a) *Method*. Diethyl-p-phenylene diamine or DPD in powder or liquid
1054 form. A test kit using the titrimetric method, ferrous ammonium sulfate and diethyl-p-phenylene diamine
1055 or FAS-DPD for chlorine and bromine testing and colorimetric comparators used for additional water
1056 testing shall be approved by the department and shall provide for accurate comparison in the required range
1057 for each test pursuant to s. ATCP 76.14 Table A. ^{Pf}

1058 (b) *Alternatives*. Other photometric, electronic, or other technology that achieves the accuracy as
1059 described in s. ATCP 76.17 Table A, and measures analytes within the range pursuant to s. ATCP 76.14
1060 Table A. ^{Pf}

1061 **ATCP 76.18 Water testing frequency. (1) ALL POOLS, EXCEPT WHIRLPOOLS, THERAPY, AND**
1062 **EXERCISE POOLS. (a) *pH and disinfectant or sanitizer***. Except as provided under sub. (3), water shall
1063 be tested for pH and disinfectant or sanitizer residual at the following times: 1. Daily before the pool is open
1064 to the public or before the pool is in use. ^{Pf}

1065 2. At least one other time during the day's peak patron load. ^{Pf}

1066 (b) *Combined chlorine*. If chlorine is used, the water shall also be tested at least twice a week for the
1067 combined chlorine level. ^{Pf}

1068 (c) *Alkalinity*. Water shall also be tested at least once a week for total alkalinity. ^{Pf}

1069 (d) *Cyanuric acid*. If cyanuric acid is used in the water basin, the cyanuric acid concentration in the
1070 water shall be tested at least once a week. ^{Pf}

1071 (2) WHIRLPOOL, THERAPY, AND EXERCISE POOLS. (a) *pH and disinfectant or sanitizer*. Except
1072 as provided under sub. (3), water shall be tested for pH and disinfectant or sanitizer residual at the following
1073 times: 1. Before the pool is open to the public or before the pool is in use and at least 4 times daily. ^{Pf}

1074 2. Two of the tests shall be during the day's peak patron load. ^{Pf}

1075 (b) *Combined chlorine*. When chlorine is used, the water shall be tested at least once daily for the
1076 combined chlorine level. ^{Pf}

1077 (c) *Alkalinity*. Water shall be tested at least once a week for total alkalinity. ^{Pf}

1078 (d) *Cyanuric acid*. When cyanuric acid is used in the water basin, the cyanuric acid concentration in
1079 the water shall be tested at least once a week. ^{Pf}

1080 (3) ELECTRONIC MONITORING DEVICE. For a properly maintained electronic monitoring device
1081 installed to control pH and disinfectant or sanitizer, the operator shall: (a) *Frequency*. Manually tested the pool
1082 at least once a day for pH and disinfectant or sanitizer residual with an approved test kit pursuant to s. ATCP
1083 76.17 Table A. ^{Pf}

1084 (b) *Maintenance*. Periodically monitor the device to determine if it meets operating criteria pursuant to
1085 s. ATCP 76.14 (5). ^{Pf}

1086 (4) INCREASED TESTING. The department or its agent may require more frequent testing if the
1087 testing logs are not maintained and the operator demonstrates a lack of active managerial control. ^{Pf}

1088 **ATCP 76.19 Water supply and temperature. (1) WATER SUPPLY PROTECTION.** A minimum air gap
1089 of 2 pipe diameters or 6 inches, whichever is less, shall exist between the potable water supply inlet and the
1090 overflow point of any pool, makeup tank, surge tank, solution tank, or slurry tank unless another approved
1091 backflow and backsiphonage prevention device is provided. ^P

1092 (2) WATER SOURCE. The water supplied to a pool shall be from a source approved by the Wisconsin
1093 department of natural resources pursuant to ch. NR 108, 811, or 812. ^P

1094 (3) WATER LEVEL. Proper water level shall be maintained at all times when the pool is open. ^{Pf}

1095 (a) *Skimmers*. Water levels in pools with skimmers shall be maintained at a level such that the weir is
1096 half submerged or in the case of a floating weir, used according to manufacturer's directions. ^{Pf}

1097 (b) *Gutters*. Pools designed with gutters shall have a continuous water supply over the gutter to provide
1098 effective skimming. ^{Pf}

1099 (4) WATER TEMPERATURE. (a) *Thermometer accuracy and location*. 1. An accurate thermometer
1100 shall be located in the pool water return line. ^{Pf}

1101 2. The thermometer shall be accessible for observation by the operator. ^{Pf}

1102 (b) *Pool water temperature*. 1. Except as provided in par. (d), the water temperature of an indoor pool

1103 shall be between 70°F. or 21°C. and 90°F. or 32°C. ^P

1104 2. The minimum water temperature for an outdoor pool shall be 65°F. or 18°C. ^P

1105 (c) *Whirlpool water temperature.* The water temperature in a whirlpool shall be greater than 90°F or
1106 32°C., and may not exceed 104°F. or 40°C. ^P

1107 (d) *Cold soak pool water temperature.* 1. Cold soak pools may be operated at a lower temperature than
1108 specified under par. (b).

1109 2. The pool shall post the water temperature on signage pursuant to s. ATCP 76.29 (5). ^{Pf}

1110 **Subchapter IV**

1111 **Staffing Pools**

1112 **ATCP 76.20 Operator. (1) POOLS.** (a) *General requirement.* Each pool shall be under the supervision of
1113 at least one operator, except that if multiple pools are located on the same premise, and licensed by the same
1114 person, they may be supervised by one operator. ^{Pf}

1115 (b) *Operator responsibilities.* Each operator shall be responsible for pool operation and maintenance
1116 including equipment shut-down, backwashing, daily maintenance and vacuuming, and maintenance of
1117 water quality pursuant to ch. ATCP 76. ^{Pf}

1118 **(2) POOL OPERATOR CERTIFICATION.** (a) *Pool operator certification required.* 1. Each water
1119 attraction or multiple water attractions on the same premise shall have at least one certified operator. ^{Pf}

1120 2. An owner of a pool who demonstrates a lack of active managerial control over the pool operation by
1121 having 2 or more reinspections in a 3-year period is required to have a certified operator. ^{Pf}

1122 3. Pool operator certification for a water attraction shall be obtained within 90 days of receiving a new
1123 license or a pool meeting the conditions under subd. 2. ^{Pf} a. A pool that is required to have a certified
1124 operator under subd. 2, may contract with a certified operator.

1125 b. The certified operator shall be able to respond within 3 hours.

1126 4. The owner of a pool shall replace a certified operator within 90 days after a certified operator's
1127 departure. ^{Pf}

1128 (b) *Certified operator duties.* A certified operator is responsible for all of the following: 1. The certified

1129 operator will perform service related to water quality parameters pursuant to ss. ATCP 76.14, 76.16, and
1130 76.19.

1131 2. The certified operator shall ensure that equipment is properly functioning pursuant to ss. ATCP
1132 76.11, 76.13, 76.15, and 76.17.

1133 (c) *Documentation of certification.* A current copy of the certified operator's certification shall be
1134 maintained at the pool. ^{Pf}

1135 **ATCP 76.21 Responsible supervisor. (1) RESPONSIBILITIES.** (a) *Supervision.* Each pool shall be under
1136 the supervision of at least one responsible supervisor at all times when the pool is in use or is open to the
1137 public. ^P

1138 (b) *Availability.* The responsible supervisor shall be on the premises or immediately available via a phone
1139 number posted by the emergency phone and shall respond to an unsafe or unsanitary condition within 15
1140 minutes, at any time the pool is open for use. ^P

1141 (c) *Duties.* The responsible supervisor shall ensure all of the following: 1. Order is maintained. ^P

1142 2. Safety and rescue equipment is in place. ^P

1143 3. Pool use regulations are enforced. ^P

1144 4. Sanitation and water testing is performed. ^P

1145 5. Monthly interlock testing is performed.

1146 6. Monthly secondary anti-entrapment device testing is performed, if applicable. ^P

1147 7. Records are maintained. ^P

1148 8. Chemical safety training is provided to staff. ^P

1149 9. The rope separating the shallow and deep portions of the pool is in place during required times.

1150 ^P

1151 10. The pool is closed pursuant to s. ATCP 76.30. ^P

1152 11. A pool cover or blanket, if provided, does not pose a safety hazard to patrons. ^P

1153 **ATCP 76.22 Lifeguards and attendants. (1) LIFEGUARD AND ATTENDANT STAFFING PLANS.** A

1154 pool that is not required to have an attendant or lifeguard is not required to have a lifeguard or attendant

1155 staffing plan. (a) *Staffing plan requirements.* The owner or operator of a pool, including a whirlpool over 4
1156 feet deep and a pool with a visual obstruction, shall have a written lifeguard and attendant staffing plan. ^{Pf}

1157 (b) *Plan criteria.* The written lifeguard and attendant staffing plan shall include all of the following:

1158 1. The square footage of the pool. ^{Pf}

1159 2. The maximum and average patron load. ^{Pf}

1160 3. The hours of operation. ^{Pf}

1161 4. The location of each lifeguard station, lifeguard roaming or walking patrol ensuring that glare
1162 conditions are assessed from each location to determine if the bottom and objects in the pool are clearly
1163 visible. ^{Pf}

1164 5. The location of each first aid station. ^{Pf}

1165 6. The number of lifeguards or attendants on duty pursuant to s. ATCP 76.23. ^{Pf}

1166 7. Diagrams shall be provided with the following information for each use of the pool, for both average
1167 and maximum capacity: a. The placement of attendants. ^{Pf}

1168 b. The placement of lifeguards. ^{Pf}

1169 c. The location of the lifeguard roaming area or walking patrol. ^{Pf}

1170 d. Location of lifeguard chairs or stations. ^{Pf}

1171 e. Location of each obstruction. ^{Pf}

1172 8. A method of communication when 2 or more attendants or lifeguards are required. ^{Pf}

1173 9. If applicable, the method that will be used for periodic supervision within a pool enclosure that
1174 contains a combination of lifeguarded and non-lifeguarded pools. ^{Pf}

1175 (c) *Availability.* The owner or operator shall keep a copy of the written lifeguard and attendant staffing
1176 plan at the pool and make it available to the department or its agent upon request, for review and approval.

1177 (2) **QUALIFICATIONS.** A lifeguard shall be required to have current certifications in all of the
1178 following: (a) *Certification requirements.* A copy of each certification held by lifeguard staff shall be

1179 maintained at the pool and shall be made available for inspection by the department or its agent. ^P

1180 Certifications required include all of the following:

1181 1. Lifeguarding certification as defined under s. ATCP 76.03 (45).^P

1182 2. First aid certification.^P

1183 3. CPR with AED certification.^P

1184 (b) *Attendants*. Attendants may staff water attractions, waterslides, or pool slides to assist patrons,
1185 pursuant to s. ATCP 76.23. Attendants may not be used in place of lifeguards.

1186 (3) LIFEGUARD IDENTIFICATION AND ASSIGNMENT. (a) *Identification and equipment*. At all
1187 times when on duty a lifeguard shall have all the following: 1. Clothing or equipment that is conspicuously
1188 marked “Lifeguard” or “Guard”.

1189 2. A rescue tube with a harness as instructed in national certification courses.^P

1190 3. A whistle.^P

1191 (b) *Assigned duties*. A lifeguard who is assigned to supervise a pool may not be assigned duties that
1192 may distract the lifeguard’s attention from observing a patron in the pool or that may hinder the lifeguard’s
1193 ability to provide immediate assistance to a patron.^P

1194 **ATCP 76.23 Lifeguard and attendant placement and staffing requirements.**

1195 (1) GENERAL. (a) *Staffing requirements*. 1. Each pool having a surface area of 2,000 square feet or
1196 more shall be staffed pursuant to ss. ATCP 76.23 Table A, and ATCP 76.23 Table B, when the pool is in
1197 use or is open to the public. If the requirements in s. ATCP 76.23 Table A or B, conflict, the pool shall
1198 comply with the strictest requirements of s. ATCP 76.23 Table A or B.^P

1199 2. An operator may close a portion of a pool to patrons in order to meet the lifeguard staffing requirements
1200 for square footage pursuant to s. ATCP 76.23 Table A, except that at least one lifeguard shall be provided.
1201^P

1202 3. An operator may limit the number of patrons in order to meet s. ATCP 76.23 Table A, for lifeguard
1203 staffing.^P

1204 4. When the patron load of a pool exceeds 336 patrons, one lifeguard shall be provided for each
1205 additional 100 patrons or fraction thereof.^P

1206 (b) *Department evaluation required.* For a pool type that is not addressed in s. ATCP 76.23 Table A or
 1207 B, the operator shall request evaluation by the department and follow the requirements specified by the
 1208 department following the evaluation. ^P

1209 (c) *Slide flumes.* An additional lifeguard shall be provided for every 2 slide flumes installed at a pool
 1210 other than a separate waterslide plunge pool. ^P

1211 (d) *Waterslide attendant.* An attendant responsible for enforcing waterslide usage rules shall be
 1212 stationed at the entrance to the waterslide flume. ^P

1213 (2) SIGNAGE. Each pool that is not required to have a lifeguard shall post a sign with letters at least 4
 1214 inches high stating: “Warning: No Lifeguard on Duty.” ^{Pf}

1215 **s. ATCP 76.23 Table A**

1216 **Required Number of Lifeguards Based on Square Footage**

1217 Actual Patron Load*	1218 Lifeguards for a Pool 1219 or Water Attraction 1220 with a Surface Area of 1221 2,000 to 4,999 sq. ft.	1218 Lifeguards for a Pool 1219 or Water Attraction 1220 with a Surface Area of 1221 5,000 to 9,999 sq. ft.	1218 Lifeguards for a Pool 1219 or Water Attraction 1220 with a Surface Area of 1221 10,000 or more sq. ft.
1222 1 – 60	1	2	3
1223 61 – 136	2	3	4
1224 137 – 236	3	4	5
1225 237 – 336*	4	5	6

1226 * When the patron load exceeds 336 patrons, one lifeguard shall be provided for each additional 100 patrons
 1227 or fraction thereof.

1228 **s. ATCP 76.23 Table B**

1229 **Required Number of Lifeguards and Attendants Based on Pool Type**

1230 Pool Type	1231 Pool or Slide Details	1232 Lifeguard and Attendant 1233 Staffing Requirements
1233 Activity Pool.	1234 Pool contains one of the following: 1235 1. A pad walk. 1236 2. A tethered floatable more than 18	At least one lifeguard is required.

1237		inches long in 2 directions. An	
1238		appendage such as alligator feet	
1239		should not be included in	
1240		determining the length.	
1241			
1242		3. A nontethered floatable. A nontethered	
1243		floatable does not include a tire inner	
1244		tube used in a leisure river or	
1245		waterslide.	
1246			
1247	Leisure River or any		At least one lifeguard,
1248	feature that convey a rider		more based on square
1249	seated or standing.		footage pursuant to s.
1250			ATCP 76.23 Table A.
1251			
1252	Vortex Pool.		At least one lifeguard is
1253			required.
1254			
1255	Current Pool; Pool with	Whenever the pool is occupied by a	At least one lifeguard is
1256	Treadmill.	patron and the current or treadmill is	required.
1257		operating.	
1258			
1259	Vanishing Edge Pool.		At least one lifeguard
1260			regardless of square
1261			footage, unless the
1262			vanishing edge pool is
1263			limited for adult usage
1264			only.
1265			
1266	Wave Pool or any pool that		At least one lifeguard
1267	involves patron interacting		is required regardless of
1268	with moving water or is		the square footage of
1269	designed to allow patron to		the pool. Additional
1270	fall into water.		lifeguard staffing shall be
1271			based on the patron load
1272			requirements pursuant to s.
1273			ATCP 76.23 Table A.
1274			
1275	Pool with a Visual	The pool has a visual obstruction larger	At least one attendant
1276	Obstruction, except for	than 10 feet in length by 6 feet in height	is required.
1277	Wading Pool.	by 5 feet in width or if the visual	
1278		obstruction covers more than 20 percent	
1279		of the pool's basin.	
1280			
1281			
1282	Wading Pool with a Visual	If a variance is not obtained	At least one attendant is
1283	Obstruction.	from the department for an alternate	required.
1284		method of coverage.	
1285			
1286	Pool Type	Pool or Slide Details	Lifeguard and Attendant
1287			Staffing Requirements

1288			
1289	Medical, Rehabilitation or Training Facility, and Therapy Pools, including those with current or treadmill.	If medical, rehabilitation or training staff are trained in CPR, AED, first aid, and have received training for safely extricating a patient from the water if a rescue is needed.	No lifeguard or attendant is required.
1290			
1291			
1292			
1293			
1294			
1295	Pool with Diving Board or Platform.	For every 2 diving boards or platforms in the same pool.	At least one lifeguard is required.
1296			
1297			
1298			
1299	Pool with a climbing wall		At least one lifeguard is required.
1300			
1301	Wading Pool.		No lifeguard or attendant is required.
1302			
1303			
1304			
1305	Whirlpool.	If a whirlpool is located within a water attraction complex.	At least one attendant shall provide periodic supervision of the whirlpool.
1306			
1307			
1308	All other whirlpools		A sign shall be posted that states in letters that are at least 4 inches high: "No Lifeguard on Duty".
1309			
1310			
1311			
1312	Pools with Slide.	Children's Slide.	No attendant is required.
1313			
1314		Pool slide: Less than 6 feet in height that drops into water 4 feet or less in depth.	No lifeguard or attendant is required.
1315			
1316			
1317			
1318			
1319	Pool slide: Less than 6 feet in height with an obstructed view of slide terminus and the obstruction is more than 43 inches high.	At least one lifeguard.	
1320			
1321			
1322	Pool slide: That drops into water greater than 4 feet deep.	At least one lifeguard.	
1323			
1324	Run-out slide: 6 feet or greater in height with a clear view of the slide terminus.	At least one attendant on top platform.	
1325			
1326			
1327			
1328	Run-out slide: 6 feet or greater in height with an obstructed view of the slide terminus.	At least one attendant on top platform and one attendant at bottom of run-out slide.	
1329			
1330			
1331			
1332			
1333	Run-out slide: Less than 6 feet with a	No lifeguard or attendant is	
1334			
1335			
1336			
1337			

1338		clear view of slide terminus.	Required.
1339			
1340		Run-out slide: Less than 6 feet with an	At least one attendant.
1341		obstructed view of slide terminus.	
1342			
1343		Waterslide or Drop slide: 6 feet or	At least one attendant on
1344		greater in height.	top of the platform or slide
1345			and one lifeguard at bottom
1346			of slide. A means of 2-way
1347			communication between
1348			attendant and lifeguard.
1349			
1350		Waterslide or Drop slide: Less than	At least one lifeguard.
1351		6 feet with a clear view of slide terminus	
1352		and no obstructions around slide.	
1353			
1354	Pool Type	Pool or Slide Details	Lifeguard and Attendant
1355			Staffing Requirements
1356			
1357	Interactive Play Attraction	An interactive play attraction not	At least one attendant on
1358	(Splash Pads).	restricted by an enclosure.	the premises. The attendant
1359			shall provide periodic
1360			supervision of the water
1361			attraction as specified
1362			in the staffing plan.
1363			
1364	Swim-up bar.	When open.	Shall have a written plan
1365			that addresses all of the
1366			following:
1367			1. Supervision of the swim
1368			up bar.
1369			2. Patrons who are ill.
1370			3. Patrons who are
1371			adversely affecting
1372			sanitation.
1373			4. Patrons who are engaging
1374			in dangerous behavior.
1375			5. Patrons who are
1376			injured.
1377			
1378	Any pool or water attraction	A pool that is used for an activity	At least one lifeguard
1379	with instructional program.	occurring in the water that is led by a	when the instructional
1380		person teaching a participant how to	program is in session.
1381		do an exercise, movement, skill, or	
1382		similar activity.	If the coach or instructor
1383			that provides instruction
1384			during the program is a
1385			lifeguard, the requirement
1386			of this subsection is met
1387			provided the coach or

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instructor can supervise the entire group. A pool that normally requires a lifeguard and that is open to the public during an instructional program session shall be supervised by an additional lifeguard or attendant pursuant to s. ATCP 76.23.

1399 **ATCP 76.24 Patron safety during pool maintenance. (1) MAINTENANCE OPERATIONS.** The
1400 operator shall ensure that no patrons are in the pool during pool maintenance operations. ^P

1401 **(2) RECIRCULATION SYSTEM INTERRUPTION.** Patrons shall be removed from the pool when the
1402 pool recirculation system is interrupted. Once the recirculation system is restored, patrons shall not reenter
1403 the pool until chemical levels are determined to be within acceptable ranges. ^P

1404 **Subchapter V**

1405 **Operation and Management**

1406 **ATCP 76.25 Maximum patron load. (1) WATER ATTRACTIONS.** The maximum number of patrons
1407 permitted to be in an individual water attraction at any one time shall be calculated on the basis of allowing
1408 one patron for every 15 square feet of water surface area. The splash zone of any water attraction shall be
1409 included in the calculation of the water surface. ^{Pf}

1410 **(2) POOLS. (a) Pools used for swimming.** The maximum number of patrons permitted to be in the water
1411 of a pool used for swimming at any one time shall be computed on the basis of allowing one patron for every
1412 15 square feet of the shallow portion of the pool and one patron for every 25 square feet of the deep portion
1413 of the pool. ^{Pf}

1414 **(b) Whirlpools.** The maximum number of patrons permitted to be in the water of a whirlpool at any one
1415 time shall be computed on the basis of allowing one patron for every 10 square feet of whirlpool surface
1416 area. ^{Pf}

1417 **(c) Wading pools.** The maximum number of patrons permitted to be in the water of a wading pool at any
1418 one time shall be computed on the basis of allowing one patron for every 15 square feet of wading pool

1419 surface area. ^{Pf}

1420 (d) *Therapy and exercise pools.* The maximum number of patrons permitted to be in the water of a
1421 therapy or exercise pool at any one time shall be computed on the basis of allowing one patron every 15
1422 square feet of the shallow portion of the pool and one patron for every 25 square feet of the deep portion of
1423 the pool. ^{Pf}

1424 **ATCP 76.26 Rescue equipment.** Rescue equipment shall meet all of the following: **(1) REQUIRED**
1425 **EQUIPMENT.** (a) *Good repair and accessible.* 1. All rescue equipment shall be maintained in good repair.
1426 ^P

1427 2. Rescue equipment shall be mounted or positioned in a conspicuous place and shall be readily
1428 accessible. ^{Pf}

1429 (b) *Shepherd's crook, ring buoy, and rescue tube.* 1. a. For each basin of water over 10 feet in length and
1430 over 2 feet deep, an intact shepherd's crook-type pole shall be provided. ^P

1431 b. For non-guarded pools, the shepherd's crook shall be long enough to effect a rescue in the deepest
1432 part of the pool. ^P

1433 c. If the shepherd's crook is not one continuous pole, the pieces shall be securely connected with durable
1434 nuts and bolts or similar hardware. ^P

1435 2. For each lifeguard chair, or for a pool 30 feet or more in width that does not have lifeguard chairs, at
1436 least one of the following shall be provided: a. A ring buoy having a minimum outside diameter of 20 inches.
1437 Each ring buoy shall be attached to a 1/4 inch rope having a length not less than 1-1/2 times the maximum
1438 width of the pool or 50 feet, whichever is less. ^P

1439 b. A rescue tube. ^P

1440 (c) *Safety rope.* 1. If applicable, a safety rope shall be provided pursuant to s. SPS 390.18 (1). ^{Pf}

1441 2. The safety rope shall remain in place except during a lifeguarded activity or adult-only lap swim. ^{Pf}

1442 3. The safety rope and floats shall be maintained in good repair and working order. ^{Pf}

1443 (d) *Spine board.* A spine board with straps and head immobilizer in good condition shall be available at
1444 a pool where a lifeguard is required pursuant to s. ATCP 76.23. ^P

1445 (2) TELEPHONE. (a) *Connection to emergency services.* A telephone capable of connecting with 911
1446 or emergency dispatch services is accessible at all times during pool operation. ^P

1447 (b) *Other technologies.* Telecommunication technology, other than a landline telephone, may be used
1448 if, in the pool area, the telecommunication device is equipped with all of the following: 1. A permanent
1449 continuous power supply with battery backup.

1450 2. A reliable service connection. ^P

1451 (c) *Location.* The location of the telephone shall be within 25 feet of the pool area. ^P

1452 (d) *Emergency numbers and address.* A current list of emergency telephone numbers and the facility's
1453 location shall be attached to or posted near the telephone. ^{Pf}

1454 **ATCP 76.27 First aid supplies. (1) AVAILABILITY.** (a) *Pool area.* A first aid kit shall be available at
1455 each pool area. ^P

1456 (b) *Contents.* The first aid kit shall contain all of the following items: ^{Pf} 1. Gauze pads.

1457 2. Adhesive bandages.

1458 3. Gauze roller bandage.

1459 4. Adhesive tape.

1460 5. Eye wash.

1461 6. Elastic bandage.

1462 7. Disposable surgical gloves.

1463 8. Resuscitation pocket face mask.

1464 9. Instant cold packs.

1465 (2) BIOHAZARD KIT. (a) *Location.* Biohazard safety equipment, including a blood and biohazard
1466 disposal kit, shall be located at the first aid station or another location on the premises. ^{Pf}

1467 (b) *Contents.* A biohazard kit shall contain all the following: ^{Pf} 1. Scoop and spatula.

1468 2. Sanitizing hand wipes.

1469 3. Sanitizing surface wipes.

1470 4. Neoprene gloves.

1471 5. Paper toweling.

1472 6. Biohazard disposal bag at least 24" x 24".

1473 7. Twist tie or other effective means to close the bag.

1474 8. Biohazard sorbent.

1475 9. Storage case.

1476 (3) EMERGENCY BLANKETS. Two conventional or emergency blankets in good condition shall be

1477 available in the pool area or as approved by the department or its agent. ^{Pf}

1478 **ATCP 76.28 Food and drink. (1) LOCATION.** Food or drink service facilities may not be located within

1479 12 feet of the water's edge of a pool, except for swim-up bars. ^{Pf}

1480 (2) UTENSILS. Only shatter-proof utensils for food and drink shall be used in the pool area, except

1481 for approved swim-up bars. ^{Pf}

1482 **ATCP 76.29 Posting pool rules.**

1483 (1) GENERAL. (a) *Posting of rules; all pools.* 1. The operator shall post pool use rules governing

1484 safety and sanitation and shall enforce those rules.

1485 2. Rules shall be conveyed using words with letters at least one inch high, or symbols that are at least

1486 4 inches in height and clearly visible to patrons.

1487 3. A legible sign showing pool use rules shall be posted in a conspicuous place.

1488 (b) *Signage contents.* 1. Pool signage shall contain the minimum information, as applicable:

1489 a. Do not enter the pool if you have a communicable disease or an open cut.

1490 b. Do not bring food, drink, gum, or tobacco into the pool.

1491 c. Shower immediately before entering the pool and after use of a steam room, sauna, or toilet facilities.

1492 d. Do not run or engage in rough play in the pool area.

1493 e. Do not bring animals into the pool area.

1494 f. Diaper changing on the pool deck is prohibited.

1495 g. Glass and shatterable items are prohibited in the pool area.

1496 (c) *Supervision of children under the age of 12.* For a non-lifeguarded pool, a statement indicating that
1497 children under the age of 12 shall be supervised by an adult shall be added the signage requirements in par.
1498 (b).

1499 (d) *“No Diving”; signage.* A pool that is 200 square feet in area or greater that does not have an
1500 approved diving well configuration shall have “NO DIVING” signs in at least 4 inch high letters included
1501 with the rules listed under par. (b). ^{Pf}

1502 (e) *Maximum patron load; signage.* A sign showing the maximum patron load shall be conspicuously
1503 displayed near each pool. The maximum patron load pursuant to s. ATCP 76.25, may not be exceeded.

1504 (f) *Breath holding; prohibition.* The operator of a pool shall provide signage or otherwise communicate
1505 to patrons that activities involving prolonged breath holding are prohibited.

1506 **(2) POOL SLIDES AND WATERSLIDES AND OTHER WATERRIDES.** (a) *Posting of rules; pool*
1507 *slides and waterslides.* For the plunge section of a pool, the pool use rules signage required under sub. (1),
1508 shall be provided. Additionally, the following rules shall be provided and be conspicuously posted at the
1509 entrance to the slide tower in at least one inch lettering:-1. Do not use the slide while under the influence of
1510 alcohol or drugs.

1511 2. Follow the instructions of the attendant.

1512 3. Leave the plunge area immediately after using the slide.

1513 4. WARNING: Water depth is _____ feet.

1514 5. Follow any rule required by the manufacturer of the attraction.

1515 (b) *Special instruction.* The operator shall ensure that the patron is instructed using words, pictures, or
1516 symbols on how to position themselves and safely ride or otherwise participate in the attraction.

1517 **(3) WHIRLPOOLS.** For whirlpools, the signage required under sub. (1) shall be conspicuously posted
1518 in the whirlpool area and include at a minimum, all of the following rules preceded by the word
1519 “WARNING” conspicuously printed in at least one inch letters: a. Persons suffering from heart disease,
1520 diabetes, or high or low blood pressure should consult their physician before using a whirlpool.

1521 b. Persons under the influence of alcohol or drugs may not use the whirlpool.

- 1522 c. Pregnant women should consult their physician regarding whirlpool usage.
- 1523 d. Lengthy exposure may be hazardous to your health and may result in nausea, dizziness, or fainting.
- 1524 e. Minors under the age of 6 are not permitted in the whirlpool.
- 1525 **(4) VORTEX POOL, CURRENT POOL, AND OTHER RIDES THAT RAPIDLY MOVE OR**
- 1526 **CHANGE POSITION OF THE PATRON.** For vortex pool, current pool and other rides that rapidly move
- 1527 or change position of the patron, the signage required in sub. (1), shall be conspicuously posted and include
- 1528 “Artificial Current; Strong Swimmers Only.” in 4 inch or larger letters.
- 1529 **(5) COLD SOAK POOLS.** For cold soak pools, the signage required under sub. (1), shall be
- 1530 conspicuously posted in the cold soak area and include a sign that states the water temperature in Fahrenheit
- 1531 in at least 4 inch high letters.
- 1532 **(6) INTERACTIVE PLAY ATTRACTIONS.** The signage required under sub (1), shall be
- 1533 conspicuously posted on the periphery of the interactive play attraction.
- 1534 **ATCP 76.30 Pool closing criteria. (1) REASONS FOR CLOSURE.** The operator or responsible supervisor
- 1535 shall close a pool for any of the following: (a) The presence of a hazardous substance or object in the pool or
- 1536 the existence of any condition creating an immediate danger to health or safety, including fecal accident
- 1537 events. ^P
- 1538 (b) Failure to comply with the water quality requirements pursuant to s. ATCP 76.16. ^P
- 1539 (c) Failure to comply with the disinfectant or sanitizer residual levels pursuant to s. ATCP 76.14, or pH
- 1540 values that are less than 6.8 or equal to or greater than 8.0. ^P
- 1541 (d) A nonoperational circulation pump, filter, or disinfectant or sanitizer feeder. ^P
- 1542 (e) Failure to comply with the number of lifeguards or attendants pursuant to s. ATCP 76.23. ^P
- 1543 (f) Absence or non-availability of a responsible supervisor. ^P
- 1544 (g) Nonfunctional emergency phone. ^P
- 1545 (h) The pool is undergoing maintenance or repair. ^P
- 1546 (i) The pool gate or door is not equipped with a self-closing and latching mechanism, except when
- 1547 staffed by a lifeguard or attendant. ^P

1548 (j) A cyanuric acid level above 300 ppm. ^P

1549 (2) ACTIONS BY THE DEPARTMENT OR ITS AGENT. The department or its agent pursuant to
1550 s. ATCP 76.07 (3) shall order that the pool be closed and posted with signage indicating closure for any
1551 criteria identified in sub. (1).

1552 **ATCP 76.31 Fecal accident, vomit, and blood response. (1) GUIDELINES FOR RESPONSE.** In
1553 responding to a fecal accident, vomit, and blood incident, the operator shall follow the guidelines for a fecal
1554 accident, vomit, and blood incident in pools used for swimming published by the United States centers for
1555 disease control and prevention. ^P

1556 **Note:** United States centers for disease control and prevention guidelines for responding to fecal accidents,
1557 vomit, and blood spills may be viewed at: [https://www.cdc.gov/healthywater/swimming/aquatics-](https://www.cdc.gov/healthywater/swimming/aquatics-professionals/fecalresponse.html#fecal-incident)
1558 [professionals/fecalresponse.html#fecal-incident](https://www.cdc.gov/healthywater/swimming/aquatics-professionals/fecalresponse.html#fecal-incident).

1559 (a) DOCUMENTATION. The operator shall document each fecal, vomit and blood contamination
1560 incident as follows: (a) *Date, time, and chemical concentrations when the event occurred.* Record the date
1561 and time of the event, and the free available chlorine or bromine concentration, cyanuric acid concentration,
1562 and pH of the pool water. ^{Pf}

1563 (b) *Date, time, and chemical concentrations after clean-up has occurred.* Record the date and time after
1564 clean-up has occurred, and the free available chlorine concentration, cyanuric acid concentration, and pH of
1565 the pool water before reopening the pool to the public. ^{Pf}

1566 (c) *Stool description.* For fecal accident, whether the stool is formed or loose. ^{Pf}

1567 (d) *Procedures followed.* The procedures followed in responding to the fecal, vomit or blood
1568 contamination. ^{Pf}

1569 (e) *Patron count.* The number of patrons in the pool. ^{Pf}

1570 (f) *Duration.* Length of time between the occurrence, detection, and resolution of the incident. ^{Pf}

1571 **ATCP 76.315 Waterborne outbreak investigations. (1) HEALTH DEPARTMENT NOTIFICATION.**

1572 The operator shall contact the department or its agent for operational and testing guidance when notified of
1573 a suspected waterborne illness. ^P

1574 **(2) SUSPECTED WATERBORNE ILLNESS OUTBREAK.** In the event of a suspected waterborne
1575 illness outbreak, the operator shall close the pool to use and contact the department or its agent for
1576 instructions regarding sampling, corrective actions, and reopening procedures. ^P

1577 **(3) FILTER MEDIA.** If *Pseudomonas aeruginosa*, *Staphylococcus aureus*, or *Legionella pneumophila*
1578 is detected in any sample from a pool, the pool must be cleaned and sanitized and filter media must be
1579 changed, as applicable, or as directed by the department or its agent. ^P

1580 **ATCP 76.32 Reports and records. (1) OPERATING REPORTS.** The pool operator or responsible
1581 supervisor shall complete reports of the pool operation on forms provided by the department or its agent to
1582 include verification and documentation of all of the following: (a) Chemical testing pursuant s. ATCP
1583 76.14.

1584 (b) Backwashing completion.

1585 (c) Breakpoint chlorination.

1586 (d) Interlock testing.

1587 (e) Anti-entrapment system testing.

1588 (f) Water temperature.

1589 (g) Safety and rescue equipment maintained pursuant to ss. ATCP 76.26 and ATCP 76.27.

1590 (h) If monthly reports are requested by the department or its agent, they shall be submitted no later than
1591 the tenth day of the following month. ^{Pf}

1592 **Note:** To obtain copies of the form for monthly reporting of daily public pool operations, or to determine
1593 which agent to contact to obtain copies, contact the bureau of food and recreational businesses at (608)
1594 224-4682 or PO Box 8911, Madison, Wisconsin 53708-8911.

1595 **(2) DEATH, INJURY, OR ILLNESS REPORTS.** The operator shall report any incident resulting in
1596 death, serious injury, or illness that requires assistance from emergency medical personnel, by the end of the

1597 next working day following the incident by phone, email, or fax to the department or its agent. ^{Pf}

1598 **Note:** Report deaths, injuries, or illnesses to the bureau of food and recreational businesses by calling (608)
1599 224-4682, emailing to datcpdfsrec@wisconsin.gov or faxing to (608) 224-4710.

1600 (3) FILES. (a) *Files permanently maintained on the premises.* The operator shall permanently
1601 maintain on the premises a copy of each of the following: 1. A copy of the most current version of ch.
1602 ATCP 76.

1603 2. For pools constructed after July 1, 2023, a copy of the Wisconsin department of safety and
1604 professional services approved pool constructions plans, including Virginia Graeme Baker Act plan
1605 approvals.

1606 3. The manufacturer's pump performance curve. ^{Pf}

1607 4. The manual of operations for any secondary anti-entrapment device or system, as applicable. ^{Pf}

1608 5. The manual of instruction on filter operation.

1609 6. Instructions for operation and maintenance of all equipment.

1610 7. Instructions and other pertinent information on pool operation and maintenance.

1611 8. The most recent United States centers for disease control and prevention recommendations for fecal
1612 accidents or another plan in response to fecal accidents that is consistent with the United States centers for
1613 disease control and prevention's fecal accident response recommendations.

1614 9. The Virginia Graeme Baker Act main drain and equalizer cover replacement receipts or
1615 similar documentation. ^{Pf}

1616 (b) *File retention period.* The following operational tests and reports shall be kept for a minimum of 2
1617 years. 1. Anti-entrapment device or system test results as required by manufacturer and corrective actions
1618 taken, if needed. ^{Pf}

1619 2. Any laboratory bacteriological report. ^{Pf}

1620 3. Any fecal accident report made pursuant to s. ATCP 76.31. ^{Pf}

1621 4. Any daily inspections and operational tests. ^{Pf}

1622 5. Any other reports required by the department or its agent.

1623 (c) *Access*. All of the documents under pars. (a) and (b), shall be accessible to the department or its
1624 agent upon request.

1625 **ATCP 76.33 Facility maintenance, repair, and sanitation. (1) POOL AREA.** (a) *Basin*. The pool
1626 basin area shall meet all of the following and be: 1. Routinely brushed or vacuumed to keep the basin and
1627 surrounding appurtenances free of sediment, lint, hair, debris, algae, and slime growth and discoloration.

1628 2. Maintained free of cracks or other defects and repaired or refinished as necessary to maintain it in a
1629 cleanable condition.

1630 3. Maintained in a clean and sanitary condition.

1631 4. Free of glass and shatterable plastic items, except for pool test kit contents while in use to test pool
1632 water according to manufacturer's instructions and in drink preparation areas of a swim up bar. ^{Pf}

1633 (b) *Deck maintenance and cleaning*. 1. Deck areas and appurtenances, including safety pads, shall meet
1634 all of the following and be: a. Maintained in good repair.

1635 b. Rinsed as needed to prevent microbial growth.

1636 2. Disinfected at least weekly for indoor pool decks with disinfecting agents according to the
1637 manufacturer's directions.

1638 **Note:** It is recommended to avoid the use of an ammonia-based disinfectant as this can contribute to an
1639 increased level of chloramines in the pool water.

1640 3. Cleaned as needed for outdoor pool decks.

1641 4. Maintained so that depth markings along the edge of the pool are clearly visible and readable. ^{Pf}

1642 5. Kept unobstructed except for easily portable furniture and equipment. ^{Pf}

1643 (c) *Walls, ceilings and floors*. The walls, ceilings, and floors in the pool area shall be maintained in a
1644 clean and sanitary condition.

1645 (d) *Hosing*. Hosing shall meet all of the following 1. Provided in adequate lengths to flush the entire
1646 pool deck.

1647 2. Protected against backsiphonage by the proper installation of an approved backflow prevention
1648 device pursuant to s. SPS 390.16 (4) (b).^P

1649 (e) *Equipment*. Pool equipment, including equipment on the deck, shall be all of the following and
1650 properly: 1. Located.

1651 2. Installed.

1652 3. Maintained.

1653 4. Repaired, as necessary.

1654 (f) *Spectator areas*. Spectator areas shall be all of the following: 1. Maintained in a clean condition.

1655 2. Set up and arranged so that tables, chairs, and other obstructions do not block the deck.^{Pf}

1656 (g) *Drinking fountain*. Drinking fountains shall be all of the following: 1. Be provided pursuant to s.
1657 SPS 390.19.^P

1658 2. Maintained in clean and sanitary condition.

1659 **(2) SHOWER, TOILET AND DRESSING FACILITIES.** (a) *Walls and floors*. The walls, partitions,
1660 and floors of showers, toilet rooms, and dressing areas shall be all of the following: 1. Maintained in good
1661 repair.

1662 2. Cleaned and disinfected daily or more frequently, if necessary to provide clean and sanitary conditions.

1663 **Note:** See s. SPS 390.19 for additional information.

1664 (b) *Showers*. Showers shall be maintained in an operable condition.

1665 **Note:** To minimize the risk of *Legionella* growth and other diseases associated with water, adequate
1666 provisions should be made to ensure that all water systems, including sink faucets, drinking fountains, and
1667 showers are safe. Any water aged over 3 weeks is potentially viable for growing *Legionella* colonies. It is
1668 strongly advised that each pool operator develop and implement a water management program as
1669 recommended by the United States centers for disease control and prevention Water Management Program
1670 Toolkit. The toolkit can be found at <https://www.cdc.gov/legionella/wmp/toolkit/index.html>.

1671 (c) *Toilet rooms and diaper changing areas*. Toilet room fixtures and diaper changing stations shall be
1672 all of the following: 1. Kept clean.

1673 2. Maintained in good repair.

1674 (d) *Lockers and furniture.* Lockers and furniture shall be all of the following: 1. Cleaned as needed.

1675 2. Maintained in good repair.

1676 (e) *Soap and soap dispensers.* Soap and dispensers shall be all of the following: 1. Soap is continually
1677 provided at each hand washing sink and shower in permanently installed dispensing devices. ^{Pf}

1678 2. The dispensers shall be maintained in operating condition.

1679 (f) *Hand drying devices.* Individual towels in dispensers or hot air dryers shall be provided at hand
1680 washing sinks. ^{Pf}

1681 (g) *Toilet tissue.* A continuous supply of toilet tissue shall be provided in permanently installed
1682 dispensing devices. ^{Pf}

1683 (h) *Bathing suits provided.* If bathing suits, towels, or caps are furnished to patrons they shall meet all
1684 of the following: 1. Be thoroughly laundered with detergent and machine dried after each use.

1685 2. Clean suits, towels, and caps shall be stored separately from unlaundered articles.

1686 (i) *Hose bibbs.* Hose bibbs shall be conveniently located so floors in the shower, dressing, and toilet
1687 facilities can be adequately rinsed.

1688 **(3) GARBAGE AND REFUSE.** Garbage and refuse shall meet all of the following: (a) *Approved*
1689 *storage container.* All garbage and refuse shall be stored in metal or rigid plastic containers having tight-
1690 fitting lids.

1691 (b) *Sufficient in number.* A sufficient number of containers shall be provided for all garbage and refuse
1692 generated.

1693 (c) *Stored to prevent harborage conditions.* Filled containers of garbage or refuse shall meet all of the
1694 following and be covered and stored in a manner to prevent: 1. Harborage of rodents, insect attraction, and
1695 breeding areas. ^{Pf}

1696 2. Odors. ^{Pf}

1697 3. Environmental pollution. ^{Pf}

1698 4. Accidents. ^{Pf}

1699 (d) *Disposal as needed.* The contents of the containers shall be disposed of as needed and in a sanitary
1700 manner.

1701 (e) *Clean Condition.* All containers shall be kept clean.

1702 (f) *Good repair.* Containers shall be maintained in good repair.

1703 **(4) WATER HEATERS, VENTILATION, ELECTRICAL.** Water heaters, ventilation, and electrical
1704 shall meet the following: (a) *Operating condition.* Water heaters and heat exchangers shall be maintained in
1705 operating condition.

1706 (b) *Air movement.* Heating, ventilation, and exhaust equipment shall be maintained and operated to
1707 provide air movement pursuant to chs. SPS 361 to 365, to prevent any excessive condensation and air
1708 quality problems in indoor enclosures, as enforced by the Wisconsin department of safety and professional
1709 services.

1710 (c) *Maintained in good repair.* Electrical equipment and lighting shall be maintained in good repair and
1711 in operating condition.

1712 (d) *Carbon monoxide alarms.* The operator shall install functioning carbon monoxide alarms, as
1713 applicable and meet all of the following: 1. A pool equipment room that has a fuel burning appliance shall
1714 install and maintain a carbon monoxide alarm. ^P

1715 2. For indoor pools, a carbon monoxide alarm shall be installed and maintained in the pool area, if there
1716 is a fuel burning appliance in the equipment room that is also located within the pool area. ^P

1717 **76.335 Dog swims.** A pool operator shall ensure all of the following during dog swim events: **(1)**
1718 **OPERATION.** (a) *Water level.* Before the dog swim event, the water level shall be adjusted so that the pool
1719 water in the basin does not enter the recirculation system. ^P

1720 (b) *Disinfectant residual.* Initial disinfectant residual must be 4 ppm free chlorine or 8 ppm if cyanuric
1721 acid present. ^P

1722 (c) *Registration.* Registration of the dog and caretaker are required. ^{Pf}

1723 (d) *Rabies Vaccination*. All dogs shall be 6 months of age or older and the owner shall provide proof
1724 of a current rabies vaccination. ^P

1725 (e) *Prohibited*. Splash pads, spray features, play structures, whirlpools, diving boards, and slides are
1726 prohibited from operation. ^{Pf}

1727 (f) *Relief area*. Grass or an alternate area shall be provided and accessible to patrons with their dogs
1728 with adequate space and trash receptacles. ^{Pf}

1729 (g) *Waste water*. Pool water shall be drained by bypassing the filtration system. ^P

1730 (h) *Post-event cleaning*. 1. Pool shall be scrubbed and cleaned after draining. ^P

1731 2. The pool shall be superchlorinated before startup occurs during the following season. ^P

1732 (i) *Restrooms and showers available*. Locker rooms may be closed, but restrooms with handwashing
1733 facilities and showers must be conveniently located. ^{Pf}

1734 (j) *Responsible supervisor*. The responsible supervisor or designee shall be present at the pool before,
1735 during, and after the dog swim event. ^P

1736 (k) *Duration*. Event shall be limited to 3 hours total from time when the first dog enters the water. ^{Pf}

1737 **(2) RULES**. The following rules must be conveyed to patrons: (a) Only dogs are allowed in the pool,
1738 except in the event of an emergency.

1739 (b) A dog must be capable of swimming, unassisted by a human, in the depth and type of pool used for
1740 the dog swim.

1741 (c) A dog must be willing and comfortable participating in the swim.

1742 (d) A dog exhibiting aggression must be removed immediately.

1743 (e) A dog with an open cut or sore may not enter the water.

1744 (f) A dog with loose stools may not enter the water.

1745 (g) A patron bringing a dog must supervise the dog at all times.

1746 (h) The patron must clean up any feces immediately and dispose of waste properly.

1747 **(3) NUMBER OF DOGS PER PATRON**. A maximum of one dog per person may participate in a dog
1748 swim event.

1749 **Subchapter VI**

1750 **Pool Construction and Design**

1751 **ATCP 76.34 Pool design. (1) HAZARDOUS CONDITIONS.** Any object or material not specifically
1752 approved pursuant to this chapter or ch. SPS 390 that may cause a hazardous condition or interfere with the
1753 safe and efficient operation of a pool, pool slide, waterslide, or deck is not permitted in the pool area. ^P

1754 **(2) GATES AND DOORS MAINTAINED.** (a) *Maintained.* All gates and doors into the pool area shall
1755 be maintained and checked for proper operation. ^P

1756 (b) *Self-closing latching and lockable mechanism; location.* A self-closing latching and lockable
1757 mechanism shall be installed at least 54 inches from the bottom of the gate or door. ^P

1758 (c) *Locked.* Gates and doors shall be locked when the pool is not open to the public or is not in use. ^P

1759 **(3) POOL FENCE OR BARRIER HEIGHT.** A pool fence or barrier shall meet all of the following:

1760 (a) Be at least 5 feet high and enclose the pool area.

1761 (b) A pool with a fence or barrier less than 5 feet in height that was previously approved by the
1762 department is acceptable, including at a change of operator, if maintained in good repair. If more than 20
1763 feet of a fence needs replacement, plan review is required by the Wisconsin department of safety and
1764 professional services.

1765 **(4) ENCLOSURES AND ENTRANCES.** Enclosures and entrances shall meet all of the following:

1766 (a) *Gates and doors.* Except as provided under subd. 5. And sub. (b), of this section, all pool areas
1767 shall be enclosed ^P and have gates and doors that are all of the following: 1. Self-closing. ^P

1768 2. Latching. ^P

1769 3. Lockable. ^P

1770 4. Not require a key, punch code, or electronic method to exit a pool enclosure. ^P

1771 5. This section does not apply to emergency doors that cannot be opened from the outside of the pool
1772 enclosure.

1773 **Note:** A primary entrance to a pool enclosure in which multiple doors must be passed through is considered
1774 to have a self-closing, latching, and lockable gate or door, if any of doors in the sequence are self-closing,

1775 latching, or lockable.

1776 (b) *Gates and doors in a lifeguarded pool area shall meet all of the following:* 1. If gates and doors are
1777 not self-closing and latching, the gates and doors to the pool shall be staffed with an attendant and at least
1778 one lifeguard shall be present. ^P

1779 2. Documentation for staffing shall be included in the lifeguard staffing plan. ^{Pf}

1780 (5) **SIGNAGE.** During closed hours, a sign shall be conspicuously posted stating that the pool, pool
1781 slide, waterslide, and deck are closed.

1782 **Note:** See s. SPS 390.18 (4) for additional rules relating to the outdoor pool enclosure.

1783 (6) **LANDSCAPING.** (a) *Restrictions.* Landscaping planters, pots, or other plant containers may not be
1784 placed on the required deck area.

1785 (b) *Separation.* Landscaping features such as bark, gravel, shrubs, or flowers may be located within the
1786 pool enclosure but shall be separated from the pool by an additional 5 feet of impervious area or maintained
1787 lawn.

1788 (c) *Maintenance.* Landscaped areas within a pool enclosure shall be continually maintained to prevent
1789 debris from entering the water.

1790 (d) *Trees.* Trees used as landscaping features may not overhang the required deck area.

1791 (e) *Sand.* Sand may not be located within a pool enclosure unless the sand area is made inaccessible
1792 from the pool area by a barrier that is at least 42 inches high. Alternatively there may be controlled entrances
1793 to the pool area if the entrances are controlled and provided with showers.

1794 **ATCP 76.35 Waterslide and pool slide design.**

1795 (1) **DESIGNED AND INSTALLED.** All waterslides and pool slides shall be designed, installed, and
1796 lubricated pursuant to s. SPS 390.31. ^{Pf}

1797 (2) **CONTINUOUSLY SEPARATED.** The portion of the pool water surface that is used as a plunge
1798 area for a drop slide or waterslide shall be continuously separated from other areas of the pool in a manner
1799 approved by the department or its agent, as long as the slide is in use. ^P

1800 **ATCP 76.36 Water attraction, play features, and slide design. (1) GENERAL.** Water attraction, play
1801 features, and slide design shall meet all of the following: (a) *Design and construction requirements.* Water
1802 attractions and play features shall be designed, assembled, constructed, and maintained in accordance with
1803 recognized safe practices as defined in s. SPS 334.01 (15), and so that maximum patron loads do not stress
1804 any part of the water attraction beyond recognized safe practices. ^{Pf}

1805 (b) *Free from hazardous projections.* Interior and exterior parts of any water attractions a patron may
1806 come into contact with shall be free of abrasives and splinters, sharp edges and corners, protruding studs,
1807 bolts, screws, and other hazardous projections. ^P

1808 (c) *Padding.* Padding or other means to minimize injury due to patron impact resulting from the action
1809 of the water attraction shall be provided in accordance with recognized safe practice, pursuant to s. SPS
1810 334.01 (15). ^P

1811 (d) *Enclosure of hazardous parts.* All hazardous parts, including pinch points and shear points of water
1812 attractions and play features, shall be enclosed, barricaded, or otherwise arranged to effectively prevent
1813 injury in accordance with recognized safe practice, as defined in s. SPS 334.01 (15). ^P

1814 (e) *Guards.* Guards removed for any purpose shall be replaced before normal operation of the water
1815 attraction is resumed. ^P

1816 (f) *Wheels and levers.* Wheels and levers used by patrons in the control of the action of the water
1817 attraction shall be designed and maintained to prevent pinches, strains, abrasions, and body actions that
1818 could result in injuries. Wheels and levers shall be padded. Wheels shall have a solid center in lieu of spokes.
1819 ^{Pf}

1820 (g) *Fences and barriers.* Water attractions shall be fenced, barricaded, or otherwise arranged in
1821 accordance with recognized safe practice, as defined in s. SPS 334.01 (15), so that the public is effectively
1822 prevented from entering hazardous areas. ^P

1823 (h) *Fence design and construction.* Fences shall be constructed to meet all of the following
1824 requirements: 1. Be at least 42 inches above the surface on which the spectators or patrons stand. ^{Pf}

1825 2. Constructed to reject a 4 inch ball at all openings, including between the bottom of the fence and the
1826 surface upon which it rests. ^P

1827 3. Be designed, constructed, and erected to inhibit overturning by spectators or patrons. ^P

1828 4. Where used, gates shall open away from the water attraction unless equipped with a self-closing
1829 latching device. ^{Pf}

1830 (i) *Gate opening.* Gates shall be designed such that, if opened during the water attraction's operation, the
1831 gate will not contact the water attraction or cause a hazard to patrons. ^P

1832 (j) *Separation.* Fences and gates shall be constructed to inhibit spectator contact with the water
1833 attraction and patron contact with fences or gates. ^{Pf} Horizontal members in a fence or gate may be used to
1834 improve construction or efficiency, but should be minimized to reduce the ease of climbing.

1835 (k) *Loading and unloading areas.* Loading and unloading areas that are an integral part of the water
1836 attraction shall be separated from moving parts by barriers or guardrails. ^P

1837 (l) *Preventing access.* A flexible barrier, such as a rope or chain, may be used to prevent access to the
1838 passenger-carrying devices, provided the barrier is no longer than necessary and is controlled by an
1839 authorized attendant. ^{Pf}

1840 (m) *Moving sweeps.* Water attractions with moving sweeps shall be guarded by a standard guardrail or a
1841 center cover designed and maintained to safely support a minimum load of 200 pounds. ^{Pf}

1842 (n) *Spectator area.* Where a spectator area is provided, it shall be separated by a railing or other barrier
1843 from the water area. ^{Pf}

1844 **(2) INTERACTIVE PLAY ATTRACTIONS.** Interactive play attractions shall meet all of the
1845 following requirements: (a) *Attendant requirements.* If access to the interactive play attraction is not
1846 restricted by an enclosure, an attendant shall be present to provide periodic supervision. ^P

1847 (b) *Water drains.* Water drains shall be in good working condition. ^{Pf}

1848 (c) *Tree and vegetation prohibited.* Trees and vegetation may not be allowed in the interactive play
1849 attraction area.

1850 (d) *Daily opening procedures.* Water spray features shall be activated for 30 minutes before the daily
1851 opening of the interactive play attraction. ^{Pf}

1852 (e) *Ring buoy and shepherd's crook.* A ring buoy and shepherd's crook are not required to be present for
1853 an interactive play attraction.

1854 **ATCP 76.37 Maintenance, repair, and modifications of water attractions. (1) GENERAL.** (a) *Maintained*
1855 *safe.* Water attractions shall be maintained, repaired, and modified in accordance with recognized safe
1856 practice as defined in s. SPS 334.01 (15). ^P

1857 (b) *Closure.* Improperly maintained, repaired, or modified water attractions may not be opened to the
1858 public. ^P

1859 (c) *Maintenance.* 1. Defective, improper, worn, or missing parts shall be replaced or repaired.

1860 2. Maintenance, repair, and replacement parts shall be of a quality equal to or better than the original
1861 parts. ^P

1862 3. All work shall be performed by a competent qualified mechanic capable of understanding the
1863 function of the parts and the proper installation. ^{Pf}

1864 4. Non-graded bolts, nails, fasteners, and wire shall be used only for their intended purposes. ^{Pf}

1865 5. Rotted, split, or otherwise structurally unsound material shall be replaced. ^{Pf}

1866 **(2) INSPECTIONS AND TESTING.** (a) *General.* 1. The owner shall arrange for all water attractions
1867 to be periodically inspected and for operational tests to be performed as specified in this subsection.

1868 2. Such inspections and tests shall be documented by written records and the records shall be kept
1869 pursuant to s. ATCP 76.32 (3) (b).

1870 (b) *Daily inspection and operational testing.* 1. Water attractions shall be inspected and their operation
1871 tested each day before use by patrons. ^P

1872 2. The inspection and operational test shall include the operation of all control devices and safety
1873 equipment. ^P

1874 (c) *Waterslide inspection.* Every 5 years, all waterslides 6 feet and higher shall be evaluated by an

1875 engineer for the structural stability and integrity of the slide and platform. A copy of a report signed by the
1876 engineer shall be kept on site as pursuant to s. ATCP 76.32. ^P

1877 **ATCP 76.38 Virginia Graeme Baker Act.** The operator shall ensure all the following for compliance with
1878 the Virginia Graeme Baker Act: **(1) GENERAL.** (a) *Requirements.* 1. For a newly constructed pool, the
1879 operator shall have approved plans from the Wisconsin department of safety and professional services and
1880 shall maintain the pool plans onsite. ^P

1881 2. For a pool constructed before the effective date of this rule, the operator shall provide at a minimum,
1882 the pump curve and the drain cover specification. ^P

1883 **(2) DOCUMENTATION.** Documentation shall include all of the following: (a) *Log maintenance.* The
1884 operator shall maintain a log that can be used to evaluate the drain covers.

1885 (b) *Components.* The log shall include all the following components related to the drain cover: 1.
1886 Make. ^{Pf}

1887 2. Model. ^{Pf}

1888 3. Gallons per minute rating. ^{Pf}

1889 4. Life span. ^{Pf}

1890 5. Installation date. ^{Pf}

1891 (c) *Receipts or affidavits.* In lieu of a log, receipts or affidavits from a pool service company shall be
1892 acceptable documentation as long as the make and model are indicated. ^{Pf}

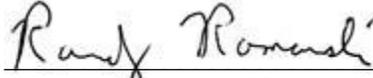
1893 (d) *Available.* Documents shall be provided to the department or its agent upon request. ^{Pf}

1894 SECTION 2. EFFECTIVE DATE. This rule shall take effect 90 days following publication in the
1895 Wisconsin administrative register, as provided pursuant to s. 227.22 (2) (intro), Stats.

(END OF RULE TEXT)

Dated this 5 day of May, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

Handwritten signature of Randy Romanski in cursive script.

By: Randy Romanski, Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date February 18, 2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Wis. Admin. Code ch. ATCP 76, Safety, Maintenance, and Operation of Public Pools and Water Attractions	
4. Subject Public Pools and Water Attractions	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. § 20.115(1)(gb) Food, lodging, and recreation.
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$50 - \$700 Over all impact to businesses is estimated between \$38,650 to \$541,100 There are approximately 773 licensed swimming pools and water attractions that are inspected by the department. There are approximately 4,000 swimming pools and water attractions licensed and inspected statewide. The State has not increased fees for swimming pools and water attractions since 2007. A very simple swimming pool with no additional features would have an increase in license fee of \$50. For additional details for the proposed fee structure see #14. Although license fees are proposed to increase, the department has also incorporated measures to reduce operational costs into the new rule. The Department does not expect any economic or fiscal impact on Local Health Department governmental units beyond the current duties as an agent of the Department.	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule A revised ATCP 76 incorporated new technologies and trends occurring within the pool and water attraction industry. When using the existing ATCP 76, industry, inspectors and the general public continually noted places within the code where clarification was needed to facilitate understanding of the rule and its intent. Because of the need for clarification, many new definitions were included. The pool industry encompasses a broad variety of businesses from small motels and campgrounds, to homeowner associations, schools, healthcare, and municipal and resort waterparks. In order to ensure development of a rule that considers all the various niches within industry, robust representation from within the pool industry, public health and the department of safety and professional services pool code plan review provided input during rule development. Sections were added to align the revised ATCP 76 with other Retail and Recreational rules. The license fee has not kept pace with the department's costs for issuing a license and conducting an inspection. The department has not had a license fee increase for pools and water attractions since 2007. In the revised ATCP 76, a pool is licensed using a modernized three-tier risk and complexity model that acknowledges the risks of the pool operation	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

and the associated features. The proposed licensing model more clearly reflects the risk and complexity of the pool operation and more accurately reflects the time it takes for the department to perform its licensing and inspection responsibilities. This licensing model will promote fairness to small business owners by having the license fee reflect inspection time and risk associated with their facilities. License fees will not be based on a one-size-fits-all model.

The proposed rule incorporates best practices and modern technologies in pool operation. Significant input was received from industry and public health partners related to methods for the operation of a pool's recirculation system and methods for chemical testing. Much of the language was outdated, including references that are no longer accurate or relevant. The input received ensured that the rule was updated to allow for new technologies, such as materials that perform more effectively in filtering pool water, and potentially, a newer water testing kit that employs technologies that may be more accurate or more efficient than the traditional approach. In these sections, the language of the rule was intensively reviewed and clarified so that it is more easily understood by industry.

Supervision and staffing of pools is key to safely operating the pool as well as addressing risks that may require the staffing of a lifeguard or attendant. The input received from industry and local health departments was used to revise the rule to address supervision of pools in general, and supervision of the nearly infinite types of features that may be added to a pool. At one time, a pool was a plain rectangle in the ground. Now there are pools that offer experiences such as waves, vortexes, and slide-based rides. It would be impossible to determine an exhaustive list of safety rules that would be applicable to all possible types of water experiences. The tables that describe attendant and lifeguard staffing were clarified so that they cover each type of water experience in detail (whirlpool, waterslide, pool slide under 6 feet, for example), and describe what the requirement is for that type of pool. The revised rule requires a pool operator and responsible supervisor to develop rules that make sense and accomplish a common goal of safely participating in the water experience.

New to the revised rule are three sub chapters addressing communicable disease outbreak response, end-of-season dog swims and federal Virginia Graeme Baker Act requirements.

When a waterborne illness outbreak occurs, early intervention is essential to identify and contain the outbreak. The rule supports expeditious investigation and resolution of any waterborne outbreaks. Sometimes when a suspected outbreak is occurring, it is difficult to know exactly what is expected of the pool operator. The revised rule clearly states requirements for an operator in the event of a suspected or confirmed outbreak, so that it supports efficient and effective investigation of potential waterborne illnesses.

In recent years, there has been an upward trend in demand for dog swims. The revised rule aims at addressing the risks to ensure health and safety at these events by eliminating time spent on the variance process by pool operators, public health staff, and the department.

Federal Virginia Graeme Baker Act requirements are intended to prevent entrapment and evisceration from submerged drains in the pool. These requirements specify ratings for drain covers as well as placement of drain covers. The revised rule clearly states the requirements and aligns with federal regulations.

Input received from pool operators and pool technical service companies was incorporated into the rule to reflect current technologies and trends.

With this rule revision, the Department has sought to eliminate duplication, clarify expectations, and to simplify licensing and align fees with costs.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

After receiving public comment and based on JCRAR action, the department removed subchapter VII, relating to limited-use public pools. On April 26, 2022, the Joint Committee for the Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Stats., that suspended s. ATCP 76.02(1)(a) in part as it applies to a tourist rooming house. In response, the department has also removed tourist rooming houses and bed and breakfast establishments from s. ATCP 76.02(1)(a).

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Local health departments, large and small full technical service pool companies, small and large swimming pool and water attraction operators, health clubs, YMCA and other community recreational centers, municipal pools and waterparks, tourism and lodging, Wisconsin Hotel and Lodging Association, professional swimming organizations, property management, Wisconsin Association of Campground Owners, Wisconsin Park and Recreation Association, water safety organizations, pool designers and engineers, fitness centers, Department of Health Services - Epidemiology, Department of Safety and Professional Services - pool plan review, other recreational specialists, sanitarians and DATCP staff.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

NA

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Three fee models were discussed and one was chosen with input from industry.

The model chosen with industry feedback contains a lower fee increase for a simple pool. The proposed fee increased from \$150 to \$200 for an annual license. Because almost half of the state-inspected pools are simple in complexity, many operators will benefit from this fee model.

The fee category for moderate complexity, including whirlpools, is now more closely aligned with the time spent by inspectors on enforcement and education, and by the program on consultation and investigation. Whirlpools have more complex chemistry due to their higher water temperatures and the evaporation of chemicals used to control sanitation. Also, whirlpools are more likely than swimming pools to be associated with a Legionella outbreak, if the water chemistry is not carefully controlled. The proposed fee for a moderate pool license is \$300, an increase of \$150.

The proposed fee category for a complex pool that includes large pools and water attractions is \$375, an increase of \$225.

The proposed fees are per pool basin and additional fess are applied if the pool basin is also equipped with features.

For example, a pool with a larger basin with features such as slides, waves and pad-walks, requires additional inspection time. A leisure river with slides, for example, is currently \$425 per year to license. With the proposed fee structure, it will be complex with features and cost \$507, an increase of \$82.

Although, the department has proposed fee increases in the new rule, the department has also communicated with industry to find alternative methods that will reduce the overall cost to maintain a swimming pool, whirlpool or water attraction. The following are examples of cost savings to pool operators:

By eliminating the need for a variance and allowing flexibility of operation, a pool operator could experience lower operating costs and a direct reduction in cost to operate a pool telephone. A pool operator may now provide a phone with a cellular 911 service option with an approximate \$400 one-time cost compared to the current land line requirement that costs as much as \$1000-\$1800 per year.

For pool operators who fail to maintain active managerial control of risks at their pool, there would be a proposed cost of \$300-\$500, to obtain pool operator certification. Failure to maintain active managerial control means that critical or numerous items are found during two inspections in a three year period, making the pool more amenable to illnesses and serious accidents.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rule will be aligned with current technologies and trends, and allow for newer uses of pools to occur under the code. For example, the revised rule describes regulations for dog swims so that they may be conducted safely, and without the need for the operator, sanitarian and program to spend time on the variance application and review process. Outbreak response is addressed in the revised rule to clarify roles and create efficiency in responding to an outbreak and in restoring a pool to service status more quickly and safely. The alternative to implementing the rule would be to continue as is, attempting to continue to apply the existing rule to new methods, innovations, and trends not currently addressed or permitted under the existing rule. Industry groups and associations would find this alternative undesirable as they are eager for the rule be updated to reflect current industry best practices and trends. Furthermore, the Department would need to devote additional time and resources towards resolving the confusion that impedes implementation of the existing code.

16. Long Range Implications of Implementing the Rule

The Department expects the proposed rule to have a positive long range impact on all stakeholders. Although the department is proposing license fee increases, the proposed rule will provide more flexibility to businesses complying with rule requirements that are consistent with recognized industry best practices. The proposed rule will allocate regulatory requirements in proportion to risk, and will support risk-based inspection methods. The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. Instead of licensing by activity area, the licensing model in the revised rule is based on assigning complexity based on basic basin characteristics, and assigning add-on fees based on what is added to the basin. This greatly clarifies the licensing process, and brings the fee for a pool into alignment with the time it takes to inspect it and manage the program.

While the department proposes to increase license fees, the proposed rule would benefit industry by allowing for new technologies, such as materials that perform more effectively in filtering pool water, and potentially a newer water testing kit that employs technologies that may be more accurate or more efficient than the traditional approach. The proposed rule is written to be more accommodating of new technologies, trends and methods.

Supervision and staffing of pools is key to safely operating the pool. The rule addresses supervision of pools in general, and supervision of the nearly infinite types of features that may be added to a pool. The tables that describe attendant and lifeguard staffing were clarified so that they cover each type of water experience in detail (whirlpool, waterslide, pool slide under 6 feet, for example), and describe what the requirement is for that type of pool.

The proposed rule supports expeditious investigation and resolution of any waterborne outbreaks. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

The proposed rule accommodates dog swims by addressing the risks to ensure health and safety at these events.

The proposed rule addresses the federal Virginia Graeme Baker Act requirements that are intended to prevent entrapment and evisceration at submerged drains in the pool.

17. Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal regulations that address the activities to be regulated by this proposed rule as a whole. However, the Consumer Product Safety Commission (CPSC) pursuant to 15 U.S.Code § 8003 requires specific construction and placement of drain covers.

The Centers for Disease Control and Prevention (CDC), oversee the guidance, Model Aquatic Health Code (MAHC). This is a comprehensive guidance document for pools, created with input from state health departments and industry partners. The department referred to this guidance document in the revision process.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois's pool code, Part 820, is similar to Wisconsin's although their code combines construction and operation into one code, whereas in Wisconsin, pools are regulated under SPS 390 (Department of Safety and Professional

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Services) and Ch. ATCP 76. Pools at single family residences are not considered ‘public’ and are not subject to licensing if the intended use is only for owner and their guests. Illinois’s code does not have specific requirements for the chemical feed to be interlocked with the recirculation pump to prevent accidental chemical feed. Illinois allows cyanuric acid levels up to 100 ppm. One set of chemical parameters (including free chlorine and pH) is defined for all swimming basins. Lifeguards are required for wave pools, water slides and at pools where children under the age of 16 might be present. An emergency telephone is required within 300 feet of the pool enclosure. Telephone design (cellular vs. landline) is not described in the code. Pool license fees are based on the square footage of the pool basin and range from \$150 to \$650.

Iowa: Iowa’s pool rule, 641-15, is similar to Wisconsin’s, but like Illinois’s also combined construction and operation into one code. Residential pools operated for more than a certain number of hours per month would be subject to the rule, 641-15, while other residential pools offered to the public for fewer hours per month would be subject to a more limited set of rules within 641-15.49(6) ‘n.’ Iowa’s requires a certified operator, except at smaller condominiums, apartment complexes and homeowners associations. A telephone is required to be available, but technology and location is not specified. The level for pool closure for cyanuric acid level is 80 ppm. Pool license fees range from \$170 to \$270.

Michigan: In Michigan, R-325 contains regulations for both construction and operation of public swimming pools. Electrical interlock is covered in construction code. Pools in single-family residences would be subject to the rule if offered to the public. The cyanuric acid limit is 80 ppm. Michigan requirements for disinfection are based on the pH of the pool, but are similar for all bodies of water. A telephone must be provided. If the telephone is not in the enclosure, written instructions must be provided for how to find the phone, as in Wisconsin’s proposed ATCP 76. Telephone technology is not specified. Requirements for disinfection of whirlpools are less specific and are outcome-based. State pool license fees are \$70, but the local health department may charge an additional inspection fee, of approximately \$200 to \$300 more.

Minnesota: Minnesota’s pool code, Chapter 4717, provides only one set of disinfection parameters. Under subp 11, Minnesota is also phasing-out use of cyanuric acid in indoor pools and sets a limit at 100 ppm. As of February, 2022, Minnesota will no longer require a telephone for public pools. Minnesota’s lifeguarding requirements are similar to those of Wisconsin, although in Minnesota, a competitive pool would not be required to have a lifeguard, whereas in Wisconsin, the same pool would be required to have a lifeguard based on the size of the pool, but also due to the presence of instructional programs. Pools at single family residences are not considered ‘public’ and subject to permitting, if the intended use is only for owner and their guests. State pool license fees for a pool are \$510.

19. Contact Name Caitlin Jeidy, Division of Food and Recreational Safety, Program and Policy Analyst	20. Contact Phone Number (608) 224-4696
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Three fee models were discussed and one was chosen with input from industry.

The model chosen with industry feedback contains a lower fee increase for a simple pool. The proposed fee increased from \$150 to \$200 for an annual license. Because almost half of the state-inspected pools are simple in complexity, many operators will benefit from this fee model.

The fee category for moderate complexity, including whirlpools, is now more closely aligned with the time spent by inspectors on enforcement and education, and by the program on consultation and investigation. Whirlpools have more complex chemistry due to their higher water temperatures and the evaporation of chemicals used to control sanitation. Also, whirlpools are more likely than swimming pools to be associated with a Legionella outbreak, if the water chemistry is not carefully controlled. The proposed fee for a moderate pool license is \$300, an increase of \$150.

The proposed fee category for a complex pool that includes large pools and water attractions is \$375, an increase of \$225.

The proposed fees are per pool basin and additional fess are applied if the pool basin is also equipped with features. For example, a pool with a larger basin with features such as slides, waves and pad-walks, requires additional inspection time. A leisure river with slides, for example, is currently \$425 per year to license. With the proposed fee structure, it will be complex with features and cost \$507, an increase of \$82.

Although, the department has proposed fee increases in the new rule, the department has also communicated with industry to find alternative methods that will reduce the overall cost to maintain a swimming pool, whirlpool or water attraction. The following are examples of cost savings to pool operators:

By eliminating the need for a variance and allowing flexibility of operation, a pool operator could experience lower operating costs and a direct reduction in cost to operate a pool telephone. A pool operator may now provide a phone with a cellular 911 service option with an approximate \$400 one-time cost compared to the current land line requirement that costs as much as \$1000-\$1800 per year.

For pool operators who fail to maintain active managerial control of risks at their pool, there would be a proposed cost of \$300-\$500, to obtain pool operator certification. Failure to maintain active managerial control means that critical or numerous items are found during two inspections in a three year period, making the pool more amenable to illnesses and serious accidents.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Local health departments, large and small full technical service pool companies, small and large swimming pool and water attraction operators, health clubs, YMCA and other community recreational centers, municipal pools and waterparks, tourism and lodging, Wisconsin Hotel and Lodging Association, professional swimming organizations, property management, Wisconsin Association of Campground Owners, Wisconsin Park and Recreation Association, water safety organizations, pool designers and engineers, fitness centers, Department of Health Services - Epidemiology, Department of Safety and Professional Services - pool plan review, and various online searches.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule will provide more flexibility to businesses in complying with rule requirements that are consistent with recognized industry best practices. The proposed rule will allocate regulatory requirements in proportion to risk, and will support risk-based inspection methods. The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. Instead of licensing by activity area, the licensing model in the revised rule is based on assigning complexity based on basic basin characteristics, and assigning add-on fees based on what is added to the basin. This greatly clarifies the licensing process, and brings the fee for the pool into alignment with the time it takes to inspect it and manage the program.

The proposed rule was updated to allow for new technologies, such as materials that perform more effectively in filtering pool water, and potentially a newer water testing kit that employs technologies that may be more accurate or more efficient than the traditional approach. The proposed rule is written to be more accommodating of new technologies, trends and methods.

Supervision and staffing of pools is key to safely operating the pool. The rule addresses supervision of pools in general, and supervision of the nearly infinite types of features that may be added to a pool. The tables that describe attendant and lifeguard staffing were clarified so that they cover each type of water experience in detail (whirlpool, waterslide, pool slide under 6 feet, for example), and describe what the requirement is for that type of pool.

The proposed rule supports expeditious investigation and resolution of any waterborne outbreaks. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

The proposed rule accommodates dog swims by addressing the risks to ensure health and safety at these events.

The proposed rule addresses the federal Virginia Graeme Baker Act requirements that are intended to prevent entrapment and evisceration at submerged drains in the pool.

After receiving public comment and based on JCRAR action, the department removed subchapter VII, relating to limited-use public pools. On April 26, 2022, the Joint Committee for the Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Stats., that suspended s. ATCP 76.02(1)(a) in part as it applies to a tourist rooming house. In response, the department has also removed tourist rooming houses and bed and breakfast establishments from s. ATCP 76.02(1)(a).

5. Describe the Rule's Enforcement Provisions

ss. 93.07 (1), 97.65, 97.67(1) and (4), Stats. The Department has broad general authority, pursuant to s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The Department has specific authority, in par. 93.07 (24)(e), Stats., to enforce the laws for the maintenance and operation of public swimming pools, and the Department has authority pursuant to ss. 97.67(1) and (4), Stats., to adopt rules for public swimming pools dealing with fees; license issuance, pre-licensing inspection fees, reinspection fees, fees for operating without a license, and late fees for untimely license renewal. The Department has authority under subs. 93.06 (7) and (8), and s. 97.71, Stats. to set conditions on a license, suspend a license, or void a license. The Department may also issue a special order requiring corrections before a pool resumes operations, pursuant to sub. 97.12 (3), Stats.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

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Yes No

Wisconsin Department of Agriculture, Trade and Consumer Protection
Regulatory Flexibility Analysis

Rule Subject: **Safety, Maintenance, and Operation of Public Pools and Water Attractions**

Adm. Code Reference: **ATCP 76**

Rules Clearinghouse #: **22-021**

DATCP Docket #: **19-R-04**

Rule Summary

The proposed rule modifies Wis. Admin. Code ch. ATCP 76.

A revised Wis. Admin. Code ch. ATCP 76 is needed because new technologies and trends within the pool and water attraction industry need to be acknowledged and addressed. In addition, in using the existing Wis. Admin. Code ch. ATCP 76, industry, inspectors and the general public continually note places within the code where clarification is needed to facilitate understanding of the rule and its intent. Because of the need for clarification, many new definitions are needed.

The pool industry encompasses a broad variety of businesses from small motels and campgrounds, to homeowner associations, schools, healthcare, and municipal and resort waterparks. In order to ensure development of a rule that considers all the various niches within industry, robust representation from within the pool industry, public health and pool code plan review was sought from industry groups that were advised during rule development. After receiving public comment and based on the Joint Committee for Review of Administrative Rules (JCRAR) action, the department removed subchapter VII, relating to limited-use public pools. On April 26, 2022, JCRAR adopted a motion under s. 227.26 (2) (d), Stats., that suspended s. ATCP 76.02 (1) (a) in part as it applies to a tourist rooming house. In response, the department has also removed tourist rooming houses and bed and breakfast establishments from s. ATCP 76.02 (1) (a).

Sections were added and formatted to align with other Retail and Recreational rules.

The proposed licensing model more clearly reflects the risks and complexity of the pool operation and more accurately reflects the time it takes for the department to perform its licensing and inspection responsibilities. This licensing model will promote fairness to small business owners by having the license fee reflect inspection time and risk associated with their facilities. License fees will not be based on a one-size-fits-all model.

The proposed rule incorporates best practices and modern technologies in pool operation. Significant input was received from industry and public health partners related to methods for the operation of a pool's recirculation system and methods for chemical testing. Much of the language was outdated, including references that are no longer accurate or relevant. The input received

ensured that the rule was updated to allow for new materials that perform more effectively in filtering pool water, and potentially a newer water testing kit that employs technologies that may be more accurate or more efficient than the traditional approach. In these sections, the language of the rule was intensively reviewed and clarified so that it is more easily understood by industry and regulators alike.

Supervision and staffing of pools is key to safely operating the pool as well as addressing risks that may require staffing by a lifeguard or attendant. The input received from industry and local health departments was used to revise the rule to address supervision of pools in general, and supervision of the nearly infinite types of features that may be added to a pool. At one time, a pool was a plain rectangle in the ground. Now there are pools that offer experiences such as waves, vortexes, and slide-based rides. It would be impossible to determine an exhaustive list of safety rules that would be applicable to all possible types of water experiences. The tables that describe attendant and lifeguard staffing were clarified so that they cover each type of water experience in detail (whirlpool, waterslide, pool slide under six feet, for example), and describe what the requirement is for that type of pool. The revised rule requires pool operators and responsible supervisors to develop rules that make sense and accomplish a common goal of safely participating in the water experience.

When a waterborne illness outbreak occurs, early intervention is essential to identify and contain the outbreak. The rule supports expeditious investigation and resolution of any waterborne outbreaks. Sometimes when a suspected outbreak is occurring, it is difficult to know exactly what is expected of a pool operator. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

In recent years, there has been an upward trend in demand for dog swims. The revised rule aims at addressing the risks to ensure health and safety at these events by eliminating time spent on the variance process by pool operators, public health staff, and the Department.

Federal Virginia Graeme Baker Act requirements are intended to prevent entrapment and evisceration from submerged drains in the pool. These requirements specify ratings for drain covers as well as placement of drain covers. The revised rule clearly states the requirements and aligns with federal regulations.

The revised rule will streamline and simplify disinfectant residual requirements to be in line with those of surrounding states, while maintaining more stringent requirements in settings where appropriate.

In the revised rule, Wisconsin will be the first to address the toxicity of cyanuric acid by recognizing that a level of 300 parts per million (ppm) is toxic to humans, per the National Sanitation Foundation (2019).

Small Businesses Affected

The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. Instead of licensing by activity area, the licensing model in the revised rule is

based on assigning complexity based on basic basin characteristics, and assigning add-on fees based on what is added to the basin. This greatly clarifies the licensing process, and brings the fee for the pool into alignment with the time it takes to inspect it and manage the program.

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Reporting, Bookkeeping and other Procedures

The proposed rule would require additional recordkeeping. The chemical interlock is a critical safety feature to predict chemical accidents. The interlock must be tested monthly or as recommended by manufacturer. In addition, the revised rule requires operators to keep information related to their pumps and drain covers, and new pools to keep pool plans. These documents are all essential for assessing safety. When pool operators do not have these documents, it results in undue hardship and extra work to obtain the documents.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses. If there is a lack of active managerial control as documented by two re-inspections within a three year period, the pool operator will be required to provide a certified pool operator. Existing requirements for certified pool operators are only in place for water attractions.

Accommodation for Small Business

A major change in these rules is the chart that assigns points for risk in licensing. This rule makes accommodation for the complexity of the business. The proposed changes in criteria for license fees were tested by applying the criteria to businesses familiar to industry members.

Conclusion

The Department believes that the provisions in this proposed rule will benefit Wisconsin's pool industry and is expected to impose very limited additional costs. The Department expects stakeholders may favorably view consideration of rule provisions that allow industry more flexibility in meeting standards and more fairly allocate regulatory requirements.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22 (2) (e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 04 day of May, 2022.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Amy Millard, Deputy Administrator,
Division of Food and Recreational Safety