



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Report From Agency

DATE: July 5, 2022

TO: The Honorable Chris Kapenga
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
PO Box 8953
Madison, WI 53708-8953

FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Clearinghouse Rule 22-021 Final Draft Rule repealing and recreating ATCP 76 relating to the regulation of the safety, maintenance and operation of public pools and water attractions.

Proposed Rule

The proposed rule is attached.

Reference to Applicable Forms

There are no applicable forms.

Fiscal Estimate and EIA

The fiscal estimate and EIA are attached.

Detailed Statement Explaining the Basis and purpose of the Proposed Rule, Including How the Proposed Rule Advances Relevant Statutory Goals or Purposes

The proposed 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 Wisconsin department of safety and professional services pool plan review was sought in rule development.

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 proposed 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 proposed 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, including a whirlpool, waterslide, and pool slide under six feet, 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 proposed 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 proposed 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 the proposed ch. ATCP 76, the department has sought to eliminate duplication, clarify expectations, and to simplify licensing and align fees with costs.

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 proposed 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. 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 proposed ch. ATCP 76, 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).

On Wednesday, April 20, 2022, the Department received notification from the Joint Committee for the Review of Administrative Rules (JCRAR) of a public hearing and executive session scheduled for April 26, 2022. The purpose of the public hearing was for JCRAR to hear testimony and review the application of the existing Wis. Admin. Code ch. ATCP 76 to tourist rooming houses and to pools made available through short-term rental entities such as VRBO and Airbnb. The purpose of the executive session was for executive action by JCRAR to include any activities related to the suspension of a rule under Wis. Stat. § 227.26, in whole or in part, and introduction of legislation to support the suspension.

After receiving testimony from interest groups, Department staff, and individual property owners, JCRAR adopted a motion to suspend the phrase “a tourist rooming house” in Wis. Admin. Code § ATCP 76.02(1)(a). JCRAR also adopted a motion to introduce LRB-6305/1 and LRB-6311/1 in support of the suspension relating to the applicability of ch. ATCP 76, to remove pools that are located at short-term rentals, as defined in Wis. Stat. § 66.0615(1)(dk), from Wis. Stat §§ 93.07(24)(e) and 97.67(1).

On May 31, 2022, the Legislative Reference Bureau will publish Wis. Admin. Code ch. ATCP 76 to show partial suspension in ATCP 76.02(1)(a) by JCRAR. If the legislation passes, the suspension would permanently remove “a tourist rooming house” from ch. ATCP 76.

The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.

Summary of Public Comments and the Department’s Responses, Explanation of Modifications to Proposed Rules Prompted by Public Comments

Public Hearing Locations

The Department held six public hearings around the State. Following the public hearings, the hearing record remained open until April 15, 2022.

Date and Time	Location
Tuesday, March 29, 2022 11:00 a.m. to 2:00 p.m.	DNR State Office Building, Lake Michigan Conference Room, 2984 Shawano Avenue, Green Bay, WI 54313
Wednesday, March 30, 2022 11:00 a.m. to 2:00 p.m.	DWD - Marathon County Job Center, 731 North 1st St., Oak Conference Room, Suite #4000, Wausau, WI 54403
Thursday, March 31, 2022 11:00 a.m. to 2:00 p.m.	Wisconsin State Office Building, Room 129 718 W. Clairemont Ave., Eau Claire, WI
Friday, April 1, 2022 11:00 a.m. to 2:00 p.m.	Virtual (use this link to join the hearing by computer or mobile app. To join by phone, call (608) 571-2209 and use ID number 605 942 339).
Thursday, April 7, 2022 11:00 a.m. to 2:00 p.m.	Wisconsin Dells Municipal Building, 300 La Crosse Street, Wisconsin Dells, WI 53965
Friday, April 8, 2022 11:00 a.m. to 2:00 p.m.	Walworth County Health Department & Human Services Auditorium, 1910 County Road NN, Elkhorn, WI 53121

List of Public Hearing Attendees and Commenters

The following is a complete list of people who attended the public hearings or submitted comments on the proposed rule during the public comment period, their position taken, and whether they provided written or oral comments.

Commenter #	Name and Address	Position Taken	Method of Commenting
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		(Support or Opposed)	(Oral or Written)
1.	Jason Hagar Tundra Lodge 865 Lombardi Ave Green Bay, WI 54311 jhager@bayinvestmentcorp.com	No Position	NA
2.	Kevin Stephanie Hawthorne Suites 335 W. Joseph Street Green Bay, WI 54301 greenbay@ipdhospitality.com	No Position	NA
3.	Austin Carter Brown County Public Health 2198 Glendale Ave Green Bay, WI 54303 Austin.carter@browncountywi.gov	No Position	NA
4.	Jason M Davies Pool Envy, LLC Green Bay, WI 54311 poolenvy@poolenvywi.com	Favor Part/ Oppose Part	Written
5.	Bruce Wolf Comfort Suites Hotel 1951 Bond Ct. Green Bay, WI 54303 bwolf@comfordsuitesgb.com	No Position	Oral
6.	Aaron Wolf Comfort Suites Hotel 2779 Prairie Garden Trail Green Bay, WI 54313 awolf@comfordsuitesgb.com	No Position	NA
7.	Brenda Stumpf Village of Sherwood 177879 Ridgeview Ct. Sherwood, WI 54169	No Position	NA
8.	Tom Jack Chairman Park and Rec W4892 Escarpment Terrace Sherwood, WI 54169	No Position	NA
9.	Trista Groth City of De Pere Health Department 225 S. Broadway De Pere, WI	No Position	NA
10.	Tom Mooney American Red Cross CCO Wisconsin	Support	Written

11.	Keith Hendricks Environmental Health Manager Racine County Public Health Division 10005 Northwestern Avenue, Franksville WI 53126 keith.hendricks@racinecounty.com	No Position	Written
12.	Jody Frymire MPH Regulatory Affairs Specialist IDEXX Water One IDEXX Drive, Westbrook, ME 04038 jody- frymire@idexx.com	Supports	Written
13.	Mark Doron Marathon County Parks and Rec 212 River Drive STE. 2 Wausau, WI 54403	No Position	NA
14.	Bradley Mroczenski Marathon County Parks and Rec 900 Parder St Wausau, WI 54401	No Position	NA
15.	Matthew Gillet City of Durand 104 E. Main Street Durand, WI 54736 dwwrpe@nelson-tel.net	No Position	Oral and Written
16.	Joe Stefanyak Ellis & Associates 500 Winderley Pl Maitland, FL 32751-7247 joe.stefanyak@jellis.com	No Position	NA
17.	Jessica Jungenberg Tri-County Environmental Health 428 Underwood Ave, Montello, WI 53949 jessica.jungenberg@co.waushara.wi.us	No Position	NA
18.	Noah Diekemper WILL 725 Kilbourn, Milwaukee, WI, 53202 noah@will-law.org	No Position	NA
19.	Will Yackle Sheraton Madison 300 Marietta St NW #304, Atlanta GA 30313 wyackle@lvmgt.com	No Position	NA
20.	Briana Harter Brown County Public Health 2198 Glendale Avenue, Green Bay WI 54303 briana.harter@browncountywi.gov	No Position	NA
21.	Mike Vechinski South Wood County YMCA 601 W Grand Ave Wi Rapids Wi 54495 vechinski@swcymca.org	No Position	NA

22.	Mary Kallin Meadowbrook Condos 2230B Meadowbrook Court msk2230bmb@yahoo.com	No Position	Oral
23.	Madeline Wojciuk UW-Madison Env & Occ Health 21 N Park St, Madison, WI 53715 madeline.wojciuk@wisc.edu	No Position	NA
24.	Zane Hugo University of Wisconsin-Madison Recreation and Wellbeing 797 W Dayton St, Madison, WI 53715 zane.hugo@wisc.edu	No Position	NA
25.	Anthony Gould Amery Hospital & Clinic 220 Keller Ave N Amery, WI 54001 anthony.r.gould@amerymedical.com	No Position	NA
26.	Jean Tretow School district of Belleville 227 N. Grant St, Belleville, WI 53508 tretowj@belleville.k12.wi.us	No Position	NA
27.	Mary Fillinger City of Milwaukee 3480 N Cramer St. Milwaukee, WI 53211Mjung@milwaukee.gov	No Position	NA
28.	Keith Peterson Northhaven condos 3851 Hwy 42 Fish Creek WI 54212	No Position	NA
29.	Nicholas Ullman Baylake Tech Services 5471 Monument Point Rd, Egg Harbor WI, 54209 nick.j.ullman@gmail.com	No Position	Oral
30.	Scott Sloan Sheraton Madison Hotel 706 John Nolen Drive, Madison, WI 53713scottslloan@sheratonmadison.com	No Position	NA
31.	Chez Misko Wisconsin Athletic Club 10840 W Rogers St West Allis, WI 53227 Chez@thewac.com	No Position	NA
32.	Isaac Storandt La Crosse Country Club 300 Marcou Rd, Onalaska, Wi 54650 isaac@lacrossecountryclub.com	No Position	NA
33.	Christine Mohr Eau Claire Parks and Recreation 915 Menomonie Street, Eau Claire WI 54703 christine.mohr@eauclairewi.gov	No Position	NA

34.	Steven Pingel Ascension St Elizabeth Hospital N496 Milky Way Appleton, WI 54915 Steven.Pingel@ascension.org	No Position	NA
35.	Kelly Smith 126334 Eau Pleine Road Stratford WI 54484 kcliff76@hotmail.com	No Position	Oral
36.	Joan Ehrlich UW-Madison 21 N Park St, Madison WI, 53715 jmehrllich2@wisc.edu	No Position	NA
37.	Ryan Daum Baraboo Park, Recreation, & Forestry Department 124 2nd Street Ste. 17, Baraboo, WI 53913 rdaum@cityofbaraboo.com	No Position	NA
38.	Shawn Osterbrink Director of Parks, Recreation and Forestry Village of Weston 5500 Schofield, WI 54476 715-359-6114 sosterbrink@westonwi.gov	No Position	Written
39.	Jon Gohlke In Depth Pool Services 187 Commerce St, Wisconsin Dells, WI 53965jon@indepthservicesllc.com	No Position	NA
40.	Brian Purdy Wilderness Properties 511 E Adams St, Wisconsin Dells, WI 53965 brianp@wildernessresort.com	Favor Part/ Oppose Part	NA
41.	Tim Hall Town of Dell Prairie 643 Gem Ave, Wisconsin Dells, WI 53965	No Position	NA
42.	Brad Preissel Blackhawk Motel PO Box 15, Wisconsin Dells, WI 53965 blackhawkmotel@blackhawkmotel.com	Favor Part/ Oppose Part	NA
43	Gary Doudna Buffalo Lake Camping Resort 585 Lake Ave, Montello, WI 53949 info@buffalolakecamping.com I	Favor Part/ Oppose part	
44.	Peter Elftmann Spring Brook Resort 240 Trout Rd, Wisconsin Dells, WI 53965 petere@spring-brook.com	No Position	NA
45.	Kevin Turner Midwest Pool Supply 216 12th Ave, Baraboo, WI 53913	No Position	NA

	kevin@midwestpoolsupply.com		
46.	Reed McRoberts DATCP Reed.mcroberts@wisconsin.gov	No Position	Oral
47.	Sarah E. Koske, DVM, MPH Epidemiologist, Enteric & Waterborne Diseases Unit Communicable Diseases Epidemiology Section Wisconsin Department of Health Services, Division of Public Health Office: (608) 267-9009	No Position	Written
48.	Kyle Koenen Policy Director Wisconsin Institute For Law & Liberty, Inc. 330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141 414-727-WILL (9455) Fax 414-727-6385 www.will-law.org	Oppose	Written
49.	Bill Elliott, CAE WHLA President & CEO Wisconsin Hotel & Lodging Association 125 North Executive Drive, Suite 206, Brookfield, WI 53005 262.782.2851 www.wisconsinlodging.org	No Position	Written
50.	Wisconsin Parks and Recreation Association	Support	Written
51.	Dan Jones 920-980-4058	No Position	Written
52.	Tyler Diers Executive Director, Midwest TechNet PO Box 9497, Springfield IL 62791 tdiers@technet.org	Oppose	Written
53.	Tom Larson Executive Vice President Wisconsin Realtors Association (608) 241-2047 Tlarson@wra.org	No Position	Written
54.	Jennifer Huddleston NetChoice 1401 K ST NW 5th Floor Washington DC 20005 Email: jhuddleston@netchoice.org	Oppose	Written
55.	Cameron Kilberg Head of Government Relations Swimply 6425 Weidlake Dr	Oppose	Written

Los Angeles, CA 90068		
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Public Hearing Comments and Department Responses

As discussed below, the Department on many occasions made substantive changes based on industry and local health department feedback. Those recommendations were incorporated into the revised final rule.

Rule Provision	Public Comment	Department Response
General	Overall, the rule includes important updates regarding pool licensing, maintenance, health and safety. (10)	The department acknowledges the support for the proposed rule.
General	The Red Cross recommends the addition of a definition for "swim instructor," defined as someone who teaches swim lessons to people of all ages and abilities, and be certified by a national training agency, like the American Red Cross or an equivalent, as determined by the agency. (10)	<p>The department acknowledges the comment.</p> <p>The proposed rule does not refer to requirements for a swimming instructor and this additional requirement was not included as part of the scope statement. The proposed rule only addresses the safety, maintenance and operation of public pools. The proposed rule requires that an instructional program is provided with an individual that is certified as a lifeguard and has first aid, CPR and AED certification to address swimmer safety concerns.</p> <p>The department recommends no change.</p>
General	<p>The Wisconsin Park and Recreation Association (WPRRA) submits these comments relating to clearinghouse rule 22-021, the repeal and recreation of ATCP 76. WPRRA appreciates the opportunity to comment on the draft rule and participate in this process.</p> <p>WPRRA is a membership association that represents over 1,300 individuals delivering a broad spectrum of services in Wisconsin. Our members include Park, Recreation, and Aquatic professionals in local, county, state, school district, private and agency settings. WPRRA also represents public Park and Recreation Boards and Commissions, students, commercial firms, and Emeritus (retired) members.</p> <p>Overall, the rule includes important industry updates regarding pool licensing, maintenance, health, and safety. WPRRA</p>	The department acknowledges the support for the proposed rule.

	<p>actively participated in the workgroup for this rule and were able to provide feedback during that process. Therefore, our organization supports the draft rule in its current form and submit these comments to officially indicate our support. (50)</p>	
General	<p>WHLA would like to compliment DATCP on their efforts to modernize the pool code while addressing the needs of keeping our guests safe and also taking into account the needs of pool operators throughout the state. We applaud their efforts to reduce the need to apply for variances, such as swim-up bars and the use of pool technology.</p> <p>We also appreciate DATCP’s willingness to work with us to decrease the burden of implementing these new rules on the large majority of lodging pool operators who have a long history of properly maintaining their facilities.</p> <p>The proposal to require operator certification only for pool operators who demonstrate a lack of active managerial control over the pool operation by having two or more reinspections in a 3-year period is a reasonable requirement.</p> <p>We also believe the requirement to retrofit older pools with flow sensor interlocks only if the pool has been involved in a chemical release incident in which the installation of a flow sensor would have prevented the chemical release is also reasonable.</p> <p>WHLA is appreciative of the opportunity we had to bring our voice to this process, and we commend the DATCP staff for the hard work on these proposed rules. (49)</p>	The department acknowledges the comment.
General	<p>We ask that DATCP abandon its efforts to implement Subchapter VII of the proposed rule, primarily because the department lacks the statutory authority to promulgate said regulations. Additionally, this new regulatory scheme would impose significant costs on home owners. If the department continues its efforts to implement these measures, we</p>	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast

	<p>suggest the scope of them be significantly scaled back. While the Wisconsin Statute §97.67 does authorize DATCP to regulate “public swimming pools,” it does not define “public swimming pool”. However, Wisconsin Statute § 145.26, which gives the Wisconsin Department of Safety and Professional Services (DPS) authority to impose construction requirements on “public swimming pools” defines “public swimming pools” and clearly eliminates individual residential pools from this definition. We thank you for your attention to this matter. (48), (52), (55)</p>	<p>establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.</p>
General	<p>The legislature also took up the issue of short term rentals in 2017 and failed to address residential pool use at such rentals. (52), (55)</p>	<p>The department cannot comment on the legislature’s intent regarding short term rentals. B&B establishments and tourist rooming houses are required to have a lodging license as required under s. 97.605, Stats.</p>
General	<p>The peer-to-peer economy, including pool sharing, benefits both homeowners and consumers – swimmers, instructors, and families; (54)</p>	<p>The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.</p>
General	<p>Increased government regulation of private pools offered through sharing platforms creates a dangerous precedent for excessive government limitations on use of private property, especially when there are less restrictive means to protect the public. Combined regulations like those proposed to create Limited-Use Public Pools will restrict the rights of homeowners for merely using their resources for entrepreneurial purposes. A better solution would be to ensure all individual residential pools when constructed meet key safety concerns, and property owners are given yearly and consistent pool safety information. (54), (55)</p>	<p>The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.</p>

General	Short term home rentals with pool access have existed for decades with technology easing the rentals for the last 15 years. This is not a new concept, and until 2021 not only had safety not been raised as a concern (55)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
General	The proposed rules are not only vague but they create a bureaucratic system fit for large businesses to comply with rather than an individual property owner sharing their property. Central to this rule is ensuring these residential pools are a form of “public pool”, and thus in theory they would need to be constructed according to Chapter SPS 390, which dictates DSPS construction standards for public pools; confusion over the definition of a public pool and which regulations apply make it even more important that the legislature clarify. (55)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
General	Individuals who rent their homes or pools do so by a wide majority on platforms that allow feedback, ratings, insurance liability coverage, and a complaint system that may then remove unsafe properties from the platform to restrict such rentals. There is already clear and consistent oversight for such properties. A better solution would be to ensure all individual residential pools when constructed meet key safety concerns, and property owners are given yearly and consistent pool safety information.(55)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.03 (35)	Consider adding a definition of a feature and adding some examples. (46)	The department agrees with the comment and proposes the following language: (29) “Feature” means a pool with a depth greater than 16 feet, a pool with a surface area greater than 20,000 sq. ft., or a physical object permanently installed in a pool that is intended for recreational use including, a pool slide, waterslide, pad walk, basketball hoop, diving board, wave generator, treadmill, vortex pool, climbing wall, current

		pool, swim-up bar, vanishing edge pool, tethered or nontethered floatable, or a spray feature.
ATCP 76.03 (68) (b)	Consider an exemption that a pool designed for a dog where there's oversight by an owner/handler/trainer that be set aside. Doesn't believe ATCP 76 should handle provisions related to dogs. (46)	The department agrees and proposes the following changes: (b) "Public Pool" does not include an inflated mobile structure, basin, chamber, or tank; a swim pond; an individual therapeutic pod, tub, or bath; or a fixed or mobile structure, basin, chamber, or tank that serves fewer than 3 individual residences;. or a fixed or mobile structure, basin, chamber, or tank that is used solely for animal training, therapy, or exercise and the only individuals in the pool are the animal trainer or handler, animal health or wellness professional or the animal's individual owner.
ATCP 76.06	Concerned about license fee increase, would appreciate if the department looked in to it further. (1), (5)	The department made every effort to minimize the impact on small business by reorganizing the fee model to incorporate, in many cases, a reduction in the number of licenses needed to operate a public swimming pool. The department met over the course of the rule making process with over 35 industry members. The department proposed three different fee models that covered the cost of the department to perform its work. The department took the industry members advise on the fee model that best reflected their operations. The model that was chosen had the least impact on small public pool operations. The department recommends no change.
ATCP 76.12 (2) (k)	For new pools constructed after the effective date of the rule, secondary containment is required for liquid disinfectant and acid. We looked up secondary containment for the full capacity of a 55-gallon drum (not just spill containment) and the cost is hundreds of dollars. If you have to purchase containment for a 250 or 500 gallon tank they can cost thousands of dollars for full containment. Please verify if this is supposed to be spill containment or full containment? (38)	The department agrees to remove this as a requirement and place as a "Note" in the rule as a recommendation. The department proposes the following language: Note: For pools with liquid disinfectant and acid it is strongly encouraged to provide secondary containment in the chemical storage area.
76.14 Table A	Bromine concentrations in whirlpools: The range (7 ppm-10 ppm) with the current	The department acknowledges the comment, but it is incorrect. The

	products for automatic chemical controllers and brominators will be extremely difficult to maintain especially considering it has to be at this range throughout the day. Whirlpools have guest loads that range a lot. Rule change will make it impossible to use a brominator with a chem controller in a whirlpool, especially when you can only effectively guess how many people are going to use the whirlpool. Check out bromine disinfection levels to make sure there is no typo in the proposed rule. (29), (46)	department actually lowered the minimum bromine level to 3.0 ppm for pools and 4.0 ppm for whirlpool and wading pools. The maximum is now 10.0 ppm based on manufacturer directions for use. This requirement is consistent with the Model Aquatic Health Code. The department recommends no change.
ATCP 76.16 (3) (b) 1.	Revising the current bacteria indicator of total coliform to <i>Escherichia coli</i> , a more protective indicator of water quality. (12)	The department received guidance from the Wisconsin department of health services, communicable disease section. They recommended that total coliforms should be left in the rule as total coliforms could include bacteria (including <i>E. coli</i>) and that total coliforms is a better measurement for disinfection efficacy. The department recommends no change.
ATCP 76.16 (3) (b) 1.	Revising the following text to: “When bacteriological analysis of total coliforms, <i>Staphylococcus aureus</i> , <i>Pseudomonas aeruginosa</i> or <i>Legionella pneumophila</i> is performed, no target bacteria are present in a 100 mL sample (0 counts/100mL). (12)	The department received guidance from the Wisconsin state lab of hygiene and proposes the following language: ATCP 76.16 (3) (b) 1. When bacteriological analysis of total coliforms, <i>Staphylococcus aureus</i> , <i>Pseudomonas aeruginosa</i> or <i>Legionella pneumophila</i> is performed, no detectable levels are present in a 100 mL sample. ^P Any approved method for each analyte may be reported as either colony forming units or most probable number.
ATCP 76.16 (3) (b) 2.	I think it might be better to state for HPC “...may not exceed 200 colony forming units per milliliter (CFU/mL) in a 100 milliliter sample.” If we just say in a one mL sample, that suggests you could just scoop up 1 mL of water and think it’s going to be a representative sample when they should be collecting 100mL. (47)	The department agrees and proposes the following language: ATCP 76.16 (3) (b) 2. When bacteriological analysis is performed for the heterotrophic plate count, the total count may not exceed 200 colony forming units per milliliter (CFU/mL) in a 100 milliliter sample. ^{Pf}
ATCP 76.20 (2)	Mandate of operator certification should be a minimum. Believes it is something important for pools, doesn’t think the cost and time commitment is unreasonable. (4), (22)	The department consulted with industry members regarding this requirement and industry felt that the requirement was burdensome to smaller operators. Maintaining a safe pool operation is important, the recommendation was to

		<p>retain the certified operator requirement for water attractions and only require a certified operator for pools operators that fail to maintain active managerial control over their pool operation.</p> <p>The department recommends no change.</p>
ATCP 76.20 (2)	<p>We have licensed and regulated numerous pools for numerous years. Many of these pools are associated with lodging facilities like hotels and motels. Because the responsible supervisor does not have the pool operation knowledge they should, we end up teaching them how to properly operate their pool(s) during our inspections. This lack of knowledge is a significant threat to public health and the safety of the lodging staff themselves. Therefore, we would like to see ATCP 76 amended to require the owner of a pool associated with a lodging facility to have at least one certified pool operator. (11)</p>	<p>The department consulted with industry members regarding this requirement and industry felt that the requirement was burdensome to smaller operators. Maintaining a safe pool operation is important, the recommendation was to retain the certified operator requirement for water attractions and only require a certified operator for pools operators that fail to maintain active managerial control over their pool operation.</p> <p>The department recommends no change.</p>
ATCP 76.20 (2) (a) 3. b.	<p>The certified operator shall be able to respond within 3 hours. What does that mean? Is it physically or by phone? Does it have to be one specific operator, or could it be any certified operator? For example, we have 3 certified operators. (38)</p>	<p>The department acknowledges the comment. The department was trying to provide flexibility for operators that have multiple properties and that contract with a certified operator or employ a certified operator for multiple facilities. The expectation is that certified operator needs to respond physically to the pool with in three hours to resolve any pool related issues. To answer the commenter question any of the certified pool operators could respond when called. If there was immediate danger to health, the responsible supervisor would close the pool until the certified pool operator resolved the problem.</p> <p>The department recommends no change.</p>
ATCP 76.21 (1) (b)	<p>The responsible supervisor shall be on the premises or immediately available via a phone number posted by the emergency phone and shall respond to an unsafe or unsanitary condition within 15 minutes, at any time the pool is open for use. What does it mean to respond to an unsafe or unsanitary condition within 15 minutes? Does this mean take care</p>	<p>The department acknowledges the commenters question. The responsible supervisor once contacted, shall provide either direction to someone on the premise or visit the premise, within 15-minutes to resolve the unsafe or unsanitary condition or close the pool</p> <p>The department recommends no change.</p>

	of the issue within that time frame? Or close the pool if necessary? (38)	
ATCP 76.22 (1) (b)	Lifeguards and attendants (b) Plan Criteria: The Red Cross recommends the action plans cover all staffing levels. (10)	The Department acknowledges the comment, but it is unclear what the commenter is referring to. The department only requires the staffing plans to cover lifeguards and attendants since they are the personnel responsible for ensuring order and safety in the pool area. The department recommends no change.
ATCP 76.22 (1) (b) 4.	Under (4) in this section, it is not clear what "roaming zone" means. We recommend it be changed to "walking patrol." Also, we suggest adding language from MAHC stating that the "Owner shall ensure glare conditions are assessed from each position to determine if the bottom and objects in the pool are clearly visible." (10)	The department agrees with the comment and proposes the following language: ATCP 76.22 (1) (b) 4. The location of each lifeguard station, lifeguard roaming or walking patrol ensuring that glare conditions are assessed from each location to determine if the bottom and objects in the pool are clearly visible. ^{Pf}
ATCP 76.22 (1) (b) 7.	Staffing plans are really important to get guards, attendants to where they need to be to keep patrons safe to prevent injury or death from occurring. As the course of a day that goes by at a pool, sometimes the use of a pool changes. Recommend looking at language that would look at expanding plans based on the use of a pool at a particular time. (46)	The department agrees that clarity is helpful and proposes the following language: ATCP 76.22 (1) (b) 7. Diagrams shall be provided with the following information for each use of the pool, for both average and maximum capacity: <ul style="list-style-type: none"> a. The placement of attendants. ^{Pf} b. The placement of lifeguards. ^{Pf} c. Location of lifeguard roaming area or walking patrol. ^{Pf} d. Location of lifeguard chairs or stations. ^{Pf} e. Location of each obstruction. ^{Pf}
ATCP 76.22 (2) (a) and (b)	ATCP 76.22 Lifeguards and attendants (2) QUALIFICATIONS: We suggest clarifying that certifications required be "current" and from a national training agency, like the language (b) Water attraction lifeguard requirements. Red Cross requests these requirements also be added to the general qualifications section. (10)	The department has moved away from listing courses in the rule for lifeguarding, first aid and CPR/AED, as these frequently change, and instead indicates the certification obtained must meet the criteria outlined in the Model Aquatic Health Code or as approved by the department. The department will maintain a list of approved certification courses that is available to operators. The department recommends no change.

		<p>The department agrees with the addition of the word “current” and proposes the following change:</p> <p>ATCP 76.22 (2) QUALIFICATIONS. A lifeguard shall be required to have current certifications in all of the following:</p>
ATCP 76.22 (2) (a) 3.	CPR with AED certification: we suggest this be clarified to ensure that it covers care for individuals of all ages: "Adult and Pediatric CPR/AED" or "CPR with AED certification for adults, children and infants." (10)	<p>The department agrees with the commenter and this is addressed under the definition of a lifeguard where certifications for a lifeguarding, first aid, and CPR/AED must meet the criteria outlined in the Model Aquatic Health Code.</p> <p>The department recommends no changes.</p>
ATCP 76.22 (2) (b)	76.22 (2) b. Water attraction lifeguard requirements. Hard enough to recruit lifeguards to be able to fully staff a pool this makes it even harder. We think this requirement should be changed. Is one lifeguard with this particular certification at the entire facility really affecting how the facility operates? (38)	<p>The department agrees with the commenter and this is addressed under the definition of a lifeguard where certifications for a lifeguarding, first aid, and CPR/AED must meet the criteria outlined in the Model Aquatic Health Code. The department agrees the additional certification is no longer needed.</p> <p>The department has removed this section from the proposed rule.</p>
ATCP 76.23 Table B.	If facility only has one diving board, does there need to be an extra or separate lifeguard to attend to that diving board, or can the regular lifeguards that are on staff based on the patron load cover this? (15)	<p>The department acknowledges the comment. The proposed rule indicates that a lifeguard is required if there are two or more diving boards or platforms. No lifeguard is required for this activity when only one diving board or platform is present.</p> <p>The department recommends no change.</p>
ATCP 76.23 Table B.	If the facility were to install a climbing wall: Is there a special lifeguard required, or is just an attendant acceptable to monitor it? Can the facility use regular lifeguards that are on staff based on the patron load to address this requirement? (15), (46)	<p>The department acknowledges the comment. Climbing walls or rock walls are required to have a lifeguard assigned to that activity. The department proposes the following clarification to the proposed rule:</p> <p>Added to ATCP 76.23 Table B.</p> <p>Pool with a climbing wall. At least one lifeguard is required.</p>
ATCP 76.26 (2) (c)	The phone is inside this clubhouse which is adjacent to the pool. With the advent of cell phones, why is the rule for a hard-wired phone still needed? It’s an unreasonable cost	The department agrees with comment and the proposed rule was updated to reflect that a hardwired phone connection is not necessary and that other alternatives are

	to pay for the phone 12-months out of the year as the phone company won't allow them to suspend the contract during the months when the pool is not in operation. Believes there should be a change to the rule. (22)	acceptable. Cellular technology is acceptable if the cellular device has a constant power supply and reliable service connection. The department recommends no change.
ATCP 76.29 (1) (f)	Breath holding is a dangerous activity happening in pools. Consider "no breath holding" as a rule. (46)	The department agrees with the comment and proposes the following new language: ATCP 7629 (1) (f) <i>Breath holding; prohibition.</i> The operator of a pool shall provide signage or otherwise communicate to patrons that activities involving prolonged breath holding are prohibited.
ATCP 76.29 (1) (b) l. h.	Children under the age of 12 shall be supervised by an adult. Feel like this new rule is not necessary and that each facility should be able to set their own rule regarding age/supervision, due to the various types of pools this code regulates. (38)	The department acknowledges the comment and suggests clarification in the proposed rule to focus on pools where no lifeguard is present. The department proposed the following changes: ATCP 76.29 (1) (c) <i>Supervision of children under the age of 12.</i> For a non-lifeguarded pool, a statement indicating that children under the age of 12 shall be supervised by an adult shall be added the signage requirements in par. (b)
ATCP 76.30 (1)	Propose adding closing criteria and clarify when a pool can be reopened after a water sample shows a bacteria positive test. (46)	The department agrees and proposes the following changes: ATCP 76.16 (3) (b) 3. If a pool is closed due to a water sample that contains total coliforms pursuant to ATCP 76.30 (1) (b), the pool can be reopened when the pool system is properly working, the disinfectant or sanitizer concentration is maintained pursuant to ATCP 76.14 Table A, and any fecal accidents have been treated pursuant to ATCP 76.31.
ATCP 76.34 (5) (e)	We think that this should be kept as it currently is stated in the code. The previous code seems to allow sand in the pool enclosure if there are controlled entrances and provided with showers. The new proposed rule does not accommodate for this. Sand/water play areas and sand volleyball courts are traditional items to be placed inside pool enclosures. Putting barriers around them seems impractical and an additional expense.	The department agrees with the comment and it was not the intent to remove that language. The department proposes adding back the deleted language as following: ATCP 76.34 (5) (e) Sand may not be located within a pool enclosure unless the sand area is made inaccessible from the pool

	Not sure that it will serve the purpose of keeping sand out of the pool/filter system as patrons will still have access to both the sand and the pool. (38)	area by a barrier that is at least 42 inches high. Alternatively there may be controlled entrances to the pool area if the entrances are controlled and provided with showers.
ATCP 76.40	We suggest a less restrictive regulatory scheme that focuses on correcting compliance problems. This could be addressed by doing the following: Replace pool licensure with a basic registration requirement. This would limit the need for pre-inspections and licensing fees and would instead focus compliance on addressing pool safety complaints from users. The proposed licensing process is also problematic. By requiring a pre-inspection before a license is granted, homeowners will likely be left waiting for inspectors to complete that initial inspection before their pool could be rented out. And the annual date for license expiration (which is also the renewal deadline) on June 30 is in the middle of the peak rental season. (48), (53), (55)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.40	Short-Term Rental operators are already subject to an existing state licensing system. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) requires all lodging facilities in Wisconsin to hold a current license, and the licensing process includes inspection requirements to address public health and safety concerns. The lodging license addresses many of the concerns the limited-use public pool license would require, including facility cleanliness. (52), (55)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.40	Your proposed ordinance I think it’s still overly restrictive. I would like to just point out I am glad that these rules are being reviewed. That being said to me the proper way to deal with pools and hot tubs at tourist rooming houses/ vacation rentals is to inform your county health department that you have a pool or hot tub and continue having the county do their yearly inspections. This coupled with proof of insurance seems to be more than sufficient. (51)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.

ATCP 76.41	Many of us do this as part-time income, so the fees associated with your proposed rule when taking into context other the fees, taxes and costs associated with running a vacation rental are also burdensome. (51)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.45	We suggest a less restrictive regulatory scheme that focuses on correcting compliance problems. This could be addressed by doing the following: Set simple, easy-to-understand pool chemistry and safety standards for homeowners to comply with. These regulations should not be overbearing and should mirror manufacturer recommendations to the greatest extent possible. (48), (53)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.48 (1)	Limited-use pools for short-term rentals: There was talk about someone checking pool chemicals every day and to keep a log. The limited-use pools sections applies to properties that someone is renting out when they’re not home, vacation properties, or businesses. There isn’t someone there every single day to manually check the pool chemicals. Hoping to have proposal modified to allow for Weekly testing or electronic monitoring of some of the chemicals. Also hoping to allow for the ability to keep electronic logs. (35) (48)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.49 (5)	If a homeowner fails to meet any one of these or the dozens of other requirements laid out in the rule, it could be grounds for the state denying a pool license. Many short- term rental owners are families trying to earn extra income, and these burdensome requirements could be make-or-break differences for many of them. (48)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments

		will remain in place until promulgation of a new rule.
ATCP 76.50	I would like to hereby request that all short term residential pool owners be required to obtain CPO or equivalent certification and be required to have their pools inspected regularly prior to renting their swimming pool on short term websites. By not taking steps to protect the public with private rental pools, the department is inadvertently placing more restrictive and difficult burdens on commercial pool operators. Thereby, contributing to unfair practices; allowing a home owner to operate a pool that violates VGBA law, while a commercial pool operator must follow provisions in ATCP 76. It would put the public at risk, and likely increase the frequency of accidents. (4)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.50 (d)	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: A specific pre-rental checklist. (48)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.54 (3)	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: Emergency blankets to be readily available. (48)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.55	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: Pool furniture that is clean and in good repair. (48)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule

		text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.
ATCP 76.56 (1)	Many of the requirements laid out in the rule seem overly prescriptive or unnecessary. For example, the rule requires the following: Registration log of all principal renters with a requirement to maintain for a minimum of three years. (48)	The final rule draft has been updated to reflect JCRAR’s suspension of the Department’s authority related to tourist rooming houses. The Department has also chosen to remove “Subchapter VII: Limited Use Public Pool” from the proposed rule text, as well as references to public pool requirements related to bed and breakfast establishments. Public pool requirements related to bed and breakfast establishments will remain in place until promulgation of a new rule.

Response to Legislative Council Staff Recommendations

The department incorporated all technical corrections suggested by the Legislative Council Rules Clearinghouse, except for the following areas:

Clearinghouse Comment	Department Response
(94) Line 1954: Change “may refuse to” to “may not”.	The suggestion to change the wording to “may not” implies the department does not have flexibility in a license determination. The words “may refuse” gives the department the ability to assess circumstances detailed in that section in which a license may be withheld or released. This change was also reflected in ATCP 76.05 (4) (b) 1.
(95) Lines 1955 and 1966: Change “shall refuse to” to “may not”.	Although “shall refuse” and “may not” may imply the same meaning, in an effort to distinguish between “may” and “shall” and to avoid confusion in the interpretation of this section, the department used the wording “shall not” to convey circumstances in which a license is withheld. This change was also reflected in ATCP 76.05 (4) (b) 2.

Report from the SBRRB and Final Regulatory Flexibility Analysis

This rule does not have an impact on small businesses. The Final Regulatory Flexibility Analysis is attached.