

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.115.106 pertaining to pools, ) PROPOSED AMENDMENT  
spas, and other water features )

TO: All Concerned Persons

1. On April 16, 2020, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/501224820>, meeting ID: 501 224 820;
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656, meeting ID: 501 224 820, find your local number: <https://mt-gov.zoom.us/j/501224820>;
- (c) Join by SIP, [501224820@zoomcrc.com](mailto:501224820@zoomcrc.com);
- (d) Join by H.323 (Polycom), 162.255.37.11##501224820; or
- (e) Join by Skype for Business, <https://mt-gov.zoom.us/skype/501224820>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on April 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.115.106 INCORPORATION BY REFERENCE (1) The Department of Public Health and Human Services, except as otherwise provided, adopts and incorporates by reference the following chapters of the International Swimming Pool and Spa Code (ISPSC), ~~2015~~ 2018, which sets forth design, construction, alteration, repair, and maintenance standards for public swimming pools. This publication may be obtained by contacting the International Code Council, 3060 Saturn Street, Suite 100, Brea, California 92821. The following chapters of this publication are being adopted with modifications as described:

- (a) and (b) remain the same.

(c) Chapter 3: General Compliance. This chapter has been adopted with the following modification:

(i) Sub-Section 305.1 – ~~Exceptions 1 and 2 are deleted in their entirety.~~ is modified to read as follows, "The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools and spas."

(d) through (2) remain the same.

(3) The department adopts and incorporates by reference the provisions in Circular FCS 3-2018 2020. Circular FCS 3-2018 2020 may be obtained by calling 406-444-2837 to request a copy; or email [hhsfcs@mt.gov](mailto:hhsfcs@mt.gov), or request one by mail by writing to DPHHS – FCS, P.O. Box 202951, Helena, MT 59620-2951, or by visiting the department's web site at:

<https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools>.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to revise ARM 37.115.106, to adopt and incorporate by reference newer editions of the International Swimming Pool and Spa Code (ISPSC) and the department's circular governing standards for swimming pools.

Under current rule, the 2015 edition of the ISPSC and Circular FCS 3-2018 - Montana Standards for Swimming Pools are adopted and incorporated by reference. The department is proposing to update the rule to refer to the 2018 version of the ISPSC and Circular FCS 3-2020, Montana Standards for Swimming Pools.

Updating the rule to refer to the 2018 edition of the ISPSC is necessary to ensure consistency with revised Department of Labor and Industry rules adopting the 2018 edition of the ISPSC and ensure consistent standards for construction of pools. Updating the rule to refer to Circular FCS 3-2020 is necessary to implement proposed revisions to the Montana Standards for Swimming Pools circular. The department is proposing the circular revisions to clarify certain requirements relating to water testing, signage, and supervision in response to stakeholder feedback.

A copy of the circular with the proposed revisions is located at:

<https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools>.

#### Fiscal Impact

The department does not anticipate the proposed changes will have any fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office

of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., April 24, 2020.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State March 17, 2020.