

## 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 <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). <b>\$50 - \$700</b> 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.

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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.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

NA

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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.

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#### 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.

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#### 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.

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#### 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
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### ATTACHMENT A

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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.

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

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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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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.

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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
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- Establishment of performance standards in lieu of Design or Operational Standards  
 Exemption of Small Businesses from some or all requirements  
 Other, describe:

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#### 4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule will provide more flexibility to businesses in complying with rule requirements that are consistent with recognized industry best practices. The proposed rule will allocate regulatory requirements in proportion to risk, and will support risk-based inspection methods. The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. Instead of licensing by activity area, the licensing model in the revised rule is based on assigning complexity based on basic basin characteristics, and assigning add-on fees based on what is added to the basin. This greatly clarifies the licensing process, and brings the fee for the pool into alignment with the time it takes to inspect it and manage the program.

The proposed rule was updated to allow for new technologies, such as materials that perform more effectively in filtering pool water, and potentially a newer water testing kit that employs technologies that may be more accurate or more efficient than the traditional approach. The proposed rule is written to be more accommodating of new technologies, trends and methods.

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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.

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#### 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.

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#### 6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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