

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

### Safe Drinking Water

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The amendments include new requirements for community water systems to prepare and provide to their customers an annual consumer confidence report (CCR), major revisions to the public notification (PN) requirements, minor revisions to the regulation of lead and copper to improve implementation and minor revisions to Chapter 109 to retain primary enforcement authority (primacy) and to clarify existing requirements.

This proposal was adopted by the Board at its meeting of July 17, 2001.

#### A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

#### B. Contact Persons

For further information, contact Jeffrey A. Gordon, Chief, Division of Drinking Water Management, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018 or Pamela Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

#### D. Background and Purpose

The purpose of the proposed rulemaking package is to amend the Department's Safe Drinking Water regulations to incorporate new primacy requirements contained in three recent Federal rulemakings. The United States Environmental Protection Agency (EPA) promulgated the following National Primary Drinking Water Regulations: CCR Final Rule as published in the August 19, 1998, *Federal Register*; PN Final Rule as published in the May 4, 2000, *Federal Register*; and Lead and Copper Rule Minor Revisions (LCRMR) as published in the January 12, 2000, *Federal Register* (40 CFR Parts 9, 141 and 142). The proposed amendments will address these new and revised provisions to satisfy primacy requirements.

##### 1. New CCR requirements.

The amendments include new requirements for community water systems to prepare and provide to their

customers an annual CCR on the quality of the water delivered by the public water system. These amendments will incorporate the provisions of the Federal CCR Rule that were mandated by the 1996 Amendments to the Federal Safe Drinking Water Act (SDWA). The CCR is the cornerstone of the public right-to-know provisions in the Federal SDWA.

The CCR will provide valuable information to customers of community water systems and allow them to make personal, health-based decisions regarding their drinking water consumption. The information in the report is information that the community water system already collects. Reports shall contain information on the sources of water provided, levels of detected contaminants, violations of any State regulations and health information concerning drinking water and potential risks from detected contaminants. The information contained in a CCR can raise consumers' awareness of where their water comes from, help them understand the process by which safe drinking water is delivered to their homes and educate them about the importance of preventative measures, such as source water protection, that ensure a safe drinking water supply. Water suppliers can use the CCR to promote dialogue with their consumers and to encourage consumers to become more involved in decisions which may affect their health.

The Department is requesting comment on the basic elements of the CCR, in particular the requirement for a community water system with a large proportion of non-English speaking residents (as determined by the Department) to include information in its report in the appropriate languages regarding the importance of the report or contain a telephone number or address where those residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language. This proposed CCR requirement is identical to the provision contained in the PN requirements.

- How should the Department define a large proportion of non-English-speaking residents? In guidance, the EPA suggests that a threshold of 10% of the population or 1,000 people, whichever is less, be used when determining whether to provide multilingual information.

- What resources are available to community water systems that choose to provide a translated copy of the report or offer to assist in the appropriate language?

- What resources are available to residents who seek translation services for assistance in reading a CCR?

##### 2. Major revisions to PN requirements.

The amendments include major revisions to the PN requirements and will incorporate the provisions of the Federal PN Rule. Public water suppliers use PN to alert consumers to potential health risks from violations of drinking water standards and to tell them how to avoid or minimize those risks. The EPA revised its PN requirements in April 2000 as required by the 1996 Amendments to the Federal SDWA because it was determined that the complexity of the rule hindered successful implementation. The EPA was required to amend the existing PN provisions to better target notices for serious violations posing a short-term exposure risk to health and to make the existing notification process less burdensome and more effective.

The revisions to PN modify the minimum requirements public water suppliers must meet regarding the form,

manner, frequency and content of public notices. The new requirements make it easier for water suppliers to provide consumers with more accurate and timely information on violations and the seriousness of any potential adverse health effects. The revisions require faster notice in emergencies and fewer notices overall. In addition, PN of drinking water violations provides a means to protect public health, build trust with consumers through open and honest sharing of information and establishes an ongoing, positive relationship with the community.

The Department is requesting comment on the Tier 1 PN requirements, in particular the list of violations requiring such a notice, the new consultation process now proposed in lieu of more prescriptive State requirements and the revised requirements for the form and manner of the Tier 1 notices.

The Department also is requesting comment on the standard elements of the public notice, in particular the requirement for a public water system serving a large proportion of non-English speaking consumers (as determined by the Department) to include in its public notice information in the appropriate languages regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language. This proposed PN requirement is identical to the provision contained in the CCR requirements.

- How should the Department define a large proportion of non-English-speaking consumers? In guidance, the EPA suggests that a threshold of 10% of the population or 1,000 people, whichever is less, be used when determining whether to provide multilingual information.

- What resources are available to public water systems that choose to provide a translated copy of the notice or offer to assist in the appropriate language?

- What resources are available to residents who seek translation services for assistance in reading a public notice?

### 3. *Minor revisions to the LCRM.*

The amendments reflect minor revisions to the regulation of lead and copper. The lead and copper regulations apply to community and nontransient noncommunity water systems. The EPA made several minor revisions to the National Primary Drinking Water Regulations for lead and copper. The proposed changes do not affect the lead or copper maximum contaminant level goals, the action levels or the basic regulatory requirements. The intended effect of this action is to streamline and reduce regulatory burden where those changes can be made without jeopardizing the level of public health protection or protection of the environment. Other minor changes are being proposed to clarify requirements and to improve the rule's implementation. Finally, the proposed changes address two issues that were the subject of an EPA judicial remand.

### 4. *Amendments to correct minor deficiencies and clarify existing requirements.*

The amendments will correct minor deficiencies in Chapter 109 to satisfy outstanding issues with the EPA and obtain primacy approval for the LCR and the Phase II/V Rule. The amendments also include proposed changes to clarify existing requirements.

In summary, the Board proposes to incorporate the provisions of the Federal CCR, PN and LCRM and the Federal corrective amendments into the Pennsylvania

Safe Drinking Water Regulations (Chapter 109) to obtain primary enforcement authority, under the Federal SDWA. These regulations must be adopted no later than 2 years after the date on which the regulations are promulgated by the EPA (August 21, 2000) or the State must request a 2-year extension from the EPA, according to the Federal SDWA. The Department has been granted an extension. Our deadline for final adoption is prior to August 21, 2002.

The draft proposed amendments were submitted for review to the Water Resources Advisory Committee (WRAC) on March 14, 2001. Comments were received from the WRAC on April 5, 2001. The WRAC encourages the Department to consider their comments, and otherwise supports the changes to Chapter 109 as proposed. The WRAC asked the Department to request additional comment during proposed rulemaking on the Tier 1 PN requirements, in particular the new consultation process now proposed in lieu of more prescriptive State requirements and the revised requirements for the form and manner of the Tier 1 notice.

The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on March 21, 2001. Comments were received from TAC on April 10, 2001. TAC suggested the Department seek public comment on the multilingual requirements of the CCR and PN Rules.

### *E. Summary of Regulatory Requirements*

The proposed amendments reflect both the new Federal CCR, PN and LCRM requirements and the Federal corrective amendments. The amendments will correct minor deficiencies in Chapter 109 to satisfy outstanding issues with the EPA and obtain primacy approval for the LCR and the Phase II/V Rule. The amendments also include proposed changes to clarify existing requirements.

#### *§ 109.1 Definitions.*

This section was amended to add a definition for "CCR—Consumer Confidence Report."

#### *§ 109.202(c)(1)(ii) Treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts.*

This subparagraph was amended to add the EPA's new PN requirements for an occurrence of a waterborne emergency. This amendment reflects the Federal requirement found in 40 CFR 141.202(a). In addition, this subparagraph was amended to clarify the Department's reporting requirements under § 109.701(a)(3).

#### *§ 109.301(1)(i)(C) Performance monitoring for filtration and disinfection.*

This clause was amended to clarify the Department's reporting requirements under § 109.701(a)(3).

#### *§ 109.301(2)(i)(D) Performance monitoring for unfiltered surface water.*

This clause was amended to clarify the Department's reporting requirements under § 109.701(a)(3).

#### *§ 109.301(3) Monitoring requirements for coliforms.*

This paragraph was amended to add the EPA's new PN requirements for a water supplier that fails to test for fecal coliforms or E. coli when any check sample tests positive for coliform. This amendment reflects the Federal requirement found in 40 CFR 141.21(e). In addition, this paragraph was amended to clarify the Department's reporting requirements under § 109.701(a)(3).

*§ 109.301(7)(ii)(C)(V) and (VI) Repeat monitoring for systems with nitrate or nitrite levels equal to or greater than 50% of the MCL.*

Subclause (V) was amended to add the EPA's new PN requirements for a water supplier that is unable to comply with the 24-hour sampling requirement. This amendment reflects the Federal requirement found in 40 CFR 141.23(f)(2). Subclause (VI) was added to relocate the Department's existing requirements for noncommunity water systems for which an alternate nitrate level has been approved by the Department. These requirements were originally located in § 109.301(7)(ii)(C)(V).

*§ 109.302(f) Special monitoring requirements.*

This subsection was deleted to be consistent with the EPA. The EPA reserved the special monitoring requirements as a result of the Federal Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Final Rule (September 17, 1999).

*§ 109.302(g) and (h)*

These subsections were renumbered as § 109.302(f) and (g), respectively.

*§ 109.401 General PN requirements.*

This section was reserved because the requirements are not consistent with the EPA's general PN requirements found in 40 CFR 141.201. General PN requirements are now found in § 109.407.

*§ 109.402 Emergency PN.*

This section was reserved because the requirements are not consistent with the EPA's Tier 1 PN requirements found in 40 CFR 141.202. Tier 1 public notice requirements are now found in § 109.408. In addition, the 1-hour reporting requirement was moved to the reporting and recordkeeping section in § 109.701.

*§ 109.403 Description and content of notice.*

This section was reserved because the requirements are not consistent with the EPA's PN content requirements found in 40 CFR 141.205. Public notice content requirements are now found in § 109.411.

*§ 109.404 Notice by the Department.*

This section was reserved. The requirements were moved to § 109.415 to be consistent with how the EPA organizes the special PN requirements.

*§ 109.405 Public notice requirements for lead.*

This section was reserved to be consistent with the EPA. The EPA reserved the public notice requirements in 40 CFR 141.43(a)(2) as a result of the minor revisions to the LCR (January 12, 2000).

*§ 109.406 Public notice requirements for unregulated contaminants.*

This section was reserved because the requirements are not consistent with the EPA's public notice requirements for unregulated contaminants found in 40 CFR 141.207. Public notice requirements for unregulated contaminants are now found in § 109.412.

*§ 109.407 General PN.*

This section was added to incorporate the EPA's new general PN requirements. This amendment reflects the Federal requirement found in 40 CFR 141.201.

*§ 109.407(c)(3), (4) and (5) Public notice recipients.*

Paragraph (3) was added to relocate the Department's existing public notice requirements for point-of-entry de-

vices. These requirements were originally located in § 109.401(4). Paragraph (4) was added to relocate the Department's existing public notice requirements for notification of key public officials. These requirements were originally located in § 109.402(2)(i). Paragraph (5) was added to relocate the Department's existing public notice requirements for notification of a parent or guardian. These requirements were originally located in § 109.402(2)(v).

*§ 109.408 Tier 1 public notice—form, manner and frequency of notice.*

This section was added to incorporate the EPA's new Tier 1 public notice requirements. This amendment reflects the Federal requirement found in 40 CFR 141.202(a).

*§ 109.408(b)(2) Timing for a Tier 1 public notice.*

This paragraph was added to incorporate the Department's existing 1-hour notification requirement as specified in § 109.701(a)(3).

*§ 109.409 Tier 2 public notice—form, manner and frequency of notice.*

This section was added to incorporate EPA's new Tier 2 public notice requirements. This amendment reflects the Federal requirement found in 40 CFR § 141.203(a).

*§ 109.409(b)(1) Timing for a Tier 2 public notice.*

This paragraph was added to incorporate the Department's existing 1-hour notification requirement as specified in § 109.701(a)(3).

*§ 109.410 Tier 3 public notice—form, manner and frequency of notice.*

This section was added to incorporate the EPA's new Tier 3 public notice requirements. This amendment reflects the Federal requirement found in 40 CFR 141.204(a).

*§ 109.411 Content of a public notice.*

This section was added to incorporate the EPA's new content requirements. This amendment reflects the Federal requirement found in 40 CFR 141.205(a).

*§ 109.412 Special notice of the availability of unregulated contaminant monitoring results.*

The section was added to incorporate the EPA's new requirements for providing unregulated contaminant monitoring results. This amendment reflects the Federal requirement found in 40 CFR 141.207(a).

*§ 109.413 Special notice for nitrate exceedances above MCL by noncommunity water systems, where granted permission by the Department.*

This section was added to incorporate the EPA's new special notice requirements for nitrate MCL exceedances. This amendment reflects the Federal requirement found in 40 CFR 141.209.

*§ 109.414 Notice to new billing units or new customers.*

This section was added to incorporate the EPA's new requirements for notice to new billing units or new customers. This amendment reflects the Federal requirement found in 40 CFR 141.206(a).

*§ 109.415 Notice by the Department on behalf of the public water system.*

This section was added to incorporate the EPA's new requirements for notice given by the Department on

behalf of the public water system. This amendment reflects the Federal requirement found in 40 CFR 141.210.

*§ 109.416 Consumer confidence report requirements.*

This section was added to incorporate the EPA's new requirements that community water systems provide an annual CCR to its customers. This amendment reflects the Federal requirements found in 40 CFR Part 141, Subpart O.

*§ 109.503(c)(3) Permit fees.*

This paragraph was deleted to provide consistency for fees required for permit applications submitted under § 109.503(c). Under this action, the permit fee submitted with an application for a permit or major permit amendment to satisfy the requirements for removal of volatile organic compounds (VOCs) and synthetic organic compounds (SOCs) (through the construction of treatment facilities designed to achieve greater removal of contaminants than would be achieved by conventional filtration) would be the same as the schedule specified for all other applications under § 109.503(c). The Department feels this decrease in fee is appropriate because the review time has decreased due to the availability of off-the-shelf, NSF-approved pieces of equipment for the removal of VOCs and SOCs.

*§ 109.701(a)(3) Compliance report.*

This paragraph was amended to relocate the Department's existing 1-hour reporting requirements. These requirements were originally located in § 109.402(1).

*§ 109.701(a)(4) Notice.*

This paragraph was amended to add the EPA's new requirements for certification that a system has fully complied with the PN requirements. This amendment reflects the Federal requirement found in 40 CFR 141.31(d).

*§ 109.701(d)(8) Record maintenance.*

This paragraph was added to incorporate the EPA's new record maintenance requirements. This amendment reflects the Federal requirement found in 40 CFR 141.33(e).

*§ 109.702(a)(6) Operation and maintenance plan.*

This paragraph was added to clarify the Department's intent to require a PN component in a community water system's operation and maintenance plan. Paragraphs (6)—(11) were renumbered accordingly as paragraphs (7)—(12).

*§ 109.707(a) and (b) Emergency response plan.*

Subsection (a) was deleted because it duplicated information already contained in § 109.701(a)(3). Subsection (b) was renumbered as § 109.707(a). This subsection also was amended and renumbered to clarify the Department's requirements for an emergency response plan.

*§ 109.805(e)(4) Certification procedure.*

This paragraph was added to clarify that a laboratory certified by the Department shall comply with § 109.810 (relating to reporting and notification requirements) to maintain certification. The Department requires that analytical data be submitted or reported in a timely manner to ensure that compliance determinations can be made and public health can be protected. A laboratory certified by the Department has an obligation to provide the data in a timely manner. The language was added to

emphasize that a failure to comply with the reporting and notification requirements may jeopardize the laboratory's continued certification.

*§ 109.806 Standards for certification.*

This section was amended to clarify the Department's standards for certification.

*§ 109.810(b) and (d) Reporting and notification requirements.*

Subsection (b) was amended to clarify the Department's requirements with respect to how a certified laboratory shall contact the Department. Subsection (d) was amended to clarify the Department's requirements with respect to the circumstances under which a laboratory shall notify the public water suppliers it serves.

*§ 109.1003(b) Monitoring requirements.*

This subsection was deleted to be consistent with the EPA. As a result, existing subsections (c) and (d) were renumbered as (b) and (c).

*§ 109.1004(a) and (b) Public notification.*

Subsection (a) was amended to clarify that bulk water and vended water suppliers shall give PN in accordance with Subchapter D. Subsection (b) was amended to revise the citation for the EPA's mandatory health effects language.

*§ 109.1102(b)(1) Optimal corrosion control treatment.*

This paragraph was amended to clarify that water systems using optimized corrosion control treatment must operate in compliance with designated water quality parameters and continue to conduct lead and copper tap monitoring. Subparagraph (ii) was amended to provide a corrosion control compliance schedule for a new large water system. Subparagraph (iv) was added to allow a water system optimized for corrosion control treatment to go to reduced lead and copper tap monitoring under the criteria of § 109.1103(e). In addition, § 109.1102(b)(2) was amended to reflect new compliance schedule requirements for systems under the proposed rulemaking.

*§ 109.1103(d)(2)(iii) Water quality parameter performance monitoring.*

This subparagraph was amended to change the water quality parameter compliance determinations from a single sample to no more than 9 days of sampling during a 6-month monitoring period that are below the minimum or outside the range of values designated by the Department.

*§ 109.1103(e)(1)(ii)(D) Triennial lead and copper tap monitoring.*

This clause was added to allow water systems that have low lead and copper levels to go directly from initial tap water monitoring to reduced 3-year monitoring, thus bypassing annual tap water monitoring.

*§ 109.1103(e)(1)(iv) Sample sites and timing.*

This subparagraph was amended to allow systems on reduced lead and copper tap sampling to collect samples other than June 1 through September 30 of each monitoring period.

*§ 109.1103(e)(2)(ii)(B) Reduced annual water quality parameter monitoring.*

This clause was added to allow systems that maintain the range of values for water quality parameters and have tap water percentile values at low levels to reduce water quality parameter monitoring to every 3 years.

§ 109.1103(e)(2)(iii), (iv) and (v) *Reduced water quality parameter monitoring revocation.*

Subparagraph (iii) was amended to specify when reduced water quality parameter monitoring would be revoked. Subparagraph (iv) was added to specify when a system may resume annual water quality parameter monitoring after having reduced water quality parameter monitoring revoked. Subparagraph (v) was added to specify when a system may resume triennial water quality parameter monitoring after having reduced water quality parameter monitoring revoked.

§ 109.1103(g)(2)(i) *Site selection for community water systems.*

This subparagraph was amended to include the definition of representative sites for a system that has an insufficient number of Tier 1, 2 and 3 sites available for sampling. Clause (D) was amended to include the definition for a single-family structure.

§ 109.1103(g)(2)(ii) *Site selection for nontransient noncommunity water systems.*

Subparagraph (ii) was amended to be consistent with the EPA requirements for alternate sampling sites if an insufficient number of Tier 1 sites are available. Section 109.1103(g)(2)(ii)(B) was replaced by § 109.1103(g)(2)(ii)(C) since Tier 2 sample sites are no longer required under § 109.1103(g)(2)(ii). This clause was also amended to allow eligible water systems to substitute non-first draw samples if an insufficient number of sampling taps are available. In addition, § 109.1103(g)(2)(v) was deleted.

§ 109.1103(h)(1)(v) *Lead and copper tap samples.*

This subparagraph was amended to clarify that first draw lead and copper samples are allowed to remain without acidification for up to 14 days after the sample is collected.

§ 109.1103(j) *Invalidation of lead or copper tap water samples.*

This subsection was added to specify that the Department, under certain criteria, may invalidate lead or copper tap samples.

§ 109.1103(k) *Monitoring waivers for small systems.*

This subsection was added to allow reduced lead and copper tap monitoring to every 9 years for systems that have no lead or copper materials in their distribution system and have determined that their lead and copper action levels are extremely low.

§ 109.1104(a)(1) *Content.*

This paragraph was amended to allow water systems to delete information from their public education program pertaining to lead service line replacement if no lead service lines exist in their service area.

§ 109.1104(a)(1)(i) *Mandatory language for newspapers and water bill inserts.*

This subparagraph was amended to allow water suppliers to modify their public education language concerning availability and access to building permit records upon approval by the Department.

§ 109.1104(a)(1)(iv) *Mandatory language for nontransient noncommunity water systems.*

This subparagraph was amended to allow nontransient noncommunity water systems to use information contained in either 40 CFR 141.85(a)(1) or (2) for public education materials.

§ 109.1104(a)(1)(v) *Mandatory language relating to the Pennsylvania Lead Ban.*

This subparagraph was deleted since the language in 40 CFR 141.85(a)(4)(D) requiring notification of the Pennsylvania Plumbing System Lead Ban and Notification Act in the public education materials has been removed from the Federal language.

§ 109.1104(a)(2)(i) *Community water system requirements.*

This subparagraph was amended to clarify that community water systems are not required to repeat public education tasks within 60 days of exceeding an action level if they are already conducting public education tasks due to previously exceeding an action level. Clause (E) was added to allow facilities, which serve populations that do not have control over system improvements and do not charge for water consumption, to use public education language in 40 CFR 185(a)(2) in lieu of the language in 40 CFR 185(a)(1). These systems may also perform the public education tasks under § 109.1104(a)(2)(ii)(A) in lieu of the tasks under § 109.1104(a)(2)(i)(A)—(D). Clause (F) was added to allow small community water systems the option of direct notice of public education materials to each customer in lieu of providing public service announcements.

§ 109.1104(a)(2)(ii) *Nontransient noncommunity water system requirements.*

This subparagraph was amended to clarify that nontransient noncommunity water systems are not required to repeat public education tasks within 60 days of exceeding an action level if they are already conducting public education tasks due to previously exceeding an action level. Clause (A) was amended to allow nontransient noncommunity water systems to electronically send public education materials to each person served in lieu of or combined with printed materials.

§ 109.1104(b) *Public notification requirements.*

This subsection was amended to be consistent with the PN requirements under Subchapter D.

§ 109.1107(a)(2)(ii) *Water quality parameter monitoring results.*

This subparagraph was amended to require submittal of water quality parameter monitoring results to the Department as stipulated by the EPA.

§ 109.1107(a)(4) *Public education reporting requirements.*

This paragraph was amended to clarify when a water supplier must submit to the Department a letter demonstrating compliance with the public education requirements.

§ 109.1107(a)(5)(i) *Lead service line replacement reporting.*

Section 109.1107(a)(5)(i)(C) has been amended to remove the requirement that water systems provide a legal opinion when there is a rebuttal of the water system's control over lead service lines. Section 109.1107(a)(5)(i)(D) was amended to add the location of sample results as part of the reporting.

§ 109.1107(d)(4) *Conditions of replacement.*

This paragraph was amended to allow water systems to replace only that portion of the lead service line that the water system owns. The water system must make an offer to the owner of the privately owned line to replace the lead service line. In addition, the water supplier must inform consumers of any partial lead service line replace-

ment and provide the results of sampling after replacement of the partial lead service line.

#### *F. Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

##### *Benefits*

##### *1. New CCR requirements.*

The amendments will affect all 2,201 community water systems that serve a total population of over 10.5 million Pennsylvanians. The CCR Rule, in concert with the PN Rule, will help to ensure that consumers are provided with information they need to make informed public health decisions concerning the water they are served.

##### *2. Major revisions to the PN requirements.*

The amendments will affect all 10,473 public water systems that serve a total population of over 12.9 million Pennsylvanians. The benefits resulting from the PN Rule are expected to improve the current level of public health protection as a result of the simplifications.

##### *3. Minor revisions to the LCRMR.*

The amendments will affect all 3,468 community and nontransient noncommunity water systems that serve a total population of over 11 million Pennsylvanians. The benefits resulting from the LCRMR Rule are not expected to change, and the EPA indicated that public health protection should also remain unchanged.

##### *Compliance Costs*

##### *1. New CCR requirements.*

The EPA has estimated that, Nationwide, a total annual cost of almost \$23 million will be borne by the regulated (\$20.3 million) and regulating communities (\$2.8 million) as a result of the CCR Rule. It is estimated that water systems in this Commonwealth will bear over \$950,000 of the total annual cost. The \$950,000 estimate includes costs for preparing, printing and mailing the CCR. It is estimated that the Department will bear over \$50,000 of the total annual cost.

##### *2. Major revisions to the PN requirements.*

The EPA has estimated that, Nationwide, the total annual cost to the regulated and regulating communities for the current PN Rule is \$27 million. The EPA has estimated that, Nationwide, a total annual cost to the regulated and regulating communities for the new PN Rule is \$17.9 million. This results in a net annual cost reduction of over \$9 million (a 33.7% reduction) for both the regulated and regulating communities. The total annual costs for the new PN Rule are as follows:

- The EPA has estimated that, Nationwide, the total annual cost to the regulated community is almost \$16.4 million. It is estimated that water systems in this Commonwealth will bear almost \$930,000 of the total annual cost. Assuming an annual cost reduction of 33.7% as referenced previously, this equates to a total cost savings of over \$310,000.

- The EPA has estimated that, Nationwide, the total annual cost to the regulating communities is over \$1.5 million. It is estimated that the Department will bear almost \$27,000 of the total annual cost. Assuming an annual cost reduction of 33.7% as referenced previously, this equates to a total cost savings of over \$9,000.

##### *3. Minor revisions to the LCRMR.*

For the LCRMR Rule, the EPA estimated that, Nationwide, public water systems will realize a total cost reduction of over \$2.8 million, while the regulating communities will realize a total cost increase of almost \$2.2 million. It is estimated that water systems in this Commonwealth will realize a total cost reduction of almost \$128,000 while the Department will bear over \$39,000 of the total annual cost.

#### **Estimated Net Annual Cost of CCR, PN and LCRMR Rules**

<i>Rule</i>	<i>Cost to Pennsylvania Water Systems</i>	<i>Cost to Department</i>
CCR	950,000	50,000
PN	-310,000	-9,000
LCRMR	-128,000	39,000
Totals	512,000	80,000

##### *Compliance Assistance Plan*

The proposed revisions address monitoring and reporting requirements. As a result, financial assistance should not be necessary.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be program staff and the regulated community. In addition, information or links to the EPA information on each of the regulations is available through the Department's Internet site at [www.dep.state.pa.us](http://www.dep.state.pa.us).

##### *Paperwork Requirements*

The proposed revisions address monitoring and reporting requirements. As a result, some changes to forms, reports and other paperwork are expected.

The CCR Rule requires community water systems to prepare and deliver a CCR. Several organizations have developed templates for systems to use when developing their CCRs (such as EPA, AWWA, PRWA). The Rule also requires water suppliers to submit a certification that all provisions have been met. The EPA has also provided a template for this certification form.

Revisions to the PN Rule should result in fewer notices overall. The EPA has provided templates for systems to use when developing public notices.

The LCRMR should result in a reduction in reporting requirements.

##### *G. Sunset Review*

This proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

##### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 28, 2001, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regu-



(1) A public water supplier shall provide, as a minimum, continuous filtration and disinfection for surface water and GUDI sources. The treatment technique shall provide at least 99.9% removal and inactivation of *Giardia lamblia* cysts, and at least 99.99% removal and inactivation of enteric viruses. Beginning January 1, 2002, public water suppliers serving 10,000 or more people shall provide at least 99% removal of *Cryptosporidium* oocysts. The Department, depending on source water quality conditions, may require additional treatment as necessary to meet the requirements of this chapter and to protect the public health.

\* \* \* \* \*

(ii) The combined total effect of disinfection processes utilized in a filtration plant shall achieve at least a 90% inactivation of *Giardia* cysts and a 99.9% inactivation of viruses, as determined by CTs and measurement methods established by the EPA. The residual disinfectant concentration in the water delivered to the distribution system prior to the first customer may not be less than .2 mg/L for more than 4 hours, as demonstrated by measurement taken under § 109.301(1). Failure to maintain this level that extends beyond 4 hours constitutes a breakdown in treatment [ under § 109.402 (relating to emergency public notification) ]. A system which experiences a breakdown in treatment shall, under § 109.701(a)(3) (relating to reporting and recordkeeping), notify the Department within 1 hour after the water system learns of the violation or the situation, and shall provide public notice in accordance with § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice).

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**Subchapter C. MONITORING REQUIREMENTS**  
**§ 109.301. General monitoring requirements.**

The monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs and MRDLs in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

(1) *Performance monitoring for filtration and disinfection.* A public water supplier providing filtration and disinfection of surface water or GUDI sources shall conduct the performance monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, unless increased monitoring is required by the Department under § 109.302.

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

\* \* \* \* \*

(C) Shall continuously monitor and record the residual disinfectant concentration of the water being supplied to the distribution system and record both the lowest

value for each day and the number of periods each day when the value is less than .2 mg/L for more than 4 hours. If a public water system's continuous monitoring or recording equipment fails, the public water supplier may, upon notification of the Department under [ § 109.402 (relating to emergency public notification) ] § 109.701(a)(3) (relating to reporting and recordkeeping), substitute grab sampling or manual recording every 4 hours in lieu of continuous monitoring. Grab sampling or manual recording may not be substituted for continuous monitoring or recording for longer than 5 days after the equipment fails.

\* \* \* \* \*

(2) *Performance monitoring for unfiltered surface water and GUDI.* A public water supplier using unfiltered surface water or GUDI sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

\* \* \* \* \*

(D) Shall continuously monitor the residual disinfectant concentration required under § 109.202(c)(1)(iii) (relating to State MCLs, MRDLs and treatment technique requirements) of the water being supplied to the distribution system and record the lowest value for each day. If a public water system's continuous monitoring equipment fails, the public water supplier may, upon notification of the Department under § [ 109.402 ] 109.701(a)(3), substitute grab sampling every 4 hours in lieu of continuous monitoring. Grab sampling may not be substituted for continuous monitoring for longer than 5 days after the equipment fails.

\* \* \* \* \*

(3) *Monitoring requirements for coliforms.* Public water systems shall determine the presence or absence of total coliforms for each routine or check sample; and, the presence or absence of fecal coliforms or E. coli for a total coliform positive sample in accordance with analytical techniques approved by the Department under § 109.304 (relating to analytical requirements). A system may forego fecal coliform or E. coli testing on a total coliform-positive sample if the system assumes that any total coliform-positive sample is also fecal coliform-positive. A system which chooses to forego fecal coliform or E. coli testing shall, under § [ 109.402(1) ] 109.701(a)(3), notify the Department within 1 hour [ of when the system is first notified of the total coliform-positive sample result ] after the water system learns of the violation or the situation, and shall provide public notice in accordance with § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice).

\* \* \* \* \*

(7) *Monitoring requirements for IOCs.* Community water systems and nontransient noncommunity water systems shall monitor for compliance with the MCLs for IOCs established by the EPA under 40 CFR 141.62 (relating to maximum contaminant levels (MCLs) for inorganic contaminants), and for arsenic established by the EPA under 40 CFR 141.11 (relating to maximum contaminant levels for inorganic contaminants). Transient noncommunity water suppliers shall monitor for compliance with the MCLs for nitrate and nitrite. The monitor-



ing shall be conducted according to the requirements established by the EPA under 40 CFR 141.23 (relating to inorganic chemical sampling and analytical requirements). The requirements are incorporated by reference except as modified by this chapter.

\* \* \* \* \*

(ii) *Monitoring requirements for nitrate and nitrite.* The following compliance monitoring for nitrite is not required at entry points receiving water which has been disinfected with free chlorine, chlorine dioxide or ozone:

\* \* \* \* \*

(C) *Repeat monitoring for systems with nitrate or nitrite levels equal to or greater than 50% of the MCL.*

\* \* \* \* \*

(V) For nitrate or nitrite sample results in excess of the MCLs, the water supplier shall take a confirmation sample within 24 hours of having received the original sample result. **A water supplier that is unable to comply with the 24-hour sampling requirement shall immediately notify persons served by the public water system in accordance with § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice), and meet other Tier 1 public notification requirements. Systems exercising this option shall take and analyze a confirmation sample within 2 weeks of notification of the analytical results of the first sample.**

(VI) Noncommunity water systems for which an alternate nitrate level has been approved by the Department in accordance with 40 CFR 141.11(d) are not required to collect a confirmation sample if only the nitrate MCL is exceeded and nitrate is not in excess of the alternate nitrate level. If the alternate nitrate level is exceeded, the water supplier shall collect a confirmation sample within 24 hours after being advised by the certified laboratory performing the analysis that the compliance sample exceeded 20 mg/L for nitrate. Confirmation monitoring shall be completed by the deadline for compliance monitoring. Quarterly performance monitoring is required for nitrate and nitrite at entry points where treatment has been installed to remove nitrate or nitrite.

\* \* \* \* \*

**§ 109.302. Special monitoring requirements.**

\* \* \* \* \*

**[ (f) The special monitoring requirements for unregulated contaminants established by the EPA under 40 CFR 141.40 (relating to special monitoring for organic chemicals) are incorporated by reference. Community water systems and nontransient noncommunity water systems serving 150 or more service connections or 500 or more persons shall monitor for the unregulated contaminants listed by the EPA under 40 CFR 141.40(n)(11) in accordance with the initial monitoring schedule for SOCs in § 109.301(7), and for sulfate listed under 40 CFR 141.40(n)(12). For sulfate, one sample shall be taken at each entry point by December 31, 1995. The Department will grant a waiver from conducting monitoring for an unregulated contaminant under 40 CFR 141.40(n)(11) based on a determination that the contaminant was not previously used, transported, stored or disposed of in the watershed or wellhead protection area Zones I and II, or the source is not susceptible to contamination by the contaminant based on the factors listed under**

**§ 109.301(6)(v). Entry points obtaining finished water from another public water system are exempt from monitoring that finished water for the unregulated contaminants listed by the EPA under 40 CFR 141.40(n)(11) and (12). ]**

**[ (g) ] (f) \* \* \***

\* \* \* \* \*

**[ (h) ] (g)** The Department may reduce or eliminate the monitoring required by subsection **[ (g) ] (f)** if the public water supplier demonstrates and the Department determines that the source of supply is not directly influenced by surface water.

**Subchapter D. PUBLIC NOTIFICATION**

*(Editor's Note:* As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 109.401—109.406, which currently appears in 25 Pa. Code pages 109-48—109.54, serial pages (207228)—(207234).)

**§§ 109.401—109.406. (Reserved).**

*(Editor's Note:* The text in §§ 109.407—109.416 is proposed to be added. It is being printed in regular print to enhance readability.)

**§ 109.407. General public notification requirements.**

(a) *Violation categories and other situations requiring a public notice.* A public water supplier shall give public notice for the following circumstances:

(1) Failure to comply with an applicable State primary MCL or MRDL in Subchapter B (relating to MCLs, MRDLs or treatment technique requirements).

(2) Failure to comply with a prescribed treatment technique requirement in Subchapter B or K (relating to MCLs, MRDLs or treatment technique requirements; and lead and copper).

(3) Failure to perform water quality monitoring, as required by Subchapter C (relating to monitoring requirements) or Subchapter K.

(4) Operation under a variance or an exemption under Subchapter I (relating to variances and exemptions issued by the Department).

(5) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.

(6) Occurrence of a waterborne disease outbreak or other waterborne emergency.

(7) Availability of unregulated contaminant monitoring data.

(8) Exceedance of the nitrate MCL by noncommunity water systems, when permitted by the Department in writing to exceed the MCL in accordance with 40 CFR 141.11(d) (relating to MCLs for inorganic contaminants).

(9) Other violations and situations determined by the Department to require a public notice.

(b) *Definition of public notice tiers.* Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and any potential adverse health effects that may be involved. The public notice requirements for each violation or situation identified in subsection (a) is determined by the tier to which it is assigned. This subchapter incorporates by reference the tier assignment for each specific violation

or situation in the National Primary Drinking Water Regulations, 40 CFR Part 141, Subpart Q, Appendix A (relating to the tier assignment for each specific NPDWR violation and other situations requiring public notice), unless other tier assignments are established by regulations or order of the Department.

(1) *Tier 1 public notice.* Required for violations and situations specified in subsection (a) with significant potential to have serious adverse effects on human health as a result of short-term exposure. General violation categories and other situations requiring a Tier 1 public notice are specified in § 109.408(a) (relating to Tier 1 public notice—form, manner and frequency of notice).

(2) *Tier 2 public notice.* Required for all other violations and situations in subsection (a) with potential to have serious adverse effects on human health. General violation categories and other situations requiring a Tier 2 public notice are specified in § 109.409(a) (relating to Tier 2 public notice—form, manner and frequency of notice).

(3) *Tier 3 public notice.* Required for all other violations and situations in subsection (a) not included in Tier 1 and Tier 2. General violation categories and other situations requiring a Tier 3 public notice are specified in § 109.410(a) (relating to Tier 3 public notice—form, manner and frequency of notice).

(c) *Public notice recipients.*

(1) A public water supplier shall provide public notice to persons served by the public water system, in accordance with this subchapter. A public water system that sells or otherwise provides drinking water to another public water system, such as to a consecutive water, bulk water hauling or vended water system, shall give public notice to the owner or operator of the other water system. The other water system is responsible for ensuring that public notice is provided to the persons it serves.

(2) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Department may allow the water supplier to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission for limiting distribution of the notice shall be granted in writing by the Department.

(3) If a public water system has a violation involving a point-of-entry (POE) device, the Department may allow the water supplier to limit distribution of the public notice to only persons served by that POE device. Permission for limiting distribution of the notice shall be granted in writing by the Department.

(4) If a community water system has a Tier 1 violation, the water supplier shall also notify key public officials as designated in the community water system's emergency response plan under § 109.707(a) (relating to emergency response plan).

(5) If a noncommunity water system in which persons 17 years of age or under are cared for or educated, such as a school or day care center, has a Tier 1 violation, the water supplier shall also provide public notice directly to the parent or guardian of those persons.

(6) A water supplier shall provide a copy of the notice to the Department in accordance with the requirements under 109.701(a)(4) (relating to reporting and recordkeeping).

**§ 109.408. Tier 1 public notice—form, manner and frequency of notice.**

(a) *General violation categories and other situations requiring a Tier 1 public notice.* A public water supplier shall provide Tier 1 public notice for the following circumstances:

(1) Violation of the MCL for total coliforms when fecal coliforms or *E. coli* are present in the water distribution system, as specified in § 109.202(a)(2) (relating to MCLs, MRDLs or treatment technique requirements), or when the water supplier fails to test for fecal coliforms or *E. coli* when any check sample tests positive for coliforms, as specified in § 109.301(3) (relating to general monitoring requirements).

(2) Violation of the MCL for nitrate, nitrite or total nitrate and nitrite, as defined in § 109.202(a)(2), or when the water supplier fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in § 109.301(7)(ii)(C)(V).

(3) Exceedance of the nitrate MCL by noncommunity water systems, where permitted by the Department in writing to exceed the MCL in accordance with 40 CFR 141.11(d) (relating to maximum contaminant levels for inorganic chemicals).

(4) Violation of the MRDL for chlorine dioxide, as defined in § 109.202(f)(2), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water supplier does not take the required samples in the distribution system, as specified in § 109.301.

(5) Violation of the turbidity MCL of 5 NTU based on an average for 2 consecutive days by a public water system using an unfiltered surface water source, as specified in § 109.202(a)(2).

(6) Violation of a treatment technique requirement for pathogenic bacteria, viruses and protozoan cysts as defined in § 109.202(c), resulting from a single exceedance of the maximum allowable turbidity limit.

(7) Occurrence of a waterborne disease outbreak, as defined in § 109.1 (relating to general provisions), or other waterborne emergency including, but not limited to, the following:

(i) Failure or significant interruption in key water treatment processes.

(ii) A natural disaster that disrupts the water supply or distribution system.

(iii) A chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

(8) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the Department on a case-by-case basis.

(b) *Timing for a Tier 1 public notice.* A public water supplier shall do the following:

(1) Provide a public notice as soon as possible, but no later than 24 hours after the water supplier learns of the violation or situation under subsection (a).

(2) Report the circumstances to the Department within 1 hour of discovery of the violation or situation in accordance with § 109.701(a)(3) (relating to reporting and recordkeeping).

(3) Initiate consultation with the Department as soon as possible, but no later than 24 hours after the water supplier learns of the violation or situation, to determine initial and any additional public notice requirements.

(4) Comply with initial and any additional public notification requirements that are established as a result of the consultation with the Department. These requirements may include the timing, form, manner, duration, frequency, and content of the initial and any repeat notices, and other actions designed to reach all persons served. The repeat notice frequency, if applicable, for a Tier 1 public notice shall be established as a result of the consultation, but shall be no less stringent than the repeat notice frequency specified for a Tier 2 public notice under § 109.409(b)(3) (relating to Tier 2 public notice—form, manner and frequency of notice).

(c) *Form and manner of a Tier 1 public notice.* The form and manner used by a public water supplier shall fit the specific situation and shall be designed to reach residential, transient, and nontransient users of the water system. To reach all persons served, a water supplier shall use, at a minimum, one or more of the following forms of delivery:

(1) Appropriate broadcast media, such as radio or television.

(2) Posting of the notice in conspicuous locations throughout the area served by the water system.

(3) Hand delivery of the notice to persons served by the water system.

(4) Another delivery method approved in writing by the Department.

**§ 109.409. Tier 2 public notice—form, manner and frequency of notice.**

(a) *General violation categories and other situations requiring a Tier 2 public notice.* A public water supplier shall provide Tier 2 public notice for the following circumstances:

(1) All violations of the primary MCL, MRDL and treatment technique requirements in Subchapter B or K (relating to MCLs, MRDLs or treatment technique requirements; and lead and copper), except where a Tier 1 notice is required under § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice) or when the Department determines that a Tier 1 notice is required. The tier assignment for fluoride is not incorporated by reference. Under § 109.202(d) (relating to MCLs, MRDLs or treatment technique requirements), a public water system shall comply with the primary MCL for fluoride of 2 mg/L. As such, a public water supplier shall provide Tier 2 public notice for violation of the primary MCL for fluoride.

(2) Violations of the monitoring requirements in Subchapter C (relating to monitoring requirements) or Subchapter K, when the Department determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(3) Failure to comply with the terms and conditions of any variance or exemption in place under Subchapter I (relating to variances and exemptions issued by the Department).

(b) *Timing for a Tier 2 public notice.* A public water supplier shall do the following:

(1) Report the circumstances to the Department within 1 hour of discovery of a violation under subsection (a)(1), in accordance with § 109.701(a)(3) (relating to reporting and recordkeeping).

(2) Provide the public notice as soon as possible, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice shall remain in place for as long as the violation or situation persists, but in no case for less than 7 days, even if the violation or situation is resolved. The Department may, in appropriate circumstances, allow additional time for the initial notice of up to 3 months from the date the system learns of the violation. The Department will not grant an extension across the board or for an unresolved violation. Extensions granted by the Department shall be in writing.

(3) Repeat the notice every 3 months as long as the violation or situation persists, unless the Department determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstances, may the repeat notice be given less frequently than once per year. The Department will not allow less frequent repeat notices across the board; or for an MCL violation for total coliforms established under § 109.202(a)(2); or for a violation of a treatment technique requirement for pathogenic bacteria, viruses and protozoan cysts as defined in § 109.202(c); or for other ongoing violations. Determinations granted by the Department for less frequent repeat notices shall be in writing.

(c) *Form and manner of a Tier 2 public notice.* A public water supplier shall provide the initial public notice and any repeat notices in a form and manner that is designed to reach all persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but the public water supplier shall at a minimum meet the following requirements:

(1) Unless directed otherwise by the Department in writing, community water systems shall provide notice using the following forms of delivery:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system.

(ii) Any other method designed to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those who do not pay water bills or do not have service connection addresses such as house renters, apartment dwellers, university students, nursing home patients or prison inmates. Other methods may include publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others (such as, apartment building owners or large private employers), posting in public places served by the system or on the Internet or delivery to community organizations.

(2) Unless directed otherwise by the Department in writing, noncommunity water systems shall provide notice using the following forms of delivery:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, when known.

(ii) Any other method designed to reach other persons served by the system if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those served who may not see a

posted notice because the posted notice is not in a location they routinely pass by. Other methods may include publication in a local newspaper or newsletter distributed to customers, use of e-mail to notify employees or students or delivery of multiple copies in central locations such as community centers.

**§ 109.410. Tier 3 public notice—form, manner and frequency of notice.**

(a) *General violation categories and other situations requiring a Tier 3 public notice.* A public water supplier shall provide Tier 3 public notice for the following circumstances:

(1) Monitoring violations under Subchapter C or K (relating to monitoring requirements; and lead and copper), except when a Tier 1 notice is required under § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice) or where the Department determines that a Tier 2 notice is required.

(2) Operation under a variance or an exemption granted under Subchapter I (relating to variances and exemptions issued by the Department).

(3) Availability of unregulated contaminant monitoring results, as required under 40 CFR 141.40 (relating to monitoring requirements for unregulated contaminants).

(b) *Timing for a Tier 3 public notice.*

(1) A public water supplier shall provide the public notice no later than 1 year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the water supplier shall repeat the notice annually for as long as the violation, variance, exemption or other situation persists. If the public notice is posted, the notice shall remain in place for as long as the violation, variance, exemption or other situation persists, but in no case shall the initial and annual repeat notice be posted for less than 7 days (even if the violation or situation is resolved).

(2) Instead of individual Tier 3 public notices, a public water supplier may use an annual report detailing all violations and situations that occurred during the previous 12 months, as long as the timing requirements of paragraph (1) are met.

(c) *Form and manner of a Tier 3 public notice.* A public water supplier shall provide the initial notice and any repeat notices in a form and manner that is designed to reach all persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but the public water supplier shall, at a minimum, meet the following requirements:

(1) Unless directed otherwise by the Department in writing, community water systems shall provide notice using the following forms of delivery:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system.

(ii) Any other method designed to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those who do not pay water bills or do not have service connection addresses such as house renters, apartment dwellers, university students, nursing home patients or prison inmates. Other methods may include publication in a local newspaper, delivery of multiple copies for distribution by customers

that provide their drinking water to others (such as, apartment building owners or large private employers), posting in public places or on the Internet or delivery to community organizations.

(2) Unless directed otherwise by the Department in writing, noncommunity water systems shall provide notice using the following forms of delivery: (i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known.

(ii) Any other method designed to reach other persons served by the system, if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include publication in a local newspaper or newsletter distributed to customers, use of e-mail to notify employees or students or delivery of multiple copies in central locations such as community centers.

(d) *Use of a CCR to meet the Tier 3 public notice requirements.* For community water systems, the CCR required under § 109.416 (relating to CCR requirements) may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as the following conditions are met:

(1) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under subsection (b).

(2) The Tier 3 notice contained in the CCR follows the content requirements under § 109.411 (relating to content of a public notice).

(3) The CCR is distributed following the delivery requirements under § 109.410(c) (relating to Tier 3 public notice—form, manner and frequency of notice).

**§ 109.411. Content of a public notice.**

(a) *Elements of a public notice.* When a public water system is required to give public notice under this subchapter, each public notice shall include the following elements:

(1) A description of the violation or situation, including the contaminants of concern, and (as applicable) the contaminant levels.

(2) When the violation or situation occurred.

(3) Any potential adverse health effects from the violation or situation, including the standard language under subsection (d)(1) or (2), whichever is applicable.

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water.

(5) Whether alternative water supplies should be used.

(6) What actions consumers should take, including when they should seek medical help, if known.

(7) What the system is doing to correct the violation or situation.

(8) When the water system expects to return to compliance or resolve the situation.

(9) The name, business address and telephone number of the water system owner, operator or designee of the public water system as a source of additional information concerning the notice.

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under subsection (d)(3), where applicable.

(b) *Elements of a public notice for public water systems operating under a variance or exemption.*

(1) If a public water system has been granted a variance or an exemption under Subchapter I (relating to variances and exemptions issued by the Department), the public notice shall contain the following elements:

(i) An explanation of the reason for the variance or exemption.

(ii) The date on which the variance or exemption was issued.

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption.

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(2) If a public water system violates the conditions of a variance or exemption, the public notice shall contain the ten elements listed in subsection (a).

(c) *Presentation of a public notice.*

(1) Each public notice required by this section shall:

(i) Be displayed in a conspicuous way when printed or posted.

(ii) Not contain overly technical language or very small print.

(iii) Not be formatted in a way that defeats the purpose of the notice.

(iv) Not contain language that nullifies the purpose of the notice.

(2) Each public notice required by this section shall comply with multilingual requirements, as follows:

(i) For public water systems serving a large proportion of non-English-speaking consumers, as determined by the Department, the public notice shall contain information in the appropriate languages regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(ii) Until the Department determines whether a system serves an area with a large proportion of non-English speaking consumers, the public water system shall include in the public notice the same information as in subparagraph (i), when appropriate, to reach a large proportion of non-English-speaking persons served by the water system.

(d) *Standard language for a public notice.* Public water systems shall include the following standard language in their public notice:

(1) *Standard health effects language for primary MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption.* Public water systems shall include in each public notice appropriate health effects language. This subchapter incorporates by reference the health effects language specified in 40 CFR Part 141, Subpart Q, Appendix B (relating to standard health effects language for public notification), corresponding to each primary MCL, MRDL and

treatment technique violation listed in 40 CFR Part 141, Subpart Q, Appendix A (relating to NPDWR violations and other situations requiring public notice), and for each violation of a condition of a variance or exemption, unless other health effects language is established by regulations or order of the Department. The health effects language for fluoride is not incorporated by reference. Public water systems shall include the following health effects language in each Tier 2 public notice for violation of the primary MCL of 2 mg/L for fluoride:

“Some people who drink water containing fluoride in excess of 4 mg/L over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water in excess of 2 mg/L may cause mottling of children’s teeth, usually in children less than 9 years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.”

(2) *Standard language for violations of monitoring requirements.* Public water systems shall include the following language in their notice, including the language necessary to fill in the blanks, for all violations of monitoring requirements listed in 40 CFR Part 141, Subpart Q, Appendix A:

“We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [insert compliance period], we “did not monitor or test” or “did not complete all monitoring or testing” for [insert contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time.”

(3) *Standard language to encourage the distribution of the public notice to all persons served.* Public water systems shall include in their notice the following language, if applicable:

“Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.”

**§ 109.412. Special notice of the availability of unregulated contaminant monitoring results.**

(a) *Timing for a special notice.* A community water system or nontransient, noncommunity water system required to monitor for an unregulated contaminant under 40 CFR 141.40 (relating to monitoring requirements for unregulated contaminants) shall notify persons served by the system of the availability of the results of the sampling no later than 12 months after the monitoring results are known.

(b) *Form and manner of a special notice.* The form and manner of the public notice shall follow the requirements for a Tier 3 public notice prescribed in § 109.410 (relating to Tier 3 public notice—form, manner and frequency of notice). A public water system may use an annual report or CCR to notify persons served by the system of the availability of the results of the sampling as long as the requirements under § 109.410(d) are met. The notice shall also identify a person and provide the telephone number to contact for information on the monitoring results.

**§ 109.413. Special notice for nitrate exceedances above MCL by noncommunity water systems, where granted permission by the Department.**

(a) *Timing for a special notice.* A noncommunity water system granted permission by the Department in writing in accordance with 40 CFR 141.11(d) (relating to maximum contaminant levels for inorganic chemicals) to exceed the nitrate MCL shall provide notice to persons served according to the requirements for a Tier 1 notice under § 109.408(a) and (b) (relating to Tier 1 public notice—form, manner and frequency of notice).

(b) *Form and manner of a special notice.* Noncommunity water systems granted permission by the Department in writing to exceed the nitrate MCL in accordance with 40 CFR 141.11(d) shall provide continuous posting of the fact that nitrate levels exceed 10 mg/L and include the potential health effects of exposure, according to the requirements for a Tier 1 notice delivery under § 109.408(c) and the content requirements under § 109.411 (relating to content of a public notice).

**§ 109.414. Notice to new billing units or new customers.**

(a) *Requirements for community water systems.* Community water systems shall give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(b) *Requirements for noncommunity water systems.* Noncommunity water systems shall continuously post the public notice in conspicuous locations to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption or other situation persists.

**§ 109.415. Notice by the Department on behalf of the public water system.**

If a public water supplier fails to give notice to the public as required by this subchapter, the Department may perform this notification on behalf of the supplier of water and may assess costs of notification on the responsible water supplier.

(1) *Public notice given by the Department on behalf of the public water system.* If the Department gives the public notice required by this subchapter on behalf of the public water supplier, the Department shall comply with this subchapter.

(2) *Public water system responsibilities when public notice is given by the Department.* If the Department gives public notice, the public water supplier remains responsible for ensuring that the requirements of this subchapter are met.

**§ 109.416. CCR requirements.**

This section applies only to community water systems and establishes the minimum requirements for the content of the annual CCR that each system must deliver to its customers. This report shall contain information on the quality of the water delivered by the system and characterize the risks, if any, from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(1) For the purposes of this section, the definitions of “customer” and “detected” established by the EPA under 40 CFR 141.151(c) and (d) (relating to definitions), respectively, are incorporated by reference.

(2) Each community water system shall deliver to its customers an annual CCR on the dates established by the EPA under 40 CFR 141.152 (relating to effective dates), which is incorporated by reference.

(3) Except as noted in subparagraphs (i)—(v), the annual report that a community water system provides to its customers shall contain all of the information, mandatory language and optional text specified by the EPA under 40 CFR 141.153 and 141.154 (relating to content of the reports; and required additional health information), which are incorporated by reference, and under 40 CFR 141, Subpart O, Appendix A (relating to regulated contaminants), which is incorporated by reference.

(i) If a water system wants to use wording of its own choice in place of optional text, the water supplier shall submit the proposed wording to the Department for review and written approval prior to including it in its annual CCR. Once approved, the water supplier’s wording may be used in future CCRs without further approval from the Department as long as it is not changed and is still applicable.

(ii) Until the Department determines whether a system serves an area with a large proportion of non-English-speaking residents, the system shall include the same information as found in 40 CFR 141.153(h)(3) in the system’s annual report in the appropriate languages to reach a large proportion of non-English-speaking persons served by the system.

(iii) For the purpose of defining how certain portions of a CCR shall appear, the term “prominently display” as used in 40 CFR 141.154(a) shall mean that the information shall be printed either in a larger size typeface or bolded or enclosed within a border or all these so as to make the information conspicuous in comparison to the rest of the text appearing before and after the prominently displayed text. Prominently displayed text placed away from other text (such as, in a highlighted or boxed area) shall be printed no smaller than the text used elsewhere in the body of the report, excluding main or section titles.

(iv) Information contained in a CCR shall appear in an easy-to-read format. Small font sizes or color combinations, or both, that make it difficult for persons to read and understand the information contained in the CCR may not be used.

(v) Information in a CCR added in accordance with 40 CFR 141.153(h)(5) (relating to additional information that may be added to a CCR) will be considered as detracting from the purpose of the report if the additional information requires the text used in the CCR to be reduced to a size that is difficult to read.

(4) *Report delivery and recordkeeping.* Each community water system shall do the following:

(i) Mail or otherwise directly deliver to each customer and to the Department one copy of the annual CCR no later than the date the water system is required to distribute the CCR to its customers.

(ii) Make a good faith effort to reach consumers who do not get water bills. The Department will determine “good faith” based on those methods identified in 40 CFR 141.155(b) (relating to delivery requirements), which are incorporated by reference.

(iii) Submit in writing to the Department no later than 3 months after the delivery of the annual CCR:

(A) A certification that the annual CCR has been distributed to customers and that the information con-

tained in the report is correct and consistent with the compliance monitoring data previously submitted to the Department.

(B) A description of what was done to meet the good faith effort requirement described in subparagraph (ii).

(iv) If another Pennsylvania agency or commission also regulates the community water system, submit a copy of the system's annual CCR to the other agency or commission upon the specific request of that agency or commission no later than the date the water system is required to distribute the CCR to its customers. Each State agency or commission shall determine the way it requests a copy of the system's CCR. Those agencies or commissions may include, but are not limited to, the following:

(A) The Pennsylvania Public Utility Commission and the Office of Consumer Advocate in the Office of the Attorney General, for water systems that are public utilities regulated under 66 Pa.C.S. (relating to Public Utility Code).

(B) The Department of Public Welfare for self-contained community water systems serving personal care or other group housing facilities.

(C) The Department of Health, for self-contained community water systems serving skilled healthcare facilities.

(v) Make copies of its annual CCR available to the public on request.

(vi) If a community water system serves 100,000 or more people, post its current year's report to a publicly accessible site on the Internet.

(vii) Retain copies of each annual CCR and the related information required in paragraph (3) on the premises of the system or at a convenient location near the premises for no less than 3 years after the date of its delivery to customers.

\* \* \* \* \*

**Subchapter E. PERMIT REQUIREMENTS**

**§ 109.503. Public water system construction permits.**

\* \* \* \* \*

(c) *Permit fees.*

\* \* \* \* \*

**[ (3) Applications for permits or major permit amendments submitted to satisfy the requirements of Subchapter B (relating to MCLs, MRDLs or treatment technique requirements) for removal of VOCs and SOCs through the construction of treatment facilities designed to achieve greater removal of contaminants than would be achieved by conventional filtration shall be accompanied by a fee of \$2,500. ]**

\* \* \* \* \*

**Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES**

**§ 109.701. Reporting and recordkeeping.**

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

\* \* \* \* \*

(3) *Compliance report.* **[ The water supplier shall report to the Department within 48 hours failure to**

**comply with Subchapter C (relating to monitoring requirements), except that emergency notification shall be made under § 109.402 (relating to emergency public notification). ] A public water supplier shall report the circumstances to the Department within 1 hour of discovery for the following violations or situations:**

**(i) A primary MCL or an MRDL has been exceeded or a treatment technique requirement has been violated under Subchapter B or K (relating to MCLs, MRDLs or treatment technique requirements; and lead and copper).**

**(ii) A sample result requires the collection of check samples under § 109.301 (relating to general monitoring requirements).**

**(iii) Circumstances exist which may adversely affect the quality or quantity of drinking water including, but not limited to, the occurrence of a waterborne disease outbreak, a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.**

(4) *Notice.* The water supplier shall, within 10 days of completion of each public notification required under Subchapter D (relating to public notification) **with the exception of a CCR**, submit to the Department a **certification that it has fully complied with the public notification requirements. The water supplier shall include with this certification** a representative copy of each type of notice **distributed, published, posted and made available to persons served by the system and to the media** and a description of the **[ publication, distribution, posting or other ]** means undertaken to make the notice available.

\* \* \* \* \*

(d) *Record maintenance.* The public water supplier shall retain on the premises of the public water system or at a convenient location near the premises the following:

\* \* \* \* \*

**(8) Copies of public notifications issued under Subchapter D and certifications made to the Department under subsection (a)(4) shall be kept for 3 years after issuance.**

**§ 109.702. Operation and maintenance plan.**

(a) A community water supplier shall develop an operation and maintenance plan for the community water system. The operation and maintenance plan shall conform to the guidelines contained in the Department's *Public Water Supply Manual* and shall contain at least the following information:

\* \* \* \* \*

**(6) A public notification program including appropriate advance preparations, such as public notice templates, an explanation of appropriate methods of delivery and a designation of public notice recipients for each tier type.**

**[ (6) ] (7) \* \* \***

**[ (7) ] (8) \* \* \***

**[ (8) ] (9) \* \* \***

- [ (9) ] (10) \* \* \*
- [ (10) ] (11) \* \* \*
- [ (11) ] (12) \* \* \*

\* \* \* \* \*

§ 109.707. Emergency response plan.

**[ (a) A public water supplier who knows or has reason to believe that circumstances exist which may adversely affect the quality or quantity of drinking water supplied by the system, shall notify the Department immediately under § 109.402 (relating to emergency public notification).**

**(b) [ (a) [ The ] A community water supplier shall develop a plan for the provision of safe and adequate drinking water under emergency circumstances, and submit the plan to the Department for approval by December 8, 1985. The emergency response plan shall conform to the guidelines contained in the Department's Public Water Supply Manual and shall contain at least the following information:**

**(1) [ The plan shall identify ] Identification of probable emergency situations, including, but not limited to, those specified in § 109.701(a)(3)(iii) (relating to reporting and recordkeeping), and alternative solutions to respond to situations including how the system will maintain its ability to provide service in the event of contamination or an outage of one or more of its sources of supply. Consideration shall be given to providing reserve capacity according to § 109.609 (relating to reserve capacity and finished water storage).**

**(2) [ The plan shall establish procedures ] Procedures for communications and coordination with the local emergency management organization.**

- [ (3) ] (b) \* \* \*
- [ (4) ] (c) \* \* \*

**Subchapter H. LABORATORY CERTIFICATION**

**§ 109.805. Certification procedure.**

\* \* \* \* \*

**(e) In addition to terms and conditions in the certification issued to a laboratory, the certified laboratory shall fulfill the following requirements to maintain certification:**

\* \* \* \* \*

**(4) The laboratory shall submit results of test measurements or analyses performed by the laboratory under this chapter in accordance with § 109.810 (relating to reporting and notification requirements).**

**§ 109.806. Standards for certification.**

The certification will be based upon compliance with Departmental guidelines and the minimum criteria contained in the most current edition of the *Manual for the Certification of Laboratories Analyzing Drinking Water* published by the EPA. The evaluation for certification will include, but is not limited to, consideration of facilities, personnel, equipment, methodology, quality assurance, **[ and ] performance, recordkeeping, reporting and notification.**

**§ 109.810. Reporting and notification requirements.**

\* \* \* \* \*

(b) A laboratory certified under this subchapter shall whenever an MCL, MRDL or a treatment technique performance requirement under § 109.202 (relating to State MCLs, MRDLs and treatment technique requirements) is violated, or a sample result requires the collection of check samples under § 109.301 (relating to general monitoring requirements):

(1) Notify the public water supplier by telephone within 1 hour of the laboratory's determination. If the supplier cannot be reached within that time, notify the Department by telephone within 2 hours of the determination. **[ If the Department cannot be reached due to an occurrence during weekend, holiday or evening hours, notify the Department by phone within 2 hours of the beginning of the next business day. ]** If it is necessary for the laboratory to contact the Department after the Department's routine business hours, the laboratory shall contact the appropriate Department regional office's after-hours emergency response telephone number and provide information regarding the occurrence, the name of a contact person and the telephone number where that individual may be reached in the event further information is needed. If the Department's appropriate emergency number cannot be reached, the laboratory shall notify the appropriate Department regional office by telephone within 1 hour of the beginning of the next business day. Each certified laboratory shall be responsible for the following:

**(i) Obtaining and then maintaining the Department's current after-hours emergency response telephone numbers for each applicable regional office.**

**(ii) Establishing or updating a standard operating procedure no later than \_\_\_\_\_ (Editor's Note: The blank refers to a date 90 days from the effective date of the adoption of this proposal.), and at least annually thereafter to provide the information needed to report the occurrences to the Department. The information regarding the public water system shall include, but is not limited to, the PWSID number of the system, the system's name, the contaminant involved in the occurrence, the level of the contaminant found, when the sample was collected, the dates and times that the sample was collected and analyzed, the name and identification number of the certified laboratory, the name and telephone number of a contact person at the laboratory and what steps the laboratory took to contact the public water system before calling the Department.**

(2) Notify the **appropriate** Department **district office** in writing within 24 hours of the determination. For the purpose of determining compliance with this requirement, the postmark, if the notice is mailed, or the date the notice is received by the Department, whichever is earlier, will be used. **Upon approval by the Department, the notice may be made electronically to the Department as long as the information is received within the 24-hour deadline.**

\* \* \* \* \*

(d) A laboratory shall notify the public water supplier served by the laboratory within 48 hours of the following:

(1) A failure to renew or **Department denial of renewal of** existing certification for a category of certification.



**Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS**

**§ 109.1003. Monitoring requirements.**

**[ (b) *Special monitoring requirements for unregulated contaminants.* Bottled water and vended water systems, retail water facilities and bulk water hauling systems, except vended water systems permitted by rule, shall monitor for the unregulated contaminants in accordance with the initial monitoring schedule for VOCs as prescribed in subsection (a). ]**

**[ (c) ] (b) \* \* \***

**[ (d) ] (c) \* \* \***

**§ 109.1004. Public notification.**

(a) *General public notification requirements.* A bottled water[, vended water,] or retail water [or bulk water] supplier shall give public notification in accordance with this section. **[ In addition, a ]** A bulk water or vended water supplier shall give public notification in accordance with **[ §§ 109.401(a) and 109.406(b) ] Subchapter D** (relating to **[ general ]** public notification requirements**;** and public notice requirements for unregulated contaminants). For the purpose of establishing a bulk water or vended water supplier's responsibilities under Subchapter D, a bulk water supplier shall comply with the public notification requirements specified for a community water system and a vended water supplier shall comply with the public notification requirements specified for a noncommunity water system.

(1) A bottled water[, vended water,] or retail water [or bulk water] supplier who knows that a primary MCL or an MRDL has been exceeded or treatment technique performance standard has been violated or has reason to believe that circumstances exist which may adversely affect the quality of drinking water, including, but not limited to, source contamination, spills, accidents, natural disasters or breakdowns in treatment, shall report the circumstances to the Department within 1 hour of discovery of the problem.

(2) If the Department determines, based upon information provided by the bottled water[, vended water,] or retail water [or bulk water] supplier or other information available to the Department, that the circumstances present an imminent hazard to the public health, the water supplier shall issue a water supply warning approved by the Department and, if applicable, initiate a program for product recall approved by the Department under this subsection. The water supplier shall be responsible for disseminating the notice in a manner designed to inform users who may be affected by the problem.

(b) *Description and content of notice.* Notice given under this section shall be written in a manner reasonably designed to fully inform the users of the system.

When appropriate or as designated by the Department, additional notices in a foreign language shall be given.

(3) Notices shall include a balanced explanation of the significance or seriousness to the public health of the subject of the notice including potential adverse health effects, the population at risk, a clear explanation of steps taken by the supplier to correct the problem, necessity for seeking alternative supplies, guidance on safeguards and alternatives available to users, and the results of additional sampling. In addition, bottled water system and **[ vended water systems, ]** retail water **[ facilities and bulk water hauling system ]** facility notices shall describe a program for product recall, if applicable.

(5) In all notices, **[ except for those required by § 109.401(a)(2), ]** when providing the information on potential adverse health effects required by subsection (b)(3), the water supplier shall include language established by the EPA for the contaminant **[ under 40 CFR 141.32(e) ] specified in 40 CFR Part 141, Subpart Q, Appendix B** (relating to mandatory health effects language) and incorporated by reference, or language established by the Department by regulations or order. The health effects language for fluoride is not incorporated by reference. A public water system shall include the health effects language specified in § 109.411(d)(1) (relating to content of a public notice) in each public notice required for violation of the primary MCL of 2 mg/L for fluoride **[ or 40 CFR 143.5(b) (relating to public notices for fluoride) ]**.

**Subchapter K. LEAD AND COPPER**

**§ 109.1102. Action levels and treatment technique requirements.**

(b) *Treatment technique requirement for corrosion control.*

(1) *Optimal corrosion control treatment.* A community water system or nontransient noncommunity water system shall provide optimal corrosion control treatment which minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the system to violate a primary MCL. **Water systems deemed to have optimized corrosion control treatment under this subsection shall operate in compliance with Department designated water quality parameters and continue to conduct lead and copper tap monitoring.** A system may achieve optimal corrosion control treatment in one of the following ways:

(ii) A **[ large ]** water system is deemed to have optimized corrosion control if the system demonstrates to the Department that for two consecutive 6-month monitoring periods conducted in accordance with § 109.1103 that the system does not exceed a lead or copper action level and the difference between the 90th percentile tap water lead level and the highest source water lead concentration is less than 0.005 mg/L, which is the Practical Quantitation Level for lead. To make this demonstration, the system shall collect one sample for lead from each entry point

during a monitoring period prior to initiation of construction or modification of corrosion control treatment facilities. If the system thereafter exceeds an action level during a monitoring period, the system shall complete applicable compliance activities under paragraph (2). The Department may require a system to repeat compliance activities previously completed when the Department determines that this is necessary for the system to achieve optimal corrosion control treatment.

\* \* \* \* \*

(iv) A water system deemed to have optimized corrosion control in accordance with this subsection shall continue monitoring for lead and copper at the tap no less frequently than once every 3-calendar years using the reduced number of sites specified in § 109.1103(e) (relating to reduced monitoring), and collecting the samples at times and locations specified in § 109.1103(e)(iv).

(2) Corrosion control treatment compliance schedule. A system shall comply with the following schedule unless the system achieves optimal corrosion control treatment under paragraph (1)(i) or (ii) prior to initiation of construction or modification of corrosion control treatment facilities.

(i) [An existing] A large water system in existence prior to \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of the adoption of this proposal.) shall:

\* \* \* \* \*

(ii) A large water system not in existence prior to \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of the adoption of this proposal.) that exceeds an action level, or any medium or small water system that exceeds an action level shall:

\* \* \* \* \*

§ 109.1103. Monitoring requirements.

\* \* \* \* \*

(d) Monitoring after performance requirements are established. A system shall conduct the applicable monitoring under this subsection beginning no later than the next 6-month monitoring period following the Department's designation of optimal corrosion control treatment water quality parameter performance requirements under § 109.1102(b)(5) or source water performance requirements under § 109.1102(b)(4).

\* \* \* \* \*

(2) Water quality parameter performance monitoring. A system shall measure the applicable water quality parameters specified in subsection (c)(2)(iii) in the distribution system during each monitoring period at the number of sites specified in subsection (a)(2)(ii) and at each entry point at least once every 2 weeks. The results of this monitoring will be used by the Department in determining compliance with the water quality parameter performance requirements established under § 109.1102(b)(5). A system that is not in compliance with the water quality parameter performance requirements established under § 109.1102(b)(5) shall provide public notification in accordance with § 109.1104(b)(2).

\* \* \* \* \*

(iii) A system [may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result shall be averaged with the first sampling result and the average shall be used for

compliance determinations under § 109.1102(b)(5) ] is out of compliance with the requirements of § 109.1102(b)(5) (relating to water quality parameter performance requirements) for a 6-month period if it has excursions for any Department specified water quality parameter on more than any 9 days during the 6-month monitoring period. An excursion occurs whenever the daily value for one or more of the water quality parameters is below the minimum value or outside the range of values designated by the Department. The Department has the discretion to delete results of sampling errors from this calculation. Daily values are calculated as follows:

(A) On days when more than one sample for a water quality parameter is collected at a sampling location, the daily value shall be the average of all results collected during the day including continuous monitoring or grab samples, or both.

(B) On days when only one sample for a water quality parameter is collected at a sampling location, the daily value shall be the result of that sample.

(C) On days when no sample is collected for a water quality parameter at a sampling location, the daily value shall be the most recent calculated daily value for which a water quality parameter was sampled at a sample location.

(e) Reduced monitoring.

(1) Reduced lead and copper tap monitoring. A community water system conducting reduced lead and copper tap monitoring shall collect one sample from the number of sample sites listed in the following column. A nontransient noncommunity water system may reduce the number of sample sites to five, regardless of population served.

System size (# of people served)	# of Sample Sites (reduced monitoring)
>100,000	50
10,001 to 100,000	30
3,301 to 10,000	20
501 to 3,300	10
500 or fewer	5

(ii) Triennial lead and copper tap monitoring.

\* \* \* \* \*

(D) A system that demonstrates for two consecutive 6-month monitoring periods that the tap water lead level as determined under § 109.1102(a)(3) is less than or equal to 0.005 mg/L and the tap water copper level as determined under § 109.1102(a)(3) is less than 0.65 mg/L may reduce the number of samples in accordance with § 109.1103(e)(1) and reduce the frequency of sampling to once every 3 years.

\* \* \* \* \*

(iv) Sample sites and timing. A system that reduces the number of sample sites and frequency of sampling shall collect samples from sample sites included in the pool of targeted sampling sites identified in subsection (g)(2). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling between June 1 and September 30. The Department may approve a different period for conducting lead and copper tap monitoring sampling for systems collecting a reduced number of samples. The period shall be no

longer than 4 consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur.

\* \* \* \* \*

(2) *Reduced water quality parameter monitoring for large water systems.* A large water system conducting reduced water quality parameter monitoring shall collect two sets of distribution samples from the following reduced number of sample sites. The sets of samples shall be collected from the same sample sites on different days and analyzed for the applicable water quality parameters.

<i>System size (# of people served)</i>	<i># of Sample sites</i>
>100,000	10
50,001 to 100,000	7

\* \* \* \* \*

(ii) *Reduced annual water quality parameter monitoring.*

(A) A large water system that maintains the range of values for water quality parameter performance requirements reflecting optimal corrosion control treatment specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring at the reduced number of sites under subparagraph (i) may reduce the frequency with which it collects sets of water quality parameter distribution samples from every 6 months to annually. A system conducting annual sampling shall collect these sets of samples evenly throughout the year to reflect seasonal variability. The system shall continue monitoring at each entry point as specified in subsection (c)(2)(iii)(B).

(B) A large water system may reduce the frequency with which it collects tap water samples for applicable water quality parameters specified in § 109.1102(b)(5) to every 3 years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead of 0.005 mg/L, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under § 109.1102(b)(5) (relating to water quality parameter performance requirements).

(iii) *Reduced water quality parameter monitoring revocation.* A large water system subject to reduced water quality parameter monitoring that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in any 6-month period shall resume water quality parameter distribution sampling in accordance with the number and frequency requirements specified in subsection (d)(2).

(iv) A large system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in subsection (e)(2) after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of subsection (e)(2)(i).

(v) A large system may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites specified in subsection (e)(2) after it demonstrates through subsequent rounds of monitoring that it meets the criteria of subsection (e)(2)(ii).

\* \* \* \* \*

(g) *Sample site location plan.* The water supplier shall complete a sample site location plan which includes a materials evaluation of the distribution system, lead and copper tap sample site locations, water quality parameter sample site locations, and certification that proper sampling procedures are used. The water supplier shall complete the steps in paragraphs (1)–(3) by the applicable date for commencement of lead and copper tap monitoring under subsection (a)(1) and the step in paragraph (4) following completion of the monitoring. The water supplier shall keep the sample site location plan on record in accordance with § 109.1107(a)(1). If the system is required to prepare a corrosion control treatment feasibility study in accordance with § 109.1102(b)(3)(i), the system shall include the sample site location plan as part of the study.

\* \* \* \* \*

(2) *Lead and copper tap sample site selection.* Lead and copper tap sampling sites are classified as Tier 1, Tier 2 or Tier 3. Tier 1 sites are the highest priority sample sites.

(i) *Site selection for community water systems.* The water supplier shall select all Tier 1 sample site locations, if possible. A community water system with an insufficient number of Tier 1 sampling sites shall complete its sampling pool with Tier 2 sites. Tier 3 sites shall be used to complete the sampling pool if the number of Tier 1 and Tier 2 sites is insufficient. If the system has an insufficient number of Tier 1, Tier 2 and Tier 3 sites, the water supplier shall sample from other [ available ] representative sites throughout the distribution system in which the plumbing materials used at the site would be commonly found at other sites served by the system.

\* \* \* \* \*

(D) Tier 3 sampling sites shall consist of single family structures, constructed as a single family residence and currently used as either a residence or business, that contain copper pipes with lead solder installed before 1983.

(ii) *Site selection for nontransient noncommunity water systems.* The water supplier shall select all Tier 1 sample site locations, if possible. A nontransient noncommunity water system with an insufficient number of Tier 1 sampling sites shall complete its sampling pool with [ tier 2 sites. If the system has an insufficient number of tier 1 and tier 2 sites, the water supplier shall sample from other available sites ] sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the system shall use representative sites throughout the distribution system in which the plumbing materials used at the site would be commonly found at other sites served by the system.

\* \* \* \* \*

(B) [ Tier 2 sampling sites shall consist of buildings that contain copper pipes with lead solder installed before 1983.

(C) ] If a nontransient noncommunity water system or a community water system that meets the criteria of § 109.1104(a)(2)(i)(E) [ the system ] contains a fewer number of buildings than the required number of sampling sites, the water supplier shall sample

from different taps within a representative number of buildings. The taps shall be those most commonly used for drinking and the samples shall be taken on different days. If the system has an insufficient number of these taps to take each sample from a different tap, the water supplier may [ sample from the same tap on different days ] apply to the Department, in writing, to substitute non-first-draw samples. Those systems shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. Non-first-draw samples shall be 1-liter in volume and collected from an interior tap that is typically used to provide drinking water.

\* \* \* \* \*

[ (v) *Site selection justification.* A water supplier shall provide justification in the sample site location plan for the following conditions:

(A) A system whose sampling pool does not consist exclusively of tier 1 sites shall explain why a review of the information listed in subsection (g)(1) was inadequate to locate a sufficient number of tier 1 sites.

(B) A community water system which includes tier 3 or lower sampling sites in its sampling pool shall explain why it was unable to locate a sufficient number of higher tier sampling sites.

(C) A system that cannot identify a sufficient number of sampling sites served by a lead service line shall explain why the system was unable to locate a sufficient number of these sites. ]

\* \* \* \* \*

(h) *Sample collection methods.*

(1) *Lead and copper tap samples.* Tap samples for lead and copper collected in accordance with this subchapter, with the exception of lead service line samples collected under § 109.1107(d)(3) and tap monitoring samples collected under § 109.1103(g)(2)(ii)(B), shall be first-draw samples and the following sample collection methods shall be used:

\* \* \* \* \*

(v) [ If the sample is not acidified immediately after collection, the sample must stand in the original container for at least 28 hours after acidification. ] Acidification of first-draw samples may be done up to 14 days after the sample is collected. After acidification, the sample shall stand in the original container for the time specified according to the approved EPA method before analyzing the sample.

\* \* \* \* \*

(j) *Invalidation of lead or copper tap water samples.* A sample invalidated under this paragraph does not count toward determining lead or copper 90th percentile levels under § 109.1102(a) or toward meeting the minimum monitoring requirements of this section. The Department's decision and rationale for invalidating a sample will be documented in writing.

(1) The Department may invalidate a lead or copper tap water sample if at least one of the following conditions is met:

(i) The laboratory establishes that improper sample analysis caused erroneous results.

(ii) The Department determines that the sample was taken from a site that did not meet the site selection criteria of this section.

(iii) The sample container was damaged in transit.

(iv) There is substantial reason to believe that the sample was subject to tampering.

(2) The system shall report to the Department the results of all samples, along with supporting documentation for samples the system believes should be invalidated.

(3) A system shall collect replacement samples for any samples invalidated under this subsection if, after the invalidation of one or more samples, the system has too few samples to meet the minimum monitoring requirements of this section.

(i) Replacement samples shall be taken as soon as possible but no later than 20 days after the Department invalidates the sample or by the end of the applicable monitoring period, whichever occurs later.

(ii) Replacement samples taken after the end of the applicable monitoring period may not be used to meet the monitoring requirements of a subsequent monitoring period.

(iii) Replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(k) *Monitoring waivers for small systems.* A small system that meets the criteria of this subsection may apply to the Department to reduce the frequency of monitoring for lead and copper under this section to once every 9 years if it meets all of the materials criteria specified in subsection (k)(1) and all of the monitoring criteria specified in subsection (k)(2). A system that meets the criteria in subsection (k)(1) and (2) only for lead, or only for copper, may apply to the Department for a waiver to reduce the frequency of tap water monitoring to once every 9 years for that contaminant only.

(1) *Materials criteria.* The system shall demonstrate that its distribution system, service lines and all drinking water plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials or copper-containing materials or both as follows:

(i) *Lead.* To qualify for a waiver of tap monitoring requirements for lead, the system shall provide certification and supporting documentation to the Department that the system is free of all lead-containing materials as follows:

(A) It contains no plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers.

(B) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless the fittings and fixtures meet the specifications of any standard established under 42 U.S.C.A. § 300g-6(e) (relating to plumbing fittings and fixtures).

(ii) *Copper.* To qualify for a waiver of the tap water monitoring requirements for copper, the system shall provide certification and supporting documentation to the Department that the system contains no copper pipes or copper service lines.

(2) *Monitoring criteria for waiver issuance.* The system shall have completed at least one 6-month round of routine tap water monitoring for lead and copper at sites approved by the Department and from the number of sites as required under § 109.1103(a)(1)(v). The system shall demonstrate that the 90th percentile levels for all rounds of monitoring conducted since the system became free of all lead-containing or copper-containing materials, as appropriate, meet the following criteria:

(i) *Lead levels.* To qualify for a waiver of the lead tap monitoring, the system shall demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

(ii) *Copper levels.* To qualify for a waiver of the copper tap monitoring, the system shall demonstrate that the 90th percentile copper level does not exceed 0.65 mg/L.

(3) *Department approval of waiver application.* The Department will notify the system of its waiver determination, in writing, setting forth the basis of the decision and any condition of the waiver. A system shall continue monitoring for lead and copper at the tap as required by this section until it receives written notification from the Department that the waiver has been approved.

(4) *Monitoring frequency for systems with waivers.*

(i) A system shall conduct tap water monitoring for the contaminant waived in accordance with subsection (e)(1)(iv) at the reduced number of sites identified in subsection (e) at least once every 9 years and provide the materials certification specified in paragraph (1) for the contaminants waived along with the monitoring results.

(ii) A system shall continue to monitor for any nonwaived contaminants in accordance with subsection (a)(1), as appropriate.

(iii) A system with a waiver shall notify the Department, in writing, within 60 days after becoming aware that it is no longer free of lead-containing or copper-containing materials, as appropriate to new construction or repair.

(5) *Continued eligibility.* If the system continues to satisfy the requirements of paragraph (4), the waiver will be renewed automatically unless any of the conditions listed in subparagraph (i)—(iii) occurs. A system whose waiver has been revoked may reapply for a waiver when it again meets the appropriate materials and monitoring criteria of paragraphs (1) and (2).

(i) A system with a lead waiver no longer satisfies the materials criteria of paragraph (1)(i) or has a 90th percentile lead level greater than 0.005 mg/L.

(ii) A system with a copper waiver no longer satisfies the materials criteria of subsection (k)(1)(ii) has a 90th percentile copper level greater than 0.065 mg/L.

(iii) The Department notifies the system, in writing, that the waiver has been revoked.

(6) *Requirements following waiver revocation.* A water system whose waiver has been revoked is subject to the corrosion control treatment, and lead and copper tap water monitoring requirements as follows:

(i) If the system exceeds the lead or copper, or both, action level, the system shall implement corrosion control treatment in accordance with § 109.1102(b), and any other applicable requirements of this subchapter.

(ii) If the system meets both the lead and copper action levels, the system shall monitor for lead and copper at the tap no less frequently than once every 3 years using the reduced number of sample sites specified in § 109.1103(e).

#### § 109.1104. Public education and notification.

(a) *Public education program.* The water supplier for a system that exceeds the lead action level based on tap monitoring conducted under § 109.1103 (relating to monitoring requirements) shall implement a public education program in accordance with this section. The public education program will remain in effect until the system qualifies for discontinuation under paragraph (3).

(1) *Content.* The water supplier shall include mandatory language established by the EPA under 40 CFR 141.85 (relating to public education and supplemental monitoring requirements), which is incorporated by reference, [ **except as specified in subparagraph (v),** ] in all of the printed and broadcast materials distributed through the lead public education program. Additional information presented by a system shall be consistent with the information specified in this section and be in plain English that can be understood by laypersons. If appropriate or as designated by the Department, public education materials shall be bilingual or multilingual. **Systems may delete information pertaining to lead service lines, upon approval by the Department, if no lead service lines exist in the system's service area.**

(i) *Mandatory language for newspapers and water bill inserts.* The **community** water supplier shall include the information contained in 40 CFR 141.85(a) in all printed material submitted to newspapers and inserted with customers' water bills. In addition to the water bill insert, the water supplier shall provide the following alert on the water bill itself in large print:

"Some homes in this community have elevated lead levels in their drinking water. Lead can pose a significant risk to your health. Please read the enclosed notice for further information."

If a water supplier is unable to include the alert verbatim on the water bill because of insufficient space on the bill, the water supplier may request, and the Department may allow, a minor wording change so long as the content remains essentially unaffected. **Public education language in 40 CFR 141.85(a)(1)(iv)(B)(5) and (D)(2) may be modified regarding building permit record availability and consumer access to these records, upon approval by the Department.**

(ii) *Mandatory language for pamphlets and brochures.* The water supplier shall include the information contained in 40 CFR 141.85(a) [ (2) ](1)(ii) and [ (4) ](iv) [ , **except as described in subparagraph (v),** ] in all pamphlets or brochures printed and distributed in accordance with this section.

\* \* \* \* \*

(iv) *Mandatory language for nontransient noncommunity water systems.* The water supplier for a nontransient noncommunity water system shall include either the information contained in 40 CFR 141.85(a)(1), [ (2) and (4) ] or the information contained in 40 CFR 141.85(a)(2), in public education materials printed and distributed in accordance with this section.

[ (v) *Mandatory language relating to Pennsylvania Lead Ban.* The water supplier who is required to include language under subparagraphs (ii) and (iv) shall replace the language contained in 40 CFR 141.85(a)(4)(D) with the following language:

**“The Pennsylvania Plumbing System Lead Ban and Notification Act prohibits the use of any pipe, pipe fitting, solder or flux that is not lead free in the construction, modification or repair of any plumbing system after January 6, 1991. If your copper pipes are joined with lead solder that was installed after January 6, 1991, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify the Department of Environmental Resources about the violation.” ]**

(2) *Delivery.*

(i) *Community water system requirements.* Within 60 days after exceeding the lead action level, unless it is already repeating public education tasks under subsection (a), the water supplier for a community water system shall deliver the public education materials to its customers in accordance with clauses (A)—(D). The water supplier shall repeat the tasks contained in clauses (A)—(C) every 12 months, and in clause (D) every 6 months for as long as the system exceeds the lead action level.

(A) The water supplier shall insert notices with and include the alert on each customer’s water bill containing the information in paragraph (1)(i). If the billing cycle or billing form prevents distribution of this notice within 60 days of the lead action level exceedance, the water supplier [ shall ] may deliver the information required in paragraph (1) within 60 days of the lead action level exceedance in one of the following ways:

\* \* \* \* \*

(E) A community water system may apply to the Department, in writing, to use the text specified in 40 CFR 185(a)(2) in lieu of the text in 40 CFR 185(a)(1), and to perform the tasks listed under subparagraph (ii)(A) in lieu of the tasks under clauses (A)—(D) if:

(I) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to the plumbing or installing point-of-use treatment devices.

(II) The system provides water as part of the cost of services provided and does not charge for water consumption.

(F) A community water system serving 3,300 or fewer persons may omit the task contained in clause (D) if notices containing the information required under paragraph (1) are distributed to

every household served by the system at least once during each calendar year the system exceeds the lead action level.

(ii) *Nontransient noncommunity water system requirements.* Within 60 days after exceeding the lead action level, the water supplier for a nontransient noncommunity water system shall deliver the public education materials contained in paragraph (1)(iv) to its consumers, unless it is already repeating public education tasks under this subsection.

(A) The water supplier shall post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system and distribute informational pamphlets or brochures, or both, on lead in drinking water to each person routinely served by the nontransient noncommunity water system. Systems may use electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

\* \* \* \* \*

(b) *Public notification requirements.* A water supplier shall give public notification in accordance with [ § 109.401 (relating to general public notification requirements) and shall otherwise comply ] Subchapter D (relating to public notification) when one of the following occurs:

\* \* \* \* \*

(2) The water supplier is not in compliance with [ water quality parameter performance requirements ] a treatment technique established under § 109.1102(b) [ (5) ] (relating to [ action levels and ] treatment technique requirements for corrosion control) [ or source water treatment performance requirements established under § 109.1102(b)(4) ].

\* \* \* \* \*

**§ 109.1107. System management responsibilities.**

(a) *Reporting and recordkeeping.* Systems shall comply with the following requirements and otherwise comply with § 109.701 (relating to reporting and recordkeeping):

\* \* \* \* \*

(2) *Reporting of monitoring results.* Reporting of monitoring results shall comply with the following requirements:

\* \* \* \* \*

(ii) *Water quality parameter monitoring results.* The water supplier shall [ retain ] assure that the results of analyses conducted in accordance with this subchapter for water quality parameters [ and present or submit the results to the Department upon request ] are reported to the Department within the first 10 days following the end of the required monitoring period as stipulated by this subchapter. The following minimum information is required when reporting water quality parameter results to the Department:

- (A) The name, address and PWSID of the public water system from which the samples are taken.
- (B) The contaminant ID.
- (C) The parameter name.
- (D) The sample period.
- (E) The sample type.

(F) The number of samples required and the number of samples taken.

(G) The analytical methods used.

(H) Whether an excursion has occurred on more than any 9 days during a 6-month monitoring period for any Department specified water quality parameter.

\* \* \* \* \*

(4) *Public education reporting requirements.* A water supplier required to implement a public education program in accordance with § 109.1104(a) (relating to public education and notification) shall [ , upon completion of this program, but no later than December 31 of the year in which the educational program is required to be implemented, ] submit a letter to the Department demonstrating that the system has complied with the public education program requirements of this subchapter within 10 days after the end of each period in which the system is required to perform public education tasks. [ The water supplier shall submit this letter to the Department annually for as long as the system exceeds the lead action level. ] The letter shall contain a list of newspapers, radio and television stations, facilities and organizations to which the system has delivered public education materials during the [ year ] most recent period for which the system was required to perform public education tasks.

(5) *Lead service line replacement reporting.*

(i) A water system that is required to initiate lead service line replacement in accordance with subsection (d) shall, within the first 3 months of the first year of lead service line replacement, submit to the Department the following:

\* \* \* \* \*

(C) [ For a water supplier which rebuts the presumption that the system has control over lead service lines, a legal opinion describing the legal authority which limits the system's control over the lead service lines and the extent of the system's control. ] The initial number of lead service lines in its distribution system and the portions owned by the system based on a materials evaluation, including the evaluation required under § 109.1103(g) and relevant legal authorities regarding the portion owned by the system.

(D) The date, location, [ and ] the results of this sampling, and method of sampling used, if lead service line sampling is completed in individual lead service lines.

\* \* \* \* \*

(6) *Record maintenance.* The water supplier shall retain on the premises of the system or at a convenient location near the premises the following:

\* \* \* \* \*

(iii) Copies of written correspondence with the Department relating to lead service line replacement, which

shall be kept for at least [ 5 ] 12 years after the completion of the replacement of applicable lead service lines.

\* \* \* \* \*

(d) *Lead service line replacement.*

\* \* \* \* \*

(4) *Conditions of replacement.* The water supplier shall replace [ the entire lead service line—up to the building inlet—unless it demonstrates to the satisfaction of the Department in accordance with subsection (a)(5)(i)(C) that it controls less than the entire service line. The water supplier may not replace less than the entire lead service line unless it receives written approval from the Department and complies with the requirements established in 40 CFR 141.84(d) and (e) (relating to service lines replacement requirements) ] the portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that the system owns and shall offer to replace the owner's portion of the line. A system is not required to replace the line if the owner refuses to pay for the cost of replacement of the privately owned portion of the line, or if any laws prohibit this replacement. A system that does not replace the entire length of service line shall complete the following tasks:

(i) The system shall provide notice to residents of all buildings served by the line at least 45 days prior to commencing partial line replacement. The Department may allow a shorter time period for notification in the case of emergency repairs. The notice shall explain that residents may experience a temporary increase of lead levels in their drinking water, along with information on measures consumers can take to minimize their exposure to lead. Residents shall be informed that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content in accordance with § 109.1103(h)(5) within 72 hours after the completion of the partial replacement of the service line.

(ii) The system shall collect the partial lead service line replacement sample and report the results of the analysis to the owner and the residents served by the line within 3 business days of receiving the results.

(iii) Information required under subparagraphs (i) and (ii) shall be provided by mail to the residents of individual dwellings. Systems have the option to post this information in a conspicuous location in those instances where multifamily dwellings are served by the line.

\* \* \* \* \*

[Pa.B. Doc. No. 01-1640. Filed for public inspection September 7, 2001, 9:00 a.m.]

# FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

## Daily Creel Limits for Panfish on Commonwealth Inland Waters

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to reducing the daily creel limit for panfish on Commonwealth inland waters.

### A. Effective Date

The proposed amendment, if approved on final-form rulemaking, will go into effect on January 1, 2003.

### B. Contact Person

For further information on the proposed amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

### C. Statutory Authority

The proposed amendment is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

### D. Purpose and Background

The proposed amendment is designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

### E. Summary of Proposal

The Commission currently is seeking public comment on a proposal to reduce the daily creel limit for panfish (sunfish, yellow perch, crappies, catfish, rock bass, suckers, carp and white bass) on inland waters from 50 (combined species) to 25 (combined species). The Commission, in seeking public comment on this proposal, is not necessarily endorsing the change. The Commission proposes to amend § 61.1 (relating to Commonwealth inland waters) to read as set forth at Annex A.

### F. Paperwork

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

### G. Fiscal Impact

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment will impose no new costs on the private sector or the general public.

### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, by December 7, 2001. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in

each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

The Commission also will hold at least two public meetings regarding this proposal.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-122. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

##### Subpart B. FISHING

#### CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

##### § 61.1. Commonwealth inland waters.

\* \* \* \* \*

(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
SUNFISH, YELLOW PERCH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, CARP, WHITE BASS	Open year-round	No minimum	[ 50 ] 25 (combined species)
	* * * * *		

[Pa.B. Doc. No. 01-1641. Filed for public inspection September 7, 2001, 9:00 a.m.]

## [58 PA. CODE CH. 65]

### Delayed Harvest Fly-Fishing Only Areas

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to the elimination of the Delayed Harvest Fly-fishing Only Program.

### A. Effective Date

The proposed amendment, if approved on final-form rulemaking, will go into effect on January 1, 2003.

### B. Contact Person

For further information on the proposed amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).



C. *Statutory Authority*

The proposed amendment is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed amendment is designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

The underlying principle in delayed harvest centers on the use of trout-stocked stream sections to offer a high catch rate fishery that places less emphasis on harvest, creates less need for constant stocking and provides opportunity to extend the "no-kill" experience to more anglers. The "no-kill" period extends from September until mid-June of the following year. From mid-June to Labor Day, the limited harvest component allows anglers to take three trout per day. These trout would otherwise be lost to natural mortality as a result of stress induced by elevated water temperatures and reduced flows.

Delayed harvest management is a deliberate attempt to extend the use of stocked trout and to permit more types of anglers to experience no-kill angling. "Recycling" of trout is a key component of the delayed harvest concept. Therefore, to minimize hooking mortality, an artificial lures only tackle restriction was created.

The delayed harvest program began in 1983 with one water, a 1.25-mile section of Cool Spring Creek, Mercer County. In the past 15 or so years, delayed harvest has continued to grow. Today, there are 26 delayed harvest fly-fishing only (DHFFO) waters and 51 delayed harvest artificial lures only (DHALO) projects.

The Commission is currently seeking public comment on a concept to merge the two different tackle restrictions applicable to delayed harvest into a single delayed harvest artificial lures only program. This would provide for simpler regulations and more diverse trout fishing opportunities at a time of reduced trout stocking. The proposal has attracted a good deal of opposition from fly-fishers who want to maintain the DHFFO restrictions.

The proposed change to delayed harvest regulations does not affect the heritage trout angling program, which was created specifically to reflect the tradition fly angling has played in Pennsylvania trout angling and conservation. The eight waters under the heritage trout angling regulations offer no-kill trout fishing opportunities for fly-fishers only.

The idea of allowing fishing with artificial lures on delayed harvest waters currently limited to fly-fishing only already has attracted a lot of comment. Many fly-fishers have advised the Commission that they are opposed to any change to the delayed harvest regulations. At the same time, supporters of "traditional angling" have contacted the Commission to indicate their opposition to any special tackle restrictions on trout waters. They want the delayed harvest waters open to all tackle and oppose even the artificial lures only restrictions.

In the face of these diverse opinions, the Commission has decided to seek public comment on proposed changes to the delayed harvest program. The Commission, in seeking public comment on this proposal, is not necessarily endorsing the change.

It is important for anglers and boaters to understand the importance of their input in this process. The Commissioners (and staff) read all public comments and give them full and fair consideration. A public comment period is a chance for anglers and boaters to share their reasoning as well as their conclusions.

The Commission accordingly proposes removing § 65.2 (relating to delayed harvest fly-fishing only areas) to read as set forth in Annex A. If adopted on final-form rule-making, all waters currently managed under this program would be moved to the DHALO program. These waters are:

County	Water on which located	Description
Adams	Conewago Creek	From 0.1 mile downstream of T-340 downstream to S.R. 34, a distance of 1.1 miles.
Bedford	Yellow Creek	From the mouth of Maple (Jacks Run) upstream to cable near Red Bank Hill, a distance of 0.9 mile.
Cameron	Driftwood Branch, Sinnemahoning Creek	From the Shippen Township Building downstream to near S.R. 120 west of Emporium, a distance of 1.4 miles.
Chester	French Creek	From the dam at Camp Sleepy Hollow downstream to Hollow road, a distance of 0.9 mile.
Cumberland	Green Spring Creek	From mouth upstream to near confluence with Bulls Head Branch, a distance of 1.0 mile.
Dauphin	Clarks Creek	Game Commission parking area on S.R. 325 downstream to Game Commission access road at the Iron Furnace, a distance of 1.9 miles.
Delaware	Ridley Creek	From the falls in Ridley Creek State Park, downstream to the mouth of Dismal Run, a distance of 0.6 mile.
Elk	West Branch of Clarion River	From intersection of S.R. 219 and S.R. 4003, upstream to Texas Gulf Sulphur property, a distance of 0.5 mile. Fishing permitted from east shore only.
Fayette	Dunbar Creek	From the confluence of Glade Run and Dunbar Creek downstream to the stone quarry along S.R. 1055, a distance of 4.1 miles.
Franklin	East Branch Antietam Creek	From S.R. 16 downstream to T-365, a distance of 1.0 mile.
Indiana	Little Mahoning Creek	From S.R. 1034 at Rochester Mills upstream to Cesna Run, a distance of 4.1 miles.

County	Water on which located	Description
Jefferson	North Fork of Redbank Creek	From S.R. 322 in Brookville upstream 1.9 miles, except a 50 yard section from the Brookville Water Authority Dam downstream to the wire across the creek, a distance of 1.9 miles.
Lancaster	Donegal Creek	From 275 yards below S.R. 772 downstream to T-334, a distance of 2.4 miles.
Lancaster	West Branch Octoraro Creek	From about 220 yards below S.R. 472, downstream to near the second unnamed tributary below S.R. 2010, a distance of 1.9 miles.
Lawrence	Slippery Rock Creek	From Heinz Camp property downstream to 0.25 mile below S.R. 2022 Bridge, a distance of 0.5 mile.
Lehigh	Little Lehigh Creek	From the downstream face of the bridge on T-508 (Wild Cherry Lane) downstream to the upstream face on the bridge on T-510 (Millrace Road), a distance of 1.8 miles.
McKean	Marvin Creek	From proximity of high voltage line (3 miles south of Smethport) downstream 1.1 miles, a distance of 1.1 miles.
Monroe	Bushkill Creek	On the Recessa Falls Scout Reservation property except 200 yards on each side of the falls, a distance of 6.1 miles.
Potter	Kettle Creek	From 500 feet downstream of the S.R. 0144 bridge upstream 1.7 miles, for a distance of 1.7 miles.
Somerset	Clear Shade Creek	From the cable at Windber Water Dam upstream, a distance of 1.0 mile.
Union	White Deer Creek	From Cooper Mill Road upstream to Union/Centre county line, a distance of 3.1 miles.
Venango	Little Sandy Creek	From S.R. 3024 at Polk upstream to old bridge at Polk Center pump house, a distance of 1.3 miles.
Warren	Caldwell Creek	From Selkirk highway bridge downstream to near the Dotyville Bridge, a distance of 1.4 miles.
Wayne	Dyberry Creek	From the Widmer property line about 1 mile below Tanner's Falls downstream to Mary Wilcox Bridge, S.R. 4009, a distance of 0.8 mile.
Wyoming	Bowman Creek	From the vicinity of S.R. 292 downstream to near the confluence with Marsh Creek, a distance of 1.0 mile.

County	Water on which located	Description
York	Muddy Creek	From cable 300 yards above S.R. 2032 Bridge in Bridgeton up to cable 300 yards downstream from Bruce, a distance of 1.9 miles.

In addition to amending the regulations to eliminate the DHFFO areas, the Commission will consider, on a case by case basis, the transfer of streams from the DHFFO program to the DHALO program.

#### F. Paperwork

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment will impose no new costs on the private sector or the general public.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, by March 7, 2002. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-121. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 65. SPECIAL FISHING REGULATIONS

#### § 65.2. [Delayed harvest fly-fishing only areas] (Reserved).

**[(a) The Executive Director, with the approval of the Commission, may designate waters as delayed-harvest, fly-fishing only areas. The designation of waters as delayed-harvest, fly-fishing only areas shall be effective when the waters are so posted after publication of a notice of designation in the Pennsylvania Bulletin.]**

**(b) It is unlawful to fish in designated and posted delayed-harvest fly-fishing only areas except in compliance with the following requirements:**

**(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion on a single hook with components wound on or about the hook. Specifically prohibited are**

**the use of molded facsimilies or replicas of insects, earthworms, fish eggs, fish or any invertebrate or vertebrate either singly or in combination with the other materials. Likewise prohibited are other lures commonly described as spinners, spoons or plugs made of metal, plastic, wood, rubber or like substances or a combination thereof.**

**(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with a maximum of 18 feet in leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.**

**(3) The use or possession of natural bait, baitfish or fishbait, and the use of another device, natural or synthetic, capable of catching fish, other than artificial flies and streamers, is prohibited.**

**(4) Fishing hours are: 1 hour before sunrise to 1 hour after sunset during the regular and any extended trout season.**

**(5) Minimum size is: 9 inches, caught on, or in possession on, the waters under regulation.**

**(6) The daily creel limit is: Three combined species except during the period after Labor Day and before June 15 when the daily limit shall be zero trout combined species, caught on or in possession on the waters under regulation.**

**(7) Taking of baitfish is prohibited. ]**

[Pa.B. Doc. No. 01-1642. Filed for public inspection September 7, 2001, 9:00 a.m.]

## GAME COMMISSION

[58 PA. CODE CHS. 141 AND 147]

### Special Permits for Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 12, 2001, meeting, proposed the following amendments:

Amend §§ 141.41 and 141.43 (relating to general; and deer). With the advent of the new special firearms deer season, the Commission needs to ensure that hunters participating in the new season wear the required daylight fluorescent orange-colored material and that trappers dispatching legally trapped furbearers with firearms during this season use only a .22 caliber rimfire. This can be accomplished by adding special firearms deer season provisions to §§ 141.41(2) and 141.43(f).

Amend § 147.146 (relating to sale of inedible wildlife parts). The act of December 21, 1998 (P. L. 1274, No. 166) (Act 166) amended 34 Pa.C.S. § 2312 (relating to buying and selling game) giving the Commission authority to authorize by regulation the buying and selling of inedible parts of game and wildlife as it deems appropriate. This can be accomplished by adding § 147.146.

These amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposals is 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

These proposals were made public at the June 12, 2001, meeting of the Commission, and comments on these proposals can be sent to the Director of Information and

Education of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until September 21, 2001.

*Proposed amendments to §§ 141.41(2) and 141.43(f)*

#### 1. Introduction

In recent years, the Commission has established seasons and bag limits, under § 139.4. In the seasons and bag limits adopted this year on April 10, 2001, the Commission adopted a 3-day special deer season, and in regulations finally adopted at the June 12, 2001, meeting, designated a special firearms season. To provide for hunter safety, the Commission proposed at its June 12, 2001, meeting that the requirements of wearing 250 square inches of fluorescent orange material on the head, chest and back, and the use of only .22 caliber rimfire firearms to dispatch trapped furbearers under §§ 141.41(2) and 141.43(f) also apply to the special firearms season.

These changes are proposed under authority contained in section 2102(a) of the code, which permits the Commission to promulgate regulations it deems necessary and appropriate concerning "... the ways, manner, methods and means of hunting or furtaking and the health and safety of person who hunt or take wildlife..." See section 2102 of the code.

#### 2. Purpose and Authority

As was indicated in the Introduction, the proposed changes would require deer hunters during the special firearms season to wear a minimum of 250 square inches of daylight fluorescent orange-colored material under § 141.41(2). The material shall be worn on the head, chest and back combined so it is visible in a 360° arc. Additionally, the proposed changes would allow only the use of .22 caliber rimfire firearms to dispatch legally trapped furbearers during the special firearms season under § 141.43(f).

Section 2102(a) of the code, providing for regulating the ways, manner and means of hunting or furtaking, is the authority for these proposed changes.

#### 3. Regulatory Requirements

The proposed changes would require persons hunting to wear fluorescent orange, and allow only the use of .22 caliber rimfire firearms to dispatch trapped furbearers, during the special firearms season.

#### 4. Persons Affected

Persons hunting for deer or furtaking during the special firearms season would be affected by the proposed changes.

#### 5. Cost and Paperwork Requirements

The proposed changes should not result in any additional cost or paperwork.

*Proposed amendments to § 147.146*

#### 1. Introduction

By Act 166, the General Assembly authorized the Commission to allow the sale of game and wildlife as it deems appropriate. Under that authorization, the Commission at its June 12, 2001, meeting proposed amendments relating to the sale of inedible wildlife parts. The proposal includes wildlife lawfully taken within this Commonwealth that has been mounted, tanned or completely prepared for study or display. Under the proposal, a permittee may sell inedible wildlife parts under limited circumstances. This change is proposed under section

2102 of the code authorizing the Commission to promulgate the regulations it deems necessary and appropriate concerning game or wildlife, and section 2312(c)(2) of the code (relating to buying and selling of game) authorizing the Commission by regulation to authorize the buying and selling of inedible parts of game and wildlife it deems appropriate.

2. Purpose and Authority

As indicated in the Introduction, the proposal would authorize a permittee to sell inedible wildlife parts under limited circumstances, and would require a permit at a cost of \$5. Section 2102 of the code authorizes the Commission to promulgate regulations it deems necessary and appropriate concerning game or wildlife, and section 2312(c)(2) of the code authorizes the Commission by regulation to authorize the buying and selling of inedible parts of game and wildlife, provide authority for this proposal.

3. Regulatory Requirements

The proposed change would authorize the issuance of permits for the sale of inedible wildlife parts valid for 120 days.

4. Persons Affected

Persons wishing to sell inedible wildlife and wildlife parts may be affected by the proposed change.

5. Cost and Paperwork Requirements

The proposed change will result in a new permit and a fee of \$5. The permit fee offsets administrative costs of the new permit requirement.

Effective Date

The proposed changes will be effective on final publication in the Pennsylvania Bulletin and will remain in effect until changed by Commission.

Contact Person

For further information regarding these changes, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS, Executive Director

Fiscal Note: 48-134. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter C. BIG GAME

§ 141.41. General.

It is unlawful to:

\* \* \* \* \*

(2) Hunt for or assist to hunt for deer, bear or elk during the regular firearms season or special firearms season without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc.

\* \* \* \* \*

§ 141.43. Deer.

\* \* \* \* \*

(f) .22 caliber rimfire required for furbearers. Only a .22 caliber rimfire may be used to dispatch legally trapped furbearers during the regular [antlered and antlerless] or special firearms deer [season] seasons.

CHAPTER 147. SPECIAL PERMITS

Subchapter H. PROTECTED SPECIMEN

§ 147.146. Sale of inedible wildlife parts.

(a) Wildlife lawfully taken within this Commonwealth that has been mounted, tanned or completely prepared for study or display in accordance with generally accepted taxidermy procedures may be sold if one of the following conditions is met:

(1) The original owner is deceased.

(2) The original owner's assets are being liquidated.

(b) Before selling a specimen, a permit shall be obtained from a Commission officer.

(c) An executed copy of the permit application (PGC-12) shall list the items to be sold. The permit is valid for 120 days.

(d) The fee for a permit issued under this section is \$5.

(e) The original owner of a specimen may donate the specimen to a wildlife conservation organization, which may then sell the specimen without a permit for fundraising purposes.

(f) Second and subsequent owners of wildlife parts acquired in accordance with section 2312(c)(1) of the act (relating to buying and selling of game) may sell the parts if included as part of a manufactured or finished product.

(g) A person violating this section shall be subject to the penalties provided in section 2312 of the act.

[Pa.B. Doc. No. 01-1643. Filed for public inspection September 7, 2001, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 63 AND 71]

[L-00010153, M-00001374]

Financial Reporting Requirements for All Telecommunications Carriers

The Pennsylvania Public Utility Commission (Commission) on June 21, 2001, adopted a proposed rulemaking order which streamlines certain financial reporting requirements for both competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) while still providing the Commission with necessary information needed to effectively monitor the telecommunications industry in this Commonwealth. The contact persons are Robert Wilson, Bureau of Fixed Utility Services, (717) 783-6162, Carl S. Hisiro, Law Bureau, (717) 783-2812, and Elizabeth Lion Januzzi, Law Bureau, (717) 772-0696.

*Executive Summary*

In September 2000, the Commission established a Collaborative consisting of all interested telecommunications carriers, Commission staff and other interested parties to determine what, if any, modifications should be adopted to the Commission's accounting procedures and financial reporting requirements in response to the opening of the local and toll telecommunications markets to competition. In particular, the Collaborative was charged with resolving a number of important issues, including whether CLECs should be held to the same financial reporting requirements as ILECs, what reports should be treated as proprietary and whether CLECs should be required to maintain separate accounting systems for their various operations.

At the conclusion of its deliberative process, the Collaborative filed a Final Report detailing its findings and recommendations. The recommendations significantly streamline the reporting requirements for both CLECs and ILECs; however, several of the recommendations require changes in the Commission's regulations. Specifically, the proposed rulemaking redefines the classes of telephone utilities in § 63.31 (relating to classification of public utilities) based on whether a carrier is an incumbent or new entrant, and, if an incumbent, whether the utility is subject to an alternative form of regulation or some type of rate based, rate-of-return regulation. The current class definitions are based solely on access lines and/or minimal operating revenues which results in CLECs and ILECs filing the same reports even though the Commission's informational needs for these two types of carriers are completely different. The proposed rulemaking also amends § 63.32 (relating to systems of accounts) to recognize that CLECs not required by the Federal Communications Commission to conform to the Uniform System of Accounts must inform the Commission of this fact in their annual reports and state what method of accounting is being utilized. Finally, the proposed rulemaking clarifies that the quarterly or annual rate-of-return financial reports required under § 71.3 (relating to filing requirements) only apply to ILECs and that the quarterly reports for the larger ILECs are reduced to a semiannual basis.

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held  
June 21, 2001

**Proposed Rulemaking Order***By the Commission:*

This Commission entered an order on September 12, 2000, at M-00001374 to establish a Collaborative wherein all telecommunications carriers and interested parties have an opportunity to participate in determining what, if any, modifications should be adopted to the Commission's accounting procedures and financial reporting requirements in response to the opening of the local and toll telecommunications markets to competition. In particular, the Collaborative was charged with resolving a number of important issues, including whether CLECs should be held to the same financial reporting requirements as ILECs, what reports (or subparts thereof) should be treated as proprietary and whether CLECs should be required to maintain separate accounting systems for their various operations. At the conclusion of the 6-month process, the Collaborative filed a 31-page Final Report

detailing its findings and recommendations. A copy of this Final Report without attachments is appended to this Order as Appendix A.

At the outset we wish to commend the members of the Collaborative for their efforts to resolve the many difficult issues facing them and for their professionalism and cooperation in developing the various recommendations contained in the Final Report. This Final Report would not have been possible without the significant contributions of time and effort by the industry participants and Commission staff.

After a careful and thorough review of that document, we are pleased to state that by this order we are adopting all the recommendations contained in the Final Report. These recommended changes will significantly streamline certain financial reporting requirements for both CLECs and ILECs, particularly the annual reports now required under § 63.36 (relating to filing of annual financial reports), while still providing the Commission with the necessary information needed to monitor effectively the telecommunications industry in this Commonwealth.<sup>1</sup> The reduced reporting requirements, we believe, will have the effect of lowering entry barriers into the local telecommunications markets in this Commonwealth, thereby promoting a more competitive marketplace.<sup>2</sup>

We also note that the Collaborative's recommendations relating to the ever-troubling issue of what information should be made public and what should be protected as confidential will provide a reasonable, balanced approach in the future. Finally, several of the recommendations require changes in the Commission's regulations. In this regard, the Collaborative provided suggested language to accomplish the necessary regulatory amendments in Appendices G and H following the Final Report. We accept and approve the suggested regulatory changes and hereby institute a rulemaking proceeding to adopt these proposals as final-form regulations.

Accordingly, under sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder in 4 Pa. Code §§ 7.251—7.235, we are considering adopting the proposed amendments set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The Bureau of Fixed Utility Services is hereby directed to implement the recommended changes to the Commission's financial reporting requirements contained in the Final Report of the Collaborative issued on March 15, 2001, at Docket No. M-00001374.

2. The quarterly tracking report required by order entered August 7, 1997, at Docket No. A-310203F0002 (which reports are submitted at Docket No. M-00970943) for CLECs to report their residential and business access lines by LATA is hereby repealed.

<sup>1</sup> We should add that we agree with the Collaborative's assessment in its report that with the reduced reporting obligations, noncompliant companies should expect more consistent and tougher enforcement efforts by the Commission to ensure compliance, including the filing of formal complaints seeking civil penalties, the suspension or revocation of certificates of public convenience or any other appropriate remedies. *See* Final Report at 2.

<sup>2</sup> The streamlined reporting requirements we adopt today are not necessarily the end of the road. As recommended by the Collaborative at page 4 of its report, we will continue to evaluate whether further streamlining is appropriate as deregulation and competition take hold in the various Commonwealth telecommunications markets.

3. A proposed rulemaking is hereby instituted to amend §§ 63.31—63.33 and 71.3.

4. The proposed rulemaking will consider the regulations set forth in Annex A, as recommended in the Final Report referred to in Ordering Paragraph No. 1.

5. The Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

6. The Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.

7. The Secretary shall certify this Order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. The Secretary shall specify publication of the Order in accordance with 45 Pa.C.S. § 727.

8. An original and 15 copies of any comments referencing the docket number of the proposed rulemaking shall be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. Reply comments will not be entertained.

9. A copy of this Order and Annex A shall be served upon the Pennsylvania Telephone Association, the Telecommunications Resellers Association, all jurisdictional telecommunication utilities, the Office of Trial Staff, the Office of Consumer Advocate and the Small Business Advocate.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-222. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 63. TELEPHONE SERVICE

##### Subchapter C. ACCOUNTS AND RECORDS

#### § 63.31. Classification of public utilities.

For accounting and reporting purposes, telephone public utilities are classified as follows:

(1) **Class A. [Public utilities having 50,000 or more access lines.] Telephone public utilities that are incumbent local exchange carriers subject to an alternative form of regulation, including, but not limited to, price cap formulas, under 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services).**

(2) **Class B. [Public utilities having less than 50,000 access lines.] Telephone public utilities that are incumbent local exchange carriers subject to rate base/rate of return regulation or the Plan B Simplified Ratemaking Plan approved by the Commission under 66 Pa.C.S. Chapter 30.**

(3) **Class C. [Telephone public utilities having average annual operating revenues exceeding \$10,000 but not more than \$50,000.] Telephone public utilities that provide competitive local telephone ex-**

**change services and that are not the incumbent provider in any local exchange area within this Commonwealth.**

**[(4) Class D. Telephone public utilities having average annual operating revenues not exceeding \$10,000.]**

#### § 63.32. Systems of accounts.

(a) Class A and Class B telephone public utilities shall keep their accounts in conformity with the requirements prescribed by the Federal Communications Commission (FCC), under "Common Carrier Services; Revision; Uniform System of Accounts (USOA); Classes A, B, and C Telephone Companies," 51 Fed. Reg. 43498 (December 2, 1986) (to be codified at 47 CFR Part 32). The symbol "32" which forms the initial component of each account number in the system of accounts, as published, may not be considered as a prescribed part of the account number for accounting and reporting purposes.

(b) **[(Reserved).**

**(c) Class C and D telephone public utilities, in the absence of a prescribed system of accounts for Class C and Class D telephone public utilities, shall keep the accounts as will be adequately informative for reasonable and foreseeable regulatory purposes.] A Class C telephone public utility which is not required by the FCC to conform to the USOA and does not do so, shall inform the Commission of this fact on its annual financial report. The Class C utility shall also state the method of accounting utilized to compile the financial information reported, including the Generally Accepted Accounting Principles (GAAP).**

**[(d) A telephone public utility may adopt a system of accounts prescribed for a higher class of telephone public utilities, if the Commission is first notified of the intention of the utility to do so.]**

#### § 63.33. Integrity of reserve accounts to be preserved.

**[Amounts] With respect to those companies which keep their accounts in conformity with the requirements prescribed by the Federal Communications Commission under the "Common Carrier Services; Revision; Uniform Systems of Accounts (USOA); Classes A, B and C Telephone Companies", 51 Fed. Reg. 43498 (December 2, 1986) (to be codified at 47 CFR Part 32), amounts in Class A and Class B accounts 169—173 inclusive, and in Class C accounts 185 and 190, reserved as of the effective date of the appropriate system of accounts prescribed in § 63.32 (relating to systems of accounts), [shall] may not, except by permission of the Commission, be used for any purpose other than the specific purpose for which reserved.**

#### CHAPTER 71. FINANCIAL REPORTS

#### § 71.3. Filing requirements.

(a) The following public utilities shall file a financial report for the 12-month period ending each March 31, June 30, September 30 and December 31:

\* \* \* \* \*

(2) **[Local exchange telecommunications utilities with annual intraState gross revenues in excess of \$10 million.**

(3) \* \* \*

[ (4) ] (3) \* \* \*

(b) **Incumbent local exchange telecommunications utilities with annual intraState gross revenues in excess of \$10 million shall file a financial report for the 12-month period ending each June 30 and December 31.**

(c) The following public utilities shall file a financial report for the 12-month period ending each December 31:

\* \* \* \* \*

(2) [ **Local** ] **Incumbent local** exchange telecommunications utilities with annual intraState gross revenues in excess of \$1 million but which do not exceed \$10 million.

\* \* \* \* \*

[ (c) ] (d) \* \* \*

[ (d) ] (e) \* \* \*

[Pa.B. Doc. No. 01-1644. Filed for public inspection September 7, 2001, 9:00 a.m.]

# STATE BOARD OF MEDICINE

## [49 PA. CODE CH. 18]

### Physician Delegation of Medical Services

The State Board of Medicine (Board) proposes to adopt Chapter 18, Subchapter G (relating to medical doctor delegation of medical services) to read as set forth in Annex A.

#### A. *Effective Date*

The regulation will be effective upon publication as a final-form regulation in the *Pennsylvania Bulletin*.

#### B. *Statutory Authority*

Section 17(b) of the Medical Practice Act of 1985 (act) (63 P. S. § 422.17(b)) authorizes the Board to promulgate criteria under which a medical doctor may delegate the performance of medical services, preclude a medical doctor from delegating the performance of certain types of medical services or otherwise limit the ability of a medical doctor to delegate medical services.

#### C. *Background and Purpose*

The Board routinely receives inquiries about whether particular delegations are appropriate. To assist medical doctors in exercising professional judgment regarding delegation, the Board published in its summer 1997 newsletter an article which provided an analytical framework for making delegation decisions. The concepts discussed in that article were well received by the medical doctor community. However, the Board continued to receive numerous requests for regulatory guidelines pertaining to delegation. In an effort to be responsive to the regulated community, and to provide a framework that placed patient safety and welfare at the forefront of the medical doctor's decision making process, the Board determined to codify basic criteria under which a medical doctor may delegate the performance of medical services.

#### D. *Description of the Amendment*

Section 17 of the act (63 P. S. § 422.17) authorizes medical doctors to delegate the performance of medical services. Section 17 of the act provides as follows:

(a) *General rule.* A medical doctor may delegate to a health care practitioner or technician the performance of a medical service if:

(1) The delegation is consistent with the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth.

(2) The delegation is not prohibited by regulations promulgated by the Board.

(3) The delegation is not prohibited by statutes or regulations relating to other licensed health care practitioners.

(b) *Regulations.* The Board may promulgate regulations which establish criteria under which a medical doctor may delegate the performance of medical services, preclude a medical doctor from delegating the performance of certain types of medical services or otherwise limit the ability of a medical doctor to delegate medical services.

(c) *Responsibility.* A medical doctor shall be responsible for the medical services delegated to the health care practitioner or technician in accordance with subsections (a) and (b). A medical doctor's responsibility for the medical service delegated to the health care practitioner or technician is not limited by any provisions of this section.

Against this statutory backdrop, the Board proposes this rulemaking.

The proposal would add § 18.401 (relating to delegation). This section would establish general criteria under which a medical doctor may exercise professional judgment in making the decision to delegate medical services.

Section 18.401(a) would establish criteria under which delegation could occur:

Section 18.401(a)(1) would reiterate the statutory requirement found in section 17(a)(1) of the act that the delegation be consistent with standards of acceptable medical practice. Standards of acceptable medical practice may be discerned from current medical literature and texts, medical teaching facilities publications and faculty, expert practitioners in the field and the commonly accepted practice of practitioners experienced in the field.

Section 18.401(a)(2) would reiterate section 17(a)(3) of the act. This section would prohibit a medical doctor from expanding the scope of practice of other health care practitioners when the General Assembly or the licensing board responsible for regulating the other health care practitioner has prohibited the performance of those services by the other health care practitioner. Section 18.401(a)(3) and (4) would require the medical doctor to assure that the individual practitioner or technician to whom the delegation is being given has sufficient education, training and competency so that they know how to perform the service safely. Accordingly, the medical doctor would be obligated to determine whether the delegatee is competent to perform the procedure. This may be accomplished by determining whether the delegatee is licensed, certified or possesses documented education and training related to the service. The physician may choose to monitor the delegatee to become satisfied as to the delegatee's competence.

Section 18.401(a)(5) would prohibit delegations when the particular patient presents with unusual complications, family history or condition so that the performance of the medical service poses a special risk to that particular patient. Unlike the other provisions, this provision directs the medical doctor's attention to the needs of the particular patient. A determination shall be made that the service may be rendered to the particular patient without undue risk. It is the physician's responsibility to make that assessment.

Section 18.401(a)(6) would recognize that patients are autonomous and that consideration of patient autonomy and dignity is a responsibility of the medical doctor. Thus, it is the medical doctor's responsibility to assure that the patient is advised as to the nature of the medical service and the reason for the delegation, so that the patient might exercise the right to request the service be performed by the medical doctor. The primary relationship in the delivery of medical services is between the patient and the physician. The person in charge of this relationship is the patient. Communication with the patient and education of the patient is essential to the proper delivery of medical services, and a primary obligation of physicians.

Section 18.401(a)(7) would direct the medical doctor to provide the level of supervision and direction appropriate to the circumstance surrounding the delivery of the medical service. It underscores the fact that the medical doctor is ultimately responsible for the patient's well being and requires the doctor to maintain the level of involvement in the treatment process as required by section 21 of the act (63 P. S. § 422.21).

Section 18.401(b) would prohibit the delegation of a medical service when the service is sufficiently complicated, difficult or dangerous so that it would require a degree of education and training possessed by medical doctors, but not commonly possessed by nonmedical doctors. Additionally, this section would prohibit delegation of medical services in situations when potential adverse reactions may not be readily apparent to an individual without medical doctor training. These criteria are intended to prohibit the delegation of medical services when the delegation poses undue risk to patients generally.

Section 18.401(c) would require the medical doctor to be sufficiently knowledgeable about the medical service so that the medical doctor is not merely a straw man. It should be axiomatic that the individual who has responsibility and authority for directing others in delivering medical services, has the knowledge, ability and competency pertaining to the performance of those services.

Section 18.401(d) would reiterate the statutory requirement contained in section 17(c) of the act. It reminds the medical doctor that the medical director retains responsibility for the performance of the service whether the doctor performs it or directs another to do so.

Section 18.401(e) would recognize the reality that emergencies arise when available health care personnel must immediately attend to patients, even though under nonemergency circumstances, the medical doctor would be the most appropriate person to care directly for the patient.

Section 18.401(f) would recognize that licensed or certified health care practitioners have a scope of practice

defined by statute and regulations. This proposed regulation is not intended to restrict or limit the performance of medical services that fall within the parameters established by law. Specific examples have been provided because of concerns that were expressed to the Board pertaining to those practitioners. They are provided as examples and are not intended to be all inclusive.

#### E. *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input and suggestions from the regulated community and other parties who have identified themselves as interested in the Board's regulatory agenda.

#### F. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector. Citizens of this Commonwealth will benefit in that this regulation promotes patient safety and welfare as a consideration in making medical service delegation decisions.

#### G. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 24, 2001, the Board submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the regulation, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of the material is available to the public upon request.

If IRRC has any objections to any portion of the proposed regulation, it will notify the Board within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor of objections raised.

#### I. *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to Cindy Warner, Health Licensing Division, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed regulation in the *Pennsylvania Bulletin*. Please cite to "delegation of medical services" when submitting comments.

CHARLES D. HUMMER, Jr.,  
*Chairperson*

**Fiscal Note:** 16A-4912. No fiscal impact; (8) recommends adoption.



**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS**

**Subchapter G. MEDICAL DOCTOR DELEGATION OF MEDICAL SERVICES**

Sec.  
18.401. Delegation.

**§ 18.401. Delegation.**

(a) A medical doctor may delegate to a health care practitioner or technician the performance of a medical service if the following conditions are met:

(1) The delegation is consistent with the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth.

(2) The delegation is not prohibited by the statutes or regulations regulating the other health care practitioner.

(3) The delegatee has documented education and training to perform the medical service being delegated.

(4) The medical doctor has determined that the delegatee is competent to perform the medical service.

(5) The medical doctor has determined that the delegation to a health care practitioner or technician does not create an undue risk to that patient.

(6) The nature of the service and the delegation of the service has been explained to the patient and the patient does not object to the performance by the health care practitioner or technician.

(7) The medical doctor assumes the responsibility for evaluating and monitoring the performance of the service and is available as appropriate to the difficulty of the procedure, the skill of the delegatee and risk level to the particular patient.

(b) A medical doctor may not delegate the performance of a medical service if performance of the medical service requires medical doctor education and training or if recognition of the complications or risks associated with the delegated medical service requires medical doctor education and training.

(c) A medical doctor may not delegate a medical service which the medical doctor is not trained, qualified and competent to perform.

(d) A medical doctor shall be responsible for the medical services delegated to the health care practitioner or technician.

(e) A medical doctor may approve a standing protocol delegating medical acts to another health care provider who encounters a medical emergency that requires medical services for stabilization until the medical doctor is able to attend to the patient.

(f) This section does not prohibit a health care provider who is licensed or certified by a Commonwealth agency from practicing within the scope of that license or certificate or as otherwise authorized by law. For example, this section is not intended to restrict the practice of certified registered nurse anesthetists, certified registered nurse practitioners, physician assistants, or other individuals practicing under the authority of specific statutes or regulations.

[Pa.B. Doc. No. 01-1645. Filed for public inspection September 7, 2001, 9:00 a.m.]