

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.115.106 pertaining to public) PROPOSED AMENDMENT
swimming pools)

TO: All Concerned Persons

1. On December 29, 2022, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81456737371?pwd=N1psbXdiS0kyeStmQkVIS0dLb3RUdz09>, meeting ID: 814 5673 7371, and password: 426355; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 814 5673 7371, and password: 426355. Find your local number: <https://mt-gov.zoom.us/u/kbbAoUy7kv>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.115.106 INCORPORATION BY REFERENCE (1) ~~The Department of Public Health and Human Services~~ department, except as otherwise provided, adopts and incorporates by reference the following chapters of the International Swimming Pool and Spa Code (ISPSC), ~~2018~~ 2021, which sets forth design, construction, alteration, repair, and maintenance standards for public swimming pools. This publication may be obtained by contacting the International Code Council, 3060 Saturn Street, Suite 100, Brea, California 92821. The following chapters of this publication are being adopted with modifications as described:

(a) through (j) remain the same.

(2) ~~The Department of Public Health and Human Services~~ department adopts and incorporates by reference the American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins, ~~2013~~ (ANSI/PHTA/ICC 7 – 2020), which sets forth design and performance criteria for circulation systems including components, devices, and

related technology installed to protect against entrapment hazards in public swimming pools. This publication may be obtained by contacting The Association of Pool and Spa Professionals, 2111 Eisenhower Ave., Alexandria, VA 22314.

(3) The department adopts and incorporates by reference the provisions in Circular FCS 3-~~2020~~ 2022. Circular FCS 3-~~2020~~ 2022 may be obtained by calling 406-444-2837 to request a copy; or email hhsfcs@mt.gov, or request one by mail by writing to DPHHS – FCS, P.O. Box 202951, Helena, MT 59620-2951, or by visiting the department's web site at: <https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools>.

AUTH: 50-53-103, MCA

IMP: 50-53-103, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to revise ARM 37.115.106, to adopt and incorporate by reference newer editions of: (1) the International Swimming Pool and Spa Code (ISPSC); (2) American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins (ANSI/PHTA/ICC 7); and (3) the department's circular governing standards for swimming pools.

Updating the ISPSC reference to the 2021 edition is necessary to align with recent rule changes made by the Department of Labor and Industry and thereby ensure consistent standards for construction of swimming pools. See MAR Notice No. 24-301-351.

Updating the ANSI/PHTA/ICC 7 reference to the 2020 edition will ensure Montana maintains consistency with national standards and best practices governing the safe operation of swimming pools.

Updating the rule to refer to Circular FCS 3-2022 is necessary to implement proposed revisions to the department's Montana Standards for Swimming Pools Circular. The department is proposing three primary changes to the Circular.

First, the department is proposing to make failure to comply with ANSI/APSP/ICC 7 drain cover documentation requirements a violation that may require immediate closure subject to the discretion of the regulatory authority rather than a violation that mandates immediate closure of the facility without allowing for the exercise of any discretion. The proposed change provides for increased regulatory flexibility by recognizing that certain instances of lack of required documentation may not create health and safety concerns that are so severe as to warrant immediate closure of a facility.

Second, the department is proposing to update reference to the Centers for Disease Control and Prevention (CDC) Fecal Incident Response under Section 2.4 of the

Circular to the most current version. The proposed change is necessary to ensure current national safety standards are followed.

Third, the department is proposing the addition of a legionella contamination response plan to direct regulatory authorities and pool operators to follow national standards contained in the CDC's Model Aquatic Health Code to shut down, clean, sanitize, and test public spas that are implicated in outbreaks of Legionaries and Pontiac fever.

A copy of the Circular with the proposed revisions is located at:
<https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools>.

5. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 6, 2023.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

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

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State November 29, 2022.