

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138e]

#### Corrective Amendment to 7 Pa. Code § 138e.16(a)

The Department of Agriculture has discovered a discrepancy between the agency text of 7 Pa. Code § 138e.16(a) (relating to minimum criteria for applications) as deposited with the Legislative Reference Bureau and the official text as published at 34 Pa.B. 2421, 2435 (May 1, 2004), and published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 356) (July, 2004) and as currently appearing in the *Pennsylvania Code*. When the amendments were published at 34 Pa.B. 2421, 2435, the text of paragraphs (3) and (4) in subsection (a) was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The Department of Agriculture has deposited with the Legislative Reference Bureau a corrective amendment to 7 Pa. Code § 138e.16(a). The corrective amendment to 7 Pa. Code § 138e.16(a) is effective as of May 1, 2004, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 7 Pa. Code § 138e.16 appears in Annex A.

#### Annex A

### TITLE 7. AGRICULTURE

#### PART V-C. FARMLAND AND FOREST LAND

#### CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM

#### REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

#### § 138e.16. Minimum criteria for applications.

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

- (1) Be one or more of the following:
  - (i) Located in an agricultural security area consisting of 500 acres or more.
  - (ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
  - (iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:
    - (A) A mansion house is on the tract and located within the purchasing county.
    - (B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.
    - (C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be one or more of the following:

- (i) Contiguous acreage of at least 50 acres in size.
- (ii) Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area.
- (iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(3) Contain at least 50% of soils which are both available for agricultural production and of land capability classes I—IV, as defined by the USDA-NRCS.

(4) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(b) The county program may contain additional criteria to evaluate farmland tracts if the criteria are fair, objective, equitable, nondiscriminatory and emphasize the preservation of viable agricultural land which will make a significant contribution to the agricultural economy, and are approved by the State Board. For example, a county program might require crop yields from a farmland tract to meet or exceed county crop yield averages, or might require the farmland tract to generate annual gross receipts of a particular sum, or might require that structures and their curtilages not occupy more than a certain percentage of the total acreage of the farmland tract.

[Pa.B. Doc. No. 04-1487. Filed for public inspection August 13, 2004, 9:00 a.m.]

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

#### Safe Drinking Water; Microbial and Disinfection Byproducts

The Environmental Quality Board (Board) amends Chapter 109 (relating to safe drinking water). The final-form rulemaking updates and clarifies several requirements concerning disinfectants, disinfection byproducts (DBP) and surface water treatment. The final-form rulemaking also adds three requirements concerning DBP monitoring, increased monitoring criteria and surface water turbidity reporting, which are necessary for the Commonwealth to obtain primary enforcement responsibility for the Safe Drinking Water Program. Lastly, the final-form rulemaking corrects minor typographical errors throughout Chapter 109.

This order was adopted by the Board at its meeting on April 20, 2004.

#### A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

### 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 Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website: [www.dep.state.pa.us](http://www.dep.state.pa.us).

### C. Statutory Authority

The final-form 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 of the Final-Form Rulemaking

The public health benefits of disinfection are significant and well recognized. However, these very disinfection practices pose health risks of their own. Although disinfectants such as chlorine, hypochlorites and chlorine dioxide are effective in controlling many harmful microorganisms, they react with organic and inorganic matter in the water to form DBPs, which pose health risks at certain levels.

The first DBPs discovered in public drinking water were halogenated methanes in 1974. In 1979, the United States Environmental Protection Agency (EPA) promulgated a Maximum Contaminant Level (MCL) to regulate these compounds. Since then, other DBPs have been identified and studied for their health effects. Many of these studies have shown DBPs to be carcinogenic or to cause adverse reproductive or developmental effects in laboratory animals, or both. Studies have also shown that high levels of the disinfectants themselves may cause health problems over long periods of time, including damage to both the blood and the kidneys.

In 1992, the EPA initiated a rulemaking process to address public health concerns associated with disinfectants and DBPs. During this rulemaking, EPA was concerned that new regulations that would control disinfection practices and limit DBP formation would also compromise, and perhaps even jeopardize, safeguards already in place for limiting risks from microbial pathogens. Accordingly, one of the major goals in this rulemaking process was to develop an approach that would reduce exposure to disinfectants and DBPs without undermining the control of microbial pathogens. The intent was to ensure that drinking water remained microbiologically safe at the limits set for disinfectants and DBPs. Thus, the EPA proposed a companion microbial rule to accompany the disinfectants and DBP rule.

On December 16, 1998, the EPA promulgated both the Federal Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Federal Disinfectants and Disinfection Byproducts Rule (D/DBPR). These companion rules were intended to simultaneously address microbial pathogens, such as *Cryptosporidium parvum*, and harmful DBPs. In response to these Federal rulemakings, the Department's Safe Drinking Water Program promulgated amendments to Chapter 109 on July 21, 2001, that reflected the provisions of the IESWTR and the D/DBPR.

After the original publishing of the IESWTR and the D/DBPR in December 1998, several issues arose at the Federal level regarding compliance dates, monitoring requirements, compliance determinations, reporting requirements, consecutive systems and typographical errors. In response to these issues, the EPA promulgated corrective amendments to the IESWTR and the D/DBPR on January 16, 2001. However, since the Department was already in the final rulemaking phase for the IESWTR and the D/DBPR at that time, several provisions of the January 16, 2001, Federal corrective amendments were not included in the final-form rulemaking. As a result, several provisions in Chapter 109 are unnecessarily more stringent than current Federal requirements.

This final-form rulemaking addresses these more stringent provisions. Some notable examples include more stringent monitoring requirements for small systems and inclusion of both consecutive and purchasing water systems for most of the D/DBPR requirements. There are also provisions in Chapter 109 that the Department has determined are in need of clarification. Lastly, there are three Federal provisions that the EPA wants added to Chapter 109 for the Department to obtain primary enforcement responsibility (primacy) of the IESWTR and the D/DBPR. These three provisions concern turbidity reporting requirements for alternative filtration technologies, increased monitoring criteria for small groundwater systems and miscellaneous considerations for determining DBP sampling locations. The EPA considers these provisions to be minor, albeit necessary for primacy.

There is one provision in the final-form rulemaking that is more stringent than the Federal requirements. Section 109.701(a)(9)(ii) (relating to reporting and recordkeeping) will require that chlorite monitoring results be reported monthly to the Department, as opposed to quarterly in the Federal rule. The Department feels that monthly reporting is appropriate since entry point chlorite samples are to be taken daily and that compliance with the chlorite MCL is based upon monthly distribution sampling. Monthly reporting would also be more appropriate than quarterly reporting due to the acute health concerns associated with the parent chlorine dioxide disinfectant. The remainder of the final-form rulemaking will be no more stringent than the Federal rules.

The Board proposes to incorporate the provisions of the Microbial and Disinfection Byproducts Corrective Amendments into Chapter 109. Over 10.5 million residents in this Commonwealth will benefit from improved drinking water standards as a result of the final-form rulemaking.

The Board approved the proposed rulemaking on May 21, 2003. The proposed rulemaking was published at 33 Pa.B. 3730 (August 2, 2003). The 30-day public comment period concluded on September 2, 2003. No comments were received. No public meetings or hearings were held on the proposed rulemaking.

The Technical Assistance Center Advisory Board (TAC) and the Water Resources Advisory Committee (WRAC) were each briefed on the final-form rulemaking. The TAC reviewed the final-form rulemaking in December 2003 by way of a special mailing to individual TAC members. The TAC had no comments and approved the final-form rulemaking for recommendation to the Board. The WRAC reviewed and discussed the final rulemaking on January 14, 2004. The WRAC commented that the TTHM and HAA5 monitoring requirements for groundwater systems in § 109.301(12)(i) (relating to general monitoring requirements) were somewhat confusing. Specifically, the

WRAC was concerned that a system using groundwater that is under the direct influence of surface water (GUDI) would incorrectly follow the requirements for groundwater systems in § 109.301(12)(i)(A)(II) and (B)(II), and not the applicable requirements for GUDI systems in § 109.301(12)(i)(A)(I) and (B)(I). In response, § 109.301(12)(i)(A)(II) and (B)(II) was revised to make obvious the exclusion of GUDI systems for the two subclauses. With these changes, the WRAC approved the final-form rulemaking for recommendation to the Board.

*E. Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking*

No comments were received on the proposed rulemaking. The Department, however, made minor clarifying changes to six areas of the proposed rulemaking.

The Department amended § 109.301(12) to account for the subparagraph on DBP precursor monitoring in § 109.301(12)(iv) and to clarify that only community and nontransient noncommunity water systems are potentially subject to DBP precursor monitoring.

The Department amended § 109.301(12)(i)(A)(II) to clarify that only systems that use groundwater exclusively are subject to the provisions of this subclause. This amendment reflects the Federal requirements in 40 CFR 141.132(b)(1)(i) (relating to monitoring requirements).

The Department amended § 109.301(12)(i)(B)(II) to clarify that only systems that use groundwater exclusively are subject to the provisions of this subclause. This amendment reflects the Federal requirements in 40 CFR 141.132(b)(1)(ii).

The Department amended § 109.301(12)(iv) to clarify that only community and nontransient noncommunity water systems are potentially subject to DBP precursor monitoring.

The Department amended § 109.304(c) (relating to analytical requirements) to more accurately reflect both current and future rules regarding operator certification. The deleted language will be added in the future when Chapter 303 (relating to certification of operators) is updated to include the language.

The Department amended § 109.1003(a)(1)(ii) (relating to monitoring requirements) to clarify that groundwater sources that are affected by surface water influence are subject to this subparagraph.

*F. Benefits, Costs and Compliance*

*Benefits*

The final-form rulemaking will affect approximately 2,565 public water systems in this Commonwealth and will be consistent with Federal requirements. Approximately 2,141 of these systems are groundwater systems serving less than 10,000 people that will potentially benefit from less stringent monitoring criteria. Eighty five surface water systems serving less than 500 people also have the potential to benefit from less stringent monitoring criteria. Twenty one systems using chlorine dioxide will benefit from clearer, more understandable chlorite reporting. Eight transient noncommunity water systems will benefit from the elimination of the enhanced coagulation treatment technique requirement. Several purchasing and consecutive water systems may benefit from the elimination of the monitoring requirements for chlorite, bromate and chlorine dioxide. Systems that are affected by either the D/DBPR or the IESWTR will benefit from the numerous clarifications of the final-form rulemaking. If the Department maintains primacy for both the

D/DBPR and the IESWTR, then all systems that are affected by these rules will benefit from the local Department field presence, as well as from the many Department compliance, technical and financial assistance programs that are already in place. Every system in this Commonwealth, regardless of D/DBPR or IESWTR applicability, will benefit from the correction of the typographical errors and incorrect cross-references that exist throughout Chapter 109. Lastly, over 10.5 million residents of this Commonwealth who are served by public water systems will benefit from the mitigation of adverse microbial and DBP health effects.

*Compliance Costs*

The final-form rulemaking will not result in additional compliance costs beyond what is already being borne by the regulated community for the D/DBPR and the IESWTR.

*Compliance Assistance Plan*

The Safe Drinking Water Program utilizes the Pennsylvania Infrastructure Investment Authority to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

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 either program staff or the regulated community, or both.

In addition to this network of training staff, the Bureau of Water Supply Management has a division dedicated to providing both training and outreach support services to public water system operators. The Department's website ([www.dep.state.pa.us/dep/deputate/waterops/](http://www.dep.state.pa.us/dep/deputate/waterops/)) also contains the Drinking Water & Wastewater Operator Information Center, which provides a bulletin board of timely, useful information for treatment plant operators.

*Paperwork Requirements*

The final-form rulemaking will create no additional paperwork (for example, reporting forms, recordkeeping, application forms, letters, public notices, and the like) for public water systems in this Commonwealth.

The chlorite reporting requirements, which will increase chlorite reporting from quarterly to monthly, will nevertheless cause no additional paperwork since the actual number of required reporting forms will not change over a given period of time. The monthly reporting will simply increase the frequency of submitting these forms. That is, affected water systems will be submitting three forms per month rather than nine forms per quarter.

The Department has been actively endorsing electronic data reporting instead of conventional paper form reporting to water systems throughout this Commonwealth. If employed, electronic data reporting would greatly reduce a water system's current paperwork requirements.

*G. Sunset Review*

The final-form 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 July 22, 2003, the Department submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 3730, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 9, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 10, 2004, and approved the final-form rulemaking.

I. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 33 Pa.B. 3730.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble.

J. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 109, are amended by amending §§ 109.202, 109.301, 109.303, 109.304, 109.503, 109.506, 109.701, 109.710, 109.810, 109.1003 and 109.1103 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the House and Senate Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3336 (June 26, 2004).)

**Fiscal Note:** Fiscal Note 7-383 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE II. WATER RESOURCES**

**CHAPTER 109. SAFE DRINKING WATER**

**Subchapter B. MCLs, MRDLs OR TREATMENT TECHNIQUE REQUIREMENTS**

**§ 109.202. State MCLs, MRDLs and treatment technique requirements.**

\* \* \* \* \*

(g) *Treatment technique requirements for disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use either surface water or GUDI sources and that use conventional filtration treatment shall provide adequate treatment to reliably control disinfection byproduct precursors in the source water. Enhanced coagulation and enhanced softening are deemed by the Department to be treatment techniques for the control of disinfection byproduct precursors in drinking water treatment and distribution systems. This subchapter incorporates by reference the treatment technique in 40 CFR 141.135 (relating to treatment technique for control of disinfection byproduct (DBP) precursors). Coagulants approved by the Department are deemed to be acceptable for the purpose of this treatment technique. This treatment technique is effective on the date established by the Federal regulations.

\* \* \* \* \*

**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:

\* \* \* \* \*

(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 § 109.701(a)(3), 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).

(i) *Frequency.* Public water systems shall collect samples at regular time intervals throughout the monitoring period as specified in the system distribution sample siting plan under § 109.303(a)(2) (relating to sampling requirements). Systems which use groundwater and serve 4,900 persons or fewer, may collect all required samples on a single day if they are from different sampling sites in the distribution system.

\* \* \* \* \*

(C) A public water system that uses either a surface water or a GUDI source and does not practice filtration in compliance with Subchapter B (relating to MCLs, MRDLs or treatment technique requirements) shall collect at least one total coliform sample at the entry point, or an equivalent location as determined by the Department, to the distribution system within 24 hours of each day that the turbidity level in the source water, measured as specified in paragraph (2)(i)(B), exceeds 1.0 NTU. The Department may extend this 24-hour collection limit to a maximum of 72 hours if the system adequately demonstrates a logistical problem outside the system's control in having the sample analyzed within 30 hours of collection. A logistical problem outside the system's control may include a source water turbidity result exceeding 1.0 NTU over a holiday or weekend in which the services of a Department certified laboratory are not available within the prescribed sample holding time. These sample results shall be included in determining compliance with the MCL for total coliforms established under § 109.202(a)(2).

\* \* \* \* \*

(8) *Monitoring requirements for public water systems that obtain finished water from another public water system.*

\* \* \* \* \*

(v) A public water supplier that obtains finished water from another permitted public water system using either surface water or GUDI sources shall, beginning May 16, 1992, measure the residual disinfectant concentration at representative points in the distribution system at least as frequently as the frequency required for total coliform sampling for compliance with the MCL for microbiological contaminants.

(vi) Community water systems and nontransient noncommunity water systems that obtain finished water from another permitted public water system shall comply with the monitoring requirements for disinfection byproducts and disinfectant residuals in paragraphs (12)(i) and (13).

\* \* \* \* \*

(12) *Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant shall monitor for disinfection byproducts and disinfection byproduct precursors in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses a chemical disinfectant or oxidant to treat the finished water shall monitor for TTHMs and HAA5 in accordance with this

paragraph. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall take all samples during normal operating conditions. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall use only data collected under this chapter to qualify for reduced monitoring. Compliance with the MCLs and monitoring requirements for TTHMs, HAA5, chlorite (where applicable) and bromate (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *TTHMs and HAA5.*

(A) *Routine monitoring.*

(I) Systems that use either surface water or GUDI sources shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least four samples per quarter per treatment plant. At least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time. The remaining samples shall be taken at locations that are representative of at least average residence time and that are representative of the entire distribution system, taking into account the number of persons served, the different sources of water, and the different treatment methods.

(-b-) Systems serving from 500 to 9,999 persons shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-c-) Systems serving fewer than 500 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, then the system shall take at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds either the TTHM or HAA5 MCL. The sample shall be taken at a location that represents a maximum residence time. If, after at least 1 year of monitoring, the TTHM running annual average is no greater than 0.060 mg/L and the HAA5 running annual average is no greater than 0.045 mg/L, the required monitoring is reduced back to one sample per year per treatment plant.

(-d-) If a system samples more frequently than the minimum required in items (-a)—(-c-), at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(II) Systems that use only groundwater sources not included under subclause (I) shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least one sample per quarter per treatment plant. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-b-) Systems serving fewer than 10,000 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, then the system shall take at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds either the TTHM or HAA5 MCL. The sample shall be taken at a location that represents a maximum residence time. If, after at least 1 year of monitoring, the TTHM running annual average is no greater than 0.060 mg/L and the HAA5 running annual average is no greater than 0.045 mg/L, the required monitoring is reduced back to one sample per year per treatment plant.

(-c-) If a system samples more frequently than the minimum required, at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(B) *Reduced monitoring.* Systems shall monitor for TTHMs and HAA5 for at least 1 year prior to qualifying for reduced monitoring. Systems serving at least 500 persons and that use either surface water or GUDI sources shall monitor source water TOC monthly for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) For systems serving at least 500 persons that use either surface water or GUDI sources and that have a source water TOC running annual average that is no greater than 4.0 mg/L, a TTHM running annual average that is no greater than 0.040 mg/L and an HAA5 running annual average that is no greater than 0.030 mg/L, the required monitoring is reduced according to items (-a-) and (-b-). Systems serving at least 10,000 persons shall resume routine monitoring as prescribed in clause (A) if the TTHM running annual average exceeds 0.060 mg/L or the HAA5 running annual average exceeds 0.045 mg/L. Systems serving from 500 to 9,999 persons shall resume routine monitoring as prescribed in clause (A) if the annual TTHM average exceeds 0.060 mg/L or the annual HAA5 average exceeds 0.045 mg/L. Systems serving at least 500 persons that must resume routine monitoring shall resume routine monitoring in the quarter immediately following the quarter in which the system exceeded the specified TTHM or HAA5 criteria.

(-a-) For systems serving at least 10,000 persons, the required monitoring is reduced to one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-b-) For systems serving from 500 to 9,999 persons, the required monitoring is reduced to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time.

(II) For systems that use only groundwater sources not included under subclause (I), the required monitoring is reduced according to the following:

(-a-) For systems serving at least 10,000 persons that have a TTHM running annual average that is no greater than 0.040 mg/L and an HAA5 running annual average

that is no greater than 0.030 mg/L, the required monitoring is reduced to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. If the annual TTHM average exceeds 0.060 mg/L or the annual HAA5 average exceeds 0.045 mg/L, the system shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.045 mg/L for HAA5.

(-b-) For systems serving fewer than 10,000 persons that have an annual TTHM average that is no greater than 0.040 mg/L and an annual HAA5 average that is no greater than 0.030 mg/L for 2 consecutive years or an annual TTHM average that is no greater than 0.020 mg/L and an annual HAA5 average that is no greater than 0.015 mg/L for 1 year, the required monitoring is reduced to one sample per 3-year cycle per treatment plant. The sample shall be taken at a location that represents a maximum residence time during the month of warmest water temperature. The 3-year cycle shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring. If the TTHM average exceeds 0.060 mg/L or the HAA5 average exceeds 0.045 mg/L, the system shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

(ii) *Chlorite.* Community water systems and nontransient noncommunity water systems that use chlorine dioxide for disinfection or oxidation shall monitor for chlorite.

\* \* \* \* \*

(B) *Reduced monitoring.* Chlorite monitoring in the distribution system required by clause (A)(II) is reduced to one three-sample set per quarter after 1 year of monitoring where no individual chlorite sample taken in the distribution system under clause (A)(II) has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under clause (A)(III). If any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct additional monitoring under clause (A)(III), the system shall revert to routine monitoring as prescribed by clause (A).

(iii) *Bromate.* Community water systems and nontransient noncommunity water systems that use ozone for disinfection or oxidation shall monitor for bromate.

(A) *Routine monitoring.* Systems shall take one sample per month for each treatment plant that uses ozone. Systems shall take the monthly sample at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) *Reduced monitoring.* For systems that have an average source water bromide concentration that is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year, the required monitoring is reduced from monthly to quarterly. Systems on reduced monitoring shall continue to take monthly samples for source water bromide. If the running annual average source water bromide concentration, computed quarterly, equals or exceeds 0.05 mg/L based upon representative monthly measurements, the system shall revert to routine monitoring as prescribed by clause (A).

(iv) *Disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use either surface water or GUDI sources and that use conventional filtration shall monitor for disinfection byproduct precursors.

(A) *Routine monitoring.* Systems shall take monthly samples of the source water alkalinity, the source water TOC and postsedimentation TOC for each treatment plant that uses conventional filtration. Postsedimentation TOC can be taken at any point between sedimentation effluent and the entry point to the distribution system. The three samples shall be taken concurrently and at a time that is representative of both normal operating conditions and influent water quality.

(B) *Reduced monitoring.* For systems with an average postsedimentation TOC of less than 2.0 mg/L for 2-consecutive years, or less than 1.0 mg/L for 1 year, the required monitoring for source water alkalinity, source water TOC and postsedimentation TOC is reduced from monthly to quarterly for each applicable treatment plant. The system shall revert to routine monitoring as prescribed by clause (A) in the month following the quarter when the annual average postsedimentation TOC is not less than 2.0 mg/L.

(C) *Early monitoring.* Systems may begin monitoring to determine whether the TOC removal requirements of 40 CFR 141.135(b)(1) (relating to enhanced coagulation and enhanced softening performance requirements) can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the requirements of 40 CFR 141.135(b)(1) and shall therefore apply for alternate minimum TOC removal requirements under 40 CFR 141.135(b)(4) is not eligible for retroactive approval of the alternate minimum TOC removal requirements and is in violation. Systems may apply for alternate minimum TOC removal requirements any time after the compliance date.

(13) *Monitoring requirements for disinfectant residuals.* Community water systems and nontransient noncommunity water systems that use either chlorine, chloramines or chlorine dioxide shall monitor for disinfectant residuals in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses either chlorine or chlorine dioxide to treat the finished water shall monitor for chlorine residual in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses chloramines to treat the finished water shall monitor for chloramine residual in accordance with this paragraph. Transient noncommunity water systems that use chlorine dioxide as either a disinfectant or oxidant shall monitor for chlorine dioxide residual in accordance with this paragraph. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfectant residuals shall take all samples during normal operating conditions. Compliance with the MRDLs and monitoring requirements for chlorine, chloramines and chlorine dioxide (where applicable) shall be deter-

mined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *Chlorine and chloramines.* Systems shall measure the residual disinfectant level at the same points in the distribution system and at the same time that total coliforms are sampled, as specified in paragraph (3). Systems that used either surface water or GUDI sources may use the results of residual disinfectant concentration sampling conducted under paragraph (1) or (2) in lieu of taking separate samples.

(ii) *Chlorine dioxide.*

(A) *Routine monitoring.* Systems shall take one sample per day at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall conduct additional monitoring as specified in clause (B) in addition to the sample required at the entrance to the distribution system.

\* \* \* \* \*

**§ 109.303. Sampling requirements.**

\* \* \* \* \*

(c) Public water suppliers shall assure that samples for laboratory analysis are properly collected and preserved, are collected in proper containers, do not exceed maximum holding times between collection and analysis and are handled in accordance with guidelines governing quality control which may be established by the Department. A public water supplier who utilizes a certified laboratory for sample collection as well as analysis satisfies the requirements of this subsection.

(d) Compliance monitoring samples for the VOCs listed under 40 CFR 141.61(a) shall be collected by a person properly trained by a laboratory certified by the Department to conduct VOC or vinyl chloride analysis.

(e) Compliance monitoring samples for the contaminants listed under 40 CFR 141.40(n), 141.61(a) and (c), 141.62 and 141.88 may be composited in accordance with 40 CFR 141.23(a)(4), 141.24(f)(14), (g)(7) and (h)(10) and 141.88(a)(1)(iv) (relating to inorganic chemical sampling and analytical requirements; organic chemicals other than total trihalomethanes, sampling and analytical requirements; and monitoring requirements for lead and copper in source water) except:

(1) Samples from groundwater entry points may not be composited with samples from surface water entry points.

(2) Samples used in compositing shall be collected in duplicate.

(3) If a contaminant listed under 40 CFR 141.61(a) or (c) is detected at an entry point, samples from that entry point may not be composited for subsequent or repeat monitoring requirements.

(4) Samples obtained from an entry point which contains water treated by a community water supplier or a nontransient noncommunity water supplier to specifically meet an MCL for an organic contaminant listed under 40 CFR 141.61(a) or (c) or an MCL for an inorganic contaminant listed under 40 CFR 141.62 may not be composited with other entry point samples.

(f) A compliance sample required under § 109.301(9) shall be taken at a free flowing tap in the house, building or facility where the POE device is located or at a monitoring point approved by the Department on the effluent side of the POE device.

(g) Samples taken to determine compliance with combined radium-226 and radium-228, gross alpha particle activity, or uranium under 40 CFR 141.66(b), (c) and (e) (relating to maximum containment levels for radionuclides) may be composited from a single entry point if the analysis is done within a year of the date of the collection of the first sample. The Department will treat analytical results from the composited sample as the average analytical result to determine compliance with the MCLs and the future monitoring frequency.

(1) If the analytical result from the composited sample is greater than one-half the MCL, the Department may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(2) Samples obtained from an entry point that contains water treated to specifically meet an MCL for a radionuclide contaminant listed under 40 CFR 141.66(b), (c) or (e) may not be composited.

(h) Samples taken to determine compliance with beta particle and photon radioactivity under 40 CFR 141.66(d) may be composited as follows:

(1) Monitoring for gross beta-particle activity may be based on the analysis of a composite of 3 monthly samples.

(2) Monitoring for strontium-90 and tritium may be based on the analysis of a composite of 4 consecutive quarterly samples.

**§ 109.304. Analytical requirements.**

\* \* \* \* \*

(c) For the purpose of determining compliance with the monitoring and analytical requirements established under this subchapter and Subchapter K (relating to lead and copper), the Department will consider only samples analyzed by a laboratory certified by the Department, except that measurements for turbidity, fluoridation operation, residual disinfectant concentration, temperature, pH, alkalinity, orthophosphates, silica, calcium, conductivity, daily chlorite, and magnesium hardness may be performed by a person meeting the requirements of § 109.704 (relating to operator certification).

**Subchapter E. PERMIT REQUIREMENTS**

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

(a) *Permit application requirements.* An application for a public water system construction permit shall be submitted in writing on forms provided by the Department and shall be accompanied by plans, specifications, engineer's report, water quality analyses and other data, information or documentation reasonably necessary to enable the Department to determine compliance with the act and this chapter. The Department will make available to the applicant the Public Water Supply Manual, available from the Bureau of Water Supply and Community Health, Post Office Box 8467, Harrisburg, Pennsylvania 17105 which contains acceptable design standards and technical guidance. Water quality analyses shall be conducted by a laboratory certified under this chapter.

(1) *General requirements.* An application shall include:

\* \* \* \* \*

(iii) *Information describing new sources.* The Department may accept approval of an out-of-State source by the agency having jurisdiction over drinking water in that state if the supplier submits adequate proof of the

approval and the agency's standards are at least as stringent as this chapter. Information describing sources shall include:

\* \* \* \* \*

(B) An evaluation of the quality of the raw water from each new source. This clause does not apply when the new source is finished water obtained from an existing permitted community water system unless the Department provides written notice that an evaluation is required. The evaluation shall include analysis of the following:

(I) For groundwater sources, VOCs for which MCLs have been established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.61(a) (relating to maximum contaminant levels for organic contaminants). Vinyl chloride monitoring is required only if one or more of the two-carbon organic compounds specified under § 109.301(5) (i) (relating to general monitoring requirements) are detected. Samples for VOCs shall be collected in accordance with § 109.303(d) (relating to sampling requirements).

\* \* \* \* \*

**§ 109.506. Emergency permits.**

\* \* \* \* \*

(c) Water suppliers having to comply with § 109.603(d) (relating to source quality and quantity) because of chronic water quantity problems shall apply for an amendment to their construction permit in accordance with § 109.503(b) (relating to public water system construction permits) to incorporate additional sources.

**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:

(1) *General reporting requirements.* Unless a different reporting period is specified in this chapter, the water supplier shall assure that the results of test measurements or analyses required by this chapter are reported to the Department within either the first 10 days following the month in which the result is received or the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is shorter. The test results shall include the following at a minimum:

\* \* \* \* \*

(2) *Monthly reporting requirements for performance monitoring.*

(i) The test results of performance monitoring required under § 109.301(1) (relating to general monitoring requirements) for public water suppliers providing filtration and disinfection of surface water or GUDI sources shall include the following at a minimum:

(A) For turbidity performance monitoring:

\* \* \* \* \*

(V) Instead of subclauses (III) and (IV), beginning January 1, 2002, for public water systems that serve 10,000 or more people and use conventional or direct filtration:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU.



(-b-) The date, time and values of any filtered water turbidity measurements exceeding 1 NTU.

(VI) Instead of clause (A)(III) and (IV), beginning January 1, 2005, for public water systems that serve fewer than 10,000 persons and use conventional or direct filtration:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU.

(-b-) The date, time and values of any filtered water turbidity measurements exceeding 1 NTU.

(VII) Instead of subclauses (III) and (IV), beginning January 1, 2002, for public water systems that serve 10,000 or more people and use other filtration technologies:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU or a more stringent turbidity performance level requirement that is based upon onsite studies and is specified by the Department.

(-b-) The date, time and values of any filtered water turbidity measurements exceeding 1 NTU or a more stringent turbidity performance level requirement that is based upon onsite studies and is specified by the Department.

(B) For performance monitoring of the residual disinfectant concentration of the water being supplied to the distribution system:

(I) The date, time and lowest value each day.

(II) The date, duration and number of periods each day when the concentration is less than .2 mg/L for more than 4 hours.

(C) For performance monitoring of the residual disinfectant concentration at representative points in the distribution system report the following:

\* \* \* \* \*

(iii) The test results from performance monitoring required under § 109.301(8)(v) of the residual disinfectant concentration of the water in the distribution system shall include the date, time and value of each sample.

\* \* \* \* \*

(9) Reporting requirements for disinfection byproducts.

\* \* \* \* \*

(ii) Systems monitoring for chlorite under § 109.301(12) shall report the following:

(A) The number of samples taken during the last month.

(B) The date, location and result of each entry point and distribution sample taken during the last month.

(C) The arithmetic average of each three-sample set of distribution samples taken during the last month.

(D) Whether the monthly arithmetic average exceeds the MCL.

\* \* \* \* \*

§ 109.710. Disinfectant residual in the distribution system.

\* \* \* \* \*

(b) A public water system that uses surface water or GUDI sources or obtains finished water from another

permitted public water system using surface water or GUDI sources shall comply with the following requirements:

(1) As a minimum, a detectable residual disinfectant concentration of 0.02 mg/L measured as total chlorine, combined chlorine or chlorine dioxide shall be maintained throughout the distribution system as demonstrated by monitoring conducted under § 109.301(1) and (2) or (8) (v) (relating to general monitoring requirements).

\* \* \* \* \*

Subchapter H. LABORATORY CERTIFICATION

§ 109.810. Reporting and notification requirements.

(a) A laboratory certified under this subchapter shall submit to the Department, on forms provided by the Department, the results of test measurements or analyses performed by the laboratory under this chapter. Unless a different reporting period is specified in this chapter, these results shall be reported within either the first 10 days following the month in which the result is determined or the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is shorter.

\* \* \* \* \*

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

§ 109.1003. Monitoring requirements.

(a) General monitoring requirements. Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall monitor for compliance with the MCLs and MRDLs in accordance with § 109.301 (relating to general monitoring requirements) and shall comply with § 109.302 (relating to special monitoring requirements). The monitoring requirements shall be applied as follows, except that systems which have installed treatment to comply with a primary MCL shall conduct quarterly operational monitoring for the contaminant which the facility is designed to remove:

(1) Bottled water systems, retail water facilities and bulk water hauling systems, for each entry point shall:

(i) Monitor for microbiological contaminants weekly.

(ii) Monitor for turbidity every 4 hours or continuously each day a surface water or GUDI source is in use.

\* \* \* \* \*

(viii) Beginning January 1, 2004, monitor annually for TTHMs and HAA5 if the system uses a chemical disinfectant or oxidant, or obtains finished water from another public water system that uses a chemical disinfectant or oxidant to treat the finished water. Bottled water systems are not required to monitor for TTHMs and HAA5 if the system does not use a chlorine-based disinfectant or oxidant and does not obtain finished water from another public water system that uses a chlorine-based disinfectant or oxidant to treat the finished water.

(A) Routine monitoring. Systems shall take at least one sample per year per entry point during the month of warmest water temperature. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, the system shall take at least one sample per quarter per entry point. The system shall return to the sampling frequency of one sample per year per entry point if, after at least 1 year of monitoring, the TTHM running annual average is no greater than 0.060 mg/L and the HAA5 running annual average is no greater than 0.045 mg/L.

(B) *Reduced monitoring.* Systems that use groundwater sources shall monitor for TTHMs and HAA5 for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) Systems that use groundwater sources shall reduce monitoring to 1 sample per 3-year cycle per entry point if the annual TTHM average is no greater 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L for 2 consecutive years or the annual TTHM average is no greater than 0.020 mg/L and the annual HAA5 average is no greater than 0.015 mg/L for 1 year. The sample shall be taken during the month of warmest water temperature. The 3-year cycle shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring.

(II) Systems that use groundwater sources that qualify for reduced monitoring shall remain on reduced monitoring if the TTHM average is no greater than 0.060 mg/L and the HAA5 average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least 1 sample per quarter per entry point beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

(ix) Beginning January 1, 2004, monitor daily for chlorite if the system uses chlorine dioxide for disinfection or oxidation. Systems shall take at least one daily sample at the entry point. If a daily sample exceeds the chlorite MCL, the system shall take three additional samples within 24 hours from the same lot, batch, machine, carrier vehicle or point of delivery. The chlorite MCL is based on the average of the required daily sample plus any additional samples.

(x) Beginning January 1, 2004, monitor monthly for bromate if the system uses ozone for disinfection or oxidation.

(A) *Routine monitoring.* Systems shall take one sample per month for each entry point that uses ozone while the ozonation system is operating under normal conditions.

(B) *Reduced monitoring.* Systems shall reduce monitoring for bromate from monthly to quarterly if the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue monthly source water bromide monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or exceeds 0.05 mg/L, the system shall revert to routine monitoring as prescribed by clause (A).

\* \* \* \* \*

**Subchapter K. LEAD AND COPPER**

**§ 109.1103. Monitoring requirements.**

\* \* \* \* \*

(h) *Sample collection methods.*

\* \* \* \* \*

(4) *Source water samples.* Lead and copper source water samples shall be collected in accordance with the requirements regarding sample location, number of samples and collection methods specified in 40 CFR

141.88(a)(1) (relating to monitoring requirements for lead and copper in source water).

\* \* \* \* \*

[Pa.B. Doc. No. 04-1488. Filed for public inspection August 13, 2004, 9:00 a.m.]

**Title 58—RECREATION**

**FISH AND BOAT COMMISSION**

**[58 PA. CODE CH. 105]**

**Boating**

The Fish and Boat Commission (Commission) amends § 105.3 (relating to unacceptable boating practices). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking makes it unlawful to engage in a practice known as “teak surfing” or “drag surfing” and to operate a motorboat at any speed when towing a person on water skis or other devices using a tow rope of 20 feet or less.

**A. Effective Date**

The final-form rulemaking will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available on the Commission’s website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

**C. Statutory Authority**

The amendment to § 105.3 is published under the statutory authority of section 5123 of the code (relating to general boating regulations). A person violating § 105.3(10) or (11) commits a summary offense of the third degree for which a \$50 fine is imposed.

**D. Purpose and Background**

The final-form rulemaking is designed to address the Commission’s concerns regarding carbon monoxide (CO) poisoning. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

Following the publication of a notice of proposed rulemaking, the Commission’s Boating Advisory Board (BAB) recommended that the Commission table this item until additional information could be obtained from the National Association of State Boating Law Administrators (NASBLA) to incorporate into the proposed rulemaking. The Commission, at a subsequent meeting, deferred action on the agenda item so that Commission staff could seek input from the NASBLA and other states. At its September 2003 meeting, the NASBLA adopted a model act for “Safe Towing Practices.” The model act provides that no person shall operate a motorboat with a person sitting, riding or hanging onto a swim platform or swim ladder attached to the motorboat. It further provides that no person shall operate a motorboat, using a tow rope of 20 feet or less, when towing a person on water skis or other devices. Thereafter, the BAB recommended to the Commission that the proposed rulemaking be revised to clarify that occupying the swim platform during certain maneuvering activities is permitted and to make it

unlawful to operate a motorboat that is towing a water-skier on a rope that is 20 feet or less in length.

*E. Summary of Changes*

CO is a colorless, odorless, tasteless and highly toxic gas. It is produced when a carbon-based fuel, such as gasoline, propane, charcoal or oil, burns. CO is often emitted through a boat's engine or generator exhaust outlets. As a result, CO can accumulate almost anywhere in or around a boat. It can collect under swim platforms, around the stern and inside canvas enclosures. The results can be dangerous, even fatal.

A fad called "teak surfing" or "drag surfing" is one of the riskiest activities for CO poisoning. Teak surfing involves an individual holding onto the swim platform of a boat as it accelerates and then letting go to "surf" the wake. Teak surfers cannot avoid the risk of inhaling dangerous levels of CO because the propulsion engines produce a very high volume of exhaust gases, usually directed straight into the area behind the boat where the teak surfers are located. There is also an inherent danger of the individual losing his grasp of the swim platform and being hit by a moving propeller. Accordingly, the Commission proposed to amend § 105.3 to make this practice unlawful.

On final-form rulemaking, the Commission adopted the proposed amendment with the clarification recommended by the BAB that occupying the swim platform during certain maneuvering activities is permitted. The Commission further made it unlawful to operate a motorboat that is towing a water skier on water skis or other devices using a tow rope of 20 feet or less in length. The Commission adopted the amendments to read as set forth in Annex A.

*F. Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

*H. Public Involvement*

A notice of proposed rulemaking was published at 33 Pa.B. 4077 (August 16, 2003). The Commission did not receive any comments concerning the proposed rulemaking during the formal public comment period. After the public comment period, the Commission received one public comment opposing the creation of a minimum length for the tow rope. Copies of all public comments were provided to the Commissioners.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the final-form rulemaking adopted by this order has been given under 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 105, are amended by amending § 105.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

DOUGLAS J. AUSTEN, Ph.D.  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-147 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 105. OPERATIONAL CONDITIONS**

**§ 105.3. Unacceptable boating practices.**

It is unlawful to:

(1) Operate a motorboat not equipped with railings or other safeguards at greater than a slow, minimum height swell speed while a person is riding on bow decking, gunwales, transom or motor cover. It is not a violation of this paragraph to ride on the motor cover of an inboard motorboat while underway at that speed if the motor cover is designed by the manufacturer for the operator or a passenger to ride on it.

(2) Operate a motorboat—less than 20 feet in length—at greater than slow, minimum height swell speed while a person is standing on or in the boat. It is not a violation of this paragraph if the boat is designed for the operator or a passenger, or both, to stand while underway at that speed.

(3) Operate or stop a boat in a marked marine event area in violation of the conditions of the event.

(4) Operate or stop a boat in a manner that interferes with the conduct of a permitted marine event.

(5) Cause a boat to become airborne or completely leave the water while crossing the wake of another boat when within 100 feet of the boat creating the wake.

(6) Weave through congested traffic.

(7) Follow too close to another boat, including personal watercraft. For the purposes of this paragraph, following too close shall be construed as operating in excess of slow, minimum height swell speed within 100 feet to the rear or 50 feet to the side of another boat that is underway, unless the boats are operating in a narrow channel, in which case the boats may operate at the speed and flow of other boat traffic.

(8) Operate within 100 feet of a water-skier being towed by another boat.

(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings or enclosed

spaces intended for persons to use while the pontoon boat is underway. This prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat or when the pontoon boat is underway at slow minimum height swell speed or less.

(10) Operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat, except when

launching, retrieving, docking or anchoring the motorboat.

(11) Operate a motorboat at any speed when towing a person on waterskis or other devices using a tow rope of 20 feet or less.

[Pa.B. Doc. No. 04-1489. Filed for public inspection August 13, 2004, 9:00 a.m.]

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