



Wisconsin Department of Agriculture, Trade and Consumer Protection

Division of Trade and Consumer Protection

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GUIDANCE DOCUMENT

JCRAR Action on Wis. Admin. Code § ATCP 76.02 (1)(a)

This guidance document is based on Wis. Stat. ch. 97 and chapter(s) ATCP 76 Wis. Admin. Code. This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed.

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6/1/2022

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DATE

Contributors:



REC-GUD-015	Public Pools and Water Attractions
Revision: 1.0	JCRAR Action on Wis. Admin. Code § ATCP 76.02 (1)(a)
Approved: May 31 2022	Wis. Admin. Code: § ATCP 76.02 (1)(a)

SUBJECT: Joint Committee for Review on Administrative Rules (JCRAR) Action on Wis. Admin. Code § ATCP 76.02 (1)(a)

Scope

This guidance document applies to local and state inspection staff.

Definitions

N/A - This document does not create or identify any definitions that are not already defined in Wisconsin Statute or Administrative Rule.

Guidance

The following guidance provides details relating to residential pools, whirlpools, and hot tubs at tourist rooming houses (TRH). On April 26, 2022, the Joint Committee for Review of Administrative Rules (JCRAR) suspended the phrase “a tourist rooming house” from Wis. Admin. Code § ATCP 76.02 (1)(a), relating to the applicability of ch. ATCP 76, and moved to introduce senate and assembly bills to remove pools that are located at short-term rentals, as defined in Wis. Stat. § 66.0615(1)(dk), from Wis. Stat §§ 93.07(24)(e) and 97.67(1). Below is the portion of ch. ATCP 76 impacted by this legislative committee action.

ATCP 76.02 Applicability.

- (1)** This chapter applies to the operation of public pools and water attractions.
- (a)** A pool or water attraction is a public pool or water attraction if it is installed in a “place of employment,” as defined in s. 101.01 (11), Stats., or in a “public building,” as defined in s. 101.01 (12), Stats., or if it serves or is installed for use by the state, a political subdivision of the state, a motel, a hotel, ~~a tourist rooming house~~, a bed and breakfast establishment, a resort, a camp, a campground, a club, an association, a housing development, such as an apartment complex, condominium complex, or housing complex having a homeowners' association, a school, a religious, charitable or youth organization, or an educational or rehabilitative facility.

WHAT DOES THIS MEAN FOR YOU?

Prior to this suspension, DATCP treated pools offered at a TRH as public pools subject to chs. ATCP 76 and SPS 390. Based on the JCRAR action, a pool, whirlpool, or hot tub at a TRH is no longer included in the definition of a public pool. Suspension of the section of rule went into effect immediately. In the next legislative session, likely in January 2023, the legislature is expected to consider the bills proposed

during the JCRAR hearing, and whether to remove DATCP's authority under Wis. Stat §§ 93.07(24)(e) and 97.67(1) to regulate pools that are located at short-term rentals, as defined in Wis. Stat. § 66.0615(1)(dk). If the legislation passes, the suspension would permanently remove "a tourist rooming house" from ch. ATCP 76.

Going forward, pools, whirlpools, or hot tubs offered at TRHs are not under the regulatory jurisdiction of DATCP or its agents. Based on the JCRAR action, DATCP has also removed Subchapter VII (Limited Use Public Pool) from the proposed updates to ch. ATCP 76. Subchapter VII dealt specifically with limited-use public pools, such as those offered at TRHs. The proposed version of ch. ATCP 76 also removed bed and breakfast establishments (B&B) from the definition of a public pool. Until the proposed rule is passed, the rental or other payment agreement for a licensed B&B may only offer a pool to guests through that agreement if the pool is a licensed public pool. However, pools that are not licensed public pools may be offered to guests through arrangements outside of the B&B agreement.

Previous and pending compliance actions against TRH pools, whirlpools, and hot tubs must be immediately dismissed as there is no longer a regulatory foundation for these actions. We ask that you modify any licensing forms or licensing messages to comply with the change made by JCRAR. The JCRAR action did not prohibit local jurisdictions in their ability to create local regulations under their independent statutory authority.

During the course of a TRH lodging inspection, structures specific to the pool facility (fencing, covers, locks, decking and basin), along with maintenance and operations, shall not be reviewed (under ch. ATCP 72, specifically § ATCP 72.15). Chemicals related to pool operations and stored at the TRH shall be stored in the same manner as other household chemicals and given no additional consideration.

Question: Can we still require TRH pools to be covered, fenced and locked when not in use?

No, authority to require covers, locks or fencing no longer exists. Note that ch. ATCP 72 general health and safety provisions are not to be used to regulate TRH pools, whirlpools, and hot tubs based on the clear direction of the JCRAR.

Question: What does this mean for bed and breakfast establishments (B&B)?

The JCRAR action only addressed TRHs. Under state law, the rental or other payment agreement for a licensed B&B may only offer a pool to guests through that agreement if the pool is a licensed public pool. However, pools that are not licensed public pools may be offered to guests through arrangements outside of the B&B agreement. The proposed ch. ATCP 76 removes B&Bs from the definition of a public pool.

Contacts

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References

Wis. Stat. § 66.0615(1)(dk)

Wis. Stat §§ 93.07(24)(e) and 97.67(1).





Wis. Admin. Code: § ATCP 76.02 (1)(a)

Document History

The most recent changes to this controlled document are listed at the top of the table:

Revision	Author	Change Description	Approval Date
1.0	BFRB Program Staff	New document.	May 31 2022

Approval

5/25/2022 9:30 AM	Task Completed	 Kaplanek, James H	Task assigned to Kaplanek, James H was approved by Kaplanek, James H. Comments: no additional comments	Approved by Kaplanek, James H
5/25/2022 10:01 AM	Task Completed	 Millard, Amy M	Task assigned to Millard, Amy M was approved by Millard, Amy M. Comments:	Approved by Millard, Amy M
5/25/2022 10:08 AM	Task Completed	 Walz, Sheri A	Task assigned to Walz, Sheri A was approved by Walz, Sheri A. Comments: Added a few minor suggested edits as tracked changes.	Approved by Walz, Sheri A
5/31/2022 8:09 AM	Task Completed	 Sprecker, Troy S	Task assigned to Sprecker, Troy S was approved by Sprecker, Troy S. Comments:	Approved by Sprecker, Troy S

