



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: March 3, 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 March 3, 2022, Board meeting, the Department will request approval of a public hearing draft, regarding ch. ATCP 76 relating to Safety, Maintenance, and Operation of Public Pools and Water Attractions. Board approval will allow the Department to submit the public hearing draft to the Legislative Council Rules Clearinghouse and hold public hearings on the proposed rule.

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 input received and is a modernization of ch. ATCP 76. Highlights of the rule revision 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.
- Addresses limited-use public pools that are not covered in the current rule.
- 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 will hold six public hearings on the preliminary rule draft. The hearings will take place March 29-31, 2022 in Green Bay, Wausau, and Eau Claire. Hearings continue in to April with a virtual hearing on April 1, 2022, and in-person hearings in Wisconsin Dells and Elkhorn on April 7-8, 2022.

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).

**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). 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), 97.67 (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, 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 s. 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 public swimming pool resumes operations, pursuant to sub. 97.12 (3), Stats.

Related Statutes and Rules

Since the transfer of several programs from the 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. Pool operators are also required to meet the requirements for pool construction pursuant to ch. SPS 390. Public pools and water attractions operators shall also meet the requirements pursuant to chs. NR 108, 811 and 812.

Plain Language Analysis

The proposed rule modifies Wis. Admin. Code ch. ATCP 76 by incorporating significant rule provisions of former ch. DHS 172.

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 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.

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 a 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 (whirlpool, waterslide, pool slide under six 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.

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.

The Department also addressed limited-use public pools. These pools are not addressed under the current rule. Licensing and health and safety requirements have been developed for this new business model.

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 (CPSC) pursuant to 15 U.S. Code § 8003 requires specific construction and placement of drain covers.

The Centers for Disease Control and Prevention (CDC), oversees 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.

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 Code, and although it is mandated by Federal law, commenters expressed concerns with Virginia Graeme Baker Act (VGBA) and the Americans with Disabilities Act (ADA). 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 (construction and operation vs. 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 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, Part 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, Rule 641, ch.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 the rule, 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 home owners 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-325.2191 through R-325.2199 contains 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 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 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 the rule was solicited from industry stakeholders on ch. ATCP 76, 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, Department, and local health department agent representatives, as well as the 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 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 fees 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.

Limited-use public pools have a proposed license fee of \$150.

Pools and water attractions need a secondary containment system for storage of disinfectants or acids. An estimated cost for the container is \$85 to \$200.

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.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

The Department's Regulatory Review Coordinator may be contacted by:

Email: Bradford.Steinel@wisconsin.gov

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Where and When Comments May Be Submitted

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

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Comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this hearing draft rule is approved by the board of agriculture, trade and consumer protection.

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 swimming pools and water
6 attractions for enforcement by the department and agent local health departments to protect public health
7 and safety.

8 **ATCP 76.02 Scope. (1) APPLICABILITY.** This chapter applies to all public pools and water attractions,
9 except that Subchapter VII, applies only to limited-use public pools.

10 (a) *Pool or water attraction.* A pool or water attraction is a public pool or water attraction if it serves
11 or is installed for use by the state, a political subdivision of the state, a motel, a hotel, a resort, a camp, a
12 campground, a club, an association, a housing development, an apartment complex with 3 or more dwelling
13 units, condominium complex, or housing complex having homeowners' association, a school, a religious,
14 charitable or youth organization, an educational or rehabilitative facility.

15 (b) *Limited-use public pool.* A pool is considered a limited-use public pool if the pool is advertised for
16 use to the general public and is associated with one or two family dwelling that is not part of a condominium
17 association.

18 (c) *Reference to the term “pool”*. Unless the context clearly indicates otherwise, references to “pool”
19 in these rules means a public pool, water attraction or a limited-use public pool.

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

24 (3) PROCEDURE FOR VARIANCE REQUEST. (a) *Application*. Request for modification or waiver
25 of a requirement of this chapter shall be submitted in writing to the department or its agent having
26 jurisdiction, along with documentation specified in par. (d).

27 (b) *Local review*. A local inspector shall review the request and forward it to the department with
28 recommendations for approval or disapproval.

29 (c) *Department action on a variance*. On receipt of a complete variance request as specified in this
30 section, the department shall review the request and grant or deny the request in writing within 30 working
31 days. A variance approved by the department shall be made conditional for a defined period of time, or
32 shall expire 5 years from the date of issuance. The department or its agent shall maintain a copy of the
33 variance in the license holder’s inspection history file.

34 (d) *Application contents*. Documentation justifying a proposed variance from the requirements of this
35 chapter shall include the following information:

36 1. A statement of the proposed variance from this chapter requirement citing relevant chapter location
37 numbers;

38 2. The rationale for how the potential public health hazards and nuisances addressed by the relevant
39 chapter section will be alternatively addressed by the proposed variance.

40 (4) CONFORMANCE WITH AN APPROVED VARIANCE. If the department grants a variance as
41 specified in sub. (2), the license holder shall: (a) *Conditions*. Comply with the department’s conditions for
42 the variance approval ^P and

43 (b) *Retention*. Maintain a copy of the approved variance at the pool.

44 (5) TRANSFERABILITY. An approved variance is not transferable to any other pool, entity, or
45 licensee.

46 (6) REISSUANCE. A license holder who wishes to continue a variance after its expiration shall:

47 (a) *Request for reissuance.* File a request with the department for reissuance of the variance at least 30
48 days prior to its expiration, unless permission for a later date has been granted by the department.

49 (b) *Continued validity.* When a license holder has made timely and sufficient application for the
50 reissuance of a variance in reference to any activity of a continuing nature, the existing waiver does not
51 expire until the application has been finally acted upon by the department.

52 **Note:** To obtain a form for requesting a variance, e-mail datcpdfsrec@wisconsin.gov or contact the
53 Bureau of Food and Recreational Businesses at (608) 224-4702 or PO Box 8911, Madison, Wisconsin
54 53708-8911.

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

56 (1) “Active Managerial Control” means that the risks at the pool are being managed so that the pool
57 is in compliance pursuant to ch. ATCP 76, or conditions are monitored so that corrections necessary for
58 compliance are in progress.

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

62 (3) “Administrative follow-up” means a type of inspection in lieu of a reinspection. The administrative
63 follow-up does not require an in-person visit to the facility because the corrective action can be validated
64 through electronic or other effective means.

65 (4) “Adult” means a person 18 years of age or older.

66 (5) “AED” means automated external defibrillator.

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

69 attractions.

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

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

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

74 (10) “Barrier” means a fence, wall or similar structure meeting the requirements pursuant to s. SPS
75 390.18 (4).

76 (11) “Basin” means any vessel constructed of manmade materials designed to hold water to be used as
77 a public swimming pool or water attraction, the splash zone of an interactive play attraction, or a stand-
78 alone run-out slide.

79 (12) “Breakpoint chlorination” means establishing a hygienic environment in the pool by raising the free
80 available chlorine level to 10 times the combined chlorine level to achieve the destruction of chloramines.

81 (13) “Certified operator” means an operator who is certified by successful completion of at least one of
82 the following training courses:

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

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

85 (c) An equivalent course approved by the department

86 (14) “CPR” means cardiopulmonary resuscitation.

87 (15) “Children’s slide” means a slide that has a maximum height of 4 feet or 1.2 meters as measured
88 vertically from the slide entrance to slide terminus, and located in less than 24 inches or 61 centimeters of
89 water.

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

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

92 (18) (a) “Core item” means a provision in this rule that is not designated as a priority item or a priority
93 foundation item.

94 (b) “Core item” includes an item that usually relates to general sanitation, operational controls,

95 sanitation standard operating procedures, facilities or structures, equipment design, or general maintenance.

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

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

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

101 (22) “Deep portion” means a portion of a pool having a design water depth greater than 5 feet or 1.5
102 meters.

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

104 (24) “Drop slide” means a slide where the terminus is located 20 inches or 50.8 centimeters or more
105 above the water level.

106 (25) “Enclosure” means the area within the barrier that separates the pool or water attraction area from
107 other areas of the building or premises.

108 (26) “Engineer” means a registered professional engineer licensed in Wisconsin.

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

110 (28) “Equipment” means all the necessary items for the operation of a public swimming pool.

111 (29) “Erosion feeder” means a chemical feed device in which powder, tablets, briquettes, or sticks are
112 placed in a container and through which a water stream is passed, eroding and dissolving the chemical.

113 (30) “Exercise pool” means a pool of shallow depth that operates with or without a current.

114 (31) “Existing pool” means a pool operating with a license first issued by the department or its agent
115 before June 30, 2023.

116 (32) (a) “Feature” means a physical object installed in a pool or water attraction that is intended for
117 recreational use.

118 (b) A “feature includes slides, water slides, pad walks, basketball hoops, diving boards, wave
119 generators, treadmills, vortex pools, current pools, swim-up bars, vanishing edge pools, tethered or

120 untethered floatables, spray features, pool depths greater than 16 feet or a play feature pursuant to s. SPS
121 390.30.

122 (33) “Filter aid” means finely powdered diatomaceous earth or similar approved material used to coat
123 a septum type filter.

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

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

128 (36) “General public” means any person who patronizes a pool. “General public” does not include
129 members of a household or their personal guests.

130 (37) “Imminent health hazard” means a condition that presents a substantial likelihood to cause severe
131 adverse health consequences or death.

132 (38) (a) “Instructional Program” means an activity occurring in the water that is led by a person teaching
133 a participant how to do an exercise, movement, skill or similar activity.

134 (b) “Instructional Program” includes a swimming class, an exercise class or a water aerobics class.

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

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

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

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

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

148 **(42)** “Lifeguard and attendant staffing plan” means a written description about how lifeguards and
149 attendants will be used at pools.

150 **(43)** (a) “Limited-use public pool” means a swimming pool or whirlpool advertised for use to the general
151 public and is associated with one or two family dwelling that is not part of a condominium association.

152 (b) The limited-use public pool does not meet department of safety and professional services ch. SPS 390.

153 (c) “Limited-use public pool” does not mean a pool only used by the owner and their guests, a plastic kiddie
154 pool, or a swim pond.

155 **(44)** “Maximum flow” means the highest flow rate attainable by the pump without friction from the
156 recirculation system.

157 **(45)** “New pool” means a pool operating with a license first issued by the department or its agent on or
158 after July 1, 2023.

159 **(46)** (a) “Nontethered floatable” means a floatation device added to a pool that is not tethered to the pool
160 basin, allowing movement of the device around the water.

161 (b) “Nontethered floatable” includes floating pads or other similar items.

162 (c) “Nontethered floatable” does not include rubber tubes in leisure rivers and swim wings.

163 **(47)** “NSF” means National Sanitation Foundation.

164 **(48)** “Operator” means the owner of a pool or the person responsible to the owner for the operation of a
165 pool, including the mechanical systems operations of the pool.

166 **(49)** “Oxidizer” means a chemical that can take away electrons from a molecule or atom, thereby
167 destroying organic matter.

168 **(50)** “Owner” means the state, a political subdivision of the state, corporation, company, association,
169 firm, partnership, or individual owning or controlling any pool.

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

172 (52) “Pathogen” means a microbial organism capable of causing disease.

173 (53) “Patron” means a human user of a pool.

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

175 (55) “Peak flow” means the highest flow rate attainable by the pump within the pool’s recirculation
176 system.

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

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

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

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

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

192 (61) “Principle renter” means the adult who is responsible for communicating with the owner or
193 responsible supervisor and is present to ensure that rules for the safe use of the limited-use public pool are
194 followed.

195 (62) (a) “Priority item” means a provision in this rule directly related to health and safety that if not

196 met or is missing could significantly contribute to an increased risk for injury or illness.

197 (b) “Priority item” is an item that is denoted in this rule with a superscript P^P.

198 (63) (a) “Priority foundation item” means a provision in this rule whose application supports, facilitates,
199 or enables one or more priority items.

200 (b) “Priority foundation item” includes an item that requires the purposeful incorporation of specific
201 actions, equipment or procedures by the operator such as personnel training, infrastructure, documentation
202 or record keeping.

203 (c) “Priority foundation item” is an item that is denoted in this rule with a superscript Pf^{Pf}.

204 (64) “Public Pool” means a structure, basin, chamber, or tank, and appurtenant buildings and
205 equipment, used for wading, swimming, diving, water recreation, or therapy. Types of pools include pools
206 used for swimming, diving pools, exercise pools, mobile pools, therapy pools, wading pools, whirlpools,
207 and cold soak pools and water attractions or a limited-use public pool. “Public Pool” does not include an
208 inflated mobile structure, basin, chamber, or tank; a swim pond; an individual therapeutic pod, tub, or bath;
209 or a fixed or mobile structure, basin, chamber, or tank that serves fewer than 3 individual residences and is
210 not used as a limited-use public pool.

211 (65) “Responsible supervisor” means a person designated by the operator to maintain compliance with
212 regulations governing safety and sanitation of a pool or water attraction, a pool slide, or a waterslide.

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

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

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

218 (69) “Slide terminus” means the last 10 feet or 3.1 meters of a slide flume discharging into a pool or
219 water attraction.

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

221 (71) “Superchlorination” means the addition of an oxidizing product such as chlorine to pool water to

222 raise the level of oxidizer to at least 10 ppm. “Superchlorination” is sometimes referred to as superoxidation.

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

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

227 (74) “Therapy pool” means a pool used for professionally administered physical therapy.

228 (75) “Turnover time” means the time for a given volume of water to pass through the recirculation
229 system.

230 (76) “Vanishing edge pool” means a pool that has no above– water line wall on one or more sides where
231 water spills over the edge.

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

234 (78) “Wading pool” means a shallow pool having a maximum depth of 24 inches (61 centimeters) and
235 intended for children’s play.

236 (79) “Water attraction” means a pool with design and operational features that provide patron
237 recreational activity other than conventional swimming and involves partial or total immersion of the body.
238 Types of water attractions include activity pools, interactive play attractions, leisure rivers, plunge pools,
239 vortex pools, vanishing edge pools, waterslides, run–out slides, drop slides, pool slides, wave pools,
240 zero–depth entry pools, and any public pool with play features except wading pools.

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

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

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

247 (83) “Zero–depth entry pool” means a water attraction having a sloped entrance to where the water depth

248 is zero inches at the shallowest point.

249 **ATCP 76.04 Plans and specifications for pools. (1) APPROVAL REQUIRED.** Except as required
250 pursuant to Subchapter VII, an operator shall submit pool plans for new construction and obtain approval
251 from the department of safety and professional services pursuant to ch. SPS 390. After July 1, 2023, the
252 following documents shall be kept onsite and made available to the department or its agent upon request.

253 (a) Approved pool plans.

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

255 (c) Compliance declaration, if applicable.

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

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

258 (f) Department of safety and professional services or department variances, if applicable.

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

262 **(3) CHANGE OF OPERATOR.** For a pool constructed prior to July 1, 2023, pool construction plans
263 are not required at a change of operator.

264 **ATCP 76.045 License holder qualifications.** To qualify for a license, an applicant shall do all of the
265 following:

266 **(1)** Be an owner of the pool or an officer of the legal entity owning the pool.

267 **(2)** Comply with the requirements of this chapter.

268 **(3)** Allow authorized representatives of the department or its agent access to the pool and provide
269 required information to those authorized representatives.

270 **(4)** Pay the applicable license fees at the time the application is submitted.

271 **ATCP 76.046 License holder responsibilities.** Upon acceptance of the license issued by the department
272 or its agent, the license holder shall do all of the following in order to retain the license:

273 **(1)** Comply with the provisions of this chapter.

274 (2) Follow reporting requirements to the department or agents, as applicable, as outlined in this chapter.

275 (3) Immediately discontinue operations directly related to an imminent health hazard, and notify the
276 department or its agent.

277 (4) Replace existing facilities and equipment that no longer comply with the criteria set forth in this
278 chapter.

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

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

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

286 **ATCP 76.05 License to operate a pool. (1) LICENSE REQUIRED.** (a) *Conditions requiring a license.*
287 No person may operate a pool without a license from the department or its agent, except as provided under
288 sub. (c) 2.; a separate license is required for each pool basin.

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

291 (c) *Transfer of ownership.*

292 1. If a license holder sells or otherwise transfers ownership or operation of a pool to another person, a
293 new license is required pursuant to s. 97.67 (2) (a), Stats., and the pool may not be opened to the public
294 until the department or its agent has issued a new license.

295 2. Pursuant to s. 97.67 (2) (b) and (c), Stats., an individual may transfer a license to an immediate
296 family member, if the individual is transferring operation of the pool. A sole proprietorship that reorganizes
297 as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole
298 proprietorship or a different type of business entity, may transfer a license to the newly formed business
299 entity or sole proprietorship if the pool remains at the location for which the license was issued and at least

300 one individual who had an ownership interest in the sole proprietorship or business entity to which the
301 license was issued has an ownership interest in the newly formed sole proprietorship or business entity.

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

304 4. A person who wishes to transfer a license under sub. (c), shall notify the department or its agent
305 prior to operation of the pool.

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

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

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

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

315 (3) NEW LICENSE. (a) *Application.* To apply for a new pool license, the applicant shall apply on an
316 application form provided by the department or its agent. The completed application shall be accompanied by
317 all of the following:

318 1. The applicable fees pursuant to s. ATCP 76.06 Table B or C, and any fees previously due to the
319 department or its agent.

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

322 3. The completed final inspection report and approval from the department of safety and professional
323 services authorized inspector.

324 4. A statement from a supervising construction contractor, architect or engineer who worked on the pool
325 indicating that it was completed in accordance with the pool's construction plan pursuant to s. SPS 390.05

326 (1) (c).

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

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

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

335 **Note:** To obtain a copy of the pool license application form, or to arrange for a preinspection, call (608)
336 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

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

342 (b) *Department action on a license renewal.*

343 1. The department may refuse to renew a new pool license as provided under sub. (5) (a) 1.

344 2. The department shall refuse to renew an existing pool license as provided under sub. (5) (b).

345 (5) DEPARTMENT OR AGENT ACTION ON LICENSE APPLICATION. (a) *Department decision*
346 *on a license.*

347 1. The department or its agent may not issue a new pool license or renew an existing pool license unless all
348 of the following conditions are met: a. The operator has corrected a condition for which the department or
349 agent has issued a written health or safety-related order.

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

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

354 (b) *License prohibited.* The department or its agent shall refuse to issue a new pool license or renew
355 an existing pool license under any of the following circumstances:

356 1. A fully and accurately completed, signed and dated application has not been received by the
357 department or its agent.

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

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

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

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

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

371 (d) *Granting or denial of a license.*

372 1. The department or its agent shall issue or deny a new pool license or shall renew an existing pool
373 license within 30 days after the applicant meets all of the requirements pursuant to subs. (3) or (4), as
374 applicable.

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

377 (6) VOIDED LICENSE FOR FAILURE TO PAY FEES. (a) *Payment time frame.* If an applicant or
378 operator fails to pay all applicable fees, late fees and processing charges pursuant to s. ATCP 76.06, within
379 45 days after the expiration of the license, the license is void.

380 (b) *Notice of insufficiency.* If the department receives a notice of an insufficiency pursuant to s. ATCP
381 76.06 (4), the applicant or operator shall have 15 days after receipt of notice from the department of the
382 insufficiency to pay all applicable fees and processing charges or the license is void.

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

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

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

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

397 (2) LICENSE CATEGORY ASSIGNMENT. (a) *Criteria.*

398 1. The department or its agent shall assign a pool basin to a license category by evaluating the
399 complexity of the pool basin based on the criteria pursuant to s. ATCP 76.06 Table A, in this section.

400 2. The department or its agent shall assign a pool basin whose point value is 0 to 2, to the simple license
401 category.

402 3. The department or its agent shall assign a pool basin whose point value is greater than 2, but not
403 more than 3, to the moderate license category.

404 4. The department or its agent shall assign a pool basin whose point value is 3.5 or greater, to the
405 complex license category.

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

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

412 **ATCP 76.06 Table A**

| 413 | Determining Factors for Pool License Category (per Basin) | Point Value |
|-----|--|--------------------|
| 414 | A. Basin | 1.0 |
| 415 | B. The pool type is a whirlpool or therapy pool | 1.0 |
| 416 | C. Choose the applicable recirculation system | |
| 417 | 1. Recirculation system is designated to a single pool basin | 1.0 |
| 418 | 2. Recirculation system is shared with another pool basin | 0.5 |
| 419 | D. The basin is greater than 1999 square feet in area | 1.0 |
| 420 | E. The pool is defined as a water attraction | 1.0 |

421 (c) *Fee schedule tables.*

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

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

| 424 | Type of | License | Preinspection | First | Second and | Late |
|-----|-----------------|----------------|----------------------|-----------------------|------------------------|-------------|
| 425 | Facility | Fee | Fee | Reinspection | Subsequent | Fee |
| 426 | | | | or | Reinspection or | |
| 427 | | | | Administrative | Administrative | |
| 428 | | | | Follow-Up Fee | Follow-Up Fee | |
| 429 | | | | | | |

| | | | | | | |
|-----|--------------------------|-------|-------|-------|-------|-------|
| 430 | Simple pool | \$200 | \$200 | \$100 | \$150 | \$40 |
| 431 | | | | | | |
| 432 | Simple pool w/ features | \$332 | \$332 | \$100 | \$150 | \$66 |
| 433 | | | | | | |
| 434 | | | | | | |
| 435 | Moderate pool | \$300 | \$300 | \$100 | \$150 | \$60 |
| 436 | | | | | | |
| 437 | Moderate pool w/features | \$432 | \$432 | \$100 | \$150 | \$86 |
| 438 | | | | | | |
| 439 | | | | | | |
| 440 | Complex pool | \$375 | \$375 | \$100 | \$150 | \$75 |
| 441 | | | | | | |
| 442 | Complex pool w/features | \$507 | \$507 | \$100 | \$150 | \$101 |
| 443 | | | | | | |
| 444 | | | | | | |

ATCP 76.06 Table C Fee Schedule — SFY 2025

For licenses issued on or after April 1, 2025

| 447 | Type of Facility | License Fee | Preinspection Fee | First Reinspection or Administrative Follow-Up Fee | Second and Subsequent Reinspection or Administrative Follow-Up Fee | Late Fee |
|-----|---------------------------|--------------------|--------------------------|---|---|-----------------|
| 448 | | | | | | |
| 449 | | | | | | |
| 450 | | | | | | |
| 451 | | | | | | |
| 452 | | | | | | |
| 453 | Simple pool | \$208 | \$208 | \$100 | \$150 | \$42 |
| 454 | | | | | | |
| 455 | Simple pool w/ features | \$345 | \$345 | \$100 | \$150 | \$69 |
| 456 | | | | | | |
| 457 | | | | | | |
| 458 | Moderate pool | \$312 | \$312 | \$100 | \$150 | \$62 |
| 459 | | | | | | |
| 460 | Moderate pool w/ features | \$450 | \$450 | \$100 | \$150 | \$90 |
| 461 | | | | | | |
| 462 | | | | | | |
| 463 | Complex pool | \$390 | \$390 | \$100 | \$150 | \$78 |
| 464 | | | | | | |
| 465 | Complex pool w/ features | \$527 | \$527 | \$100 | \$150 | \$105 |
| 466 | | | | | | |
| 467 | | | | | | |

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

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

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

476 (d) *Reinspection or administrative follow-up fee.* If the department or its agent conducts a reinspection
477 or administrative follow-up of a pool pursuant to s. ATCP 76.07 (1) (b) 1. or 4., the operator shall pay to the
478 department or its agents the applicable reinspection or administrative follow-up fee pursuant to s. ATCP
479 76.06 Table B or C. The department or its agents shall assess an additional fee pursuant to s. ATCP 76.06
480 Table B or C, for any second or subsequent reinspection or administrative follow-up conducted pursuant to
481 s. ATCP 76.07 (1) (b) 4.

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

485 **Note:** Anyone operating a pool without a license is also subject to the penalties pursuant to ss. 97.72
486 and 97.73, Stats.

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

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

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

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

498 Pursuant to ss. 97.615 (2) and 97.65 (1), Stats., an authorized employee or agent of the department, upon
499 presenting proper identification, may enter any pool area and the recirculation equipment and piping area,
500 and any other associated area at any reasonable time, for any of the following purposes:

- 501 1. To inspect the pool.
- 502 2. To determine if there has been a violation of this chapter or s. 97.67, Stats.
- 503 3. To determine compliance with previously written violation orders.
- 504 4. To secure samples or specimens.
- 505 5. To examine and copy relevant documents and records related to the operation of the pool.
- 506 6. To obtain photographic or other evidence needed to enforce this chapter.

507 (b) *Reinspections or administrative follow-up.*

508 1. The department or its agent may perform a reinspection or administrative follow-up of a pool
509 whenever an inspection or the investigation of a complaint reveals the existence of a violation that is
510 potentially hazardous to the health and welfare of patrons or employees of the pool.

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

513 3. A reinspection or administrative follow-up fee shall be charged for the reinspection or administrative
514 follow-up pursuant to s. ATCP 76.06 Table B or C, or applicable charges as determined by an agent of the
515 department.

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

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

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

527 (b) *Failure to correct a violation.*

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

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

535 (c) *Requests for an extension to correct a violation.*

536 1. The department or its agent may extend the time period to correct a violation based on a determination
537 of the seriousness of the violation, the operator's progress towards correcting the violation, and the
538 operator's previous history of compliance.

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

543 (3) TEMPORARY ORDERS. (a). *Conditions for a temporary order.* Pursuant to s. 97.65 (2) (a),
544 Stats., whenever, as a result of an inspection under sub. (1), the department or its agent has reasonable cause
545 to believe that an immediate danger to health or safety exists, the department or its agent may issue a temporary
546 order without advance notice or hearing to do any of the following:

547 1. Prohibit the continued operation or method of operation of specific equipment.

548 2. Require the premises or affected areas within the premises to cease operations and close until
549 remedies are applied which eliminate the immediate danger to health or safety.

550 (b) *Duration of a temporary order; actions prohibited.*

551 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as
552 provided in par. (c), the temporary order shall remain in effect for 14 days from the date of its delivery, but
553 a temporary order may be reissued for one additional 14-day period if necessary to complete any analysis
554 or examination of samples, specimens, or other evidence.

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

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

570 (d) *Failure to comply with a temporary order; forfeitures and penalties.* Any person who fails to
571 comply with a temporary order issued by the department shall forfeit \$50 for each day of noncompliance after
572 the order is served upon or directed to them pursuant to s. 97.12(5); and, pursuant to s. 97.65 (5) (a), Stats.,
573 may be fined not more than \$10,000 or imprisoned not more than one year in the county jail, or both. A

574 person may appeal a forfeiture or penalty pursuant to s. ATCP 76.09.

575 (4) ACTION PLANS. (a) When required by the department or its agent, the operator shall develop, on
576 a form provided by the department or its agent, an action plan for compliance. The action plan shall include
577 all of the following:

- 578 1. A description of the violation and code citation.
- 579 2. The steps the operator will take to correct the violation.
- 580 3. The date compliance will be achieved.

581 (b) The pool is placed on a conditional license.

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

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

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

595 **Note:** A request for hearing shall be submitted to the DATCP Secretary via e-mail at
596 datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin
597 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718. The hearing may be
598 conducted by the department secretary or designee.

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

601 **Subchapter II**

602 **Standards for Pools**

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

606 **ATCP 76.106 Inspections (1) REFUSED INSPECTION; PROCESS.** If a person denies access to the
607 department or its agent, the department or its agent shall inform the person of all the following:

608 (a) *Department access.* The license holder is required to allow access to the department or its agent
609 pursuant to s. 97.12, Stats.

610 (b) *License condition.* Access is a condition of the acceptance and retention of a pool license pursuant
611 to s. ATCP 76.045 (3).

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

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

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

621 **(4) INSPECTION DOCUMENTATION.** The department or its agent shall document all of the
622 following on an inspection report form:

623 (a) *Establishment information.* Administrative information about the pool's legal identity, street and
624 mailing addresses, type of establishment and operation, inspection date, and other information such as type

625 of water supply and sewage disposal, status of the license, and personnel certificates that may be required
626 at the pool.

627 (b) *Inspection findings.* The conditions or other violations from this chapter that require corrective
628 action by the license holder. An accompanying narrative shall contain all of the following:

629 1. A factual description of the violation observed, including location of the observed violation.

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

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

634 4. Unless otherwise indicated on the inspection report, each violation shall have a corrective action
635 deadline. The corrective action deadline shall be based on the following criteria:

636 a. The nature of the potential hazard involved and the complexity of the corrective action needed. The
637 department or its agent may agree to or specify additional time, not to exceed 72 hours after the inspection,
638 for the license holder to correct violations of a priority item.

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

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

646 (5) ISSUING A REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT. At the
647 conclusion of the inspection, an authorized representative of the department shall sign the completed
648 inspection report. The department or its agent shall then perform an exit interview and obtain a signature
649 on the inspection report from the license holder's designated person in charge. A copy of the inspection

650 report shall be left with the person in charge at the completion of the inspection or emailed or otherwise
651 presented within 2 business days after completion of the inspection.

652 (6) REFUSAL TO SIGN INSPECTION REPORT. If the license holder's designated person in charge
653 refuses to sign the inspection report, the department or its agent shall do all of the following:

654 (a) *Receipt of inspection report.* Inform the person who declines to sign the inspection report that a
655 written acknowledgment of receipt is not an agreement with findings.

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

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

660 (7) POSTING OF INSPECTION REPORTS. The department and its agents shall make inspection
661 reports available to the public on the internet.

662 Subchapter III

663 Water Treatment Systems and Water Quality

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

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

669 (2) SKIMMERS AND RECIRCULATION FLOW. (a) *Skimmer flow.*

670 1. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous
671 skimming action at each skimmer. ^{Pf}

672 2. The pool water level shall be maintained at an elevation so that continuous effective surface
673 skimming is accomplished through skimmers or over the gutter lip. ^{Pf}

674 a. For gutter pools, approximately 75 percent of the required recirculation flow shall be through the
675 gutter and 25 percent through the main drain during normal operation. ^{Pf}

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

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

680 (b) *Skimmers maintained.*

681 1. Skimmers, skimmer weirs, and overflow gutters and drains shall be maintained so that they are clean.

682 2. Skimmers, skimmer weirs, and overflow gutters are repaired or replaced as needed.

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

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

687 (d) *Strainer baskets or screens.*

688 1. Strainer baskets or screens shall be continuously in use and maintained.

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

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

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

692 (4) PUMPS. (a) *Operational specification.* The pump manufacturer's maintenance and operating
693 instructions shall be followed. ^{Pf}

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

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

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

| 698 Pool Type | Turnover Time (in hours) |
|----------------------|---------------------------------|
| 699 Swimming | 6 |
| 700 Diving | 6 |

| | | |
|-----|-----------------------------|---------------------------|
| 701 | Lap Lanes | 6 |
| 702 | Activity | 2 |
| 703 | Interactive play attraction | 0.5 |
| 704 | Leisure river | 2 |
| 705 | Plunge | 1 |
| 706 | Runout slide | 1 |
| 707 | Vortex | 1 |
| 708 | Wading pool | 1 |
| 709 | Whirlpool | 0.5 |
| 710 | Therapy and Exercise pools | See s. ATCP 76.11 Table B |
| 711 | Cold soak | 4 |

712

713 **Note:** If a pool is used as an alternate type of pool (ex. whirlpool used as a pool), the recirculation shall
714 follow the stricter turnover time.

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

| 716 | Pool Temperature in | Load (gals/person) | Maximum |
|-----|---------------------|-----------------------|---------|
| 717 | °F. (°C.) | Turnover Time (hours) | |
| 718 | | | |
| 719 | <72–93 (22–33 °C.) | > 2,500 | 4 |
| 720 | <72–93 (22–33 °C.) | > 450 | 2 |
| 721 | <72–93 (22–33 °C.) | < 450 | 1 |
| 722 | >93–104 (33–40 °C.) | N/A | 0.5 |

723 N/A = not applicable.

724 **Note:** If a pool is used as an alternate type of pool including a whirlpool used as a pool, the recirculation
725 should follow the stricter turnover time.

726 **(5) FLOWMETERS, VALVES, AND GAUGES.** (a) *Maintained.* Flowmeters, valves and gauges shall

727 be maintained in operating condition.

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

729 (5m) PIPING. Water treatment system piping shall have permanent labels, numbered tags or a color
730 coding system that identifies valves, piping, and the direction of water flow. Labels, tags, or color coding
731 shall correspond to a conspicuously posted, easily read chart that explains the system.

732 (6) FILTERS. (a) *General*.

733 1. The manufacturer's data plate shall be visible on all filters.

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

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

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

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

738 (b) *Sand filters*. The following types of sand filters shall be backwashed as recommended by the

739 manufacturer:

740 1. Rapid-rate sand filters. ^{Pf}

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

742 3. Vacuum sand filters. ^{Pf}

743 (c) *Diatomaceous earth filters*.

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

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

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

750 4. Positive displacement feeder suction intake shall be:

751 a. suspended at least 6 inches above any sludge layer in the solution tank. ^P

- 752 b. Tanks for mixing and distribution of slurry shall be appropriately labeled.
- 753 c. A cover with a screened vent shall be provided on all mixing and distribution tanks.
- 754 d. The installation shall be maintained to prevent backflow of water into the tanks and to prevent the
- 755 slurry from being siphoned out of the tanks into the pool recirculation system.^P

756 5. Diatomaceous earth slurry feeders.

- 757 a. The lowest effective concentration of solution shall be used in a diatomaceous earth slurry feeder.
- 758 b. The concentration of solution may not exceed 5 percent by weight.^{Pf}
- 759 c. The diatomite slurry feeder head and lines shall be flushed as recommended by the manufacturer, to
- 760 assure proper and continuous operation.^{Pf}
- 761 d. Water from the discharge side of the recirculation pump may be used.
- 762 e. If connection is to a potable water supply line, the supply line shall be equipped with an approved
- 763 backflow or backsiphonage prevention device.^P

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

765 (d) *Cartridge filters.*

- 766 1. Cartridge-type filters shall be removed and cleaned as recommended by the manufacturer.^{Pf}
- 767 2. Cartridges shall be replaced when plugged or damaged.^{Pf}
- 768 3. A duplicate set of replacement cartridges shall be available on-site and used when removing a soiled
- 769 cartridge from the filter for cleaning.^{Pf}

770 (e) *Activated filter media, filter ball media, and glass filter media.* Shall be maintained and backwashed

771 according to the manufacturers' specifications.^{Pf}

772 (f) *Other media types.* Other media types as approved by the department shall be maintained and

773 backwashed according to the manufacturers' specifications.^{Pf}

774 **ATCP 76.12 Labeling, storing, mixing, and handling chemicals, including gaseous chlorine.** All

775 labeling, storing, mixing and handling of chemicals must be in compliance with applicable local, state and

776 federal regulations.^{Pf} **(1) LABELING.** Except for erosion feeders, which require only the name of the

777 chemical, all chemicals used in the operation and maintenance of pools, and bulk storage tanks containing
778 the chemicals, shall be conspicuously labeled with the following information: ^{Pf}

779 (a) Name of the product. ^{Pf}

780 (b) The manufacturer's name and address. ^{Pf}

781 (c) Active ingredients. ^{Pf}

782 (d) Directions for use. ^{Pf}

783 (e) Hazardous ingredient warning. ^{Pf}

784 (f) For chemicals used for the primary purpose of controlling microbial or algal growth, the U.S.
785 environmental protection agency registration number. ^{Pf}

786 **(2) STORAGE.** Chemicals shall be: (a) *Original container.* Stored in the original or a properly labeled
787 container. ^{Pf}

788 (b) *Location.* Covered and kept in a clean, dry, well ventilated and locked area away from flammables,
789 incompatible chemicals, and heat sources. ^P

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

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

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

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

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

795 (h) *Ventilation.* Ventilation shall comply pursuant to ch. SPS 364, as enforced by the department of
796 safety and professional services. ^{Pf}

797 (i) *Doors.* Doors shall be locked and marked to indicate entry is for authorized personnel only. ^{Pf}

798 (j) *Emergency telephone numbers.* A list of emergency telephone numbers must be readily accessible.

799 ^{Pf}

800 (k) *Secondary containment.* For new pools constructed after the effective date of the rule, secondary
801 containment is required for liquid disinfectant and acid. ^{Pf}

802 **Note:** A separate room is not required under this rule, unless required by the department of safety and
803 professional services.

804 **(3) MIXING.** (a) *Added to water.* A chemical solution shall be added to water, not by adding water to
805 the chemical. ^P

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

807 (c) *Restriction of patrons.* Patrons shall not be in the pool, when chemicals are added directly into the
808 pool basin. ^P

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

811 (b) *Safety data sheet.*

812 1. a. Safety data sheets for each chemical used shall be readily accessible to staff, the department or its
813 agent. For example, the operator may keep the safety data sheets in a binder or on a computer as long as
814 the operator or designated representative has immediate access to the information without leaving the pool
815 area, ^{Pf}

816 b. A paper back-up is available for rapid access to the safety data sheet in the case of a power outage
817 or other emergency. ^{Pf}

818 2. Staff shall be trained in the use of the safety data sheets and where they are located. ^{Pf}

819 **ATCP 76.13 Chemical feeders and filter aid equipment. (1) GENERAL.** (a) *Installed.* All disinfectant
820 or sanitizer chemical (including disinfectant or sanitizer and acid) feeders shall be installed according to the
821 manufacturer's directions.

822 (b) *Used.* Used only with the disinfectant or sanitizer recommended by the manufacturer and meet all of
823 the following requirements: ^{Pf}

824 1. Feeders shall be:

825 a. Automatic. ^{Pf}

826 b. Easily adjustable. ^{Pf}

827 c. Capable of providing the required chemical residuals. ^{Pf}

828 (c) *Interlocks*

829 1. All recirculation systems shall be equipped with chemical feed interlocks pursuant to ch. SPS 390,
830 as enforced by the department of safety and professional services by: a. Providing an interlock device so
831 that when power to the recirculation pump is interrupted, the chemical feed stops, ^{Pf} and

832 b. Except as provided in subd. 5., for a pool or whirlpool, provide an interlock device so that when flow
833 in the recirculation system is interrupted, the chemical feeds stops. ^{Pf}

834 2. The operator or their designee shall demonstrate knowledge to the department or its agent:

835 a. Shows the location of chemical feed connections and system flow sensing interlocks in the
836 recirculation system; ^P

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

838 c. Describes how the system flow interlock functions, if applicable; ^P

839 d. Describes how monthly testing is performed; ^P and

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

841 3. Once monthly, challenge testing of the chemical feeder system shall be conducted to assess the
842 interlocks pursuant to subd 2. and 3. ^P

843 4. a. A log of the monthly test shall be kept, with the date, results, and the name of the person performing
844 the test. ^P

845 b. Records shall be made available to the department or its agent upon request.

846 5. For pools constructed before February 2009, par. (c) 1. b., does not apply unless the pool has been
847 involved in a chemical release incident in which the installation of a flow sensor would have prevented the
848 chemical release.

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

852 (b) *Maintenance signage.* When access to a pool or pool area cannot be restricted, signage shall be in
853 place indicating that the pool is closed and the area shall be monitored to ensure the pool is not in use. This

854 would include a pool area that contains more than one pool, but not all of the pools are closed. This also
855 applies to hotels with pools built before February 1, 2017, with access to the pool area through the guest
856 room. ^P

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

859 (4) EVACUATION DURING CHEMICAL FEED INCIDENT. When the interlock is activated
860 stopping flow from the chemical feeders, or the water recirculation pump is stopped manually or
861 unexpectedly for any reason and duration, including power outages, all bathers shall be evacuated from the
862 pool until manual evaluation of the cause for interlock activation or recirculation pump interruption is
863 completed by the responsible supervisor or pool operator. ^P

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

867 (2) CHEMICAL USE REQUIREMENTS. (a) *Disinfectant or Sanitizer-producing chlorine and*
868 *bromine and other chemicals.* Disinfectant or Sanitizer-producing chlorine or bromine and any
869 supplemental or alternative chemical used shall meet all the following requirements:

870 1. a. The disinfectant or sanitizer or supplemental chemical is registered with the U.S. environmental
871 protection agency as a disinfectant or sanitizer, except algaecides shall be registered as algaecide ^{Pf}.

872 b. The product label is registered with the department. ^{Pf}

873 2. The disinfectant or sanitizer has an effective residual that can be measured easily and accurately by
874 an approved field test procedure. ^{Pf}

875 3. The disinfectant or sanitizer is compatible for use with other chemicals normally used in the water
876 treatment or is clearly identified as having a use limitation. ^{Pf}

877 4. The disinfectant or sanitizer does not impart toxic properties to the patrons in the water when used
878 according to the manufacturer's directions. ^P

879 5. The disinfectant or sanitizer does not create an undue safety hazard when handled, stored, or used
880 according to the manufacturer's directions. ^P

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

883 (c) *Cyanuric acid*. Cyanuric acid-containing disinfectant or sanitizer may not be used at an indoor pool,
884 therapy pool or whirlpool, beginning 2 years after the effective date of the new rule.

885 (3) GAS CHLORINATION. (a) *Upright*. Cylinders shall be in an upright position, other
886 container types shall be placed per manufacturer's instructions. ^{Pf}

887 (b) *Chained*. Cylinders shall be chained or strapped to a rigid support. ^{Pf}

888 (c) *Moving cylinders*. Cylinders may not be moved unless the protection cap is secured over the valve.
889 ^{Pf}

890 (d) *Tagged*. Empty cylinders shall be tagged to indicate they are empty. ^{Pf}

891 (e) *Valves*. Cylinder valves shall be closed when in storage or empty. ^{Pf}

892 (4) CHEMICAL FEEDING. Disinfectant or Sanitizer and filter aid feeding shall be conducted as
893 follows: (a) *Positive displacement disinfectant or sanitizer feeding*. Liquid chemicals shall be fed into water
894 circulation piping or a surge tank or vacuum filter by means of a positive displacement feeder either at full
895 strength or diluted. If calcium hypochlorite or another chemical that forms a residue is used, a 2-tank system
896 shall be used. One tank shall be used for mixing the solution and settling the precipitate. The clear liquid
897 shall be decanted or siphoned into the second tank for distribution. ^{Pf}

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

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

902 (5) CHEMICAL CONCENTRATIONS AND RESIDUALS. (a) *Minimum disinfectant or sanitizer*
903 *residuals*. Except as provided in par. (b), feeding shall result in the minimum disinfectant or sanitizer
904 residuals pursuant to s. ATCP 76.14 Table. ^P

905 (b) *Cyanurates*. The water cyanuric acid concentration may not exceed 30 ppm. ^{Pf} 1. A cyanuric acid
906 level above 300 ppm is considered a hazardous substance in the pool. ^P

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

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

911 (e) *Combined chlorine*.

912 1. The operator shall develop and implement a plan to minimize combined chlorine in the pool. ^{Pf}

913 2. The plan shall contain the following components: ^{Pf} a. Action level (it is recommended that 0.4 ppm
914 be used for combined chlorine for either breakpoint chlorination or water replacement or a combination of
915 both to occur.)

916 b. Taking into account monochloramine in the source water.

917 c. Volume of pool.

918 d. Range of volume of fresh source water added to pool each day.

919 e. Description of showering requirements and how communicated to patrons.

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

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

923 ^P

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

925 **s. ATCP 76.14 Table A**

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

| 927 Swimming and Activity Pools | 928 Minimum Free Chlorine Residual | 929 Total Bromine |
|--|---|--------------------------|
| 930 Swimming and Activity Pool | 931 1.0 ppm | 932 3.0 ppm |
| 931 Swimming and Activity Pool With Stabilizer | 932 2.0 ppm | N/A |

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

| | | | |
|-----|---|--------------------------------------|---------|
| 971 | Interactive Play Attraction | 2.0 ppm | 3.0 ppm |
| 972 | | | |
| 973 | Interactive Play Attraction With Stabilizer | 4.0 ppm | N/A |
| 974 | | | |
| 975 | Interactive Play Attraction With Electronic | 1.0 ppm (with or without stabilizer) | 3.0 ppm |
| 976 | Monitoring Devices Present and Properly | | |
| 977 | Functioning | | |
| 978 | | | |

979 **Waterslides and Pool Slides**

| | | | |
|-----|---|--------------------------------------|---------|
| 980 | | | |
| 981 | Waterslides and Pool Slides | 2.0 ppm | 3.0 ppm |
| 982 | | | |
| 983 | Waterslides and Pool slides With Stabilizer | 4.0 ppm | N/A |
| 984 | | | |
| 985 | Waterslides and Pool Slides With Electronic | 1.0 ppm (with or without stabilizer) | 3.0 ppm |
| 986 | Monitoring Devices Present and Properly | | |
| 987 | Functioning | | |
| 988 | | | |

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

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

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

1000 (1) CHLORINE GENERATORS. (a) *NSF 50*. Chlorine generators, including salt systems, shall be
1001 certified and installed to NSF 50 and manufacturer instructions. ^{Pf}

1002 (b) *Disinfectant system on line*. An additional disinfection system shall remain on line and able to
1003 automatically provide the capacity to superchlorinate the water and maintain the required sanitizer residual.

1004 ^P

1005 (2) OZONE GENERATORS. (a) *Maximum concentration.* Ozone generators shall provide a
1006 concentration of ozone in the return line to the pool not to exceed 0.1 mg/L. ^P

1007 (b) *Electrically interlocked.* The ozone generator shall be electrically interlocked with the recirculation
1008 pump to prevent the feeding of ozone when the recirculation pump is not operating. A flow sensor controller
1009 may also be used to turn off the feeder when flow is interrupted. ^P

1010 (c) *Maximum ambient ozone level.* Off-gassing of ozone shall not result in ozone levels in the equipment
1011 room or pool area exceeding 0.1 ppm. ^P

1012 (3) ULTRAVIOLET LIGHT. Ultraviolet light units shall be certified to NSF 50, and tested and
1013 approved for use in water disinfection systems and installed pursuant to NSF 50 requirements. ^P

1014 (4) OTHER TECHNOLOGIES. Other technologies that inactivate or kill pathogens shall be certified
1015 and installed pursuant to NSF 50, manufacturer instructions and have an EPA registration number, if
1016 applicable. ^P

1017 **ATCP 76.16 Water quality. (1) GENERAL REQUIREMENT.** Pool water shall be free of chemical,
1018 physical and microbial substances known to be, or suspected of being, capable of creating toxic reactions
1019 or skin or membrane irritations. ^P

1020 (2) WATER CLARITY. Pool water shall be transparent and free from cloudiness. The main drain
1021 grating shall be readily visible from the pool deck, including the outline of the main drain and the main
1022 drain cover pattern. ^P

1023 (3) WATER SAMPLING. (a) *Sample collection and analysis.* The department or its agent may collect
1024 samples of pool water for microbiological analysis in evaluating water quality. The analysis of water samples
1025 shall be performed by a laboratory accredited by the department. These monitoring activities may be
1026 supplemented with additional microbiological analysis, which shall be performed by an accredited
1027 laboratory certified in those methods. ^{Pf}

1028 **Note:** A list of accredited laboratories may be obtained by calling the department at 608-224-4712
1029 or by email at www.datcp.state.wi.us.

1030 (b) *Bacteriological standards*. Water quality shall be maintained to meet the following standards:

1031 1. When bacteriological analysis of total *coliforms*, *Staphylococcus aureus*, *Pseudomonas aeruginosa*
1032 or *Legionella pneumophila* is performed, no colony forming units are present in a 100 mL sample. ^P

1033 2. When bacteriological analysis is performed for the heterotrophic plate count, the total count may not
1034 exceed 200 colonies in a one mL sample. ^{Pf}

1035 (4) ALGAE CONTROL. An algaecide may be used in a pool pursuant to ss. ATCP 76.14 (2) and 29.50
1036 (4) (b) 1, according to the manufacturer's label directions. ^P

1037 **ATCP 76.17 Water test kits. (1) APPROVED.** A test kit of a type approved by the department shall be
1038 maintained for testing the pool water pH; the disinfectant or sanitizer residual; the combined chlorine level,
1039 when chlorine is used; the total alkalinity; and the cyanuric acid concentration. The test kits shall meet the
1040 following specifications, as described in s. ATCP 76.17 Table A. Required Test Kit Accuracy and
1041 Increment. ^{Pf}

1042 **s. ATCP 76.17. Table A Required Test Kit Accuracy and Increment**

| 1043 | | Minimum Accuracy ^{Pf} | Maximum Increment ^{Pf} |
|------|---------------------------------------|---------------------------------------|--|
| 1044 | Chlorine and combined chlorine | +/- 0.2 ppm | 0.2 ppm |
| 1045 | pH | +/- 0.2 pH unit* | 0.2 units |
| 1046 | Alkalinity | +/- 25 percent | 10 ppm |
| 1047 | Cyanuric | +/- 20 percent | 20 ppm |
| 1048 | Bromine | +/- 10 percent | 0.5 ppm |

1049 **Note:** Operators who do not want to use a pH meter and are using a test kit with a pH accuracy of +/-
1050 0.2 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
1051 in many available test kits for pH, it is strongly encouraged to use a pH meter, with an accuracy greater
1052 than 0.1 or better, to determine the PH reading on the higher and lower end. If the Taylor test kit is used
1053 and natural light is not available, the Taylor light box shall be used as instructed in the manufacturer's

1054 directions.

1055 **(2) TEST REAGENTS USE AND STORAGE.** Test kit reagents shall be: (a) *Stored.* Stored in the original
1056 container or per manufacturer directions. ^{Pf}

1057 (b) *Replaced.* Replaced as recommended by the manufacturer. ^{Pf}

1058 (c) *Temperature range.* Stored within the temperature range specified by the manufacturer for storage. ^{Pf}

1059 (d) *Use.* Used and properly disposed of before the expiration date. ^{Pf}

1060 **(3) TESTING REAGENT TECHNOLOGIES.** The disinfectant or sanitizer testing reagent shall use
1061 one of the following technologies: (a) *Method.* Diethyl-p-phenylene diamine or DPD in powder or liquid
1062 form. A test kit using the titrimetric method, ferrous ammonium sulfate and diethyl-p-phenylene diamine
1063 or FAS-DPD for chlorine and bromine testing and colorimetric comparators used for additional water
1064 testing shall be approved by the department and shall provide for accurate comparison in the required range
1065 for each test pursuant to s. ATCP 76.14 (4). ^{Pf}

1066 (b) *Alternatives.* Other photometric, electronic or other technology that achieves the accuracy as
1067 described in s. ATCP 76.17 Table A, and measures analytes within the range pursuant to s. ATCP 76.14
1068 (4). ^{Pf}

1069 **ATCP 76.18 Water testing frequency. (1) ALL POOLS, EXCEPT WHIRLPOOLS, THERAPY AND**
1070 **EXERCISE POOLS.** (a) *pH and disinfectant or sanitizer.* Except as provided under sub. (2) or (3), water
1071 shall be tested for pH and disinfectant or sanitizer residual:

1072 1. Daily before the pool is open to the public or before the pool is in use, ^{Pf}

1073 2. At least one other time, during the day's peak patron load. ^{Pf}

1074 (b) *Combined chlorine.* When chlorine is used, the water shall also be tested at least twice a week for the
1075 combined chlorine level. ^{Pf}

1076 (c) *Alkalinity.* Water shall also be tested at least once a week for total alkalinity. ^{Pf}

1077 (d) *Cyanuric acid.* When cyanuric acid is used in the water basin, the cyanuric acid concentration in
1078 the water shall be tested at least once a week. ^{Pf}

1079 **(2) WHIRPOOL, THERAPY AND EXERCISE POOLS.** Except as specified under sub. (3), water in

1080 a whirlpool, therapy pool, or exercise pool shall be tested for pH and disinfectant or sanitizer residual: (a)
1081 *Frequency*. Before the pool is open to the public or before the pool is in use and at least 4 times daily. ^{Pf}

1082 (b) *When in use*. For at least 2 of these times, the testing shall be done when the pool is in use. ^{Pf}

1083 (c) *Combined chlorine and alkalinity*. Water shall be tested at least once daily for combined chlorine,
1084 when chlorine is used, and at least weekly for total alkalinity. ^{Pf}

1085 (3) ELECTRONIC MONITORING DEVICE. (a) *Frequency*. Water in a pool that has a properly
1086 maintained electronic monitoring device installed to control pH and disinfectant or sanitizer residual shall
1087 be manually tested at least once a day for pH and disinfectant or sanitizer residual with an approved test kit
1088 pursuant to s. ATCP 76.17 Table A. ^{Pf}

1089 (b) *Maintenance*. The operator shall periodically monitor the device to determine if it meets operating
1090 criteria pursuant to s. ATCP 76.14 (5). ^{Pf}

1091 (4) INCREASED TESTING. The department or its agent may require more frequent testing, if the
1092 testing logs are not maintained and the operator demonstrates a lack of active managerial control. ^{Pf}

1093 **ATCP 76.19 Water supply and temperature. (1) WATER SUPPLY PROTECTION.** A minimum air gap
1094 of two pipe diameters or six inches, whichever is less, shall exist between the potable water supply inlet
1095 and the overflow point of any pool, makeup tank, surge tank, solution tank, or slurry tank unless another
1096 approved backflow and backsiphonage prevention device is provided. ^P

1097 (2) WATER SOURCE. The water supplied to a pool shall be from a source approved by the department
1098 of natural resources pursuant to chs. NR 108, 811, or 812. ^P

1099 (3) WATER LEVEL. Proper water level shall be maintained at all times when the pool is open. ^{Pf}

1100 (a) *Skimmers*. Water levels in pools with skimmers shall be maintained at a level such that the weir is
1101 half submerged or in the case of a floating weir, used according to manufacturer's directions. ^{Pf}

1102 (b) *Gutters*. Pools designed with gutters shall have a continuous water supply over the gutter to provide
1103 effective skimming. ^{Pf}

1104 (4) WATER TEMPERATURE. (a) *Accuracy*.

1105 1. An accurate thermometer shall be located in the pool water return line. ^{Pf}

1106 2. Shall be accessible for observation by the operator. ^{Pf}

1107 (b) *Pool water temperature.*

1108 1. Except as provided in par. (d), the water temperature of an indoor pool shall be between 70°F. or 21°C.
1109 and 90°F. or 32°C. ^P

1110 2. The minimum water temperature for an outdoor pool shall be 65°F. or 18°C. ^P

1111 (c) *Whirlpool water temperature.* The water temperature in a whirlpool shall be greater than 90°F or
1112 32°C., and shall not exceed 104°F. or 40°C. ^P

1113 (d) *Cold soak pool water temperature.*

1114 1. Cold soak pools may be operated at a lower temperature than specified under par. (b).

1115 2. The pool shall post the water temperature on signage pursuant to s. ATCP 76.29 (5). ^{Pf}

1116 **Subchapter IV**

1117 **Staffing Pools**

1118 **ATCP 76.20 Operator. (1) POOLS.** (a) *General requirement.* Each pool shall be under the supervision of
1119 at least one operator, except that if multiple pools are located on the same premise, and licensed by the same
1120 person, they may be supervised by one operator. ^{Pf}

1121 (b) *Operator responsibilities.* Each operator shall be responsible for pool operation and maintenance
1122 including equipment shut-down, backwashing, daily maintenance and vacuuming, and maintenance of
1123 water quality pursuant to s. ATCP 76.11. ^{Pf}

1124 **(2) POOL OPERATOR CERTIFICATION.** (a) *Pool operator certification required.*

1125 1. Each water attraction or multiple water attractions on the same premise shall have at least one certified
1126 operator. ^{Pf}

1127 2. An owner of a pool who demonstrates a lack of active managerial control over the pool operation by
1128 having 2 or more reinspections in a 3-year period. ^{Pf}

1129 3. Pool operator certification shall be obtained within 90-days of receiving a new license or meeting
1130 the conditions under sub. (2) (a) 2. ^{Pf} a. A pool that is required to have a certified operator under sub. (2),

1131 may contract with a certified operator.

1132 b. The certified operator shall be able to respond within 3-hours.

1133 4. The owner of a pool shall replace a certified operator within 90 days after a certified operator's
1134 departure. ^{Pf}

1135 (b) *Certified operator duties.*

1136 1. The certified operator will perform service related to water quality parameters pursuant to ss. ATCP
1137 76.14, 76.16 and 76.19.

1138 2. The certified operator shall ensure that equipment is properly functioning pursuant to ss. ATCP
1139 76.11, 76.13, 76.15, and 76.17.

1140 (c) *Documentation of certification.* A current copy of the certified operator's certification shall be
1141 maintained at the pool. ^{Pf}

1142 **ATCP 76.21 Responsible supervisor. (1) RESPONSIBILITIES.** (a) *Supervision.* Each pool shall be under
1143 the supervision of at least one responsible supervisor at all times when the pool is in use or is open to the
1144 public. ^P

1145 (b) *Availability.* The responsible supervisor shall be on the premises or immediately available via a phone
1146 number posted by the emergency phone and shall respond to an unsafe or unsanitary condition within 15
1147 minutes, at any time the pool is open for use. ^P

1148 (c) *Duties.* The responsible supervisor shall ensure:

1149 1. Order is maintained, ^P

1150 2. Safety and rescue equipment is in place, ^P

1151 3. Pool use regulations enforced, ^P

1152 4. Sanitation and water testing is performed, ^P

1153 5. Monthly interlock testing is performed,

1154 6. Monthly secondary anti-entrapment device testing is performed, if applicable, ^P

1155 7. Records are maintained, ^P

1156 8. Chemical safety training is provided to staff, ^P

1157 9. The rope separating the shallow and deep areas of the pool is in place during required times,

1158 ^P

1159 10. The pool is closed pursuant to s. ATCP 76.30 ^P, and

1160 11. A pool cover or blanket, if provided, does not pose a safety hazard to patrons. ^P

1161 **ATCP 76.22 Lifeguards and attendants. (1) LIFEGUARD AND ATTENDANT STAFFING PLANS.** A

1162 pool that is not required to have an attendant or lifeguard is not required to have a lifeguard or attendant

1163 staffing plan. (a) *Staffing plan requirements.* The owner or operator of a pool, including a whirlpool over 4

1164 feet deep and a pool with a visual obstruction, shall have a written lifeguard and attendant staffing plan. ^{Pf}

1165 (b) *Plan criteria.* The owner or operator shall keep a copy of the plan at the pool and make it available

1166 to the department or its agent upon request. The department or its agent shall review, verify and approve

1167 the plan according to the following criteria:

1168 1. The square footage of the pool. ^{Pf}

1169 2. The maximum and average patron load. ^{Pf}

1170 3. The hours of operation. ^{Pf}

1171 4. In addition to the location of each lifeguard station or lifeguard roaming zone account for elements

1172 such as, glare, distance to scan and rescue and obstructions. ^{Pf}

1173 5. The location of each first aid station. ^{Pf}

1174 6. The number of lifeguards or attendants on duty pursuant to s. ATCP 76.23. ^{Pf}

1175 7. A diagram of the facility that indicates the placement of attendants, lifeguards, roaming zones, chairs,

1176 and stations for both average and maximum patron capacity. The diagram shall include each obstruction. ^{Pf}

1177 8. A method of communication when 2 or more attendants or lifeguards are required. ^{Pf}

1178 (c) *Lifeguard signage.* A pool less than 2,000 square feet shall post a sign that states, in letters that are a

1179 minimum of 4 inches high, "No Lifeguard on Duty". ^{Pf}

1180 (d) *Periodic supervision.* A plan required under par. (a), to address coverage or periodic supervision within a

1181 pool enclosure that contains lifeguarded and non-lifeguarded pools. ^{Pf}

1182 **(2) QUALIFICATIONS.** (a) *Certification requirements.* A copy of each certification held by lifeguard

1183 staff shall be maintained at the pool and shall be made available for inspection by the department or its agent.

1184 ^P Certifications required include:

1185 1. Lifeguarding certification, ^P

1186 2. First aid certification, ^P and

1187 3. CPR with AED certification. ^P

1188 (b) *Water attraction lifeguard requirements.* At least one lifeguard, pursuant to s. ATCP 76.23 (1), to

1189 supervise a water attraction shall have one or more of the following additional certifications: ^P

1190 1. American Red Cross Lifeguard with Waterpark Skill certification.

1191 2. National Aquatic Safety Company Lifeguard Training certificate.

1192 3. National Pool and Water park International Lifeguard Training Program certificate.

1193 4. Other water park certification approved by the department.

1194 (c) *Attendants.* Attendants may staff water attractions, waterslides, or pool slides to assist patrons,

1195 pursuant to s. ATCP 76.23. Attendants may not be used in place of lifeguards.

1196 **(3) LIFEGUARD IDENTIFICATION AND ASSIGNMENT.** (a) *Identification and equipment.* At all

1197 times when on duty a lifeguard shall have all the following:

1198 1. Clothing that is conspicuously marked “Lifeguard” or “Guard”,

1199 2. A rescue tube with a harness as instructed in national certification courses. ^P

1200 3. A whistle. ^P

1201 (b) *Assigned duties.* A lifeguard who is assigned to supervise a pool or water attraction may not be

1202 assigned duties that may distract the lifeguard’s attention from observing a patron in the pool or water

1203 attraction area or that may hinder the lifeguard’s ability to provide immediate assistance to a patron. ^P

1204 **ATCP 76.23 Lifeguard and attendant placement and staffing requirements.**

1205 **(1) GENERAL.** (a) *Staffing requirements.*

1206 1. Each pool having a surface area of 2,000 square feet or more shall be staffed pursuant to s. ATCP

1207 76.23 Table A, and s. ATCP 76.23 Table B, when the pool is in use or is open to the public. If the

1208 requirements in s. ATCP 76.23 Table A, and s. ATCP 76.23 Table B, conflict, the pool shall comply with
1209 the strictest requirements of s. ATCP 76.23 Table A, or s. ATCP 76.23 Table B. ^P

1210 2. An operator may close a portion of a pool to patrons in order to meet the lifeguard staffing requirements
1211 for square footage pursuant to s. ATCP 76.23 Table A, except that least one lifeguard shall be provided. ^P

1212 3. An operator may limit the number of patrons in order to meet s. ATCP 76.23 Table A, for lifeguard
1213 staffing. ^P

1214 4. When the patron load of a pool exceeds 336 patrons, one lifeguard shall be provided for each
1215 additional 100 patrons or fraction thereof. ^P

1216 (b) *Department evaluation required.* For a pool type that is not addressed in s. ATCP 76.23 Table A, or
1217 s. ATCP 76.23 Table B, the operator shall request evaluation by the department and follow the requirements
1218 specified by the department following the evaluation. ^P

1219 (c) *Slide flumes.* An additional lifeguard shall be provided for every 2 slide flumes installed at a pool
1220 other than a separate waterslide plunge pool. ^P

1221 (d) *Waterslide attendant.* An attendant responsible for enforcing waterslide usage rules shall be
1222 stationed at the entrance to the waterslide flume. ^P

1223 (2) SIGNAGE. Each pool that is not required to have a lifeguard shall post a sign with letters at least 4
1224 inches high stating: "Warning: No Lifeguard on Duty." ^{Pf}

1225 **s. ATCP 76.23 Table A**

1226 **Required Number of Lifeguards Based on Square Footage**

| 1227 | Actual Patron Load* | Lifeguards for a Pool | Lifeguards for a Pool | Lifeguards for a Pool |
|------|----------------------------|-------------------------------|---------------------------------|------------------------------|
| 1228 | | or Water Attraction | or Water Attraction | or Water Attraction |
| 1229 | | with a Surface Area of | of 5,000 to 9,000 sq.ft. | of 10,000 or more |
| 1230 | | | | sq. ft. |
| 1231 | | | | |
| 1232 | 1 – 60 | 1 | 2 | 3 |
| 1233 | 61 – 136 | 2 | 3 | 4 |
| 1234 | 137 – 136 | 3 | 4 | 5 |
| 1235 | 237 – 336* | 4 | 5 | 6 |

1236 * When the patron load exceeds 336 patrons, one lifeguard shall be provided for each additional 100
1237 patrons or fraction thereof.

1238 **s. ATCP 76.23 Table B**

1239 **Required Number of Lifeguards and Attendants Based on Pool Type**

| 1240 1241 | Pool Type Staffing Requirements | Pool or Slide Details | Lifeguard and Attendant |
|--------------|--|--|--------------------------------|
| 1242 | | | |
| 1243 | Activity Pools | Pool contains one of the following: | At least one lifeguard is |
| 1244 | | 1. A pad walk. | Required |
| 1245 | | | |
| 1246 | | 2. A tethered floatable more than 18 | |
| 1247 | | inches long in 2 directions. | |
| 1248 | | Appendages such as alligator feet | |
| 1249 | | should not be included in | |
| 1250 | | determining the length. | |
| 1251 | | | |
| 1252 | | 3. A nontethered floatable. Nontethered | |
| 1253 | | floatables do not include tire inner | |
| 1254 | | tubes used in Leisure Rivers or | |
| 1255 | | waterslides. | |
| 1256 | | | |
| 1257 | Leisure Rivers or any | | At least one Lifeguard, |
| 1258 | feature that convey riders | | more based on square |
| 1259 | seated or standing. | | footage pursuant to s. |
| 1260 | | | ATCP 76.23 Table A. |
| 1261 | | | |
| 1262 | Vortex Pools | | At least one lifeguard is |
| 1263 | | | required. |
| 1264 | | | |
| 1265 | Current Pools; Pools with | Whenever the pool is occupied by a | At least one lifeguard is |
| 1266 | Treadmill | patron and the current or treadmill is | required. |
| 1267 | | operating. | |
| 1268 | | | |
| 1269 | Vanishing Edge Pools | Unless the water attraction is limited | At least one lifeguard |
| 1270 | | to adult use only. | regardless of the square |
| 1271 | | | footage. |
| 1272 | | | |
| 1273 | Wave Pools, any pool that | | At least one lifeguard |
| 1274 | involves patron interacting | | is required regardless of |
| 1275 | with moving water or is | | the square footage of |
| 1276 | designed to allow patron to | | the pool. Additional |
| 1277 | fall into water. | | lifeguard staffing shall be |
| 1278 | | | based on the patron load |
| 1279 | | | requirements pursuant to s. |
| 1280 | | | ATCP 76.23 Table A. |
| 1281 | | | |
| 1282 | Pools with a Visual | The pool has a visual obstruction larger | At least one attendant |

| | | | | |
|------|--|--|---|--|
| 1283 | Obstruction, Except for Wading Pool | than 10 feet in length by 6 feet in height by 5 feet in width or if the visual obstruction covers more than 20 percent of the pool's basin. | is required. | |
| 1284 | | | . | |
| 1285 | | | . | |
| 1286 | | | . | |
| 1287 | | | . | |
| 1288 | | | | |
| 1289 | Wading Pool with a Visual Obstruction | Unless a variance is obtained from the department for an alternate method of coverage. | At least one attendant is required. | |
| 1290 | | | | |
| 1291 | | | | |
| 1292 | | | | |
| 1293 | | | | |
| 1294 | Pool Type | Pool or slide Details | Lifeguard and Attendant Staffing Requirements | |
| 1295 | | | | |
| 1296 | | | | |
| 1297 | Medical, Rehabilitation or Training Facility Therapy Pools, including those with current or treadmill. | If medical, rehabilitation or training staff are trained in CPR, AED, first aid and receive training that covers safely extricating a patient from the water in case a rescue is needed. | No lifeguard or attendant is required. | |
| 1298 | | | | |
| 1299 | | | | |
| 1300 | | | | |
| 1301 | | | | |
| 1302 | | | | |
| 1303 | | The operator must provide a risk control plan that explains how rescues and training shall be accomplished. | | |
| 1304 | | | | |
| 1305 | | | | |
| 1306 | | | | |
| 1307 | Pools with Diving Boards or Platforms | For every 2 diving boards or platforms in the same pool. | At least one lifeguard | |
| 1308 | | | . | |
| 1309 | | | . | |
| 1310 | Wading Pools | | Do not require a lifeguard or attendant. | |
| 1311 | | | | |
| 1312 | | | | |
| 1313 | Whirlpools | If a whirlpool is located within a water attraction complex, | At least one attendant shall provide periodic supervision of the whirlpool. If a whirlpool is not guarded or attended with an attendant assigned at all times, a sign shall be posted that states in letters that are at least 4 inches high: "No Lifeguard on Duty". | |
| 1314 | | | | |
| 1315 | | | | |
| 1316 | | | | |
| 1317 | | | | |
| 1318 | | | | |
| 1319 | | | | |
| 1320 | | | | |
| 1321 | | | | |
| 1322 | | | | |
| 1323 | | | | |
| 1324 | | | | |
| 1325 | | | | |
| 1326 | Pools with Slides | Children's Slide | No attendant is required. | |
| 1327 | | | | |
| 1328 | | Poolslide: Less than 6 feet in height, which drops into water less than 4 feet or less in depth. | No lifeguard or attendant is required. | |
| 1329 | | | | |
| 1330 | | | | |
| 1331 | | | | |
| 1332 | | Poolslide: Less than 6 feet in height, | At least one lifeguard. | |

| | | | |
|------|-----------------------------|---|--------------------------------|
| 1333 | | with an obstructed view of slide | |
| 1334 | | terminus at 43 inches at entry point. | |
| 1335 | | | |
| 1336 | | Poolslide: That drops into water | At least one lifeguard. |
| 1337 | | greater than 4 feet deep. | |
| 1338 | | | |
| 1339 | | Run-out slide: 6 feet or greater in | At least one attendant |
| 1340 | | height clear view of the slide terminus. | on top platform. |
| 1341 | | | |
| 1342 | | Run-out slide: 6 feet or greater in height | At least one attendant on |
| 1343 | | with an obstructed view of the slide | top and bottom of run |
| 1344 | | terminus. | -out. |
| 1345 | | | |
| 1346 | | Run-out slide: Less than 6 feet with a | No attendant or lifeguard |
| 1347 | | clear view of slide terminus. | Required |
| 1348 | | | |
| 1349 | | Run-out slide: Less than 6 feet with an | At least one attendant. |
| 1350 | | obstructed view of slide terminus. | |
| 1351 | | | |
| 1352 | | Waterslide or Drop slide: 6 feet or | Attendant on top of the |
| 1353 | | greater in height. | slide, lifeguard on bottom |
| 1354 | | | and means of 2-way |
| 1355 | | | communication between |
| 1356 | | | attendants and lifeguards. |
| 1357 | | | |
| 1358 | | Waterslide or Drop slide: Less than | At least one lifeguard. |
| 1359 | | 6 feet with a clear view of slide terminus | |
| 1360 | | and no obstructions around slide. | |
| 1361 | | | |
| 1362 | Pool Type | Pool or slide Details | Lifeguard and Attendant |
| 1363 | | | Staffing Requirements |
| 1364 | | | |
| 1365 | Interactive Play Attraction | An interactive play attraction not restricted | Shall have at least one |
| 1366 | (Splash Pads) | by an enclosure. | attendant on the premises. |
| 1367 | | | The attendant shall provide |
| 1368 | | | periodic supervision of the |
| 1369 | | | water attraction as specified |
| 1370 | | | in the staffing plan. |
| 1371 | | | |
| 1372 | Swim-up bars | When open | Shall have a written plan |
| 1373 | | | that addresses: |
| 1374 | | | |
| 1375 | | | 1. Supervision of the swim |
| 1376 | | | up bar, |
| 1377 | | | 2. Patrons who are ill, |
| 1378 | | | 3. Patrons adversely |
| 1379 | | | affecting sanitation, |
| 1380 | | | 4. Patrons engaging in |
| 1381 | | | dangerous behavior, or |
| 1382 | | | 5. Patrons who are |

| | | | |
|------|------------------------------|--|-------------------------------|
| 1383 | | | injured. |
| 1384 | | | |
| 1385 | Any pool or water attraction | A pool that is used for an activity | Shall be staffed by a |
| 1386 | with instructional program | occurring in the water that is led by a | lifeguard when the |
| 1387 | | person teaching a participant how to | instructional program is in |
| 1388 | | do an exercise, movement, skill or similar | session. |
| 1389 | | activity. | |
| 1390 | | | If the coach or instructor |
| 1391 | | | that provides instruction |
| 1392 | | | during the program is a |
| 1393 | | | lifeguard, the requirement |
| 1394 | | | of this subsection is met |
| 1395 | | | provided the coach or |
| 1396 | | | instructor can supervise the |
| 1397 | | | entire group. A pool that |
| 1398 | | | normally requires a |
| 1399 | | | lifeguard and that is open to |
| 1400 | | | the public during an |
| 1401 | | | instructional program |
| 1402 | | | session shall be supervised |
| 1403 | | | by an additional lifeguard or |
| 1404 | | | attendant pursuant to s. |
| 1405 | | | ATCP 76.23. |
| 1406 | | | |

1407 **ATCP 76.24 Patron safety during pool maintenance.** (1) MAINTENANCE OPERATIONS. The
1408 operator shall ensure that no patrons are in the pool during pool maintenance operations. ^P

1409 (2) RECIRCULATION SYSTEM INTERRUPTION. Patrons shall be removed from the pool when the
1410 pool recirculation system is interrupted. Once the recirculation system is restored, patrons shall not reenter
1411 the pool until chemical levels are determined to be within acceptable ranges. ^P

1412 **Subchapter V**

1413 **Operation and Management**

1414 **ATCP 76.25 Maximum patron load.** (1) WATER ATTRACTIONS. The maximum number of patrons
1415 permitted to be in an individual water attraction at any one time shall be calculated on the basis of allowing
1416 one patron for every 15 square feet of water surface area. The splash zone of any water attraction shall be
1417 included in the calculation of the water surface. ^{Pf}

1418 (2) POOLS. (a) *Pools used for swimming.* The maximum number of patrons permitted to be in the water
1419 of a pool used for swimming at any one time shall be computed on the basis of allowing one patron for every

1420 15 square feet of the shallow portion of the pool and one patron for every 25 square feet of the deep portion
1421 of the pool. ^{Pf}

1422 (b) *Whirlpools*. The maximum number of patrons permitted to be in the water of a whirlpool at any one
1423 time shall be computed on the basis of allowing one patron for every 10 square feet of whirlpool surface
1424 area. ^{Pf}

1425 (c) *Wading pools*. The maximum number of patrons permitted to be in the water of a wading pool at any
1426 one time shall be computed on the basis of allowing one patron for every 15 square feet of wading pool
1427 surface area. ^{Pf}

1428 (d) *Therapy and exercise pools*. The maximum number of patrons permitted to be in the water of a
1429 therapy or exercise pool at any one time shall be computed on the basis of allowing one patron every 15
1430 square feet of the shallow portion of the pool and one patron for every 25 square feet of the deep portion of
1431 the pool. ^{Pf}

1432 **ATCP 76.26 Rescue equipment. (1) REQUIRED EQUIPMENT. (a) Good repair and accessible.**

1433 1. All rescue equipment shall be maintained in good repair. ^P

1434 2. Rescue equipment shall be mounted or positioned in a conspicuous place and shall be readily
1435 accessible. ^{Pf}

1436 (b) *Shepherd's crook, ring buoy, and rescue tube*.

1437 1. a. For each basin of water over 10 feet in length and over 2 feet deep, an intact shepherd's crook-type
1438 pole shall be provided. ^P

1439 b. For non-guarded pools, the shepherd's crook shall be long enough to effect a rescue in the deepest
1440 part of the pool. ^P

1441 c. If the shepherd's crook is not one continuous pole, the pieces shall be securely connected with durable
1442 nuts and bolts or similar hardware. ^P

1443 2. In addition, for each lifeguard chair, or for a pool 30 feet or more in width that does not have lifeguard
1444 chairs, at least one of the following shall be provided:

1445 a. A ring buoy having a minimum outside diameter of 20 inches. Each ring buoy shall be attached to a
1446 1/4 inch rope having a length not less than 1-1/2 times the maximum width of the pool or 50 feet, whichever
1447 is less. ^P

1448 b. A rescue tube. ^P

1449 (c) *Safety rope.*

1450 1. If applicable, a safety rope shall be provided pursuant to s. SPS 390.18 (1). ^{Pf}

1451 2. The safety rope shall remain in place except during a lifeguarded activity or adult-only lap swim. ^{Pf}

1452 3. The safety rope and floats shall be maintained in good repair and working order. ^{Pf}

1453 (d) *Spine board.* A spine board with straps and head immobilizer in good condition shall be available at
1454 a pool where a lifeguard is required pursuant to s. ATCP 76.23. ^P

1455 (2) TELEPHONE. (a) *Connection to emergency services.* A telephone capable of connecting with 911
1456 or emergency dispatch services is accessible at all times during pool operation. ^P

1457 (b) *Other technologies.* Telecommunication technology, other than a landline telephone, may be used
1458 if, in the pool area, the telecommunication device:

1459 1. Is equipped with a permanent continuous power supply with battery backup, and

1460 2. Has a reliable service connection. ^P

1461 (c) *Location.* The location of the telephone shall be within 25 feet of the pool area. ^P

1462 (d) *Emergency numbers and address.* A current list of emergency telephone numbers and the facility's
1463 location shall be attached to or posted near the telephone. ^{Pf}

1464 **ATCP 76.27 First aid supplies. (1) AVAILABILITY.** (a) *Pool area.* A first aid kit shall be available at
1465 each pool area. ^P

1466 (b) *Contents.* The first aid kit shall contain all of the following items: ^{Pf}

1467 1. Gauze pads

1468 2. Adhesive bandages.

1469 3. Gauze roller bandage.

1470 4. Adhesive tape.

1471 5. Eye wash.

1472 6. Elastic bandage.

1473 7. Disposable surgical gloves.

1474 8. Resuscitation pocket face mask.

1475 9. Instant cold packs.

1476 **(2) BIOHAZARD KIT.** (a) *Location.* Biohazard safety equipment, including a blood and biohazard

1477 disposal kit shall be located at the first aid station or another location on the premises. ^{Pf}

1478 (b) *Contents.* A biohazard kit shall contain the following: ^{Pf}

1479 1. Scoop & spatula

1480 2. Sanitizing hand wipes.

1481 3. Sanitizing surface wipes.

1482 4. Neoprene gloves.

1483 5. Paper toweling.

1484 6. Biohazard disposal bag at least 24" x 24"

1485 7. Twist tie or other effective means to close the bag.

1486 8. Biohazard sorbent.

1487 9. Storage case.

1488 **(3) EMERGENCY BLANKETS.** Two conventional or emergency blankets in good condition shall be

1489 available in the pool area or as approved by the department or its agent. ^{Pf}

1490 **ATCP 76.28 Food and drink. (1) LOCATION.** Food or drink service facilities may not be located within

1491 12 feet of the water's edge of a pool, except for swim-up bars. ^{Pf}

1492 **(2) UTENSILS.** Only shatter-proof utensils for food and drink shall be used in the pool area, except

1493 for approved swim-up bars. ^{Pf}

1494 **ATCP 76.29 Posting pool rules.**

1495 **(1) GENERAL.** (a) *Posting of rules; all pools.*

1496 1. The operator shall post pool use rules governing safety and sanitation and shall enforce those rules.

1497 2. Rules shall be conveyed using words with letters at least one inch high, or symbols that are at least
1498 4 inches in height and clearly visible to patrons.

1499 3. A legible sign showing pool use rules shall be posted in a conspicuous place

1500 (b) *Signage contents.*

1501 1. Pool signage shall contain the minimum information, as applicable:

1502 a. Do not enter the pool if you have a communicable disease or an open cut.

1503 b. Do not bring food, drink, gum or tobacco into the pool.

1504 c. Shower immediately before entering the pool and after use of a steam room, sauna or toilet facilities.

1505 d. Do not run or engage in rough play in the pool area.

1506 e. Do not bring animals into the pool area.

1507 f. Diaper changing on the pool deck is prohibited.

1508 g. Glass and shatterable items are prohibited in the pool area.

1509 h. Children under the age of 12 shall be supervised by an adult.

1510 (c) *“No Diving”*; *signage.* A pool that is 200 square feet in area or greater that does not have an
1511 approved diving well configuration shall have “NO DIVING” signs in at least 4 inch high letters
1512 included with the rules listed under par. (b).^{Pf}

1513 (d) *Maximum patron load; signage.* A sign showing the maximum patron load shall be conspicuously
1514 displayed near each pool. The maximum patron load pursuant to s. ATCP 76.25, may not be exceeded.

1515 (e) *Swim diapers.* If a person that wears a diaper is allowed in the pool they shall be required to wear a
1516 swim diaper.

1517 **(2) POOL SLIDES AND WATERSLIDES AND OTHER WATERRIDES.** (a) *Posting of rules; pool*
1518 *slides and waterslides.* For the plunge section of a pool, the pool use rules signage required under sub. (1),
1519 shall be provided. Additionally, the following rules shall be provided and be conspicuously posted at the
1520 entrance to the slide tower in at least one inch lettering:

1521 1. Do not use the slide while under the influence of alcohol or drugs.

- 1522 2. Follow the instructions of the attendant.
- 1523 3. Leave the plunge area immediately after using the slide.
- 1524 4. WARNING: Water depth is_____feet.
- 1525 5. Follow any rule required by the manufacturer of the attraction.

1526 (b) *Special instruction.* The operator shall ensure that the patron is instructed using words, pictures, or
1527 symbols on how to position themselves and safely ride or otherwise participate in the attraction.

1528 (3) WHIRLPOOLS. For whirlpools, the signage required under sub. (1) shall also be conspicuously
1529 posted in the whirlpool area and include at a minimum, all of the following rules preceded by the word
1530 “WARNING” conspicuously printed in at least one inch letters: a. Persons suffering from heart disease,
1531 diabetes, or high or low blood pressure should consult their physician before using a whirlpool.

1532 b. Persons under the influence of alcohol or drugs may not use the whirlpool.

1533 c. Pregnant women should consult their physician regarding whirlpool usage.

1534 d. Lengthy exposure may be hazardous to your health and may result in nausea, dizziness or fainting.

1535 e. Minors under the age of 6 are not permitted in the whirlpool.

1536 (4) VORTEX POOL, CURRENT POOL AND OTHER RIDES THAT RAPIDLY MOVE OR
1537 CHANGE POSITION OF THE PATRON. For these pools, the signage required in sub. (1), shall also be
1538 conspicuously posted and include “Artificial Current; Strong Swimmers Only.” in 4 inch or larger letters.

1539 (5) COLD SOAK POOLS. For cold soak pools, the signage required under sub. (1), shall also be
1540 conspicuously posted in the cold soak area and include a sign that states the water temperature in Fahrenheit
1541 in at least 4 inch high letters.

1542 (6) INTERACTIVE PLAY ATTRACTIONS. The signage required under sub (1), shall also be
1543 conspicuously posted on the periphery of the interactive play attraction.

1544 **ATCP 76.30 Pool closing criteria.** Any of the following conditions or situations shall constitute sufficient
1545 reason for the operator or responsible supervisor to close a pool or for the department or its agent pursuant to
1546 s. ATCP 76.07 (3) to order that the pool be closed and posted with signage indicating closure:

1547 (1) The presence of a hazardous substance or object in the pool or the existence of any condition creating

1548 an immediate danger to health or safety, including fecal accident events. ^P

1549 (2) Failure to comply with the water quality requirements pursuant to s. ATCP 76.16. ^P

1550 (3) Failure to comply with the disinfectant or sanitizer residual levels pursuant to s. ATCP 76.14, or pH
1551 values that are less than 6.8 or equal to or greater than 8.0. ^P

1552 (4) A nonoperational circulation pump, filter, or disinfectant or sanitizer feeder. ^P

1553 (5) Failure to comply with the number of lifeguards or attendants pursuant to s. ATCP 76.23. ^P

1554 (6) Absence or non-availability of a responsible supervisor. ^P

1555 (7) Nonfunctional emergency phone. ^P

1556 (8) The pool is undergoing maintenance or repair. ^P

1557 (9) The pool gate or door is not equipped with a self-closing and latching mechanism, except when
1558 staffed by a lifeguard or attendant. ^P

1559 (10) A cyanuric acid level above 300 ppm. ^P

1560 **ATCP 76.31 Fecal accident, blood and vomit response. (1) GUIDELINES FOR RESPONSE.** In
1561 responding to a fecal accident, vomit or blood incident, the operator shall follow the guidelines for a fecal
1562 accident, vomit or blood incident in pools used for swimming published by the US centers for disease control
1563 and prevention. ^P

1564 **Note:** US Centers for Disease Control and Prevention guidelines for responding to fecal accidents and
1565 blood and vomit spills may be viewed at: [https://www.cdc.gov/healthywater/swimming/aquatics-
1566 professionals/fecalresponse.html#fecal-incident](https://www.cdc.gov/healthywater/swimming/aquatics-professionals/fecalresponse.html#fecal-incident).

1567 (2) **DOCUMENTATION.** The operator shall document each fecal, vomit or blood contamination
1568 incident as follows:

1569 (a) *Date and time.* The date and time of the event and the free available chlorine, cyanuric acid
1570 concentration and pH of the pool water at the time of the event and after the event, before reopening the pool
1571 to the public. ^{Pf}

1572 (b) *Stool description.* For fecal accident, whether the stool is formed or loose. ^{Pf}

1573 (c) *Procedures followed.* The procedures followed in responding to the fecal, vomit or blood
1574 contamination. ^{Pf}

1575 (d) *Patron count.* The number of patrons in the pool. ^{Pf}

1576 (e) *Duration.* Length of time between the occurrence, detection, and resolution of the incident. ^{Pf}

1577 **ATCP 76.315 Waterborne outbreak investigations. (1) HEALTH DEPARTMENT NOTIFICATION.**

1578 The operator shall contact the department or its agent for operational and testing guidance when notified of
1579 a suspected waterborne illness. ^P

1580 **(2) SUSPECTED WATERBORNE ILLNESS OUTBREAK.** In the event of a suspected waterborne
1581 illness outbreak, the operator shall close the pool to use and contact the department or its agent for
1582 instructions regarding sampling, corrective actions and reopening procedures. ^P

1583 **(3) FILTER MEDIA.** When *Pseudomonas aeruginosa*, *Staphylococcus aureus* or *Legionella*
1584 *pneumophila* is detected in any sample from a pool, the pool must be cleaned and sanitized and filter media
1585 must be changed, as applicable, or as directed by the department or its agent. ^P

1586 **ATCP 76.32 Reports and records. (1) OPERATING REPORTS.** The pool operator or responsible
1587 supervisor shall complete reports of the pool operation on forms provided by the department or agent to
1588 include verification and documentation of:

1589 (a) Chemical testing pursuant s. ATCP 76.14.

1590 (b) Backwashing completion.

1591 (c) Breakpoint chlorination.

1592 (d) Interlock testing.

1593 (e) Anti-entrapment system testing.

1594 (f) Water temperature.

1595 (g) Safety and rescue equipment maintained pursuant to ss. ATCP 76.26 and ATCP 76.27.

1596 If monthly reports are requested by the department or its agent, they shall be submitted no later than the
1597 tenth day of the following month. ^{Pf}

1598 **Note:** To obtain copies of the form for monthly reporting of daily public pool operations, or to determine
1599 which agent to contact to obtain copies, contact the Bureau of Food and Recreational Businesses at (608)
1600 224-4682 or PO Box 8911, Madison, Wisconsin 53708-8911.

1601 **(2) DEATH, INJURY, OR ILLNESS REPORTS.** The operator shall report incidents resulting in death,
1602 or serious injury or illness that requires assistance from emergency medical personnel, by the end of the next
1603 working day following the incident by phone, email or fax to the department or agent. ^{Pf}

1604 **Note:** Report deaths, injuries, or illnesses to the Bureau of Food and Recreational Businesses by calling
1605 (608) 224-4682, e-mailing at DATCPDFRSREC@wisconsin.gov or faxing to (608) 224-4710.

1606 **(3) FILES.** (a) *Files permanently maintained on the premises.* The operator shall permanently maintain
1607 on the premises a copy of each of the following:

1608 1. A copy of the most current version of ch. ATCP 76.

1609 2. For pools constructed after July 1, 2023, a copy of the Department of Safety and Professional
1610 Services approved pool constructions plans, including Virginia Graeme Baker Act plan approvals.

1611 3. The manufacturer's pump performance curve. ^{Pf}

1612 4. The manual of operations for any secondary anti-entrapment device or system, as applicable. ^{Pf}

1613 5. The manual of instruction on filter operation.

1614 6. Instructions for operation and maintenance of all equipment,

1615 7. Instructions and other pertinent information on pool operation and maintenance.

1616 8. The most recent US centers for disease control and prevention recommendations for fecal accidents
1617 or another plan in response to fecal accidents that is consistent with the US centers for disease control and
1618 prevention's fecal accident response recommendations.

1619 9. The Virginia Graeme Baker Act main drain and equalizer cover replacement receipts or
1620 similar documentation. ^{Pf}

1621 (b) *File retention period.* The following operational tests and reports shall be kept for a minimum of 2
1622 years.

- 1623 1. Anti-entrapment device or system test results as required by manufacturer and corrective actions
1624 taken, if needed. ^{Pf}
- 1625 2. Any laboratory bacteriological report. ^{Pf}
- 1626 3. Any fecal accident report made pursuant to s. ATCP 76.31. ^{Pf}
- 1627 4. Any other reports required by the department or agent.
- 1628 5. Daily inspections and operational tests for water attractions. ^{Pf}

1629 (c) *Access*. All of the documents under par. (a) and (b), shall be accessible to the department or agent
1630 upon request.

1631 **ATCP 76.33 Facility maintenance, repair and sanitation. (1) POOL AREA.**

1632 (a) Basin.

- 1633 1. Each pool shall be routinely brushed or vacuumed to keep the basin and surrounding appurtenances
1634 free of sediment, lint, hair, debris, algae and slime growth and discoloration.
- 1635 2. Cracks or other defects shall be repaired and the pool interior shall be refinished as necessary to
1636 maintain it in a cleanable condition.
- 1637 3. The pool and water area shall be maintained in a clean and sanitary condition.
- 1638 4. Glass and shatterable plastic items shall be prohibited in the pool area, except for pool test kit contents
1639 while in use to test pool water according to manufacturer's instructions and in drink preparation areas of a
1640 swim up bar. ^{Pf}

1641 (b) Deck maintenance and cleaning.

- 1642 1. Deck areas and appurtenances, including safety pads, Shall be:
- 1643 a. Maintained in good repair.
- 1644 b. Rinsed as needed to prevent microbial growth.
- 1645 2. Indoor pool decks shall be disinfected at least weekly.
- 1646 3. Disinfecting agents are used to manufacturer's directions.
- 1647 4. Outdoor pool decks shall be cleaned as needed.

1648 **Note:** It is recommended to avoid the use of an ammonia-based disinfectant as this can contribute to an
1649 increased level of chloramines in the pool water.

1650 5. Depth markings along the edge of the pool shall be maintained to be clearly visible and readable.^{Pf}

1651 6. The deck shall be kept unobstructed except for easily portable furniture and equipment.^{Pf}

1652 (c) Walls, ceilings and floors. The walls, ceilings and floors in the pool area shall be maintained in a
1653 clean and sanitary condition.

1654 (d) Hosing.

1655 1. Hosing shall be provided in adequate lengths to flush the entire pool deck.

1656 2. All hose bibbs shall be protected against backsiphonage by the proper installation of an approved
1657 backflow prevention device pursuant to s. SPS 390.16 (4) (b).^P

1658 (e) Equipment. Pool equipment, including equipment on the deck, shall be properly:

1659 1. Located.

1660 2. Installed.

1661 3. Maintained.

1662 4. Repaired, as necessary.

1663 (f) Spectator areas.

1664 1. The spectator area shall be maintained in a clean condition.

1665 2. Spectator areas with tables, chairs and other obstructions may not block the deck.^{Pf}

1666 (g) Drinking fountain.

1667 1. A drinking fountain shall be provided pursuant to s. SPS 390.19.^P

1668 2. The drinking fountain shall be maintained in clean and sanitary condition.

1669 **(2) SHOWER, TOILET AND DRESSING FACILITIES.** (a) *Walls and floors.* The walls, partitions
1670 and floors of showers, toilet rooms and dressing areas shall be:

1671 1. Maintained in good repair, and

1672 2. Cleaned and disinfected daily or more frequently, if necessary to provide clean and sanitary conditions.

1673 **Note:** See s. SPS 390.19 for additional information.

1674 (b) *Showers*. Showers shall be maintained in an operable condition.

1675 **Note:** To minimize the risk of *Legionella* growth and other diseases associated with water, adequate
1676 provisions should be made to ensure that all water systems including sink faucets, drinking fountains, and
1677 showers are safe, any water aged over 3 weeks is potentially viable for growing *Legionella* colonies. It is
1678 strongly advised that each pool operator develop and implement a water management program as
1679 recommended by the CDC Water Management Program Toolkit. The toolkit can be found at
1680 <https://www.cdc.gov/legionella/wmp/toolkit/index.html>.

1681 (c) *Toilet rooms and diaper changing areas*. Toilet room fixtures and diaper changing stations shall be:

- 1682 1. Kept clean, and
- 1683 2. Maintained in good repair.

1684 (d) *Lockers and furniture*. Lockers and furniture shall be:

- 1685 1. Cleaned as needed, and
- 1686 2. Maintained in good repair.

1687 (e) *Soap and soap dispensers*.

- 1688 1. Soap shall be continually provided at each hand washing sink and shower in permanently installed
1689 dispensing devices. ^{Pf}
- 1690 2. The dispensers shall be maintained in operating condition.

1691 (f) *Hand drying devices*. Individual towels in dispensers or hot air dryers shall be provided at hand
1692 washing sinks. ^{Pf}

1693 (g) *Toilet tissue*. A continuous supply of toilet tissue shall be provided in permanently installed
1694 dispensing devices. ^{Pf}

1695 (h) *Bathing suits provided*. If bathing suits or towels or caps are furnished to patrons:

- 1696 1. They shall be thoroughly laundered with detergent and machine dried after each use.
- 1697 2. Clean suits, towels and caps shall be stored separately from unlaundered articles.

1698 (i) *Hose bibbs*. Hose bibbs shall be conveniently located so floors in the shower, dressing, and toilet
1699 facilities can be adequately rinsed.

1700 (3) GARBAGE AND REFUSE. (a) *Approved storage container.* All garbage and refuse shall be stored
1701 in metal or rigid plastic containers having tight-fitting lids.

1702 (b) *Sufficient in number.* A sufficient number of containers shall be provided for all garbage and refuse
1703 generated.

1704 (c) *Stored to prevent harborage conditions.* Filled containers of garbage or refuse shall be covered and
1705 stored in a manner to prevent:

1706 1. Harborage of rodents, insect attraction and breeding areas, ^{Pf}

1707 2. Odors, ^{Pf}

1708 3. Environmental pollution, ^{Pf} and

1709 4. Accidents. ^{Pf}

1710 (d) *Disposal as needed.* The contents of the containers shall be disposed of as needed and in a sanitary
1711 manner.

1712 (e) *Clean Condition.* All containers shall be kept clean.

1713 (f) *Good repair.* Containers shall be maintained in good repair.

1714 (4) WATER HEATERS, VENTILATION, ELECTRICAL. (a) *Operating condition.* Water heaters and
1715 heat exchangers shall be maintained in operating condition.

1716 (b) *Air movement.* Heating, ventilation, and exhaust equipment shall be maintained and operated to
1717 provide air movement pursuant to chs. SPS 361 to 365, to prevent any excessive condensation and air
1718 quality problems in indoor enclosures, as enforced by the department of safety and professional services.

1719 (c) *Maintained in good repair.* Electrical equipment and lighting shall be maintained in good repair and
1720 in operating condition.

1721 (d) *Carbon monoxide alarms.* The operator shall install functioning carbon monoxide alarms, as
1722 applicable.

1723 1. A pool equipment room that has a fuel burning appliance shall install and maintain a carbon monoxide
1724 alarm. ^P

1725 2. For indoor pools, a carbon monoxide alarm shall be installed and maintained in the pool area, if there
1726 is a fuel burning appliance in the equipment room that is also located within the pool area. ^P

1727 **Note:** Refer to s. SPS 390.16 for department of safety and professional services installation
1728 requirements.

1729 **76.335 Dog swims. (1) OPERATION.** (a) *Water level.* Before the event, the water level shall be adjusted
1730 so that the pool water in the basin does not enter the recirculation system. ^P

1731 (b) *Disinfectant residual.* Initial disinfectant residual must be 4 ppm free chlorine (8 ppm if cyanuric
1732 acid present). ^P

1733 (c) *Registration.* Registration of the dog and caretaker are required. ^{Pf}

1734 (d) *Rabies Vaccination.* All dogs shall be 6 months of age or older and the owner shall provide proof
1735 of a current rabies vaccination. ^P

1736 (e) *Prohibited.* Splash pads, spray features, play structures, whirlpools, diving boards and slides are
1737 prohibited from operation. ^{Pf}

1738 (f) *Relief area.* Grass or an alternate area shall be provided and accessible to patrons with their dogs
1739 with adequate space and trash receptacles. ^{Pf}

1740 (g) *Waste water.* Pool water shall be drained by bypassing the filtration system. ^P

1741 (h) *Post-event cleaning.*

1742 1. Pool shall be scrubbed and cleaned after draining. ^P

1743 2. The pool shall be superchlorinated before startup occurs during the following season. ^P

1744 (i) *Restrooms and showers available.* Locker rooms may be closed but restrooms with handwashing
1745 facilities, and showers must be conveniently located. ^{Pf}

1746 (j) *Responsible supervisor.* The responsible supervisor or designee shall be present at the pool before,
1747 during and after the dog swim event. ^P

1748 (k) *Duration.* Event shall be limited to 3 hours total from time when first dogs enter water. ^{Pf}

1749 **(2) RULES.** The following rules must be conveyed to patrons: (a) Only dogs are allowed in the pool,
1750 except in the event of an emergency.

- 1751 (b) A dog must be capable of swimming, unassisted by a human, in the depth and type of pool used for
1752 the dog swim.
- 1753 (c) A dog must be willing and comfortable participating in the swim.
- 1754 (d) A dog exhibiting aggression must be removed immediately.
- 1755 (e) A dog with an open cut or sore may not enter the water.
- 1756 (f) A dog with loose stools may not enter the water.
- 1757 (g) A patron bringing a dog must supervise the dog at all times.
- 1758 (h) The patron must clean up any feces immediately and dispose of waste properly.
- 1759 (3) Dog swims shall comply with all applicable sections pursuant to ch. ATCP 76.

1760 Subchapter VI

1761 Pool Construction and Design

1762 **ATCP 76.34 Pool design. (1) HAZARDOUS CONDITIONS.** Any object or material not specifically
1763 approved pursuant to this chapter or ch. SPS 390 that may cause a hazardous condition or interfere with the
1764 safe and efficient operation of a pool, pool slide, waterslide, and deck is not permitted in the pool area. ^P

1765 (2) GATES AND DOORS MAINTAINED. (a) *Maintained.* All gates and doors into the pool area shall
1766 be maintained and checked for proper operation. ^P

1767 (b) *Mechanism location.* A self-closing latching and lockable mechanism shall be installed at least 54
1768 inches from the bottom of the gate or door. ^P

1769 (c) *Locked.* Gates and doors shall be locked when the pool is not open to the public or is not in use. ^P

1770 (3) POOL ENCLOSURE HEIGHT. All pool enclosures shall be at least 5 feet high, unless previously
1771 approved by the department or its agent.

1772 (4) ENCLOSURES AND ENTRANCES. (a) *Gates and doors.* All pool areas shall be enclosed ^P and
1773 have gates and doors that are:

1774 1. Self-closing. ^P

1775 2. Latching. ^P

1776 3. Lockable. ^P

1777 4. Gates and doors shall not require a key, code or other electronic method to exit a pool enclosure. ^P

1778 5. For a lifeguarded pool area. a. If gates and doors are not self-closing and latching, the gates and doors
1779 shall be locked unless the entrance to the pool is staffed with an attendant and at least one lifeguard is
1780 present. ^P

1781 b. Documentation for staffing shall be included in the lifeguard staffing plan. ^{Pf}

1782 6. This section does not apply to emergency doors that cannot be opened from the outside of the pool
1783 enclosure.

1784 **Note:** A primary entrance to a pool enclosure in which multiple doors must be passed through is
1785 considered to have a self-closing, latching and lockable gate or door, if any of doors in the sequence are
1786 self-closing, latching or lockable.

1787 **(5) SIGNAGE.** During closed hours, a sign shall be conspicuously posted stating that the pool, pool
1788 slide, water slide, and deck are closed.

1789 **Note:** See s. SPS 390.18 (4) for additional rules relating to the outdoor pool enclosure.

1790 **(6) LANDSCAPING.** (a) *Restrictions.* Landscaping planters, pots or other plant containers may not be
1791 placed on the required deck area.

1792 (b) *Separation.* Landscaping features such as bark, gravel, shrubs, or flowers may be located within the
1793 pool enclosure but shall be separated from the pool by an additional 5 feet of impervious area or maintained
1794 lawn.

1795 (c) *Maintenance.* Landscaped areas within a pool enclosure shall be continually maintained to prevent
1796 debris from entering the water.

1797 (d) *Trees.* Trees used as landscaping features may not overhang the required deck area.

1798 (e) *Sand.* Sand may not be located within a pool enclosure unless the sand area is made inaccessible
1799 from the pool area by the location of a security-type barrier that is at least 42 inches high.

1800 **ATCP 76.35 Waterslide and pool slide design.**

1801 **(1) DESIGNED AND INSTALLED.** All waterslides and pool slides shall be designed, installed and

1802 lubricated pursuant to s. SPS 390.31. ^{Pf}

1803 (2) CONTINUOUSLY SEPARATED. The portion of the pool water surface that is used as a plunge
1804 area for a drop slide or waterslide shall be continuously separated from other areas of the pool in a manner
1805 approved by the department or its agent, as long as the slide is in use. ^P

1806 **ATCP 76.36 Water attraction, play features, and slide design. (1) GENERAL.** (a) *Design and*
1807 *construction.* Water attractions and play features shall be designed, assembled, constructed and maintained in
1808 accordance with recognized safe practices pursuant to s. SPS 334.01 (15), and so that maximum patron
1809 loads do not stress any part of the water attraction beyond recognized safe practices. ^{Pf}

1810 (b) *Free from hazardous projections.* Interior and exterior parts of all water attractions a patron may
1811 come into contact with shall be free of abrasives and splinters, sharp edges and corners, protruding studs,
1812 bolts, screws, and other hazardous projections. ^P

1813 (c) *Padding.* Padding or other means to minimize injury due to patron impact resulting from the action
1814 of the water attraction shall be provided in accordance with recognized safe practice, pursuant to s. SPS
1815 334.01 (15). ^P

1816 (d) *Enclosure of hazardous parts.* All hazardous parts, including pinch points and shear points of water
1817 attractions and play features, shall be enclosed, barricaded or otherwise arranged to effectively prevent
1818 injury in accordance with recognized safe practice, pursuant to s. SPS 334.01 (15). ^P

1819 (e) *Guards.* Guards removed for any purpose shall be replaced before normal operation of the water
1820 attraction is resumed. ^P

1821 (f) *Wheels and levers.* Wheels and levers used by patrons in the control of the action of the water
1822 attraction shall be designed and maintained to prevent pinches, strains, abrasions, and body actions that
1823 could result in injuries. Wheels and levers shall be padded. Wheels shall have a solid center in lieu of spokes.

1824 ^{Pf}

1825 (g) *Fences and barriers.* Water attractions shall be fenced, barricaded or otherwise arranged in
1826 accordance with recognized safe practice, pursuant to s. SPS 334.01 (15), so that the public is effectively

1827 prevented from entering hazardous areas. ^P

1828 (h) *Fence design and construction.* Fences shall be constructed to meet all of the following
1829 requirements:

1830 1. Fences shall be at least 42 inches above the surface on which the spectators or patrons stand. ^{Pf}

1831 2. Fences shall be constructed to reject a 4 inch ball at all openings, including between the bottom of
1832 the fence and the surface upon which it rests. ^P

1833 3. Fences shall be designed, constructed and erected to inhibit overturning by spectators or patrons. ^P

1834 4. Where used, gates shall open away from the water attraction unless equipped with a self-closing
1835 latching device. ^{Pf}

1836 (i) *Gate opening.* Gates shall be designed such that, if opened during the water attraction's operation, the
1837 gate will not contact the water attraction or cause a hazard to patrons. ^P

1838 (j) *Separation.* Fences and gates shall be constructed to inhibit spectator contact with the water
1839 attraction and patron contact with fences or gates. ^{Pf}

1840 **Note:** Horizontal members in a fence or gate may be used to improve construction or efficiency, but
1841 should be minimized to reduce the ease of climbing.

1842 (k) *Loading and unloading areas.* Loading and unloading areas which are an integral part of the water
1843 attraction shall be separated from moving parts by barriers or guardrails. ^P

1844 (l) *Preventing access.* A flexible barrier, such as a rope or chain, may be used to prevent access to the
1845 passenger-carrying devices, provided the barrier is no longer than necessary and is controlled by an
1846 authorized attendant. ^{Pf}

1847 (m) *Moving sweeps.* Water attractions with moving sweeps shall be guarded by a standard guardrail or a
1848 center cover designed and maintained to safely support a minimum load of 200 pounds. ^{Pf}

1849 (n) *Spectator area.* Where a spectator area is provided, it shall be separated by a railing or other barrier
1850 from the water area. ^{Pf}

1851 **(2) INTERACTIVE PLAY ATTRACTIONS.** All interactive play attractions shall comply with all of

1852 the following requirements:

1853 (a) *Attendant requirements.* If access to the interactive play attraction is not restricted by an enclosure,
1854 an attendant shall be present to provide periodic supervision. ^P

1855 (b) *Water drains.* Water drains shall be in good working condition. ^{Pf}

1856 (c) *Tree and vegetation prohibited.* Trees and vegetation may not be allowed in the interactive play
1857 attraction area.

1858 (d) *Daily opening procedures.* Water spray features shall be activated for 30 minutes before the daily
1859 opening of the interactive play attraction. ^{Pf}

1860 **Note:** A ring buoy and shepherd's crook are not required to be present for an interactive play attraction.

1861 **ATCP 76.37 Maintenance, repair, and modifications of water attractions. (1) GENERAL.**

1862 (a) *Maintained safe.* Water attractions shall be maintained, repaired and modified in accordance with
1863 recognized safe practice pursuant to s. SPS 334.01 (15). ^P

1864 (b) *Closure.* Improperly maintained, repaired or modified water attractions may not be opened to the
1865 public. ^P

1866 (c) *Maintenance.*

1867 1. Defective, improper, worn, or missing parts shall be replaced or repaired.

1868 2. Maintenance, repair, and replacement parts shall be of a quality equal to or better than the original
1869 parts. ^P

1870 3. All work shall be performed by a competent qualified mechanic capable of understanding the
1871 function of the parts and the proper installation. ^{Pf}

1872 4. Non-graded bolts, nails, fasteners, and wire shall be used only for their intended purposes. ^{Pf}

1873 5. Rotted, split, or otherwise structurally unsound material shall be replaced. ^{Pf}

1874 **(2) INSPECTIONS AND TESTING. (a) General.**

1875 1. The owner shall arrange for all water attractions to be periodically inspected and for operational tests
1876 to be performed as specified in this subsection.

1877 2. Such inspections and tests shall be documented by written records and the records shall be kept
1878 pursuant to s. ATCP 76.32 (3) (b).

1879 (b) *Daily inspection and operational testing.*

1880 1. Water attractions shall be inspected and their operation tested each day before use by patrons. ^P

1881 2. The inspection and operational test shall include the operation of all control devices and safety
1882 equipment. ^P

1883 (c) *Waterslide inspection.* Every 5 years, all waterslides 6 feet and higher shall be evaluated by an
1884 engineer for the structural stability and integrity of the slide and platform. A copy of a report signed by the
1885 engineer shall be kept on site as pursuant to s. ATCP 76.32. ^P

1886 **ATCP 76.38 Virginia Graeme Baker Act (1) GENERAL.** (a) *Requirements.*

1887 1. New pool construction. For a newly constructed pool, the operator shall have approved plans from
1888 the Department of Safety and Professional Services and shall maintain the pool plans onsite. ^P

1889 2. Existing pools. For a pool constructed before the effective date of this rule, the operator shall provide
1890 at a minimum, the pump curve and the drain cover specification. ^P

1891 **(2) DOCUMENTATION.** (a) *Log maintenance.* The operator shall maintain a log that can be used to
1892 evaluate the drain covers.

1893 (b) *Components.* The log shall include the following components related to the drain cover:

1894 1. Make. ^{Pf}

1895 2. Model. ^{Pf}

1896 3. Gallons per minute rating. ^{Pf}

1897 4. Life span. ^{Pf}

1898 5. Installation date. ^{Pf}

1899 (c) *Receipts or affidavits.* In lieu of a log, receipts or affidavits from a pool service company shall be
1900 acceptable documentation as long the information required in par. (2) (b), is provided. ^{Pf}

1901 (d) *Provided upon request.* Documents shall be provided to the department or agent upon request. ^{Pf}

1902

Subchapter VII

1903 **Limited-Use Public Pool**

1904 **ATCP 76.39 Applicability.** A limited-use pool is exempt from the requirements pursuant to ss. ATCP
1905 76.04 to 76.06 and 76.11 to 76.38.

1906 **ATCP 76.40 License to operate a limited-use public pool. (1) LICENSE REQUIRED.**

1907 (a) *Conditions requiring a license.* No person may operate a limited-use public pool without a license
1908 from the department or its agent. Except as provided under par. (b) 2., a separate license is required for each
1909 pool basin.

1910 (b) *Transfer of ownership.*

1911 1. If a license holder sells or otherwise transfers ownership or operation of a limited-use public pool
1912 to another person, a new license is required. The limited-use public pool may not be operated until the
1913 department or its agent has issued a new license.

1914 2. An individual may transfer a license to an immediate family member, if the individual is transferring
1915 operation of the limited-use public pool. A sole proprietorship that reorganizes as a business entity, pursuant
1916 to s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of
1917 business entity may transfer a license to the newly formed business entity or sole proprietorship if the pool
1918 remains at the location for which the license was issued and at least one individual who had an ownership
1919 interest in the sole proprietorship or business entity to which the license was issued has an ownership
1920 interest in the newly formed sole proprietorship or business entity.

1921 3. Except as provided in this paragraph, no license issued under this chapter is transferable from one
1922 premise to another or from one person or entity to another.

1923 4. A person who wishes to transfer a license under par. (c), shall notify the department or its agent prior
1924 to operation of the limited-use public pool.

1925 **Note:** To notify the department of a transfer of ownership, call (608) 224-4923 or send an e-mail to
1926 datcpdfslicensing@wi.gov.

1927 (c) *Preinspection required.* Before the department or its agent may issue a license to operate a limited-
1928 use public pool under sub. (1), the department or agent shall conduct a preinspection. A preinspection is
1929 not required for a transfer of a license under par. (b) 2.

1930 (2) LICENSE DURATION AND RENEWAL. (a) *Expiration.* Each license issued under this chapter
1931 expires on June 30, except that a license initially issued during the period beginning on April 1 and ending on
1932 June 30 expires on June 30 of the following year.

1933 (b) *Annual Renewal.* Each license shall be renewed annually as provided in sub. (4) (b).

1934 (3) NEW LICENSE. (a) *Application.* To apply for a new license, the applicant shall apply on an
1935 application form provided by the department or its agent. The completed application shall be accompanied by
1936 all of the following:

1937 1. The applicable fees pursuant to s. ATCP 76.41, and any fees previously due to the department or its
1938 agent.

1939 2. Information, as determined by the department or its agent, indicating that the pool will be maintained
1940 and operated in compliance Subchapter VII.

1941 **Note:** To obtain a copy of the pool operator license application form, or to determine which agent to
1942 contact for an application form, call (608) 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

1943 (b) *Requests for preinspection.* The operator shall contact the department or its agent and arrange a time
1944 for the preinspection pursuant to s. ATCP 76.40 (1) (c), before operating a limited-use public pool to the
1945 general public.

1946 **Note:** To obtain a copy of the pool operator license application form, or to arrange for a preinspection,
1947 call (608) 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

1948 (4) LICENSE RENEWAL. (a) *Renewal fee.* To renew a license, the operator shall pay the department
1949 or its agent the applicable license fee pursuant to s. ATCP 76.41, before the license expires. If payment to
1950 renew a license fee is not received by the department or its agent before the expiration date of the license,
1951 the late fee pursuant to s. ATCP 76.41(2) (e), shall be paid in addition to the license fee. An application for
1952 a renewal license is not required.

1953 (b) *Department action on a license renewal.*

1954 1. The department or its agent may refuse to renew a license as provided under sub. (5) (a) 1.

1955 2. The department or its agent shall refuse to renew a license as provided under sub. (5) (b).

1956 (5) DEPARTMENT OR AGENT ACTION ON LICENSE APPLICATION. (a) *Department or agent*
1957 *decision on a license.*

1958 1. The department or its agent may not issue a new license or renew an existing license for a limited use-
1959 public pool unless all of the following conditions are met:

1960 a. The operator has corrected a condition for which the department or agent has issued a written health
1961 or safety-related order.

1962 b. The operator, applicant, or license holder has provided the department or its agent with the
1963 information required under sub. (3) (a) 2.

1964 c. The department or its agent has determined that the operator, applicant or license holder is not in
1965 violation of ch. 97, Stats., or has only a minor violation pursuant to s. 227.04 (1) (a), Stats.

1966 (b) *License prohibited.* The department or its agent shall refuse to issue a new license or renew an
1967 existing license to operate a limited-use public pool under any of the following circumstances:

1968 1. A fully and accurately completed, signed and dated application has not been received by the
1969 department or its agent.

1970 2. The department or its agent has not conducted the preinspection pursuant to s. ATCP 76.40 (1) (c).

1971 3. The operator has not paid all of the applicable fees pursuant to s. ATCP 76.06.

1972 4. The operator has maintained the pool in a manner that is not in accordance with what the department
1973 or its agent recognizes as safe practice as outlined in this chapter.

1974 5. The owner or any occupant of the residence with a limited-use public pool is listed on the Wisconsin
1975 or national sex offender website.

1976 (c) *Conditional license.* Except, pursuant to s. 93.135, Stats., the initial issuance, renewal, or continued
1977 validity of a license may be conditioned upon the requirement that the license holder correct a violation of

1978 this chapter, s. 97.67, Stats., or ordinances adopted pursuant to s. 97.615 (2) (g), Stats., within a specified
1979 period of time. If the condition is not satisfied within the specified time or after an extension of time
1980 approved by the department, the license is void. No person may operate a limited-use public pool after a
1981 license has been voided. Any person who does so shall be subject to the penalties pursuant to ss. 97.72 and
1982 97.73, Stats., and fees pursuant to s. ATCP 76.41 (2) (e). An operator whose license is voided under this
1983 paragraph may appeal the decision pursuant to s. ATCP 76.09.

1984 (d) *Granting or denial of a license.*

1985 1. The department or its agent shall issue or deny a new license or shall renew a license for a limited-
1986 use public pool within 30 days after the applicant meets all of the requirements under subs. (3) or (4), as
1987 applicable.

1988 2. If the department or its agent denies an application for a license, the applicant shall be given reasons,
1989 in writing, for the denial and information regarding appeal rights pursuant to s. ATCP 79.09.

1990 (6) VOIDED LICENSE FOR FAILURE TO PAY FEES. (a) *Payment time frame.* If an applicant or
1991 operator fails to pay all applicable fees, late fees and processing charges pursuant to s. ATCP 76.41, within
1992 45 days after the expiration of the license, whichever occurs first, the license is void.

1993 (b) *Notice of insufficiency.* If the department receives a notice of an insufficiency pursuant to s. ATCP
1994 76.06 (3), the applicant or operator shall have 15 days after receipt of notice from the department of the
1995 insufficiency to pay all applicable fees and processing charges or the license is void.

1996 (c) *Appeal rights.* An operator whose license is voided under this subsection may appeal the decision
1997 pursuant to s. ATCP 76.09. The burden is on the license applicant or operator to show that all applicable
1998 fees, late fees and processing charges have been paid. During any appeal process concerning a payment
1999 dispute, operation of the pool is deemed to be operation without a license and is subject to the fees pursuant
2000 to s. ATCP 76.06 (2) (e), in addition to the fees otherwise due, unless the applicant or owner meets its burden
2001 of proof under this subsection.

2002 (7) LICENSE POSTING. A license shall be posted in a place visible to the public. A license may not
2003 be altered or defaced.

2004 **ATCP 76.41 Department fees. (1). FEE SCHEDULE.** Pursuant to s. 97.67 (5), Stats., no license may be
 2005 issued until all applicable fees have been paid. The fee schedule pursuant to s. ATCP 76.41 Table A, applies
 2006 to limited-use public pool licenses issued by the department or its agent under this chapter for each basin.
 2007 **Note:** Pursuant to s. 97.615 (2) (d), Stats., a local health department can establish and collect fees for license.
 2008 For a license issued by a local health department, contact the local health department for its license fee
 2009 schedule.

2010 **s. ATCP 76.41 Table A Fee Schedule — SFY 2023**

| 2011 | Type of | Permit | Preinspection | First | Second and | Late |
|------|-----------------|---------------|----------------------|-----------------------|------------------------|-------------|
| 2012 | Facility | Fee | Fee | Reinspection | Subsequent | Fee |
| 2013 | | | | or | Reinspection or | |
| 2014 | | | | Administrative | Administrative | |
| 2015 | | | | | Follow-Up Fee | |
| 2016 | | | | | | |
| 2017 | Limited Use | \$150 | \$150 | \$100 | \$150 | \$30 |
| 2018 | Public Pool | | | | | |
| 2019 | | | | | | |

2020 **(2) TYPES OF FEES. (a) Preinspection fee.** The operator shall pay the applicable preinspection fee
 2021 pursuant to s. ATCP 76.41 Table A, to the department or its agent before a new license is issued pursuant
 2022 to s. ATCP 76.40 (3).

2023 **(b) License fee.** The operator shall pay the applicable license fee pursuant to s. ATCP 76.41 Table A, to
 2024 the department or its agent for each limited-use public pool for which the operator applies for a new or
 2025 renewal license.

2026 **(c) Late fee.** If the license fee for a license renewal is not paid before the expiration date of the license,
 2027 the operator of the limited-use public pool shall pay to the department or its agent a late fee pursuant to s.
 2028 ATCP 76.41 Table A, and s. 93.21(5) (b), Stats., in addition to the renewal license fee.

2029 **(d) Reinspection or administrative follow-up fee.** If the department or its agent conducts a reinspection
 2030 or administrative follow-up of a limited-use public pool pursuant to s. ATCP 76.07 (1) (b) 1. or 4., the operator
 2031 shall pay to the department or its agent the applicable reinspection or administrative follow-up fee pursuant
 2032 to s. ATCP 76.41 Table A. The department or its agent shall assess an additional fee pursuant to s. ATCP
 2033 76.41 Table A, for any second or subsequent reinspection or administrative follow-up conducted pursuant

2034 to s. ATCP 76.07 (1) (b) 4.

2035 (e) *Fees for operating without a license.* If a limited-use public pool is found to be operating without a
2036 license, the operator shall pay to the department or its agent a fee of \$749.00, in addition to all applicable fees
2037 and any processing charges under sub (3).

2038 **Note:** Anyone operating a limited-use public pool without a license is also subject to the penalties
2039 pursuant to ss. 97.72 and 97.73, Stats.

2040 (f) *Duplicate license.* The department or its agent may charge the operator of a limited-use public pool
2041 \$15 for the request of a duplicate license.

2042 (g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly
2043 related to the department's responsibilities for issuing licenses, the department or its agent shall charge the
2044 operator or the entity requesting the inspection or consultation \$175.00.

2045 **(3) PENALTIES FOR INSUFFICIENCY OF PAYMENT.** If the payment for a new or renewal license
2046 is by check or other draft drawn upon an account containing insufficient funds, the applicant or operator
2047 shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees
2048 pursuant to sub. (1), and the financial institution's processing charges by cashier's check, other certified
2049 draft, or money order.

2050 **ATCP 76.42 Inspections. (1) REFUSED INSPECTION; PROCESS.** If a person denies access to the
2051 department or its agent, the department or its agent shall inform the person of all the following:

2052 (a) *Department access.* The license holder is required to allow access to the department or its agent
2053 pursuant to s. 97.12, Stats.

2054 (b) *License condition.* Access is a condition of the acceptance and retention of a limited-use public pool
2055 license to operate pursuant to s. ATCP 76.40.

2056 (c) *Denied access.* If the limited-use public pool license holder denies access to an authorized
2057 representative of the department or its agent, the department or its agent may apply for an inspection warrant
2058 to allow access as provided in law pursuant to s. 66.0119, Stats.

2059 **(2) REPORTING OF REFUSED ACCESS.** If the person in charge continues to refuse access after the
2060 department or its agent presents credentials, provides the explanation in sub. (1), and makes a final request
2061 for access, the department or its agent shall document details of the denial of access on an inspection report
2062 form.

2063 **(3) FREQUENCY OF INSPECTION.** The department or its agent shall inspect a limited-use public
2064 pool at frequency as determined by the department.

2065 **(4) INSPECTION DOCUMENTATION.** The department or its agent shall document all of the
2066 following on an inspection report form:

2067 **(a) *Establishment Information.*** Administrative information about the limited-use public pool’s legal
2068 identity, street and mailing addresses, type of establishment and operation, inspection date, and other
2069 information such as type of water supply and sewage disposal, and status of the license.

2070 **(b) *Inspection findings.*** The conditions or other violations from this chapter that require corrective
2071 action by the license holder. An accompanying narrative shall contain all of the following:

2072 1. A factual description of the violation observed, including location of the observed violation.

2073 2. Citation and a brief description of the statute, administrative rule, or local ordinance for the observed
2074 violation.

2075 3. A statement indicating what corrective action the license holder has taken, or shall take, to regain
2076 compliance with the administrative rule, statute, or local ordinance.

2077 4. Unless otherwise indicated on the inspection report, each violation shall have a corrective action
2078 deadline. The corrective action deadline shall be based on the following criteria: a. The nature of the
2079 potential hazard involved and the complexity of the corrective action needed. The department or its agent
2080 may agree to or specify additional time, not to exceed 72 hours after the inspection, for the license holder
2081 to correct violations of a priority item as defined in ch. ATCP 76.

2082 b. The license holder has a maximum time of 10 calendar days after the inspection for the license holder
2083 to correct violations of a priority foundation item.

2084 c. The license holder shall correct core items, as defined in ch. ATCP 76, by a deadline agreed to or
2085 specified by the department or its agent, but no later than 90 calendar days after the inspection. The
2086 department or its agent may approve a written compliance schedule that extends beyond 90 calendar days,
2087 if the license holder submits a written schedule of compliance and no health hazard exists, or will result,
2088 from allowing an extended schedule for compliance.

2089 (5) ISSUING A REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT. At the
2090 conclusion of the inspection, an authorized representative of the department shall sign the completed
2091 inspection report. The department or its agent shall then perform an exit interview and obtain a signature
2092 on the inspection report from the license holder's designated person in charge. A copy of the inspection
2093 report shall be left with the person in charge at the completion of the inspection or emailed or otherwise
2094 presented within 2 business days after completion of the inspection.

2095 (6) REFUSAL TO SIGN INSPECTION REPORT. If the license holder's designated person in charge
2096 refuses to sign the inspection report, the department or its agent shall do all of the following:

2097 (a) *Receipt of inspection report.* Inform the person who declines to sign the inspection report that a
2098 written acknowledgment of receipt is not an agreement with findings.

2099 (b) *License holder's obligations.* Inform the person that refusal to sign the inspection report will not
2100 affect the license holder's obligation to correct the violations noted in the inspection report by the deadlines
2101 specified.

2102 (c) *Refusal documentation.* Document the refusal to sign in the inspection report.

2103 (7) POSTING OF INSPECTION REPORTS. The department and its agents shall make inspection
2104 reports available to the public on the internet.

2105 **ATCP 76.43 Recirculation system. (1) GENERAL.** Each limited-use public pool shall have a water
2106 recirculation system with disinfection treatment and filtration equipment.

2107 (2) CONTINUOUS OPERATION. The system shall be operated continuously except for seasonal
2108 closing or during periods of necessary maintenance.

2109 **ATCP 76.44 Chemical handling and feed. (1) STORAGE. (a) Physical location.** Chemicals shall be:

- 2110 1. Stored in the original labeled container.
- 2111 2. Separated as much as reasonably possible.
- 2112 3. Kept covered in a clean, dry, well ventilated area.
- 2113 4. Stored in containers maintained in good condition.
- 2114 5. Accessible only to authorized personnel.

2115 **(2) MIXING.** (a) *Special instruction.* The method of adjusting water chemistry shall be by adding a
2116 chemical to pool water, not by adding water to a chemical.

2117 (b) *Chemicals added separately.* Each chemical or chemical solution shall be added separately to the
2118 water.

2119 (c) *Patrons prohibited.* Patrons shall not be in the limited-use public pool, when chemicals are added
2120 directly into the pool basin.

2121 **(3) HANDLING** (a) *Safety data sheet.* Safety data sheets for each chemical used shall be:

- 2122 1. Readily accessible to the department or its Agent, and
- 2123 2. Provided in a binder that is available to guests, patrons or emergency responders, and
- 2124 3. Available to the responsible supervisor. The responsible supervisor shall: a. Be trained in the use of
2125 the safety data sheets, and
- 2126 b. Know where safety data sheets are located.

2127 **(4) CHEMICAL FEEDER INSTALLATION.** (a) *Installation.* Devices used for chemical feeding shall
2128 be installed and used according to the manufacturer's directions.

2129 (b) *Use.* Used only with the disinfectant or sanitizer recommended by the manufacturer and meet all of
2130 the following requirements:

- 2131 1. Easily adjustable.
- 2132 2. Capable of providing the required chemical residuals.

2133 (c) *Interruption of return water flow.* If a liquid chemical feed pump is used, the pump shall stop when
2134 the flow of return water is interrupted by installing:

- 2135 1. Electrical interconnection.

2136 2. Flow sensing.

2137 **ATCP 76.45 Water chemistry. (1) CHEMICAL CONCENTRATIONS AND RESIDUALS. (a)**
2138 *Disinfectant or sanitizer residuals.*

2139 1. A limited-use public pool disinfected with chlorine shall have a free chlorine residual of: a. 1 ppm
2140 to 10 ppm.

2141 b. If cyanuric acid is used (if tri-chlor or di-chlor briquettes are used), the cyanuric acid level shall be
2142 2 ppm to 10 ppm.

2143 2. If bromine is used as a disinfectant, the minimum level of bromine shall be 3 ppm to 10 ppm.

2144 3. If a disinfectant or sanitizer is used other than chlorine or bromine: a. It shall be designed for use in
2145 a swimming pool, and

2146 b. The manufacturer's directions for use shall be followed.

2147 (b) *Cyanurates.* The water cyanuric acid concentration may not exceed 30 ppm. A cyanuric acid level
2148 above 300 ppm is considered a hazardous substance in the pool.

2149 (c) *pH control.* The water's pH shall be maintained within a range of 7.2 to 7.8.

2150 (d) *Alkalinity.* The total alkalinity of pool water shall be maintained between 60 and 180 ppm as calcium
2151 carbonate unless it can be shown by the operator that another level of total alkalinity produces chemically-
2152 balanced water based on calculations approved by the department.

2153 (e) *Combined chlorine.* The operator shall conduct breakpoint chlorination or water replacement or a
2154 combination of both when the combined chlorine is 0.4 ppm or higher.

2155 **Note:** if the source water contains combined chlorine, that amount may be subtracted from the
2156 combined chlorine reading.

2157 **ATCP 76.46 Water temperature. (1) POOL WATER TEMPERATURE.** The pool water shall not exceed
2158 90° F.

2159 **(2) WHIRLPOOL WATER TEMPERATURE.** The whirlpool water may not exceed 104° F.

2160 **ATCP 76.47 Visibility. (1) WATER CLARITY.** The grating of the main drain shall be readily visible from
2161 the pool deck. If there is not a main drain on the bottom of the pool, the floor of the pool must be clearly

2162 visible.

2163 (2) ILLUMINATION. Artificial lighting shall be provided so that all areas of a pool, including the
2164 bottom, shall be visible when the pool is used during periods of low illumination.

2165 **ATCP 76.48 Water testing. (1) WATER TESTING FREQUENCY.** Water shall be tested as follows:

2166 (a) Daily before the limited-use public pool is open to the public or before the limited-use public pool
2167 is in use and in-between each user group for pH and available disinfectant.

2168 (b) If chlorine is used, the water shall also be tested at least twice a week for the combined chlorine
2169 level.

2170 (c) Water shall be tested at least once a week for total alkalinity.

2171 (d) If cyanuric acid is used in the water basin, the cyanuric acid concentration in the water shall be
2172 tested at least once a week.

2173 (e) A log shall be kept and indicate that the recirculation system is working properly, the level of
2174 disinfectant, water clarity, time and date of test, water temperature, the results of any other testing performed
2175 and the name of the person performing the tests.

2176 (2) TEST KIT, USE. (a) *Availability.* A test kit shall be provided to perform the tests required pursuant
2177 to sub. (1), of this section, for any chemicals used in the limited-use public pool.

2178 (b) *Test kit chemicals.*

2179 1. Test kit chemicals shall be used within their expiration date.

2180 2. Stored according to manufacturer's directions.

2181 **ATCP 76.49 Responsible supervisor. (1) RESPONSIBILITIES.** (a) *Supervision.* Each limited-use public
2182 pool shall be under the supervision of at least one responsible supervisor at all times when the pool is open
2183 to the public.

2184 (b) *Availability.*

2185 1. The responsible supervisor, when notified, shall provide direction to the caller and if necessary, have
2186 the caller remove the occupants from the pool until the responsible supervisor can respond to the unsafe or
2187 unsanitary condition.

2188 2. The responsible supervisor shall routinely monitor the pool.

2189 (c) *Duties*. The responsible supervisor shall perform all of the following:

2190 1. Ensure that safety and rescue equipment is in place.

2191 2. Ensure sanitation and water testing.

2192 3. Maintain records.

2193 4. Ensure pumps, disinfectant and recirculation systems are in working order.

2194 5. Close the pool as necessary to protect health and safety.

2195 6. Ensure that current CDC guidelines are followed in responding to a fecal or vomit incident.

2196 **ATCP 76.50 License holder responsibility. (1) INFORMATIONAL MATERIALS.** The license holder
2197 of a limited-use public pool shall provide the following information to users in a binder or by other written
2198 means:

2199 (a) *Safety warnings*. Main drain, wall drain, and skimmer safety warning information, as applicable.

2200 (b) *Safety data sheets*. Safety data sheets.

2201 (c) *Personal floatation devices*. A statement indicating that personal floatation devices will not be
2202 provided.

2203 (d) *Pre-rental checklist*. The license holder shall provide a pre-rental checklist to the principle renter
2204 indicating the following areas shall be checked before use of the pool or whirlpool:

2205 1. The main drain or bottom of the limited-use public pool is clearly visible.

2206 2. A phone capable of calling 911 is available.

2207 3. Recirculation system is functioning such as water flowing out at inlets.

2208 4. No floating debris is present.

2209 5. No obvious hazards, including spills, exist.

2210 6. First aid kit is available.

2211 7. Phone number and contact information for the owner and responsible supervisor is available.

2212 **(2) APPLICABLE RULES.** Comply with the provisions of this chapter and ch. ATCP 76.

2213 **(3) RECORD KEEPING.** Follow record keeping requirements as outlined in this chapter.

2214 (4) CLOSURE AND NOTIFICATION. Immediately discontinue operations directly related to an
2215 imminent health hazard, and notify the department or its agent.

2216 (5) CORRECTIVE ACTIONS. Comply with directives of the department or its agent including
2217 deadlines for taking corrective actions specified in inspection reports, notices, orders, warnings, and other
2218 directives issued by the department or its agent for the license holder's pool or in response to community
2219 emergencies.

2220 (6) NOTICES. Accept notices issued and served by the department or its agent according to law.

2221 (7) PENALTIES. Be subject to the administrative, civil, injunctive, and criminal remedies authorized
2222 in law for failure to comply with ch. ATCP 76, and any other directive of the department or its agent,
2223 including deadlines for corrective actions specified in inspection reports, notices, orders, warnings, and
2224 other directives.

2225 **ATCP 76.51 Reports and paperwork.** Before the limited-use public pool is open to the public or before
2226 the pool is in use and in-between each user group the license holder or responsible supervisor shall
2227 document the following information: (1) TESTING LOGS. Water testing shall be performed pursuant to
2228 s. ATCP 76.48 (1) (e). (a) *Results*. The results shall be documented in a log.

2229 (b) *Retention*. The log shall be kept for a minimum of 3 years and made available to the department or
2230 its agent upon request.

2231 (2) FECAL AND VOMIT INCIDENT LOG. Record date, time and action taken in responding to a
2232 fecal or vomit incident.

2233 **ATCP 76.52 Signage. (1) REQUIRED.** The following shall be provided and posted at the limited-use
2234 public pool. (a) *Maximum patron load*. The maximum patron load shall be posted and shall:

2235 1. Allow for 20 square feet per person in a pool, and

2236 2. Allow for 10 square feet per person in a whirlpool.

2237 (b) *General safety*. A sign shall be provided with the following:

2238 1. No lifeguard on duty.

2239 2. Swim at your own risk.

- 2240 3. No diving.
- 2241 4. Do not swim if you can't see the bottom of the pool.
- 2242 5. Drains can be a source of injury or entrapment, please avoid.
- 2243 6. Persons with open sores shall not use the pool or whirlpool.
- 2244 7. Keep children under the age of 6 out of the whirlpool.
- 2245 8. Leave the pool if a fecal or vomit incident occurs and call the responsible supervisor.
- 2246 (c) *Responsible supervisor*. Signage with the address of the pool location and the contact information
- 2247 for the responsible supervisor shall be provided.
- 2248 **ATCP 76.53 First aid, rescue and safety supplies.** Rescue equipment shall be mounted in a conspicuous
- 2249 place and shall be readily accessible. **(1) SHEPHERD'S CROOK.** Except for a whirlpool, an intact
- 2250 shepherd's crook shall be provided at the pool in case a non-swimmer needs to rescue someone in the water.
- 2251 **(2) FIRST AID SUPPLIES.** A standard first aid kit plus ice packs shall be available at the pool area.
- 2252 **(3) EMERGENCY BLANKETS.** Two conventional or emergency blankets in good condition shall be
- 2253 available in the pool area.
- 2254 **(4) FECAL ACCIDENT KIT.** A fecal accident cleanup kit must be on premises and include the
- 2255 following: A bucket and cleanup items such as scoop, spatula, biohazard bag, disposable gloves, antiseptic
- 2256 hand wipes and paper towels.
- 2257 **ATCP 76.54 Limited-use public pool area. (1) GENERAL.** The pool basin, stairs, ladders, deck
- 2258 and furniture shall be:
- 2259 (a) Maintained clean.
- 2260 (b) Maintained in good repair.
- 2261 **(2) TOILET ROOM.**
- 2262 (a) At least one toilet room shall be available.
- 2263 (b) The toilet room shall be maintained clean.
- 2264 (c) The toilet room shall be maintained in good repair.

2265 (3) RESTRICTED ACCESS. For a tourist rooming house or bed and breakfast establishment, when the
2266 limited-use public pool is not under a rental agreement with the guests, the limited-use public pool shall be
2267 secured such as locked cover or fencing with gate, or door, to prevent access, when rented.

2268 **ATCP 76.55 Registration. (1) REGISTRATION LOG.** The license holder shall keep a registration log
2269 with the following information:

2270 (a) *Date and time.* The Date and time the limited-use public pool was rented.

2271 (b) *Principle renter information.* The name and phone number of the principle renter.

2272 (2) RECORDS. Registration records may be written or electronic.

2273 (3) RETENTION. Registration records shall be kept for a minimum of 3 years and made available to
2274 the department or its agent as requested.

2275 SECTION 2. EFFECTIVE DATE. This rule shall take effect 90 days following publication in the
2276 Wisconsin administrative register, as provided pursuant to s. 227.22 (2) (intro), Stats.

(END OF RULE TEXT)

Dated this _____ day of _____, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

| | |
|--|--|
| <p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p> | <p>2. Date February 18, 2022</p> |
| <p>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</p> | |
| <p>4. Subject Public Pools and Water Attractions</p> | |
| <p>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</p> | <p>6. Chapter 20, Stats. Appropriations Affected Wis. Stat. § 20.115(1)(gb) Food, lodging, and recreation.</p> |
| <p>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</p> | |
| <p>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)</p> | |
| <p>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.</p> | |
| <p>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</p> | |
| <p>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</p> | |

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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.

The department also addressed limited-use public pools. These pools are not addressed under the current rule. Licensing

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and health and safety requirements were developed for this new business model.

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.

Limited-use public pools have a proposed license fee of \$150.

Pools and water attractions need a secondary containment system for storage of disinfectants or acids. An estimated cost for the container is \$85 to \$200.

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.

The proposed rule provides health and safety standards for a limited-use public 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)

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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 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 |
|---|--|

This document can be made available in alternate formats to individuals with disabilities upon request.

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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 fees 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.

Limited-use public pools have a proposed license fee of \$150.

Pools and water attractions need a secondary containment system for storage of disinfectants or acids. An estimated cost for the container is \$85 to \$200.

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

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

- Establishment of performance standards in lieu of Design or Operational Standards
 Exemption of Small Businesses from some or all requirements
 Other, describe:

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.

The proposed rule provides health and safety standards for limited-use public pools.

5. Describe the Rule's Enforcement Provisions

ss. 93.07 (1), 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)

- Yes No
-

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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 #: **Not assigned**

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. Also, included in the pool industry are limited-use public pools that now are rented to the general public in a residential environment.

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.

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 fees 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.

Limited-use public pools have a proposed license fee of \$150.

Pools and water attractions need a secondary containment system for storage of disinfectants or acids. An estimated cost for the container is \$85 to \$200.

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.

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 18 day of February, 2022.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



Amy Millard, Deputy Administrator,
Division of Food and Recreational Safety

**State of Wisconsin
Department of Agriculture, Trade and Consumer Protection**

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a permanent rule to repeal and recreate ATCP 76, relating to Safety, Maintenance, and Operation of Public Pools and Water Attractions and affecting small business*, at the times and places shown below.

Hearing Information

Date: Tuesday, March 29, 2022

Time: 11:00 a.m. – 2:00 p.m.

Location: 2984 Shawano Avenue, DNR State Office Building, Lake Michigan Conference Room, Green Bay, WI 54313

Date: Wednesday, March 30, 2022

Time: 11:00 a.m. – 2:00 p.m.

Location: DWD – Marathon County Job Center, 731 North 1st Street, Oak Conference Room, Ste #4000, Wausau, WI 54403

Date: Thursday, March 31, 2022

Time: 11:00 a.m. – 2:00 p.m.

Location: 718 W. Clairemont Avenue, Eau Claire State Office Building, Conference Room 129, Eau Claire, WI 54701

Date: Friday, April 1, 2022

Time: 11:00 a.m. – 2:00 p.m.

Location: Virtual

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 608-571-2209](tel:+16085712209),,605942339# United States, Madison

Phone Conference ID: 605 942 339#

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Date: Thursday, April 7, 2022

Time: 11:00 a.m. – 2:00 p.m.

Location: 300 La Crosse Street, Wisconsin Dells Municipal Building, Wisconsin Dells, WI 53965

Date: Friday, April 8, 2022

Time: 11:00 a.m. – 2:00 p.m.

Location: 1910 County Road NN, Walworth County Health Department & Human Services Auditorium, Elkhorn, WI 53121

Accessibility

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by March 15, 2022 by writing to Caitlin Jeidy at caitlin.jeidy@wisconsin.gov, or by phone at (608) 977-0565. Alternatively, you may contact the Department of Agriculture, Trade and Consumer Protection TDD at (608) 224-5058.

Appearances at the Hearing and Submittal of Written Comments

The proposed rule may be reviewed and comments made at https://datcp.wi.gov/Pages/About_Us/AdministrativeRules.aspx no later than April 15, 2022.

Initial Regulatory Flexibility Analysis

The proposed rule will have minimal effect on small businesses, as defined under s. 227.114 (1), Stats.

1. Description of the types of small businesses that will be affected by the rule:

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. A proposed licensing structure is included in the rule. 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.

2. Description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule:

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.

3. Description of the types of professional skills necessary for compliance with the rule:

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.

Agency Small Business Regulatory Coordinator

The Department's Regulatory Review Coordinator may be contacted by email at Bradford.Steinel@wisconsin.gov or by phone at (608) 224-5024.

Dated this ____ day of February, 2022

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By _____
Randy Romanski, Secretary