

analysis. The sample shall be analyzed at the state laboratory of hygiene or other certified laboratory.

(b) *Results.* Should a sample be unsafe as specified in s. HSS 172.07 (1) (b), daily samples shall be collected until a safe analysis is reported. The cause of the unsafe sample should be determined and disinfectant feed rate shall be adjusted upward to achieve more effective bacterial kill. See s. HSS 172.04 (4).

(2) **CHEMICAL.** Such samples as needed to maintain chemical content or pH in the ranges specified in s. HSS 172.04 (4) shall be collected and analyzed by the operator.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; renum. from H 72.08, Register, May, 1982, No. 317, eff. 6-1-82.

HSS 172.09 Variance. The department may approve safety, operation and maintenance rules for pools that are different from those contained in this chapter for experimental or trial purposes. Such purposes shall comply with the purpose and intent of this chapter. The department may require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding the sufficiency of any proposed alternative.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; renum. from H 72.09, Register, May, 1982, No. 317, eff. 6-1-82.

HSS 172.10 License. (1) **REQUIREMENT.** Before being opened for public use each public swimming pool as defined in s. HSS 172.02 (10), shall be licensed by the department or a local governmental entity. Application for licensure by the department shall be made on forms provided by the department.

(1m) **ACTION BY THE DEPARTMENT.** Within 60 days after receiving a complete application for a license for a public swimming pool, the department or its agent designated under s. 50.535 (2), Stats., shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department or its agent designated under s. 50.535 (2), Stats., shall give the applicant reasons, in writing, for the denial.

(2) **EXEMPTION.** Two or more pools on a property having a single recirculation and filtration system are considered one unit (pool).

(3) **STATE FEES.** The departmental annual fiscal year license fee shall be nonreturnable, nontransferable and nonprorated as specified in s. 140.05 (17), Stats.

(4) **RESTRICTION.** The department shall not assess license fees for public swimming pools if the appropriate local governmental entity (where physically located) enacts an ordinance or promulgates regulations causing payment of an annual local license fee and further providing the following conditions are met by ordinance or regulation enactment and/or activity.

(a) Chapters HSS 171 and 172 or similar regulations which are at least as stringent as those chapters in all respects be adopted.

(b) A means for suspension or revocation of the local license be provided.

- (c) At least one sanitary survey (inspection) per year be conducted.
 - (d) Copies of all applicable ordinances or regulations and the name and address of the responsible inspecting official be submitted to the department.
 - (e) A listing of all public swimming pools in its jurisdiction and subject to its regulatory and inspection program be submitted annually during the month of April to the department.
 - (f) Local governmental entity staff, within 30 days after completing a sanitary survey, submit a copy of that report to the department on forms provided at cost by the department.
- (5) **LOCAL FEES.** Local license fees shall be assessed by the appropriate governmental entity. However, should a local governmental entity own and operate a public swimming pool and conduct a regulatory and inspection program in accord with this section, the fees required by s. 140.05 (21), Stats., shall be considered assessed and paid.

Note: Because of the variety of operating procedures used by local governmental entities, one department, committee, section or other organizational unit may own a facility(s) and staff of another organizational unit may conduct the regulatory and inspection program. In such cases a fee may actually be assessed. Such action is based on local ordinance or resolution content.

- (6) **SUPERVISION.** The department shall have the right to separately or jointly conduct sanitary surveys and review all records of local activities at reasonable times and upon reasonable notice. Copies of reports on sanitary surveys conducted by department staff shall be transmitted to the appropriate local authority within 30 days.
- (7) **ENFORCEMENT.** (a) Should the department determine that the local regulation and inspection program does not meet the provisions of these regulations, it shall notify the governing body and the responsible inspecting official or agency of the local governmental entity. The local governmental entity shall then revise its regulation and inspection program to comply with these regulations within 60 days. If after that 60 days, the department determines that the local regulation and inspection program has not been revised to comply with these regulations, public swimming pools in that local governmental entity shall be assessed the state license fee for the appropriate state fiscal year to avoid concurrent local and state license fees; and upon expiration of the local license the department shall assume licensure, regulatory and inspection responsibilities.
- (b) Should the department determine that a satisfactory program is not being conducted by the local governmental entity because of the lack of a qualified inspector, the department shall after the 60 day period offer that or any other local official an examination designed for statewide use and relating to all facets of public swimming pool design and operation. The examination shall be jointly prepared by qualified state and local governmental entity representatives. Should the employee (inspector) achieve a grade of at least 70 on a scale of 100 he or she shall be deemed qualified.

- (8) **LOCAL-STATE LICENSE.** If local governmental entities conduct an inspection and regulation program in compliance with these regulations,

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public swimming pools licensed in their jurisdiction shall be deemed licensed by the state under s. 140.05 (17) Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; renum. from H 72.10, Register, May, 1982, No. 317, eff. 6-1-82; cr. (1m), Register, November, 1985, No. 359, eff. 12-1-85.

Register, November, 1985, No. 359