

CR 09-115

**ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES**

The Wisconsin Department of Health Services proposes to **repeal** ch. DHS 117, ch. DHS 160, DHS 172.14 (2) (c) 8. Note, and ch. DHS 253; to **amend** DHS 172.04 (13), (27) (c) 1., (39), (40), and (45), 172.05 (4) (a) 4., 172.11 (1) and 172.13 (1) (intro.) and (a), Table DHS 172.14, 172.15 (1), 172.19 (4) (b), 172.22 (2) (b) 1. and 3., Table DHS 172.23 B, 172.26 (1) (b) and (c) and (2) Note, 172.29 (3) (f), 172.33 (1) (d) and (g), (2) (a) Note, and (4) (c) Note, 172.34 (5) Note, 172.35 (1) and (2), and 172.36 (2) (a), and to **repeal and recreate** Table DHS 172.11-B, and DHS 172.11 Note, relating to fees for copies of health care provider records, registration of sanitarians, safety, maintenance and operation of public swimming pools and water attractions, and child support cooperation for food stamps, and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statute interpreted:

Not applicable.

Statutory authority:

Chapter 227.11 (2) (a), Stats.

Explanation of agency authority:

Chapter 227.11 (2) (a), Stats., provides state agencies with general rulemaking authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule:

Not applicable.

Plain language analysis:

Similar to the legislature's need to periodically make corrections and minor revisions to the Wisconsin statutes, the Department must periodically make such revisions to the Department's section of the Wisconsin administrative code and to its administrative rules. The changes made under this order are due to changes made to state law or rules and are intended to have little or no substantive effect on persons regulated by the rules.

The legislature, under 2009 Act 28, established a fee schedule for medical record copies under s. 146.83, Stats., which replaces the medical record copy fee schedule established by the department under ch. DHS 117. Under this order, the department repeals ch. DHS 117.

The legislature, under 2005 Act 25, transferred authority to regulate sanitarians to the department of regulation and licensing (DRL). DRL subsequently promulgated chs. RL 174 to 177 to

regulate sanitarians. The department's rules for sanitarians are under ch. DHS 160. Under this order, the department repeals ch. DHS 160.

The legislature, under 2007 Act 20, repealed s. 49.79 (2) (a), Stats., the child support cooperation requirement for food stamp eligibility. The department's rules for implementing these requirements are under ch. DHS 253. Under this order, the department repeals ch. DHS 253.

The department of commerce repealed and recreated ch. Comm 90 (Clearinghouse Rule 08-056) which resulted in the renumbering of various sections of that chapter. Chapter DHS 172 includes cross-references to a number of sections in ch. Comm 90. In addition to inaccurate cross-references, the DHS 172 contains language in need of correction or clarification. Under this order, the department updates the cross-references, and revises language in ch. DHS 172.

Summary of, and comparison with, existing or proposed federal regulations:

Not applicable.

Comparison with rules in adjacent states:

Illinois:

Not applicable.

Iowa:

Not applicable.

Michigan:

Not applicable.

Minnesota:

Not applicable.

Summary of factual data and analytical methodologies:

The department reviewed statutes, Acts, and the rules presented in this order to determine which rules needed to be repealed or revised.

Analysis and supporting documents used to determine effect on small business:

The rules will not have a fiscal effect on businesses.

Effect on small business:

The rules will not have a fiscal effect on businesses.

Agency contact person:

Rosie Greer
Department of Health Services
608-266-1279
Rosie.greer@dhs.wi.gov

Place where comments are to be submitted and deadline for submission:

The Department of Health Services will adopt the rules in this order without public hearing or comment unless within 30 days after January 1, 2010, the Department of Health Services is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

General questions may be submitted to:

Rosie Greer
Department of Health Services
608-266-1279
Rosie.greer@dhs.wi.gov

TEXT OF PROPOSED RULE

SECTION 1. Chapter DHS 117 is repealed.

SECTION 2. Chapter DHS 160 is repealed.

SECTION 3. DHS 172.04 (13), (27) (c) 1., (39), (40), and (45) are amended to read:

DHS 172.04 (13) "Deep portion" means a ~~water depth greater than 5.5~~ portion of a pool having a design water depth greater than 5 feet.

(27) (c) 1. A certificate from the American Red Cross "~~CPR for the Professional Rescuer~~ CPR-AED for Lifeguards" course.

(39) "Pool and water attraction area" means, in an outdoor facility, the pool or water attraction and the area within the basin's enclosure and, in an indoor facility, the pool or water attraction and the required deck as specified in s. ~~Comm 90.09~~ Comm 90.13 (1) ~~&~~ (2).

(40) "Pool slide" means a slide where the drop from the slide terminus to water is less than 20 inches (50.8 centimeters) and the flume carries less than 100 gallons of water per minute.

(45) "Superchlorination" means the addition of an oxidizing product such as chlorine to pool water ~~to raise the level of the oxidizer~~ to raise the level of oxidizer to at least 10 ppm. "Superchlorination" is sometimes referred to as "superoxidation".

SECTION 4. DHS 172.05 (4) (a) 4. is amended to read:

DHS 172.05 (4) (a) 4. A statement from an engineer who worked on the pool indicating that it was completed in accordance with the pool's construction plan under s. ~~Comm 90.04~~ 90.05 (1) (c).

SECTION 5. DHS 172.11 (1) is amended to read:

DHS 172.11 (1) GENERAL. ~~As required by s. Comm 90.11, each~~ Each pool shall have a water recirculation system with disinfection treatment and filtration equipment consisting of overflow gutters or skimmers, main drains, inlets, pumps, piping, and filters. The system shall be operated continuously except for seasonal closing or during periods of necessary maintenance.

SECTION 5m. DHS 172.11 (1) Note is repealed and recreated to read:

DHS 172.11 (1) Note: See s. Comm 90.14 for design requirements for the recirculation system.

SECTION 6. Table DHS 172.11-B is repealed and recreated to read:

Table DHS 172.11-B
Maximum Turnover Time for Therapy and Exercise Pools

Temperature in ° F. Load (° C.)	(gals/person) ^a	Maximum Turnover Time (hours)
≤72-93 (22-33 ° C.)	> 2,500	4
≤72-93 (22-33 ° C.)	> 450	2
≤72-93 (22-33 ° C.)	< 450	1
>93-104 (33-40 ° C.)	N/A	0.5

N/A = not applicable.

^a The number is equal to posted patron load.

SECTION 7. DHS 172.13 (1) (intro.) and (a) are amended to read:

DHS 172.13 (1) GENERAL. ~~As required in s. Comm 90.12 (1) (b), all~~ All disinfectant feeders shall be ~~approved by the department of commerce and~~ installed according to the manufacturer's directions; and used only with the disinfectant recommended by the manufacturer and meet all of the following requirements:

(a) Feeders shall be automatic, easily adjustable, capable of providing the required chemical residuals, equipped with flow control valves upstream and downstream from the feeder, easily disassembled for cleaning and maintenance, durable, and capable of accurate feeding ~~with a rate-of-flow meter installed to accurately measure the flow through the feeder system.~~

SECTION 8. Table DHS 172.14 is amended to read:

Table DHS 172.14
Minimum Disinfectant Residuals

	Minimum Free Chlorine Residual	Total Bromine
Swimming and Activity Pools		
Swimming and Activity Pool	1.0 ppm	3.0 ppm
Swimming and Activity Pool With Stabilizer	1.5 ppm	N/A
Wading Pools		
Wading Pool	2.0 ppm	4.0 ppm
Wading Pool With Stabilizer	3.0 ppm	N/A
Whirlpool, Exercise, Therapy Pools		
Whirlpool, <u>Exercise, or Therapy Pool</u>	3.0 ppm	7.0 ppm
Whirlpool With Stabilizer	4.0 ppm	N/A

Water Attractions Other Than Those Specified

Water Attraction Other Than Those Specified	1.0 ppm	3.0 ppm
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Water Attraction Other Than Those Specified With Stabilizer	1.5 ppm	N/A
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Plunge Pools and Wave Pools

Plunge and Wave Pool	2.0 ppm	5.0ppm
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Plunge/ Wave Pool With Stabilizer	3.0 ppm	N/A
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Interactive Play Attractions

Interactive Play Attraction	2.0 ppm	5.0 ppm
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Interactive Play Attraction With Stabilizer	3.0 ppm	7.0 ppm
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Waterslides and Pool Slides

Waterslides and Pool Slides	2.0 ppm	5.0 ppm
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Waterslides With Stabilizer

3.0 ppm

N/A

SECTION 9. DHS 172.14 (2) (c) 8. Note is repealed.

SECTION 10. DHS 172.15 (1) is amended to read:

DHS 172.15 (1) CHLORINE GENERATORS. Chlorine generators shall be NSF approved and installed according to NSF and manufacturer instructions. An additional disinfection system shall remain on line to provide the capacity to superchlorinate the water as ~~specified in s. Comm 90.12 (1) (e)~~ and maintain the required sanitizer residual.

SECTION 11. DHS 172.17 (3) is amended to read:

DHS 172.17 (3) The disinfectant testing reagent shall be diethyl-p-phenylene diamine (DPD) in powder or liquid form. A test kit using the titrimetric method (FAS-DPD) for chlorine and bromine testing and colorimetric comparators used for additional water testing shall be approved by the department and shall provide for accurate comparison in the required range for each test as stated in s. DHS 172.14 (4). The test equipment shall provide for direct measurement of free and combined chlorine from 0 to 10 ppm in increments of 0.2 ppm. If bromine is used, the testing equipment shall provide for direct measurement of total bromine from 0 to 20 ppm in increments of ~~0.2~~ 0.5 ppm.

SECTION 12. DHS 172.19 (4) (b) is amended to read:

DHS 172.19 (4) (b) Except as provided in par. (d), the water temperature of an indoor pool shall be between 72°F. (~~25~~22°C.) and 95°F. (35°C.). The minimum water temperature for an outdoor pool shall be 65°F. (18°C.).

SECTION 13. DHS 172.22 (2) (b) 1. and 3. are amended to read:

DHS 172.22 (2) (b) 1. American Red Cross ~~Water~~ Park Lifeguard Training certificate.

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

SECTION 14. Table DHS 172.23 B is amended to read:

Table DHS 172.23-B

Required Number of Lifeguards and Attendants Based on Pool Type

Pool Type Lifeguard and Attendant Staffing Requirements

Activity Pools	<p>At least one lifeguard is required if the pool contains one of the following:</p> <ol style="list-style-type: none"> 1. A pad walk. 2. A tethered floatable more than 18 inches long in 2 directions. Appendages such as alligator feet should not be included in determining the length. 3. A non-tethered floatable. Non-tethered floatables do not include tire inner tubes used in leisure rivers or waterslides.
Leisure Rivers	<p>At least one attendant is required at the entrance of the leisure river. The attendant shall have a clear line of sight for all areas of the river, or additional attendants are required so that all areas of the river are in view of at least one attendant.</p>
Vanishing Edge Pools	<p>At least one lifeguard regardless of the square footage, unless the water attraction is limited to adult use only.</p>
Vortex Pools and Current Pools	<p>At least one lifeguard is required whenever the pool is occupied by a patron.</p>
Wave Pools	<p>At least one lifeguard is required regardless of the square footage of the pool. Additional lifeguard staffing shall be based on the patron load requirements in Table DHS 172.23-A.</p>
Pools with a Visual Obstruction	<p>At least one attendant is required if the pool has a visual obstruction larger than 10 feet in length by 6 feet in height by 5 feet in width or if the visual obstruction covers more than 20 percent of the pool's basin.</p>
Pools with Diving Boards or Platforms	<p>At least one lifeguard for every 2 diving boards or platforms in the same pool.</p>
Pools with Slides	<ol style="list-style-type: none"> 1. Children's Slide: No attendant is required. 2. Poolslide: Greater than 4 feet but less than 6 feet in height, which drops into water greater than 4 feet deep: At least one lifeguard. 3. Poolslide: Less than 6 feet in height, with an obstructed view of slide terminus at 43 inches at entry point: At least one lifeguard. 4. Drop slide: Less than 6 feet in height: At least one lifeguard

5. Run-out slide:

Greater than 6 feet in height clear view of the terminus end: At least one attendant on top platform.

Greater than 6 feet obstructed view of the terminus end: At least one attendant on top and bottom of run-out.

Less than 6 feet clear view of terminus end: No attendant or lifeguard required

6. Waterslide:

Greater than 6 feet: Attendant on top of the slide, lifeguard on bottom and means of 2-way communication between attendants and lifeguards.

Less than 6 feet with a clear view of terminus end and no obstructions around slide: At least one lifeguard.

Wading Pools Wading pools do not require a lifeguard or attendant unless there is a large obstruction per ss. Comm ~~90.18 (3)~~90.20 (4) and ~~90.30 (3)~~90.31 (3).

Exercise Pools Exercise pools do not require a lifeguard or attendant.

Whirlpools If a whirlpool is located within a water attraction complex, at least one attendant shall provide periodic supervision of the whirlpool. If a whirlpool is not guarded or attended with an attendant assigned at all times, a sign shall be posted that states in letters that are at least 4 inches high: Non-guarded area.

Therapy Pools At least one attendant who has current CPR certification is required for a therapy.

Interactive Play An interactive play attraction not restricted by an enclosure shall have at least one attendant on the premises. The attendant shall provide periodic supervision of the water attraction as specified in the staffing plan.
Attraction (Splash Pads)

SECTION 14m. DHS 172.23-B Note under “Wading Pools” is repealed.

SECTION 15. DHS 172.26 (1) (b) and (c) and (2) Note are amended to read:

DHS 172.26 (1) (b) For each basin of water over 4 feet in length and over 2 feet deep, a ~~shepherd's~~shepherd's crook-type pole shall be provided. In addition, for each lifeguard chair, or for a pool 30 feet or more in width that does not have lifeguard chairs, at least one of the following shall be provided:

(c) The safety rope required in s. Comm ~~90.08 (4)~~90.18 (1) shall remain in place except during a lifeguarded activity or adult only lap swim. The responsible supervisor shall ensure the rope is in place during required times.

(2) Note: A request for an alternative location for a telephone or another system of communication that provides access to emergency service during hours of pool operation may be made under s. DHS ~~173.02 (2)~~172.03 (2).

SECTION 16. DHS 172.29 (3) (f) is amended to read:

DHS 172.29 (3) (f) Minors under the age of 6 ~~and under~~ are not permitted in the whirlpool.

SECTION 17. DHS 172.33 (1) (d) and (g), (2) (a) Note, and (4) (c) Note are amended to read:

DHS 172.33 (1) (d) *Hosing*. Hosing shall be provided in adequate lengths to flush the entire pool deck. All hose bibbs shall be protected against backsiphonage by the proper installation of an approved backflow prevention device as required under s. Comm ~~90.13 (6)~~90.16 (4).

(g) *Drinking fountain*. Each drinking fountain required under ~~ss. s. Comm 90.09 (3) and 90.16~~ 90.19 shall be maintained in clean and sanitary condition.

(2) (a) Note: See ~~chapter s. Comm 90~~90.19 for additional information.

(4) (c) Note: Refer to ~~chapter s. Comm 90~~90.16 for department of commerce installation requirements.

SECTION 18. DHS 172.34 (5) Note is amended to read:

DHS 172.34 (5) Note: See ~~chapter s. Comm 90~~90.18 (4) for additional rules relating to the outdoor pool enclosure.

SECTION 19. DHS 172.35 (1) and (2) are amended to read:

DHS 172.35 (1) All waterslides and pool slides shall be designed and installed as required in s. Comm ~~90.30~~90.31.

(2) Waterslide and pool slide lubrication shall be in accordance with s. Comm ~~90.30 (4)~~ 90.31 (4). Run-out slide flume lubrication systems shall comply with the requirements in s. ~~Comm 90.206 (3) (b) 2. and 3~~ 90.31 (4) (a).

SECTION 20. DHS 172.36 (2) (a) is amended to read:

DHS 172.36 (2) (a) If access to the interactive play attraction is not restricted by an enclosure, an attendant shall be present to provide periodic supervision.

SECTION 21. Chapter DHS 253 is repealed.

SECTION 22. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health Services

Dated: April 7, 2010

Karen E Timberlake, Department Secretary

SEAL: