

Wisconsin Department of Agriculture, Trade and Consumer Protection
Regulatory Flexibility Analysis

Rule Subject: **Safety, Maintenance, and Operation of Public Pools and Water Attractions**

Adm. Code Reference: **ATCP 76**

Rules Clearinghouse#: **22-021**

DATCP Docket #: **19-R-04**

Rule Summary

The proposed rule modifies Wis. Admin. Code ch. ATCP 76.

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

The pool industry encompasses a broad variety of businesses from small motels and campgrounds, to homeowner associations, schools, healthcare, and municipal and resort waterparks. In order to ensure development of a rule that considers all the various niches within industry, robust representation from within the pool industry, public health and pool code plan review was sought from industry groups that were advised during rule development. After receiving public comment and based on the Joint Committee for Review of Administrative Rules (JCRAR) action, the department removed subchapter VII, relating to limited-use public pools. On April 26, 2022, JCRAR adopted a motion under s. 227.26 (2) (d), Stats., that suspended s. ATCP 76.02 (1) (a) in part as it applies to a tourist rooming house. In response, the department has also removed tourist rooming houses and bed and breakfast establishments from s. ATCP 76.02 (1) (a).

Sections were added and formatted to align with other Retail and Recreational rules.

The proposed licensing model more clearly reflects the risks and complexity of the pool operation and more accurately reflects the time it takes for the department to perform its licensing and inspection responsibilities. This licensing model will promote fairness to small business owners by having the license fee reflect inspection time and risk associated with their facilities. License fees will not be based on a one-size-fits-all model.

The proposed rule incorporates best practices and modern technologies in pool operation. Significant input was received from industry and public health partners related to methods for the operation of a pool's recirculation system and methods for chemical testing. Much of the language was outdated, including references that are no longer accurate or relevant. The input received

ensured that the rule was updated to allow for new materials that perform more effectively in filtering pool water, and potentially a newer water testing kit that employs technologies that may be more accurate or more efficient than the traditional approach. In these sections, the language of the rule was intensively reviewed and clarified so that it is more easily understood by industry and regulators alike.

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

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

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

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

The revised rule will streamline and simplify disinfectant residual requirements to be in line with those of surrounding states, while maintaining more stringent requirements in settings where appropriate.

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

Small Businesses Affected

The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. Instead of licensing by activity area, the licensing model in the revised rule is

based on assigning complexity based on basic basin characteristics, and assigning add-on fees based on what is added to the basin. This greatly clarifies the licensing process, and brings the fee for the pool into alignment with the time it takes to inspect it and manage the program.

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.

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 04 day of May, 2022.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
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By 
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