

CIRCULAR FCS 3-2020-2022
MONTANA STANDARDS FOR PUBLIC SWIMMING POOLS
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Introduction

This circular applies to all public swimming pools in Montana. It is intended to be used in conjunction with the International Pool and Spa Code, ARM 37.115.102, 37.115.103, and 37.115.106, and 50-53-101 through 50-53-218, MCA.

Chapter 1. Definitions

In addition to the definitions in 50-53-102, MCA, and those in the 2018 International Swimming Pool and Spa Code (ISPSC) as adopted in ARM 37.115.106, the following definitions apply to this circular. ARM 37.115.102 outlines the chapters in ISPCS that are adopted with modifications.

(1) "Alkalinity" means a measure of the amount of bicarbonate, carbonate, or hydroxide compounds present in a water solution. It is the buffering potential for water to change pH.

(2) "Attendant" means a person who oversees the use of a public swimming pool by bathers, provides supervision of the facility and basic emergency assistance to bathers in need.

(3) "Automated controller" means a system of at least one chemical probe, a controller, and auxiliary or integrated components that sense the level of one or more water parameters and provides a signal to other equipment to maintain the parameters within a user-established range.

(4) "Bathhouse" means a structure that contains dressing rooms, showers, and toilet facilities for use at a public bathing place or adjacent to a public swimming pool.

(5) "Breakpoint chlorination" means the addition of a sufficient amount of chlorine to water to destroy the combined inorganic compounds present.

(6) "Bromine" means a chemical element that exists as a liquid in its elemental form or as part of a chemical compound which is a bacteriological agent used to disinfect swimming pool water.

(7) "Certified pool operator (CPO)" means someone who has successfully completed the CPO course sanctioned by the National Swimming Pool Foundation, the Aquatic Facility Operator (AFO) course sanctioned by the National Recreation and Park Association, or an equivalent course approved by the department.

(8) "Chloramines" means compounds that are formed when free chlorine combines with nitrogen-containing compounds such as perspiration or ammonia.

They can cause eye and skin irritation, have strong objectionable chlorine-type odors, and low sanitizing capability. Also see "combined chlorine".

(9) "Chlorine" means a chemical agent that exists as a gas in its elemental form or as a part of a chemical compound which is an oxidant. It is a bacteriological agent used to disinfect the water in public swimming pools.

(10) "Code official" means Department of Public Health and Human Services.

(11) "Combined chlorine" means the portion of the total residual chlorine existing in water in chemical combination with ammonia, nitrogen, and/or organic compounds, mostly comprised of chloramine. The combined chlorine number is the result of subtracting the free residual chlorine levels from the total chlorine levels, as determined by a test kit.

(12) "Contaminant" means a substance that soils, stains, corrupts, or infects another substance by contact or association.

(13) "Critical point inspection" means an inspection performed by the regulatory authority that minimally addresses critical health and safety violations outlined in Chapter 2 and would include other health and safety violations that may be present, or are pending from prior inspections.

(14) "Critical safety violation" means a health or safety violation that has the potential to imminently cause or result in water contamination illness, serious injury or death, or an environmental or safety hazard.

(15) "Cyanuric acid (CYA)" is a chemical which helps reduce the degradation of chlorine in outdoor swimming pools due to ultraviolet light.

(16) "Department" means the Department of Public Health and Human Services (DPHHS) provided for in 2-15-2201, MCA.

(17) "Disinfectant" means any oxidant that is added to water in any part of the treatment or distribution process and that is intended to kill or inactivate pathogenic microorganisms.

(18) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(19) "DPD" means diethyl-phenylene diamine.

(20) "Effluent" means the outflow water from a filter, pump, or public swimming pool.

(21) "Facility" means a public bathing place and includes any public swimming pools, bathhouses, restrooms, dressing rooms, equipment rooms, deck enclosures, and all other appurtenances directly serving the public bathing place.

(22) "Float tank" means a tub that contains a saturated solution of magnesium sulfate, provides a light and sound reduced environment, and is maintained at human skin temperature. Float tanks may also be called isolation tanks, or sensory deprivation tanks. Float tanks that are designed and operated for individual use, and in accordance with the North American Float Tank Standard Version 2, published by the Floatation Tank Association in February 2017, are considered to be medicinal hot water baths and are not a public swimming pool.

(23) "Flow-through hot springs pool" means a hot springs pool in which the water is continually flowing to waste.

(24) "Flow meter" is a device that measures the rate of flow of water or other liquid through piping.

(25) "Flow rate" means the volume of water flowing past a designated point within a specified time. It is usually expressed as "gallons per minute".

(26) "Free available chlorine (FAC)" means the portion of the total chlorine remaining in chlorinated water that is not combined with ammonia, nitrogen, or other organic compounds and that will react chemically with undesirable or pathogenic organisms.

(27) "Full facility inspection" means an inspection performed by the regulatory authority that addresses compliance with all applicable rules.

(28) "Hardness" means the amount of calcium and magnesium salts dissolved in water. It is measured by a test kit and expressed as parts per million (ppm) of equivalent calcium carbonate.

(29) "Hot tub" means a spa.

(30) "Hydrotherapy pool" or "therapeutic pool" or "therapy pool" means a pool used exclusively for aquatic therapy, physical therapy, and/or rehabilitation to treat a diagnosed injury, illness, or medical condition, wherein the therapy is provided under the direct supervision of a licensed medical professional. Any pool that meets this definition is not a public swimming pool.

(31) "Invited guest" means an individual who is visiting a family member or friend and uses the privately-owned swimming pool upon invitation.

(32) "ISPSC" means the 2018 International Swimming Pool and Spa Code as adopted in ARM 37.115.102.

(33) "License" means the document issued by the department that authorizes a person to operate a public swimming pool.

(34) "Licensee" means the person or other entity that is legally responsible for the operation of a public swimming pool and any adjacent facility, and who possesses a valid license to operate the public swimming pool.

(35) "Lifeguard" means a qualified person who is responsible for supervision and lifesaving at a licensed public bathing place or public swimming pool. Under this rule, "lifeguard" means either a certified lifeguard or a licensed lifeguard with the certification or training as set forth in this circular.

(36) "Medicinal hot water baths" means a tub of water containing warm or hot water to be used by an individual and includes:

- "Hydrotherapy pool" or "therapeutic pool" or "therapy pool"; and
- "Float tank".

(37) "Oxidation reduction potential (ORP)" means the measurement of the oxidizing properties of any sanitizer being used in a public swimming pool, and is measured in millivolts (mV) by an ORP meter.

(38) "Oxidizers" means products used to destroy organic and inorganic contaminants in water.

(39) "Ozone (O³)" means a gaseous molecule composed of three atoms of oxygen that is generated on-site and used for oxidation of water contaminants. Ozone can also be used to regenerate bromine from bromide ions and as a

supplemental contact sanitizer in conjunction with an EPA-registered sanitizer that provides a constant residual.

(40) "Pathogens" means disease-causing microorganisms.

(41) "Parts per million (ppm)" means a unit of measurement of a chemical concentration which indicates the parts by weight in relation to one million parts by weight of water. It is equivalent to the term milligrams per liter (mg/l).

(42) "Person in charge (PIC)" means the individual present at a public swimming pool and the related facilities who is responsible for the operation at the time of inspection. The person in charge does not have to be a CPO.

(43) "pH" means the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity. Values between seven and 14 indicate alkalinity. The value for pure distilled water is seven, which is considered neutral. $\text{pH} = -\log_{10}[\text{H}^+]$.

(44) "Pool" means a subset of aquatic venues designed to have standing water for total or partial bather immersion. This does not include spas. The term "Pool", as defined in the ISPSC, is limited to construction of the pool.

(45) "Potable Water" means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR 141).

(46) "Pump curve" means a graph of performance characteristics of a given pump under varying horsepower, flow, and resistance factors. It is used in checking and sizing a pump.

(47) "Regulatory authority" means the department or local boards of health that have entered into a cooperative agreement with the Department to conduct inspection and enforce applicable statutes and department rules relating to public swimming pools within their jurisdictions.

(48) "Remodel" or "renovate" mean a substantial or material alteration. In the context of these rules, the terms mean the activity of restoring or upgrading all or part of a public bathing place or public swimming pool structure and its component parts. Remodeling or renovation may include rebuilding or replacing system components that are not identical or substantially similar to existing components such as pipes, drains, filtration systems, disinfectant systems, circulation systems, and/or public swimming pool decks that use different materials or different from the existing component or design. The terms do not include painting, replacing tile or caulk, other such cosmetic changes, or replacing a worn or broken component for the same component, such as replacing a pump with a pump that is identical or substantially similar.

(49) "Residential" means a residential building containing less than five dwelling units.

(50) "Residential swimming pool" means a pool intended for use which is accessory to a residential setting and available only to the household and its invited guests. All other pools, not specifically exempt in 50-53-102, MCA and this rule, are considered public swimming pools for the purposes of this circular.

(51) "Responsible person" means any person who is charged with safeguarding the child. A responsible person should exercise good judgment, remain attentive to their charges and not be distracted. Examples of a responsible person are:

- Responsible friends, caretakers, and family that are age 14 or over;
- Public swimming pool staff that are not in charge of a zone of patron surveillance;

(52) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in the water of a public swimming pool.

(53) "Sanitizer" means the same as "Disinfectant".

(54) "Saturation index" means a mathematical representation or scale representing the ability of water to deposit calcium carbonate, or dissolve metal, concrete or grout.

(55) "Serious accident or injury" means any accident or injury:

- requiring emergency services response where a person requires medical treatment as determined by the emergency medical response personnel, including a drowning that does not result in death;
- resulting in a person seeking medical attention at a medical facility, hospital emergency room, or admittance to a hospital;
- requiring a lifeguard save of a drowning person; or
- resulting in a death.

(56) "Shock treatment" means the same as "superchlorination".

(57) "Sodium hypochlorite" or "NaOCL" means a clear liquid form of an inorganic chlorine compound.

(58) "Splash Deck" means a spray pool that does not have standing water.

(59) "Stabilizer" means a chemical which helps reduce the degradation of chlorine due to ultraviolet light. Also see "cyanuric acid".

(60) "Superchlorination" means the addition of large quantities of chlorine-based chemicals to kill algae, destroy odors, or improve the ability to maintain a disinfectant residual.

(61) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(62) "Test kit" or "Water Quality Testing Device (WQTD)" means a device for monitoring or measuring a specific chemical residual or other parameter in the water of a public swimming pool.

(63) "Total alkalinity" means the ability of water to resist change in pH. It is also known as the buffering capacity of water, and consists mainly of carbonates, bicarbonates and hydroxides. Total alkalinity is measured with a FAS-DPD test kit and measured in parts per million (ppm).

(64) "Total available chlorine" or "total chlorine" means the sum of both free available and combined chlorine.

(65) "Total dissolved solids (TDS)" means a measure of the total amount of dissolved matter in water including calcium, magnesium, carbonates, bicarbonates, or metallic compounds.

(66) "Wastewater" means water-carried waste products from public swimming pools and related facilities. Wastewater includes waste from sanitary facilities and showers, water drained from public swimming pools, backwash water from filter systems, and waste from deck drains.

(67) "Water clarity" is a qualitative visual observation of the opacity of water in a public swimming pool. Water clarity may be affected by glare, surface turbulence, water depth, ambient light levels and concentrations of organic and inorganic solids that are suspended in the water. Water clarity is recorded using one of the following terms:

- "excellent" means that the water is clear, with the fine details of the reference point are sharply defined and easily seen on the bottom of the public swimming pool;
- "good" means that the water is slightly cloudy, with some loss of fine details and slight blurring of the reference point, but major characteristics of the reference point can still be recognized;
- "moderate" means the water is very cloudy, with complete loss of fine details, but the overall shape of the reference point is visible and recognizable; or
- "poor" means the water clarity is significantly deteriorated such that the reference point cannot be seen on the bottom of the public swimming pool.

Chapter 2. Pool Closures and Other Corrective Action

2.1 CRITICAL HEALTH AND SAFETY VIOLATIONS THAT REQUIRE IMMEDIATE CLOSURE

2.1.1 The following items are critical health and safety violations that require a licensee to immediately close a public swimming pool and related facilities until the safety violations have been resolved:

- (a) no filtration is available;
- (b) ORP is less than 650 mV;
- (c) sanitizer concentration falls outside the parameters set forth in 7.7.1, Table 2;
- (d) a main drain cover is missing, loose, or unsecured or there is any other entrapment hazard present;
- (e) water clarity is poor;
- (f) there is fecal or vomit contamination in the pool;
- (g) there are not lifeguards or attendants on duty in required numbers where lifeguards or attendants are required;
- (h) there is not a "no lifeguard on duty" sign posted in a situation where a lifeguard is not required;
- (i) the temperature of the water in a public swimming pool exceeds 104°F;
- (j) the temperature of the water in a flow-through hot spring pool or spa exceeds 106°F;

(k) lighting in the vicinity of the public swimming pool is inadequate to allow an observer to see the main drain from anywhere in or around the pool;

(l) there is a missing vacuum suction outlet cover;

(m) at an outdoor public swimming pool, when thunder is heard or lightning has been sighted, the public swimming pool must be closed and remain closed until 30 minutes after the last thunder clap is heard, or the last flash of lightning is observed, whichever is greater;

(n) a drowning or other serious accident has occurred and emergency responders or investigators are still present to render aid to the victim or to gather evidence;

(o) pH of the water is less than 6.5 or higher than 8.0, except flow-through hot springs which may have a pH up to 9.4;

(p) the public swimming pool does not comply with the requirements of ANSI/APSP/ICC-7 ~~2013~~ 2020 Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins based on a visual inspection; and/or

~~(q) the public swimming pool does not comply with the requirements of ANSI/APSP/ICC-7 2013 Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins based on a review of drain cover documentation.~~

(r) (q) an approved, fully functioning, and unexpired WQTD is not available at the licensed facility.

2.1.2 The licensee is required to self-close the public swimming pool until any of the above safety violations have been corrected.

2.1.3 The licensee must prepare and maintain a record of each instance in which the pool is self-closed to correct a safety violation. The record must be signed by the person responsible for correcting the safety violation and it must document:

(a) the nature of the safety violation;

(b) the date and time the violation occurred;

(c) the date and time the public swimming pool was closed;

(d) the measures taken to correct the safety violation; and

(e) the date and time the public swimming pool reopened.

2.1.4 If any drowning or other serious accident or injury has occurred, the report must be submitted to the department within 48 hours of the incident by faxing it to the Food and Consumer Safety Division, Department of Public Health and Human Services, (406) 444-5055.

2.1.5 Failure or refusal of a licensee to close a public swimming pool when one of the health or safety violations in Chapter 2.1 has occurred presents an imperative risk to public health and safety that supports emergency closure of the facility and emergency suspension of the facility licenses.

2.2 VIOLATIONS THAT MAY REQUIRE IMMEDIATE CLOSURE

2.2.1 The regulatory authority may order a public swimming pool immediately closed when one or more of the following violations have been repeatedly observed during at least three consecutive inspections:

(a) alkalinity of the water falls outside the parameters of 60-180 ppm;
(b) except during lap swimming or competitive swimming, no guard line is in place at the break between the shallow area and deep area of the public swimming pool;

(c) required safety equipment is not available; ~~and/or~~

(d) if, during an inspection, the regulatory authority requests the facility to contact its certified pool operator by telephone and the certified pool operator does not respond within 30 minutes; or

(e) the public swimming pool does not comply with the requirements of ANSI/APSP/ICC-7 2020 Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins based on a review of drain cover documentation.

2.2.2 The regulatory authority may order immediate closure of any public swimming pool that is operating without a valid license.

2.2.3 The regulatory authority may close any public swimming pool for any of the violations listed in Chapter 2.1.

2.2.4 Once the facility operator has submitted and satisfactorily completed a corrective action plan under Chapter 2.3, the regulatory authority will approve reopening any public swimming pool.

2.3 CORRECTIVE ACTION PLAN -- USE OF SECONDARY DISINFECTION SYSTEM

2.3.1 In instances in which a public swimming pool has more than two users contract waterborne disease such as cryptosporidium or giardia within a period of 30 days the regulatory authority will require the licensee of the public swimming pool to develop a corrective action plan and submit it to the regulatory authority for approval.

2.3.2 If the corrective action fails to bring the disease outbreak under control, the regulatory authority will require that the facility utilize a secondary disinfection system approved by the department, such as ultraviolet or other NSF approved secondary disinfection systems to control disease.

2.3.3 Any licensee operating a splash deck or related water feature with a recirculating water supply is required to utilize a secondary disinfection system approved by NSF and installed according to the manufacturer's directions.

2.3.4 The regulatory authority may require a supplemental UV or ozone disinfection system on a public swimming pool in a plan of corrective action when health and safety is threatened as indicated by recurring outbreaks or the inability to control an outbreak.

2.4 FECAL AND VOMIT CONTAMINATION RESPONSE

2.4.1 In the event of fecal or vomit contamination of any public swimming pool, the person in charge must:

- (a) immediately close the public swimming pool;
- (b) follow the applicable procedures given in the CDC Fecal Incident Response, ~~2016~~ 2018 edition;
- (c) notify the CPO and request assistance; and
- (d) document the incident using department approved fecal incident log.

2.5 LEGIONELLA CONTAMINATION RESPONSE

2.5.1 The regulatory authority and the CPO of a licensed facility suspected of being contaminated with Legionella shall follow the process outlined in the 2018 Model Aquatic Health Code 6.5.3.6.

Chapter 3. Plan Review

3.1 PLAN REVIEW REQUIRED FOR PUBLIC SWIMMING POOLS

3.1.1 Complete plans and specifications for work or installation must be submitted to the Montana Department of Public Health and Human Services and the Montana Department of Labor and Industry Building Codes Bureau or the Local Code Official for review and approval before any construction begins or before any change is made to the existing facility whenever the owner or operator of a public swimming pool intends to:

- (a) construct, reconstruct, alter, convert, or repair any aspect of the public swimming pool, or any related facility and the work will be more extensive than what occurs in routine maintenance; or
- (b) install equipment or replace existing equipment with components that are not identical or substantially similar or are new to the design at the location of the public swimming pool.

3.1.2 All plans and specifications for new facilities and all plans and specifications pertaining to any planned changes or additions to existing facilities must be submitted as attachments to a plan review checklist form. The forms are available from the department by contacting the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box Helena 202951, MT 59620-2951 or at www.fcss.mt.gov.

3.1.3 The plan review checklist form, plans and specifications, and the applicable plan review fee, must be submitted to the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, at least:

- (a) 90 days prior to the anticipated date that the construction or reconstruction, alteration, or conversion of an existing public swimming pool, or related facility is set to begin; or

(b) 30 days prior to the anticipated installation date of new or replacement equipment which is new to the facility design and has not been previously approved.

3.2 SUBMITTING PLANS FOR REVIEW

3.2.1 Plans and specifications must be submitted to the department, and the local regulatory authority, with a completed plan review checklist. All plans and specifications must be drawn to a standard scale and with sufficient detail to license a comprehensive review of whether the plan complies with all applicable standards.

3.2.2 All specifications for any plans submitted for review must comply with the standards set by these rules. An inadvertent failure of the department to reject a specification that does not meet the requirements of these rules does not excuse the licensee or license applicant from its duty to meet the standards set here.

3.2.3 The plan submittal package for the construction of a public swimming pool or related facility, or for the reconstruction, alteration, or conversion of an existing public swimming pool or related facility, must include:

- (a) a plan view and a sectional view of both the public swimming pool or related facility, and surrounding area;
- (b) one or more drawings showing cross-sections through the main drain;
- (c) a drawing of the overall plan showing the public swimming pool, spa, or other water feature in relation to other facilities in the area, including any equipment room;
- (d) a detailed view of the equipment layout in the equipment room;
- (e) a piping schematic that shows the piping configuration, pipe size, valves, inlets, main drains, over flow outlets, skimmers, make-up water, backwash from the filter, and treatment facilities;
- (f) scaled drawings of the public swimming pool bottom and sidewalls;
- (g) cross section drawings with measurements of the step risers and treads and of any handrails;
- (h) all manufacturer specifications for public swimming pool circulation equipment and drain covers;
- (i) specifications for the materials that will be used to construct the public swimming pool and for the materials used as finishes on any of the walkways;
- (j) specifications for the slope and drainage of public swimming pool bottoms, decks, and other surfaces requiring drainage;
- (k) plans and drawings related to all bathhouses or other sanitary facilities;
- (l) an estimation of the anticipated bather load of the public swimming pool;
- (m) calculations of the surface area and volume of the public swimming pool, calculations of the turn-over rate, flow rate, water velocities, total dynamic head, and pump curve showing design flow for each public swimming pool pump system;
- (n) the name and location of any water source that will or may supply water to the public swimming pool;
- (o) details on the method that will be used to dispose of wastewater in compliance with applicable law;
- (p) details on barrier construction;

- (q) staffing plan with zones of patron surveillance for facilities using lifeguards;
- (r) the plan review fee established in Table 1; and
- (s) any other information specifically requested by the department.

3.3 INCOMPLETE PLAN REVIEW APPLICATIONS

3.3.1 The department will provide timely review of any plan review application packet it receives to determine if it is complete and to determine whether more information is needed based upon the specific plans submitted.

3.3.2 If the department determines that all items required in Chapter 3.2 for the review have not been submitted, it will notify the applicant in writing and will identify which items still need to be submitted. Review of the plans will not proceed until those items of information are submitted.

3.3.3 In some circumstances, the department may need information in addition to what the applicant is asked for in the plan review packet to submit. In those cases, the department will require additional information as soon as practical. Where the department has requested this additional information, review of the remainder of the plan review packet and supporting documents will continue to the extent possible while the department waits to receive the additional information.

3.4 PAYMENT OF PLAN REVIEW FEES

3.4.1 The applicant must submit any required fee identified in Table 1 to the department at the time the plan review checklist and supporting documents are submitted.

Table 1.

| Type | Design Volume | Plan Review Fees | Pre-opening Inspections and Interim Visit Fees |
|---|-------------------------|------------------|--|
| Public swimming Pool | Less than 4,000 gallons | \$200 | \$60 |
| Public swimming Pool | 4,000 – 9,999 gallons | \$400 | \$80 |
| Public swimming Pool | 10,000 gallons or more | \$600 | \$100 |
| Review Fees for a Substantial Modification to Existing Filtration or Disinfection systems | | \$75 | |

3.4.2 Public swimming pools not located on contiguous properties are considered separate projects for purposes of the fee schedule.

3.4.3 Plan review will not begin until the fee is received.

3.4.4 Fees for subsequent review, including interim review, final review, and engineering reviews must be paid at or before those reviews occur or within 30 days of when an invoice for an engineering review is submitted to the license applicant or licensee.

3.4.5 If the department requires site visits at identified phases of construction of water parks or complex projects to ensure that the construction is in compliance with the plans, any interim fee outlined in Table 1 must be paid at the time of each such additional site visits. The fee applies to each public swimming pool.

3.4.6 The fee for any pre-opening inspection of a public swimming pool is outlined in Table 1. A pre-opening inspection fee applies to each public swimming pool opening at the facility to ensure that construction is in compliance with the plan.

3.5 QUALIFICATIONS REQUIRED FOR PERSONS PREPARING PLANS FOR REVIEW

3.5.1 Plans, specifications, and supporting data for design of a new public swimming pool, or for reconstruction or remodeling of a currently operating public swimming pool must be prepared by a professional engineer who is registered in Montana. The licensed professional engineer must include his seal and signature on any plans and specifications submitted to the department. Stamps or seals may be provided electronically.

3.5.2 Plan specifications and supporting data for any facilities related to operation of a public swimming pool, such as restrooms or bathhouses, and spray pools, may be submitted by a licensed architect or by a registered construction contractor as long as the design meets all applicable building codes and as long as all applicable permits have been obtained.

3.5.3 Any plans for any slide structure must be reviewed and approved by a structural engineer licensed in the state of Montana and the plan for the slide must include his or her seal.

3.6 SCOPE OF REVIEW BY THE DEPARTMENT

3.6.1 The department will review all plans, specifications, and supporting data only to determine if they are in compliance with these rules.

3.6.2 The department's review of the plans will not include:

(a) a review of the structural design or structural stability of any section or part of the facility;

(b) any determination of whether the plan is in compliance with building, electric, plumbing, mechanical, or ventilation codes; or

(c) any determination of whether the public swimming pool complies with the Americans with Disabilities Act.

3.6.3 In any instance in which there is a conflict between the requirements set in these rules or requirements set by another agency that has jurisdiction over some

aspect of the design, construction, or operation of a public swimming pool, or related facility, the more stringent requirement must be met.

3.7 OUTSIDE ENGINEERING REVIEW

3.7.1 The department may determine it is necessary to have an engineering review conducted on facets of the design such as total dynamic head (TDH), pipe flow velocities, air exchange, or other complex calculations and it may contract with an engineering firm to conduct that portion of the plan review.

3.7.2 The department may incur reasonable engineering fees for an engineering consultation on aspects of the application for plan review that are beyond the in-house expertise of department personnel.

3.7.3 The applicant will be notified in writing of the estimated costs associated with an engineering consultation before the department incurs the expense.

3.7.4 The applicant will be required to reimburse the department for the engineering costs charged to the department by the engineering firm. This fee is in addition to any other applicable review fees set out in Table 1.

3.7.5 The fee for any engineering review must be paid before the department may issue a license for the public swimming pool.

3.8 PLAN REVIEW APPROVAL AND EXTENSIONS

3.8.1 Plan review approval by the department is valid for two years. Substantial and continuous construction must be initiated within two years of the date of approval.

3.8.2 If substantial and continuous construction has not been initiated within two years from the date of the department's plan approval, the owner or operator must obtain an extension in writing from the department. In no case will an extension of the plan approval be granted for more than 18 months. The department is not required to approve a request for an extension of the plan approval.

3.8.3 In any instance in which construction is not initiated within two years of plan approval or within the time granted for an extension, plans, specifications, and supporting documents, a new application must be made and appropriate fees will be charged.

3.9 PLAN REVIEW DURING CONSTRUCTION PHASE

3.9.1 Whenever plans and specifications must be submitted to the department for review, the department will review the construction or renovation of any public swimming pool and related facilities to ensure that it is constructed in compliance with the applicable requirements of these rules.

3.9.2 Depending upon the complexity of the project, the department may require interim site visit reviews to be conducted at phases of construction that the department identifies to the applicant during the initial plan review.

3.9.3 A pre-opening inspection must be performed for any public swimming pool before the final approval may be granted and a license issued.

3.9.4 Any deficiencies identified during the plan review or the pre-opening inspection must be satisfactorily addressed by the applicant before the department may issue a license to operate the public swimming pool.

3.10 CHANGES FROM ORIGINALLY APPROVED PLANS AND FINAL CERTIFICATION

3.10.1 The public swimming pool and related facilities must be built in accordance with the plans as approved unless a modification of the approved plans is approved in writing by the department prior to construction or installation of the modification.

3.10.2 Amended plans and specifications must be submitted to the department for approval of any proposed modifications.

3.10.3 Before a license may be issued, the contractor must provide a letter to the department, certifying that the facility has been constructed according to plans that were approved by the department.

3.11 INFORMATION AND TRAINING TO BE PROVIDED TO LICENSE APPLICANT

3.11.1 Upon completion of any construction or installation of equipment at a public swimming pool, the contractor must provide written plans and operating instructions pertaining to all features and equipment at the public swimming pool, including the plans and instructions for any and all equipment, the circulation system, and maintenance required for the public swimming pool.

3.12 UNAPPROVED CONSTRUCTION OR INSTALLATION

3.12.1 Any construction, renovation, alteration, or installation of equipment that was not reviewed and approved by the department violates these rules.

3.12.2 If construction on the public swimming pool shell, piping, or another component associated solely with the public swimming pool begins before the plan is submitted for review and approved, the construction must cease immediately until the plans, specifications, and applicable fees provided for in these rules are submitted, the review is completed, and the project is approved.

3.12.3 If construction, renovation, alteration, or installation of equipment was completed before the department was notified by the owner or operator, the public swimming pool may not operate and no member of the public may be allowed to use the facility until the plans, specifications, and applicable fees provided for in these rules are submitted and the project is reviewed and approved.

3.12.4 If construction, renovation, alteration, or installation of the public swimming pool structure, equipment, or other components, other than replacing an existing part with a part or component that is identical or substantially similar, was

completed before obtaining the required approval from the department and it is determined upon review that one or more aspect of the construction, renovation, alteration, or installation of equipment does not comply with these rules, no license will be granted for operation of the facility until the owner or operator takes any and all steps necessary to bring the public swimming pool into compliance with the rules. No member of the public may be allowed to use the public swimming pool until the department has determined that it is in compliance with these rules and a license has been issued.

3.13 ADDITIONAL SAFETY REQUIREMENTS

3.13.1 The department may require extra lifeguards, U.S.C.G. approved life jackets, or other safety requirements for as needed to protect public health and safety.

Chapter 4. General Requirements

4.1 BARRIERS

4.1.1 A barrier or alternate method approved by the department must be in place before a public swimming pool with standing water is allowed to operate.

4.1.2 Facilities must provide a barrier as defined in ISPSC, Chapter 2: DEFINITIONS, that is in compliance with ISPSC, Chapter 3, Section 305, or propose an alternate method to prohibit unauthorized entry to the public swimming pool. Alternate methods must provide the same level of protection as a barrier and may include:

- (a) full-time, personal surveillance by a dedicated attendant; or
- (b) electronic warning devices and video surveillance, monitored by a full-time dedicated attendant.

4.1.3 Lockable safety covers for spas and hot tubs and powered safety covers for pools are not sufficient to meet barrier or alternate methods required in this section.

4.1.4 Barriers, alternate methods, and any component parts such as self-latching and self-closing gates and doors, must be maintained and operable at all times the facility is open to the public.

4.2 VENTILATION

4.2.1 All bathhouses, dressing rooms, shower rooms, toilet rooms, equipment rooms, and indoor public swimming pools must provide air turnover that is adequate to prevent the buildup of odors, excessive condensation, and chloramines. Minimum ventilation rates and ventilation system design criteria are found in the International Mechanical Code, 2012, as adopted by the State Department of Labor and Industry in ARM 24.301.172.

4.3 WATER SUPPLY

4.3.1 An adequate and potable supply of water must be provided to the facility.

4.3.2 The source of a water supply system serving a public swimming pool must be one of the following:

(a) a public water supply system which is currently regulated by the Montana Department of Environmental Quality; or

(b) a private well, or spring, that meets the requirements of Nonpublic Water Supply Circular FCS 1-2016.

4.3.3 A nonpublic water supply system must meet the requirements of Nonpublic Water Supply Circular FCS 1-2016 when:

(a) the water supply is constructed after the effective date of this rule;

(b) modifications are made to the water system; or

(c) the regulatory authority determines compliance with Nonpublic Water Supply Circular FCS 1-2016 is necessary to meet the requirements of this circular.

4.4 WASTEWATER AND SOLID WASTE

4.4.1 Wastewater must be disposed of in accordance with state and local regulations.

4.4.2 A wastewater disposal system used by a public swimming pool and related facilities must be designed, operated, and maintained in accordance with state and local regulations.

4.4.3 Solid waste must be collected, stored, and disposed of in a manner that does not create a public nuisance.

4.4.4 Solid waste must be removed from the premises at least weekly to a licensed solid waste disposal facility.

4.5 FACILITY CARE

4.5.1 All public swimming pools and related facilities must be kept in good repair, and maintained in a safe, clean, and sanitary condition at all times.

4.6 DECK AREAS

4.6.1 No deck equipment or furniture may occupy the deck area within 4 feet of the public swimming pool.

4.6.2 All deck surfaces must be clear of tripping or other injury hazards.

4.6.3 Decks must be cleaned at least daily or as necessary. When cleaned with a spray, care must be taken to prevent deck wash material from draining back into any public swimming pool.

4.7 DRESSING ROOMS, TOILETS, AND SHOWER AREAS

4.7.1 Liquid, foam, or powdered soap must be provided by the licensee for

patron use in each shower unit.

4.7.2 Liquid, foam, or powdered soap and either disposable towels with adjacent waste receptacles or hand blowers must be provided by the licensee for patron handwashing in restrooms.

4.7.3 Public swimming pools that allow diaper-aged children must provide an area to facilitate the hygienic changing of baby diapers. This area must be kept clean and sanitary and must be conveniently located for the user to access a handwashing sink and waste receptacle.

4.8 FOOD, DRINK, TOBACCO USE

4.8.1 Food preparation and cooking is only permitted in areas specifically designed and designated for that purpose.

4.8.2 Bathers must only eat or drink in areas designed and designated for that purpose.

4.8.3 Swim-up bars must provide surfaces for bathers to place food and drinks on, which can be effectively cleaned and sanitized.

4.8.4 Glass food and beverage containers are prohibited in patron areas of public swimming pools.

4.8.5 Trash containers must be provided in areas designed for food consumption.

4.8.6 Smoking is prohibited in all indoor public facilities. Tobacco products are not permitted in an area adjacent to an outdoor public swimming pool unless the area is specifically designed and authorized by the management for this use.

4.9 NO ANIMALS PERMITTED IN OR NEAR POOLS

4.9.1 Except as provided in this part, animals are not permitted in any public swimming pool or in the vicinity of any public swimming pool.

4.9.2 Service animals are permitted only on the deck area of a public swimming pool, if needed, but may not enter the water.

4.9.3 A service animal may be excluded from the facility or portions of the facility whenever its behavior or health poses a direct threat to the health or safety of others.

4.9.4 Dogs may be allowed in a public swimming pool during special scheduled events, with express written permission from and under the guidance of the department. Current best practices for "Dog Swim Days" must be followed and all other regulations must be followed.

4.10 FIRST AID KIT

4.10.1 A first aid kit must be readily available, continuously stocked and include, at a minimum:

- (a) a first aid guide;
- (b) absorbent compress;

- (c) adhesive bandages;
- (d) adhesive tape;
- (e) sterile pads;
- (f) disposable gloves;
- (g) scissors;
- (h) elastic wrap;
- (i) emergency blanket;
- (j) resuscitation mask with one-way valve; and
- (k) blood borne pathogen spill kit.

4.11 SPRAY POOLS CLEANING REQUIREMENTS

4.11.1 The spray pool must remain clean and free of debris while in use.

4.11.2 The spray pool recirculation tank must be completely drained and cleaned whenever needed to maintain water quality parameters set by these rules.

4.12 SPA CLEANING REQUIREMENTS

4.12.1 Spa operators must drain, thoroughly clean, and disinfect the spa:

(a) weekly; or

(b) when the total dissolved solids reach 1500 ppm above the levels in the potable water supply used for the spa; or

(c) when required as determined by using the following formula: number of spa gallons divided by three divided by the number of bathers in a 24-hour period equals the number of days before draining, cleaning, and disinfecting the spa is required.

4.12.2 The operator must document the date the spa was drained and cleaned and whether the spa is drained and cleaned weekly or based upon the criteria in 4.12.1(b) or 4.12.1(c). If the spa is drained and cleaned based upon total dissolved solids, that reading must be documented. If the spa is drained and cleaned based upon the size of the spa and the number of users, the licensee must maintain records showing the number of users in each 24-hour period.

4.13 WADING POOLS

4.13.1 Fill and drain wading pools are prohibited.

4.14 EQUIPMENT ROOM

4.14.1 The equipment room must be kept locked at all times, unless occupied by authorized persons or staff.

4.15 CHEMICAL STORAGE

4.15.1 Chemicals and testing equipment must be stored according to the manufacturer's SDS and labels.

4.15.2 Chemicals must be stored with the covers in place and not in proximity of dripping, leaking, or standing water.

4.15.3 Scoops may not be shared between containers with different chemicals.

4.15.4 Chemicals must be stored in a correctly labeled container.

4.15.5 Placards identifying the oxidation reactivity must be located on the main door where the chemicals are kept.

4.16 HAZARDOUS CHEMICAL STORAGE AND OPERATIONS

4.16.1 Use of chlorine gas is prohibited for new construction and after substantial remodeling of existing public swimming pools.

4.16.2 All users of chlorine gas must obtain a copy of the following pamphlets published by the Chlorine Institute:

(a) #1 Chlorine Basics;

(b) #65 Personal Protective Equipment for Chlor-Alkali Chemicals; and

(c) #82 Recommendations for Using 100 & 150 Pound Chlorine Cylinders at swimming Pools.

4.16.3 Hazardous chemicals must be used and stored according to the Safety Data Sheet (SDS) provided by the manufacturer or supplier of the hazardous chemical.

4.16.4 Regulations promulgated by the Montana Department of Labor Building Codes Bureau, Montana Department of Justice Fire Prevention and Investigation Program, U.S. Occupational Safety and Health Administration, and other Local, State, or Federal agencies may apply to the use and storage of hazardous chemicals.

Chapter 5. Circulation Systems

5.1 TURNOVER RATES

5.1.1 Spas must have a maximum 30-minute turnover rate.

5.1.2 Existing public swimming pools that have not lost their grandfather status under Chapter 14, must continue to meet the turnover rates approved at the time of initial licensing.

(a) Pools newly constructed before June 28, 1985 must have a maximum 8 hour turnover rate.

(b) Pools newly constructed after June 28, 1985 must have a maximum 6 hour turnover rate.

5.2 CIRCULATION SYSTEM

5.2.1 The circulation system of a public swimming pool must be:

(a) operated such that at least 80% of the flow is through skimmers or gutters and no greater than 20% of the flow is through main drains; and

(b) operated 24 hours per day.

5.2.2 A flow turndown system may be utilized, providing:

(a) the flow rate is only reduced when the public swimming pool is closed;

(b) the flow rate is not reduced more than 25%;

(c) disinfectant and pH levels must be maintained during the turndown period; and

(d) all water quality parameters must be met before the public swimming pool is reopened.

5.2.3 A dye test may be required by the regulatory authority to verify the uniform circulation of water and distribution of sanitizer in a public swimming pool.

5.2.4 All circulation equipment must be installed and maintained according to manufacturer's instructions. In the absence of manufacturer's instructions, all components must be maintained as needed to ensure system performance is not impeded.

5.3 VACUUM EQUIPMENT

5.3.1 Vacuum equipment may be required by the regulatory authority to remove sediment and other accumulations from the bottom of the public swimming pool.

5.3.2 Vacuum equipment must be used in accordance with manufacturer's guidelines and with all parts in place.

5.4 FILTRATION EQUIPMENT

5.4.1 For cartridge type filters, a minimum of three filters must be provided for each public swimming pool:

(a) one in use;

(b) one which has been cleaned and is ready for use; and

(c) one which is being cleaned.

5.5 PLUMBING

5.5.1 The piping system of the public swimming pool must be marked to identify filtered water, make-up water, waste water, vacuum lines, and heating lines and must be marked to identify the direction of flow.

5.6 AUTOMATED CONTROL

5.6.1 All chemical feeders used with public swimming pools which are built or remodeled after January 1, 2019 must be controlled by an automated controller.

5.6.2 The regulatory authority may require the use of an automated controller when a facility operator is unable to maintain the appropriate levels of residual sanitizer or pH.

5.6.3 An automated controller must be installed and maintained according to the manufacturer's instructions.

5.7 HAND DOSING OF DISINFECTANT NOT PERMITTED

5.7.1 The hand dosing of disinfectant or the introduction of disinfectant at a public swimming pool by means other than through a chemical feeder which has been NSF approved is not permitted except for superchlorination or for bringing the residual of the disinfectant up to required levels when the facility is closed.

Chapter 6. Facility Operations

6.1 OPERATOR QUALIFICATIONS

6.1.1 The licensee of the public swimming pool must ensure personnel are trained and knowledgeable in water testing, operating the water treatment equipment, and that trained personnel are available whenever the facility is open for use.

6.1.2 The licensee of a public swimming pool must employ, or contract with a Certified Pool Operator (CPO), a certified Aquatic Facility Operator (AFO), or a person who has equivalent current certification approved by the department.

6.1.3 The CPO for the facility must be at the facility whenever it is open, or must be available to respond by phone or in person to the public swimming pool within 30 minutes of being telephoned or notified by other effective means.

6.2 RECORD KEEPING

6.2.1 The licensee must maintain accurate records concerning the daily operations of all public swimming pools at the facility.

6.2.2 Records must be maintained on forms approved by the department.

6.2.3 The licensee must maintain records of the following water tests at the frequency required in Chapter 7.2:

- (a) FAC or bromine;
- (b) combined chlorine;
- (c) pH;
- (d) water temperature;
- (e) total alkalinity;
- (f) cyanuric acid;
- (g) calcium hardness;
- (h) water clarity; and
- (i) saturation index.

6.2.4 The facility must also maintain records on all of the following:

- (a) serious injury accident reports;
- (b) incident reports for incidents not requiring medical attention;
- (c) fecal and vomit accidents;
- (d) maintenance information;
- (e) bather loads;
- (f) submerged suction outlet documentation of certification to ANSI/APSP-16 2011 standards, installation date, and lifespan;
- (g) CPO training certificates;
- (h) Lifeguard and CPR training certificates; and
- (i) Staffing plans and zones of patron surveillance.

6.2.5 The licensee must post the facility's license and all applicable operators' licenses. Copies of all other required certifications must be available whenever the public swimming pool is open upon request of the regulatory authority or any member of the public. This includes life guard certifications and first aid, and CPR certifications.

6.2.6 The licensee must obtain and retain a copy of all Material Safety Data Sheets (SDS) for each chemical used in the facility. The facility must maintain records which document that each person that works with a specific chemical has read the relevant SDS sheet.

6.2.7 Records, certificates, and licenses required under this chapter must be kept at the licensed facility and in a readily accessible location for a minimum of 3 years for review by the regulatory authority, except that accident and incident reports must be maintained at the facility for 5 years.

6.2.8 The licensee must furnish copies of records to the regulatory authority upon request.

6.2.9 A copy of these rules must be maintained at the facility premises.

Chapter 7. Water Testing

7.1 TEST KITS

7.1.1 Water quality testing must be done to measure the following parameters using a WQTD that has been certified, listed and labeled to NSF/ANSI 50:

- (a) free chlorine and/or bromine;
- (b) combined chlorine;
- (c) pH (colorimetric test);
- (d) total alkalinity (at least 10 ppm titration calibration ability);
- (e) cyanuric acid (0-100 ppm turbidimetric test); and
- (f) calcium hardness (at least 10 ppm titration calibration ability).

7.1.2 The department may approve an alternative testing method if the method can accurately measure the parameters listed in Chapter 7.1.1.

7.1.3 Expired test kit reagents may not be used to conduct water quality tests.

7.1.4 Test kit comparators must be maintained in a usable condition. Comparators that are cloudy, or otherwise discolored, must be cleaned or replaced.

7.1.5 A temperature measuring device, that is accurate to +/- 2°F, must be available at the licensed facility to check the water temperature of any licensed public swimming pool;

7.1.6 All testing equipment must be maintained according to manufacturers recommendations;

7.1.7 Any testing equipment that is no longer accurate, or no longer holds calibration, must be repaired or replaced as necessary.

7.2 FREQUENCY OF WATER TESTING

7.2.1 Public swimming pools using a manual disinfectant feed system that delivers disinfectant via a flow-through erosion feeder or metering pump without an automated controller, FAC or bromine, and pH must be tested prior to opening to the public and every two hours while open to the public.

7.2.2 Public swimming pools using an automated controller, FAC or bromine, and pH, must be tested prior to opening to the public and every four hours while open to the public.

7.2.3 The test taken before opening must be a manual test. A public swimming pool that utilizes an automatic controller may use the electronic readings from that system for the remaining daily tests.

7.2.4 Combined chlorine must be determined prior to opening to the public.

7.2.5 Total alkalinity must be tested weekly.

7.2.6 Calcium hardness must be tested at least monthly to determine water chemical balance.

7.2.7 Chemical balance, as determined by the saturation index, must be calculated at least monthly.

7.2.8 CYA must be tested at least monthly at all public swimming pools utilizing CYA.

7.2.9 Temperature must be checked each time FAC or Bromine, and pH are tested.

7.2.10 Water clarity must be observed each time a water sample is taken for routine daily water testing.

7.2.11 The regulatory authority may require more frequent testing where indicated, based upon occupancy loads or test results of the public swimming pool.

7.3 WATER SAMPLE LOCATION

7.3.1 At least one set of daily water samples must be taken directly from the public swimming pool before opening to the public.

7.3.2 All other daily water samples may be taken from an in-line sampling port of the automated control unit, when available.

7.3.3 Samples taken directly from the public swimming pool must be obtained under the following conditions:

(a) at least 18 inches below the surface of the water;

(b) a water depth of between three to four feet when available; and

(c) at a location between water inlets.

7.3.4 Sample locations must rotate around the shallow end of the public swimming pool.

7.3.5 One sample per week must be obtained from the deep end.

7.4 WATER SAMPLES FOR PUBLIC HEALTH INVESTIGATION

7.4.1 Upon request by the regulatory authority, the operator of a public swimming pool must collect water samples for bacteriological or other testing for public health investigations. The regulatory authority may also require that samples be taken and analyzed by an independent certified laboratory with the results transmitted to the regulatory authority from the independent certified laboratory.

7.4.2 Water samples must be collected and transported under the guidance and direction of the certified laboratory being used to analyze the samples.

7.5 DISINFECTANT USE

7.5.1 Only disinfectants that are EPA-registered for use in public swimming pools in the United States are permitted.

7.5.2 Public swimming pools must be continuously disinfected by a chemical that imparts a residual effect.

7.5.3 Superchlorination is required when the combined chlorine reading reaches 0.4 ppm or greater.

7.5.4 To superchlorinate a public swimming pool the operator must, at one time, increase the free chlorine reading to a level at least ten times greater than the combined chlorine reading.

7.5.5 Superchlorination cannot be undertaken while the public swimming pool is in use. The public swimming pool must be closed and may not be reopened until the level of chlorination falls within the parameters set in Chapter 7.7.

7.5.6 Cyanuric acid or stabilized chlorine products (Trichlor or Dichlor) may not be used in an indoor pool or spa, or an outdoor hot water spa.

7.5.7 Systems that do not impart a residual, such as Ozone, UV, or Copper/Silver Ion systems, may not take the place of chlorine or bromine.

7.5.8 Residual Ozone dissolved in the return water of the public swimming pool, in the breathable air space over a public swimming pool, or within the breathable atmosphere of the equipment room, must remain below 0.1 ppm.

7.6 CHEMICALS USED TO CONTROL ALGAE

7.6.1 Products used to control algae must be registered with the U.S. EPA, labeled as an algaecide for use in public swimming pools and used in strict compliance with label Instructions.

7.7 WATER CHEMISTRY PARAMETERS

7.7.1 Water chemistry, temperature and clarity measurements must be within the following parameters:

Table 2.

| | Pool | Spa |
|-------------------|--|---|
| Free Chlorine | Stabilized: 2-10ppm Unstabilized: 1-10ppm | 3-10ppm |
| Combined Chlorine | ≤0.4ppm | ≤0.4ppm |
| Total Bromine | 3-8ppm | 4-8ppm |
| pH | 7.2 – 7.8 | 7.2 – 7.8 |
| Total Alkalinity | 60-180ppm | 60-180ppm |
| Calcium Hardness | ≤ 1,000ppm <i>Ideal: 200-400ppm</i> | ≤ 1,000ppm <i>Ideal: 100-200ppm</i> |
| Temperature | ≤ 104°F (40°C) | ≤ 104°F (40°C) |
| ORP | ≥650 | ≥650 |
| Clarity | Clarity must be “moderate” or better | Clarity must be “moderate” or better |
| Cyanuric Acid | ≤ 50ppm <i>Ideal: ≤ 15ppm</i> | N/A |
| Saturation Index | -0.3 to +0.3 | -0.3 to +0.3 |
| Copper/Silver | ≤ 1.3ppm/0.10ppm | ≤ 1.3ppm/0.10ppm |
| Residual Ozone | < 0.1ppm | < 0.1ppm |

7.8 SATURATION INDEX

7.8.1 The Taylor Watergram, or the Langelier Saturation Index (LSI) will be used to calculate the saturation index.

7.8.2 $LSI = pH + \text{Temperature Factor (TF)} + \text{Calcium Hardness Factor (CF)} + \text{Total Alkalinity Factor (AF)} - \text{Total Dissolved Solids Factor (TDSF)}$.

7.8.3 The following is the saturation index table. If the total dissolved solids (TDS) are less than 1,000 ppm then 12.1 is used as the total dissolved solids factor. If the total dissolved solids are greater than 1,000 ppm then 12.2 is used as the total dissolved solids factor.

Table 3.

| Temperature (F°) | Temp Factor (TF) | Calcium Hardness as ppm | Calcium Factor (CF) | Total Alkalinity (TA) | Alkalinity Factor (AF) |
|------------------|------------------|-------------------------|---------------------|-----------------------|------------------------|
| 32 | 0.0 | 5 | 0.3 | 5 | 0.7 |
| 37 | 0.1 | 25 | 1.0 | 25 | 1.4 |
| 46 | 0.2 | 50 | 1.3 | 50 | 1.7 |
| 53 | 0.3 | 75 | 1.5 | 75 | 1.9 |
| 60 | 0.4 | 100 | 1.6 | 100 | 2.0 |
| 66 | 0.5 | 150 | 1.8 | 150 | 2.2 |

| Temperature (F°) | Temp Factor (TF) | Calcium Hardness as ppm | Calcium Factor (CF) | Total Alkalinity (TA) | Alkalinity Factor (AF) |
|------------------|------------------|-------------------------|---------------------|-----------------------|------------------------|
| 76 | 0.6 | 200 | 1.9 | 200 | 2.3 |
| 84 | 0.7 | 300 | 2.1 | 300 | 2.5 |
| 94 | 0.8 | 400 | 2.2 | 400 | 2.6 |
| 105 | 0.9 | 800 | 2.5 | 800 | 2.9 |
| 128 | 1.0 | 1000 | 2.6 | 1000 | 3.0 |

7.9 WATER CLARITY

7.9.1 The water in a public swimming pool must be sufficiently clear such that the bottom is visible while the water is static at all times the public swimming pool is open or available for use by the public.

7.9.2 An observer must be able to see the main drains, or other approved device placed in the deepest part on the bottom of the public swimming pool.

7.9.3 This reference point must be visible from any point on the deck up to thirty feet away in a direct line of sight.

7.9.4 Corrective actions to improve water clarity must be taken by the public swimming pool operator when the water clarity is determined to be moderate. All corrective actions must be recorded on the daily log sheets.

Chapter 8. Safety Signs

8.1 TYPES OF SIGNS REQUIRED

8.1.1 Every licensee must conspicuously post signs which meet the requirements of this circular and which address the following categories of safety issues:

- (a) prohibited conduct;
- (b) warnings of medical or safety hazards;
- (c) potential disease hazards;
- (d) notification of the supervision that is or is not provided by the facility; and
- (e) diving requirements.

8.2 GENERAL PUBLIC SWIMMING POOL SIGN REQUIREMENT

8.2.1 All public swimming pools that are not required to provide lifeguards under these rules and which do not provide lifeguards must have a sign that states "NO LIFEGUARD ON DUTY" in clearly legible letters at least four inches high. No other wording may be on this sign.

8.2.2 All public swimming pools must have the following sign in letters at least two inches high: "THE MAIN DRAINS MUST BE VISIBLE FROM ANY POINT AROUND THE POOL. ANYTHING ELSE REQUIRES THE MANAGEMENT TO CLOSE THE POOL".

8.2.3 All public swimming pools must have signs with the following wording or substantially similar wording:

- (a) "Take a cleansing shower before using the pool";
- (b) "Please do not use the pool if you have diarrhea or any other disease transmittable by water";
- (c) "Food and Drink may be consumed in designated areas only";
- (d) "Non-swimmers and children under age 14 must not use the pool without a responsible person in attendance";
- (e) "Swimmers who are not toilet trained must wear a swim diaper with waterproof pants with elastic opening for legs and waist";
- (f) "Do not change diapers near the pool, or on the deck";
- (g) "No running or rough play";
- (h) "No glass or other breakable material allowed in the pool or deck area";
- (i) "No animals in the pool or deck area except as allowed under the Americans With Disabilities Act";
- (j) "Offensive or unsanitary behavior is prohibited"; and
- (k) "Capacity of the pool is _____".

8.2.4 All public swimming pools must have a "NO DIVING" sign in any area where diving is prohibited.

8.2.5 The licensee must fill in the capacity of the pool as approved in its license in the sign posted under 8.2.3(k).

8.2.6 All public swimming pools must comply with signage requirements in ISPSC Section 412.

8.2.3.7 The regulatory authority may require additional notices to be posted if necessary to protect public health or safety.

8.3 SPA SIGNS

8.3.1 The following rules must be posted adjacent to the spa. The wording must be in the following language or substantially similar language:

- (a) "Take a cleansing shower before using the spa";
 - (b) "Please do not use the spa if you have diarrhea or any disease transmittable by water";
 - (c) "No person under the influence of drugs and/or alcohol may use the spa";
 - (d) "Warning – people using prescription medications and/or having the following medical conditions should consult with their physician before entering the spa: pregnancy, heart disease, diabetes, high blood pressure, or other serious medical condition";
 - (e) "Enter and exit the spa slowly";
 - (f) "Staying in a spa too long may result in dizziness, fainting, and nausea";
- and
- (g) "Heat stroke warning – Users limited to 15 minutes in spa".

8.3.2 All spas must have a sign in letters not less than one inch high stating: "Children age 5 and under are not allowed in the spa".

8.3.3 All spas must have a sign adjacent to the spa which identifies spa capacity with the following language: "Capacity of the spa is _____".

8.3.4 The licensee must fill in the capacity of the spa as set in its license on the sign posted under 8.3.3.

8.4 SIGNS FOR WATER SLIDES

8.4.1 One or more signs with the following language or substantially similar language must be posted adjacent to the water slide:

(a) "One rider at a time. Wait until the landing area is clear before starting down the slide";

(b) "Slide in a sitting position or feet first on the back only";

(c) "Do not attempt to stop on the slide";

(d) "Leave plunge area immediately";

(e) "WARNING: Water depth is _____ feet";

(f) "Non-swimmers not permitted if landing area water depth is over five feet";

and

(g) "Do not use this slide while under the influence of alcohol and/or drugs".

8.4.2 The facility must fill in the depth of the portion of the pool in which the water slide terminates on the sign posted under 8.4.1(e).

8.5 SPRAY POOL SIGNS

8.5.1 One or more signs with the following language or substantially similar language must be posted adjacent to the spray pool:

(a) Spray hours must be listed and the sign must then state, "Spray pool use at any other time is prohibited";

(b) "Do not use the spray pool if you have diarrhea or disease transmittable by water";

(c) In two inch letters: "DO NOT DRINK THE WATER";

(d) "Children who are not toilet trained must wear swim diapers covered with waterproof pants with elasticized openings for the waist and legs";

(e) "Do not change diapers at or near the spray pool"; and

(f) "No animals allowed on or near the spray pool".

Chapter 9. Lifeguards and Attendants

9.1 WHEN LIFEGUARDS ARE REQUIRED

9.1.1 Lifeguards must be present and on duty during the operation of any municipally owned or operated public swimming pool except splash decks.

9.1.2 Water slides that are 11 feet or greater in height may be required to provide a lifeguard at the bottom of the slide and an attendant at the top of the slide as decided by the regulatory authority.

9.1.3 Lifeguards are required for all wave pools and all vortex pools.

9.1.4 When lifeguards are required, the facility must have certified or licensed lifeguards who are authorized and assigned to enforce and ensure compliance with all safety rules at the public swimming pool and surrounding deck area.

9.1.5 When lifeguards are provided voluntarily, all lifeguard requirements must be met.

9.1.6 A public swimming pool staffed by a lifeguard must have at least one spinal injury board, constructed of material easily disinfected, with a head immobilizer and sufficient straps to immobilize a person. The equipment must be stored in an easily accessible location.

9.1.7 Lifeguards must be equipped with a rescue tube and must be attired so that they are readily identifiable as members of the lifeguard staff.

9.1.8 Lifeguards must remain attentive to bathers at all times, and minimize any source of distraction.

9.1.9 A lifeguard must never be the only staff member on-duty at a public swimming pool. There must always be at least one additional staff member on-duty that is able to assist the lifeguard in an emergency situation.

9.2 WHEN LIFEGUARDS ARE NOT REQUIRED

9.2.1 Except as provided in Chapter 9.1, public swimming pools are not required to have a lifeguard on duty if:

(a) a sign is prominently displayed adjacent to the public swimming pool in letters at least four inches high that states: "NO LIFEGUARD ON DUTY"; and

(b) an attendant is on the premises and has reasonable access to the pool.

9.2.2 Lifeguards are not required for public swimming pools associated with apartment complexes.

9.3 CERTIFICATION OF LIFEGUARDS

9.3.1 A "certified lifeguard" means an individual who holds current certification in a course sponsored by one of the following agencies:

(a) American Red Cross Lifeguard Training;

(b) YMCA Lifeguarding;

(c) Boy Scouts of America Lifeguard;

(d) International Lifeguard Training Program (ILTP) of Jeff Ellis and Associates;

(e) Starguard; or

(f) Lifeguard-Pro; or

~~(f)~~(g) another program that is substantially equivalent to the above programs and which is approved by the department.

9.3.2 "Licensed lifeguard" means an individual who holds a current license from the National Pool and Waterpark Lifeguard Training Program in one of the following programs:

(a) National Pool and Waterpark Pool Lifeguard;

(b) National Pool and Waterpark Lifeguard Training; or

(c) National Pool and Waterpark Deep Water Lifeguard.

9.3.3 In addition to holding a current certification or license from one of the agencies listed in 9.3.1 or 9.3.2, each lifeguard must also hold current certification:

(a) by the American Red Cross, the American Heart Association, Starguard or a substantially equivalent course in infant, child, and adult cardiopulmonary resuscitation (CPR); and

(b) by the American Heart Association, or Starguard in standard first aid or a substantially equivalent first-aid course.

9.3.4 Training courses for CPR, CPO, or lifeguarding must have a hands on participation and evaluation portion to satisfy the requirements of this chapter.

9.4 ZONE OF PATRON SURVEILLANCE

9.4.1 When lifeguards are required by this rule, or when provided voluntarily, the licensee, will determine the number and placement of lifeguards by developing a staffing plan with zones of patron surveillance.

9.4.2 Zones of patron surveillance are sized so that:

(a) the lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance;

(b) the lifeguard is able to scan the entire area of the assigned zone of patron surveillance once every 10 seconds. A significant change in the number of patrons using the public swimming pool may change the time required to scan a zone of patron surveillance. The licensee must increase, or decrease, the number and size of zones of patron surveillance, and subsequently the number of on-duty lifeguards, in order to meet this standard scanning time and make efficient use of lifeguard resources;

(c) the lifeguard is able to reach the furthest extent of the assigned zone of patron surveillance within 20 seconds; and

(d) all areas of the public swimming pool are assigned a zone of patron surveillance.

9.4.3 The staffing plan will:

(a) include diagrams of the zones of patron surveillance and placement of lifeguards;

(b) identify the position of each lifeguard (elevated stand, walking, in-water, or other approved position); and

(c) identify any additional responsibilities for each zone.

9.4.4 Each zone of patron surveillance will be staffed by at least one lifeguard while that zone is open for use by the public.

9.4.5 The licensee may close a zone of patron surveillance and prohibit use of that area by the public.

9.4.6 Staffing plan and zones of patron surveillance must be developed and implemented within one year after the adoption of this rule.

9.5 ATTENDANT

9.5.1 An attendant must be:

- (a) at least 15 years of age; and
- (b) currently certified by a Department approved program for:
 - (i) Infant, Child, and Adult Cardiopulmonary Resuscitation (CPR); and
 - (ii) Standard First Aid.

9.5.2 Unless a lifeguard is on duty, all public swimming pools with standing water must have at least one attendant employed at the facility during operating hours.

9.5.3 An attendant must have the authority to enforce all safety rules.

9.5.4 An attendant must be on the premises and have reasonable access to the pool.

9.5.5 An attendant is not required for public swimming pools associated with an apartment complex;

Chapter 10. Flow-Through Hot Spring Pools and Spas

10.1 GENERAL

10.1.1 A flow-through hot springs pool or spa must comply with all other provisions of these rules, except for the following:

- (a) the pH of pool water in a flow-through hot spring pool must be maintained at no less than 7.2 and no greater than 9.4;
- (b) the temperature of a flow-through hot spring pool or spa may not exceed 106°F; and
- (c) the turnover rate of a flow-through hot spring pool may not exceed eight hours.

10.1.2 A flow-through hot spring pool or spa must be equipped with an accurate flow indicator to measure the turnover rate, except that the department may approve the use of an alternate method of establishing an accurate flow rate. To demonstrate that an alternative means of measurement is accurate, the applicant must submit a written application to use that alternative method. The application must demonstrate that the alternative method accurately measures the water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste water discharge.

10.1.3 A flow-through hot springs pool or spa must have an inline thermometer installed to monitor the temperature of the pool. The department may allow an alternative method of monitoring pool temperature upon a showing by an applicant who demonstrates that the water temperature can be accurately measured by the alternative method and that the use of the alternative method does not have the potential to cause adverse public health effects. When an alternative method is used to monitor pool temperature, the licensee is responsible for recording the pool temperatures a minimum of twice a day or more frequently as needed to demonstrate that the temperature is being regulated. The reading must be recorded and maintained on forms approved by the department.

10.1.4 A sign must be posted that states: "For their protection, children under the age of 5 are not allowed to enter water over 100 degrees Fahrenheit. The temperature of the pool is _____, checked at (time) and the pH is _____".

10.1.5 A thermometer must be in place, available for the patrons to check. Documentation of weekly thermometer calibration must be kept on file for three years.

10.1.6 If the pH of a flow-through hot springs pool or spa exceeds a pH of 8.5, a sign must be posted adjacent to the pool or spa notifying users that a pH higher than 8.5 may cause skin irritation and indicating the pH of the water for that date of operation.

10.2 CLEANING REQUIREMENTS

10.2.1 Flow-through hot springs pools or spas must be maintained to prevent corrosion, algae growth, and other mineral accumulation on the pool wall, floor, and equipment.

10.2.2 Flow-through hot springs pools or spas that do not use a chemical disinfectant must be drained, cleaned, and sanitized every 72 hours, along with all surfaces that flow into the pool. Records of the cleaning must be maintained in accordance with the record keeping requirements of these rules.

10.2.3 If the flow-through hot springs pool or spa is not chemically disinfected, a sign must be conspicuously posted at pool side that states the following in the same words or words of substantially the same meaning: "State law does not require chemical disinfection of this pool (or spa) if it is completely drained and sanitized every 72 hours. No one with any disease communicable by water is allowed in the pool or spa".

Chapter 11. Licensing

11.1 LICENSE EXPIRATION; CONTINUATION OF LICENSE DURING RENEWAL PROCESS

11.1.1 A license expires on December 31 of the year of issuance. However, when a licensee has timely applied for renewal of the license and has submitted the fee and any other documents required, the existing license will continue in effect until the department has completed review of the application for renewal and has determined whether to grant or deny the renewal.

11.1.2 Except as provided in 11.1.3, if the department denies the application for renewal of the license or newly limits the license, the license will continue in effect until the last day available for seeking review of the agency order or until a later date fixed by order of a reviewing court.

11.1.3 If grounds exist to order emergency closure of a public swimming pool the department may do so in compliance with these rules even though the licensee or license applicant is in the process of challenging the denial or renewal of the license.

11.2 LICENSE TO BE DISPLAYED

11.2.1 The license must be prominently displayed at the public swimming pool.

Chapter 12. Inspections

12.1 INSPECTIONS

12.1.1 Any regulatory authority that has jurisdiction over an aspect of the operation of a public swimming pool may, after showing proper identification, enter facilities associated with the operation of the public swimming pool at any time the facility has staff present or is operating, and may conduct an inspection to determine compliance with the requirements of these or other applicable rules. The regulatory authority must be permitted to examine any records pertaining to the operation, maintenance, or personnel employed at the facility and collect water samples.

12.1.2 Whenever an inspection of a public swimming pool or related facility is made to determine compliance with these rules, the findings must be recorded on an inspection form approved by the department.

12.1.3 If the regulatory authority determines that one or more violations exist, the inspection form must be marked to designate the rule the inspector has identified as not in compliance, document the observation of the violation, any correction which needs to be made, and the date by which the correction must be made.

12.1.4 A copy of the completed inspection report form must be furnished to the person in charge of the public swimming pool at the conclusion of the inspection.

12.1.5 The completed inspection form is a public document that is available for public review or distribution to any person upon request and upon payment of a reasonable copying fee.

12.1.6 An electronic copy of the completed inspection form may be emailed to the operator in lieu of the hard copy. Electronic copies must be sent within 3 days of the close of the inspection.

12.2 INSPECTIONS BY LOCAL BOARD OF HEALTH

12.2.1 A local board of health that has signed a cooperative agreement to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools must employ a person who is currently licensed by the Montana Board of Sanitarians as a Registered Sanitarian or a Sanitarian-in-Training to conduct inspections of public swimming pools in accordance with 50-53-209, MCA.

12.2.2 The sanitarian or sanitarian-in-training must be trained in swimming pool inspection techniques.

12.2.3 A local board of health that has entered into a cooperative agreement with the department to inspect public swimming pools must ensure that its trained sanitarian conducts a pre-licensing inspection.

12.3 REOPENING AFTER EMERGENCY CLOSURE

12.3.1 If the license of a public swimming pool was suspended, or an emergency closure ordered, the regulatory authority may require an in-person inspection of the facility to verify that the problem has been corrected. Alternatively, depending upon the circumstances and the nature of the violation, the regulatory authority may choose to accept other forms of documentation to support reopening the public swimming pool, including, but not limited to, such things as faxes or scans of water quality test results, test results provided to the regulatory authority by an independent laboratory, photographs, or video footage.

12.3.2 If the regulatory authority determines that an in-person inspection is needed to verify that the problem has been corrected, that must occur within five working days after the regulatory authority has received written notification from the licensee, license applicant or facility operator that the problem has been resolved.

Chapter 13. Right to Hearing and Hearing Procedures

13.1 REQUEST FOR FAIR HEARING

13.1.1 A licensee or license applicant may request a fair hearing to contest any suspension, or cancellation of a license or any corrective action ordered by the department.

13.1.2 A request for fair hearing must be in writing and must specify the alleged mistakes in facts or law relied upon by the department.

13.1.3 Hearing requests must be mailed or delivered to the department's Office of Fair Hearings, P.O. Box 202953, 2401 Colonial Drive, 3rd Floor, Helena, MT 59620-2953.

13.1.4 A request for fair hearing to contest an order for suspension or cancellation of a license or to contest corrective action ordered by the department must be received by the Office of Fair Hearings within ten days after the regulatory authority serves the written notice of violation upon the licensee, license applicant, or on-site operator of the public swimming pool.

13.1.5 Fair hearings are held pursuant to the contested case procedures of the Montana Administrative Procedure Act (MAPA) and the applicable provisions of ARM Title 37, chapter 5, subchapter 3.

13.1.6 Hearings must be held in Helena, Montana, unless the department agrees that it is necessary for the hearing examiner to conduct an on-site visit of the facility in which the public swimming pool is located. In that case, the hearing or a portion of the hearing may be held in a location convenient to where the public swimming pool is located.

13.2 SHOW CAUSE HEARING

13.2.1 The department may set a show cause hearing requiring a licensee, license applicant, or operator to appear and show cause why the department should not deny, suspend, or cancel a license or otherwise require compliance with Title 50, chapter 53, MCA, ARM 37.115.102, 37.115.103, 37.115.106, and this circular.

13.2.2 Show cause hearings are held pursuant to the contested case procedures of the Montana Administrative Act and the applicable provisions of ARM Title 37, chapter 5, subchapter 3.

13.2.3 The department may initiate a show cause hearing by including in a notice of violation an order for the licensee, license applicant, or operator to appear before the department within ten days to show cause why the license should not be denied, suspended, cancelled, or why other compliance with Title 50, chapter 53, MCA, and ARM 37.115.102, 37.115.103, 37.115.106, and this circular, should not be ordered.

13.2.4 The notice of violation containing the show cause order may be hand delivered to the licensee, license applicant, or operator, but must also be served by U.S. mail, postage prepaid, by internal departmental mail, or by facsimile, or other electronic means followed by a hard copy. Service of the request for a show cause hearing is complete upon mailing or electronic delivery.

13.2.5 Hearings must be held in Helena, Montana, unless the department agrees that it is necessary for the hearing examiner to conduct an on-site visit of the facility in which the public swimming pool is located. In that case, the hearing or a portion of the hearing may be held in a location convenient to where the public swimming pool is located.

13.3 PREHEARING PROCEDURES

13.3.1 Upon receipt of a request for fair hearing or a notice of violation containing an order to appear and show cause, the Office of Fair Hearings must appoint a hearing examiner.

13.3.2 The hearing examiner must set a scheduling conference to be held by telephone within ten days after the request for hearing or the notice of violation containing the order to show cause is received by the Office of Fair Hearing. The licensee, license applicant, or operator of the public swimming pool may agree to set the scheduling conference at a later date.

13.3.3 At the telephone scheduling conference, the hearing examiner must:

- (a) set the date, time, and physical location for the hearing;
- (b) set deadlines for any discovery requested by the parties;
- (c) set deadlines for exchange of witness lists and exchange of exhibits; and
- (d) set a date by which any prehearing order required by the hearing examiner must be filed by the parties.

13.3.4 Following the scheduling conference, the hearing examiner must issue a written order that:

- (a) sets out its rulings on the issues listed in 13.3.3;
- (b) notifies the parties that the proceedings are a contested case proceeding under the Montana Administrative Procedure Act;

- (c) notifies the parties that formal proceedings may be waived under 2-4-603, MCA;
- (d) provides the legal authority and jurisdiction of the hearing examiner;
- (e) a reference to the particular sections of the statutes and rules involved;
- and
- (f) a short plain statement of the matters asserted.

13.3.5 The hearing examiner may require the parties to submit a prehearing order signed by the representatives or both parties which includes such things as: the parties' contentions, any agreed facts or other stipulations, the issues of fact and law, witnesses, expert witnesses, exhibits, and any relevant statutes and rules, and the anticipated length of hearing. The parties may use electronic signatures to sign and submit the prehearing order.

13.3.6 If a public swimming pool has been closed, the hearing examiner must expedite the proceedings to the extent possible while still providing the parties reasonable time for discovery.

13.4 HEARING, ORDER OF PRESENTATION, BURDENS OF PROOF

13.4.1 In a hearing concerning adverse action or proposed adverse action against an existing license, the department must present its case-in-chief first during the hearing to establish the background facts and the basis for the action or proposed action. The department has the burden to establish by a preponderance of the evidence that there is a reasonable basis for the department to take the adverse action. The licensee will then have the opportunity to present its case-in-chief. The licensee has the burden of persuasion to establish that there is not a reasonable basis for the adverse action or proposed adverse action against the existing license. The department will have the opportunity to present rebuttal evidence.

13.4.2 In a hearing concerning the proposed denial of a license by the department, the department must open the hearing by providing evidence to establish the background facts and any reasons relied upon by the department for the denial of the license. The license applicant or operator must then present its case-in-chief. The license applicant has the burden of proof to establish by a preponderance of the evidence that the denial of the license has no reasonable basis and that all requirements of Title 50, chapter 53, MCA, ARM 37.115.102, 37.115.103, and 37.115.106 have been met and the license applicant is therefore entitled to the license. The department must then have an opportunity to present its case-in-chief. The department has the burden of persuasion to show that there is some reasonable basis for denial of the license or that the license applicant has not met all requirements of Title 50, chapter 53, MCA, ARM 37.115.102, 37.115.103, and 37.115.106. The license applicant or operator must have the opportunity to present rebuttal evidence.

13.4.3 If the department has established by a preponderance of the evidence that there have been violations of Title 50, chapter 53, MCA, ARM 37.115.102, 37.115.103, and/or 37.115.106, the department's exercise of discretion in deciding

the level of negative licensing action to take must be upheld unless the hearing examiner finds that in light of all the circumstances, the penalty the department has imposed or proposed to impose is so disproportionate or excessive as to be arbitrary and capricious.

13.5 LIMITS ON CONSIDERATION OF PRIOR VIOLATIONS

13.5.1 Except as provided in 13.5.2 through 13.5.4, the hearing examiner may not consider any prior violations that were included on a notice of violation delivered to the licensee, license applicant, or operator of a public swimming pool if:

(a) satisfactory corrective action was taken and accepted by the department;
or

(b) the licensee, license applicant, or operator requested a fair hearing to challenge the notice of violation, the hearing examiner issued a dispositive order that denied all of the department's claims against the licensee and that order was not appealed or it was upheld after any appeal.

13.5.2 The hearing examiner may consider any history of corrective action that was taken in response to a notice of violation and that was accepted by the department only for the limited purpose of determining whether:

(a) the history of past violations taken together with the current violations supports a penalty as severe as the level of adverse action imposed by or requested by the department; or

(b) the department's imposition of the penalty or proposed penalty is so severe as to be arbitrary and capricious.

13.5.3 In considering any prior violations by the licensee for purposes of Chapter 13.5.20, any prior violation cited at the public swimming pool is presumed admitted unless it was timely contested.

13.5.4 In considering any such prior violations, the hearing examiner must weigh the frequency and the seriousness of the prior violations and the willingness and ability the licensee has demonstrated in the past to take corrective action that prevented reoccurrence of violations.

Chapter 14. Grandfather Clause

14.1 Any public swimming pool that has been licensed and regularly operating on or before January 9, 2016 is entitled to a grandfather clause exemption from any requirement to upgrade to new design and construction standards set in Administrative Rules of Montana Title 37 Chapter 115, and codes adopted herein, until one or more of the following occurs:

(a) the public swimming pool undergoes reconstruction, remodeling, or renovation;

(b) the license is not renewed within one month of expiration;

(c) the license has been suspended for 90 days or longer as a penalty for violation of a provision of Title 50, chapter 53, MCA or these rules and the order of suspension is final; or

(d) the license has been cancelled and the order of cancellation is final.

14.2 Where some aspect of a currently licensed public swimming pool, such as the physical plant or circulation system, is reconstructed, remodeled, or renovated, it loses its grandfather protection with regard to the area or aspect of the public swimming pool being modified.

14.3 Existing public swimming pools must comply with current standards for barriers, suction outlets, suction outlet covers, and diaper changing areas, regardless of their grandfather status.

14.4 The regulatory authority may require a plan review of a public swimming pool and upgrade to new construction standards, due to health or safety risks, during a change of ownership.

Chapter 15. Variances

15.1 The department may grant a variance to the requirements of the Administrative Rules of Montana Title 37 Chapter 115 and codes adopted herein.

15.2 An applicant seeking a variance must apply in writing and provide the following information:

(a) a citation of the rule to which the variance is requested;

(b) a statement as to why the applicant is unable to comply with the rule to which the variance is requested;

(c) the nature and duration of the variance requested;

(d) a statement of how the intent of the rule will be met and the reasons why the public health or safety would not be jeopardized if the variance was granted; and

(e) a full description of any policies, procedures, or equipment that the applicant proposes to use to rectify any potential increase in health or safety risks created by granting the variance.

15.3 A variance will remain in effect for the lifetime of the public swimming pool, unless otherwise specified or revoked.

15.4 A variance may be revoked by the department at any such time as the department feels is necessary in order to abate a public health risk.

15.5 The department will solicit information from the local regulatory authority in order to determine the final disposition of the variance request.

15.6 The department may add restrictions to any variance request as necessary to protect public health and safety.