

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 18]

Public Swimming and Bathing Places

The Department of Health (Department) amends Chapter 18 (relating to public swimming and bathing places) which includes requirements relating to certification of lifeguards and criteria to be followed by recreational swimming establishments regarding lifeguards.

I. *Purpose of the Final-Form Rulemaking*

The act of June 18, 1998 (P. L. 531, No. 75) (Act 75), amending the Public Bathing Law (act) (35 P. S. §§ 672—680d), directed the Department to select and identify authorities to certify lifeguards and to promulgate regulations to determine the number of lifeguards required at a recreational swimming establishment when the recreational swimming establishment is open to the public. The Department prepared this final-form rulemaking in consultation with established certifying authorities and the operators of recreational swimming establishments.

This final-form rulemaking requires that all lifeguards in this Commonwealth obtain certification from a certifying authority recognized by the Department and establish the minimum criteria that a lifeguard certifying authority must include in its training program for its program to be recognized by the Department. Further, this final-form rulemaking names the American Red Cross, the YMCA and Jeff Ellis and Associates, Inc. (Ellis and Associates) as recognized lifeguard certifying authorities. Finally, this final-form rulemaking establishes criteria which recreational swimming establishments must follow to have an adequate number of lifeguards present to ensure the safety of patrons.

The Department published proposed rulemaking at 32 Pa.B. 4581 (September 21, 2002), and provided a 30-day public comment period. The Department received 9 public comments to the proposed rulemaking and 12 additional comments from the Independent Regulatory Review Commission (IRRC). The Department's responses to these comments appear in the summary of this final-form rulemaking.

II. *Summary*

One commentator raised a concern that the requirement in § 18.42(c) (relating to certified lifeguards), which requires a minimum of two lifeguards be "present and available to aid bathers whenever the recreational swimming establishment is being used by bathers," is too restrictive for small, low volume pools. The commentator suggested that, when two lifeguards are not available, "a competent and qualified employee at least 18 years of age and specifically trained to assist lifeguards in an emergency, must be present and assist the lifeguard on-duty should an aquatic emergency arise."

The provision cited by the commentator applies to only very small recreational swimming establishments (5,000 square feet or less) in which only one certified lifeguard would be required at waterside during general swim activities. The Department believes that it is essential to ensure the safety of the bathers that there is a certified

lifeguard available to act as a backup in the event that an emergency or other event occurs that removes the sole certified lifeguard from protecting the bathers. Furthermore, Act 75 only grants the Department the authority to require certified lifeguards at recreational swimming establishment. Regulations requiring an assistant lifeguard or other type of personnel at the recreational swimming establishment would be beyond the scope of the statutory authority granted to the Department.

Another commentator suggested that basing the lifeguard regulations on the size of the facility is not consistent with industry standard, as required by Act 75. According to the commentator, regulations requiring a lifeguard coverage plan, taking into account surveillance and response time, would be consistent with industry standards. IRRC also asked the Department to explain why it had not proposed amendments based on the "10/20 rule" for surveillance by lifeguards and how the lifeguard coverage requirement of one lifeguard per 4,000 square feet of water surface area was consistent with the intent of Act 75.

The Department issued a proposed rulemaking published at 29 Pa.B. 820 (February 13, 1999) requiring that all recreational swimming establishments draft a lifeguard coverage plan based on the "10/20 rule." The "10/20 rule" means that each lifeguard can scan his assigned area in less than 10 seconds, and can respond to any emergency within the lifeguards assigned areas within 20 seconds. At that time, both the Senate Public Health and Welfare Committee and IRRC questioned the use of a lifeguard coverage plan. The Public Health and Welfare Committee stated, "Operators of recreational swimming establishments are entitled to know with reasonable certainty the requirements they need to satisfy to comply with Department regulation, and they are entitled to know those requirements in advance of opening to the public." No other state has adopted the "10/20 rule" for determining lifeguard coverage in its regulations because the term is too subjective for regulatory language. All states that require lifeguards at swimming pools use more objective criteria such as the size of the facility, the number of bathers or a combination of both.

The Department considered numerous proposals for lifeguard coverage standards and consulted with various stakeholders and industry experts, including Dr. Tom Griffiths of Penn State University, the American Red Cross, Ellis and Associates, the Pennsylvania Recreation and Park Society, Pia Consulting and various individual operators of swimming pools and water parks. Additionally, the Department reviewed regulations of other states, and studies conducted by the New York State Department of Health and Pia Consulting. After consulting with these individuals and entities and reviewing studies and regulations of other states, the Department concluded that the requirement of one lifeguard for every 4,000 square feet meets the goal of the "10/20 rule," while also providing the operators of recreational swimming establishments an objective standard by which they can determine if they are in accordance with Act 75.

IRRC further asked if the Department had considered allowing the swimming establishments to use either the "10/20 rule" or square footage of water surface area to determine the required number of lifeguards under a Department-approved plan.

The Department's first proposed rulemaking concerning lifeguards would have required recreational swimming establishments to draft and submit to the Department lifeguard coverage plans. That proposed rulemaking was also questioned because commentators were concerned that a lifeguard coverage plan would not provide a sufficient degree of certainty that recreational swimming establishments are safe. IRRC noted that, "The regulations should specify the required number of lifeguards for a particular facility based on the size of facility, participants on site, support staff, and scheduled activities." The proposed rulemaking at 32 Pa.B. 4581 was drafted in response to these concerns.

Further, it is estimated that there are 2,000 swimming pools in this Commonwealth that meet the definition of "recreational swimming establishment," with more being added each year. The Department does not have the personnel or the resources to review that large a volume of coverage plans to ensure that each one provides adequate protection for the bathers.

IRRC asked if the Department had considered including provisions in the proposed rulemaking which would allow a swimming establishment to petition the Department for a waiver of the standard lifeguard requirements if the facility can demonstrate that an alternative lifeguard coverage plan achieves the adequate level of safety. The Department has not altered the proposed rulemaking in response to this comment. The Department does not have the resources or the personnel to review a large volume of lifeguard coverage plans or waiver requests to ensure that the plans provide an adequate level of safety for the bathers.

Another concern raised by a commentator was that once an entity, such as Ellis and Associates, was designated a lifeguard certifying authority, the Department would not need to consider approval of the authority.

Section 18.42(a) of the final-form rulemaking states, "The Department recognizes the American Red Cross, the YMCA, and Jeff Ellis and Associates, Inc. as lifeguard certifying authorities." These three authorities are therefore recognized as lifeguard certifying authorities in the *Pennsylvania Code* and further approval by the Department would be unnecessary. These three certifying authorities were selected because they account for over 90% of lifeguard certifications in the United States and set the standard by which other certifying authorities are judged. Their inclusion in regulatory language is consistent with standards adopted by other states. The final-form rulemaking allows the Department to determine whether any other lifeguard certifying authority meets the standards set forth in § 18.42(f), as provided for in Act 75.

Another concern raised by that commentator was that the phrase "sufficient to accomplish the task" in § 18.42(c)(1)(ii) was potentially ambiguous. The phrase "sufficient to accomplish the task" was included in the language after stakeholder comments requested clarification on the meaning of "adequate." The phrase "sufficient to accomplish the task" is based on, and consistent with, lifeguard regulations adopted by other states, including New York, when defining the word "adequate." The Department has not revised the regulation in response to the comment.

One commentator stated that the proposed regulations would require unnecessary additional lifeguard hours. The Department disagrees with this assessment and has not changed the regulations. The regulations were drafted to provide adequate lifeguard coverage to ensure the

safety of the bathers at recreational swimming establishments, based on input from stakeholder groups including operators and certifying authorities. As with any new regulatory standard, there are some facilities that do not currently meet the standard, while others already exceed it. In comparison to the regulations adopted by other states, the regulations proposed by the Department are not excessive. In fact, most neighboring states, including New York, New Jersey, Delaware, Maryland and Ohio, have adopted standards for the number of lifeguards that exceed the standards in the Department's regulations. The Department believes that most recreational swimming establishments in this Commonwealth will be able to meet these standards with little or no budgetary difficulty.

A municipality commented that, due to liability and insurance issues, municipalities whose swimming pools would be subject to this final-form rulemaking are, in general, more safety-minded than other swimming pool operators that would be exempted from the regulations. Further, the municipality argued that the transient nature of some of the exempted swimming pools increases the likelihood of injury at these facilities, justifying making these facilities subject to this final-form rulemaking.

The Department has not changed the final-form rulemaking. The Department proposed exemptions from its regulations in accordance with the requirements of Act 75. The definition of a "recreational swimming establishment" in Act 75 details which facilities are exempted from these regulations. A regulation that requires certified lifeguards at the exempted facilities would be beyond the statutory authority granted to the Department by the General Assembly.

Another commentator recommended that the number of lifeguards be determined by the number of bathers in the water, not the size of the facility. The Department did consider regulations based on bather load rather than the size of the facility. After conducting several stakeholder meetings, it was determined that the majority of stakeholder participants opposed basing the number of lifeguards on bather load. These stakeholders considered a standard based on bather load to be unfeasible, especially for the operators of large recreational swimming establishments and the water park industry. Those facilities would be required to have personnel constantly monitoring people getting in and out of the water and adjusting lifeguard coverage accordingly. Therefore, the Department has not changed the final-form rulemaking.

Related to this commentator's concern, IRRC questioned the reliance on square footage for the number of certified lifeguards when there are only a small number of bathers in the facility.

This final-form rulemaking will allow operators to close off unused portions of their recreational swimming establishments with a rope and float line, thereby reducing the square footage of water available to bathers. Furthermore, after consulting with numerous stakeholders, the Department concluded that basing the number of guards on the number of bathers in the pool would be a heavy burden on many stakeholders, especially the operators of larger pools and the water parks. Recreational swimming establishments would be constantly counting the number of people in facility and adjusting their lifeguard coverage accordingly.

Another commentator suggested that the Department clarify the provision that only one certified lifeguard is

required during restricted access swimming periods, such as early morning lap swimming. The commentator suggested that the Department change the proposed rulemaking to state that a minimum of two lifeguards is required "when the establishment is open to the general public for recreational swimming." IRRC also recommended that the Department clarify this provision. The Department has accepted this recommendation and incorporated it into the final-form rulemaking.

A commentator suggested that the regulations allow for the use of "shallow water guards" at wading pools and other recreational swimming establishments. The American Red Cross certifies shallow water guards in first aid and CPR, but they do not receive deep-water rescue training, which is not needed in wading pools. However, Act 75 only grants the Department the authority to require certified lifeguards at recreational swimming establishments. No mention of shallow water guards is made in the statute. Regulations covering the use of shallow water guards would be beyond the statutory authority granted to the Department by the General Assembly. The Department did not revise the regulations in response to this comment.

IRRC also made several additional comments. IRRC first raised a concern about the definition of the term "bather." IRRC suggested that the final-form rulemaking clarify whether "bather" includes a person in the pool area who does not intend to swim, such as a parent who accompanies a child to the pool.

The complete definition of "bather" in the proposed rulemaking is, "Any person using a recreational swimming establishment in the water or adjoining deck area for the purpose of swimming, water sports, or other recreational activity." This definition was taken from the National Spa and Pool Institute. The scope of the definition is limited to only those people "in the water or adjoining deck area." The deck area of a swimming pool is defined by the Public Bathing Place Manual, Part I, Section 5.9 as an area around the pool perimeter 4 feet in width, extending to between 6 and 8 feet behind a diving board. The only people who would be on the deck area would either be getting into or out of the water or waiting in line at water features such as slides or diving boards. These individuals may require assistance from a certified lifeguard in the event of accident or injury or may provide a distraction to the lifeguard. A parent who accompanies a child to the pool, but does not intend to swim and is outside of the deck area, is not considered a bather.

Second, IRRC requested that the Department renumber the paragraphs in § 18.42. IRRC stated,

Section 18.42(a)(1) paragraph lists the three organizations that the Department recognizes as lifeguard certification authorities. Paragraph (a)(1) outlines the requirements that other organizations that want to become lifeguard certifying authorities, must follow to obtain qualification. For clarity, Paragraph (a)(1) should be renumbered to become Paragraph (b), with Subparagraph (2) through Subparagraph (4) being renumbered and placed under the new Paragraph (b). Current Paragraphs (b), (c) and (d) should also be renumbered accordingly.

The Department has accepted this recommendation and has incorporated it into the final-form rulemaking.

IRRC next requested clarification on the meaning of "present and available" in proposed § 18.42(c)(1). IRRC asked if that phrase required that two lifeguards be present at waterside at all times or if the location of

lifeguards depends on the square footage of the recreational swimming establishment. For recreational swimming establishments where more than one lifeguard is required at waterside, for example, when there is more than 5,000 square feet in water surface area, then two or more lifeguards must be at waterside at all times. For smaller recreational swimming establishments, only one lifeguard must be at waterside, while the other must only be somewhere in the facility where that lifeguard can be called upon to stand in for the primary lifeguard in the event of an emergency.

IRRC also raised a question about the provision in proposed § 18.42(c)(1)(iii), which states that the Department may require additional certified lifeguards under certain circumstances, such as when the shape or size of the pool prevents the lifeguard from monitoring the assigned area. IRRC asked if the Department would make this determination as part of the initial permitting process.

For new recreational swimming establishments, this determination will be made during the initial permit application process during the operational inspection and prior to the issuance of an operating permit. During the operational inspection, the inspector will review issues such as surveillance, visibility of bathers and response time with the operator to determine if additional lifeguards may be required to ensure safety of the bathers. However, since existing facilities have been constructed that may be required to have additional lifeguards at waterside, it is likely that the Department may have to notify some existing recreational swimming establishments that more lifeguards are required. If this is necessary, the operator will receive a written notice informing it of the need for additional lifeguard coverage during the annual inspection of the facility.

Further, IRRC commented regarding the provision in proposed § 18.42(c)(3), which requires one certified lifeguard at special events such as swim meets, swim team practices, learn-to-swim programs, lifeguard training and other special events where access to the recreational swimming establishment was limited. IRRC requested that the Department clarify whether the certified lifeguard is required to be an employee of the recreational swimming establishment or if the group holding the special event can provide the certified lifeguard.

The Department does not believe that the question of who employs the lifeguard is relevant to the issue of bather safety, which is the concern the rulemaking is intended to address. So long as the lifeguard is qualified and certified according to the requirements of § 18.42, the issue of who provides the lifeguard should be negotiated between the owner of the recreational swimming establishment and organizers of the event on a case-by-case basis.

III. *Affected Persons*

This final-form rulemaking will affect all swimming and bathing facilities in this Commonwealth that meet the definition of recreational swimming establishment. These establishments include swimming pools, water rides, wave pools and swimming beaches that are not otherwise excluded by the statutory definition of a recreational swimming establishment. This final-form rulemaking will enhance the safety of the public when it uses recreational swimming establishments.

IV. *Cost and Paperwork Estimates*

This final-form rulemaking will have little fiscal impact on the Commonwealth, local government, the private

sector and the general public. Based on current hiring practices, the Department of Conservation and Natural Resources has estimated it may incur \$200,000 in expenses for additional lifeguard salaries.

Most recreational swimming establishments, as defined by Act 75, currently employ lifeguards to protect the safety of their patrons. Many recreational swimming establishments have lifeguard coverage ratios that exceed the regulatory standard; other recreational swimming establishments use a lifeguard coverage ratio that is below the regulatory standard. The exact cost incurred as a result of this final-form rulemaking will depend on the current practices of the individual recreational swimming establishment and the number of additional lifeguards, if any, that will be required to meet the standard. The costs incurred will primarily be in the form of lifeguard salaries. This final-form rulemaking will not significantly increase paperwork.

V. *Effective Date/Sunset Date*

This final-form rulemaking will be effective on January 1, 2005. No sunset date has been established. The Department will monitor the effectiveness of the regulations on a continual basis, primarily through the annual sanitary inspections conducted by the Department.

VI. *Statutory Authority*

The Department's authority to promulgate regulations related to public swimming and bathing places is established under the act, the Local Health Administration Law (16 P. S. §§ 12001—12028) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

VII. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 21, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 4581, to IRRC and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee for review and comment.

The Department received nine public comments during the public comment period. In preparing the final-form rulemaking, the Department has considered all comments received from the public and IRRC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5(j.2)), on November 17, 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 November 18, 2004, and approved the final-form rulemaking. The Office of Attorney General approved the final-form rulemaking.

VIII. *Contact Person*

Questions regarding this final-form rulemaking may be submitted to Dennis C. Wilson, Environmental Health Administrator, Department of Health, Bureau of Community Health Systems, Room 628 Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108-0090, (717) 787-4366. Persons with disabilities may submit questions in alternative formats such as audio tape, Braille or by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons who require an alternative format of this document may contact Dennis Wilson at the address or telephone numbers listed previously so that necessary arrangements may be made.

IX. *Findings*

The Department finds that:

(1) Public notice of the intention to adopt the regulation 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 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 adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

X. *Order*

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

(a) The regulations of the Department, 28 Pa. Code Chapter 18, are amended by amending §§ 18.1 and 18.42 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Secretary shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House and the Senate Committees for their review and action as required by law.

(d) The Secretary 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 on January 1, 2005.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 6476 (December 4, 2004).)

Fiscal Note: 10-155 FINAL. (1) General Fund; (2) Implementing Year 2004-05 is \$67,000; (3) 1st Succeeding Year 2005-06 is \$200,000; 2nd Succeeding Year 2006-07 is \$200,000; 3rd Succeeding Year 2007-08 is \$200,000; 4th Succeeding Year 2008-09 is \$200,000; 5th Succeeding Year 2009-10 is \$200,000; (4) 2003-04 Program—\$51,207,000; 2002-03 Program—\$60,559,000; 2001-02 Program—\$61,133,000; (7) Department of Conservation and Natural Resources State Parks Operations; (8) recommends adoption. No additional costs to the Department of Health. The Department of Conservation and Natural Resources will incur increased costs, as outlined previously, for additional lifeguards to meet requirements. The 2004 General Appropriation Act includes these additional costs.

Annex A

TITLE 28. HEALTH AND SAFETY

PART II. LOCAL HEALTH

CHAPTER 18. PUBLIC SWIMMING AND BATHING PLACES

GENERAL PROVISIONS

§ 18.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Air gap—The unobstructed vertical distance through the free atmosphere between the lowest opening from a

pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the receptacle.

Backflow—The flow of water or other liquids, mixtures or substances into the distributing pipes of a potable supply of water from a source other than the approved source.

Bather—A person using a recreational swimming establishment in the water or adjoining deck area for the purpose of swimming, water sports or other recreational activity.

Bather load—The total number of bathers in a recreational swimming establishment.

Bathing beach—A body of natural water, impounded or flowing, of a size in relation to the bathing load that the quality and quantity, confined or flowing, need be neither mechanically controlled for the purpose of purification nor contained in an impervious structure.

Certified lifeguard—An individual who has a current certificate in lifeguarding, issued by a lifeguard certifying authority, as recognized by the Department of Health in a notice published yearly in the *Pennsylvania Bulletin*.

Cross connection—A physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other steam, gas, a chemical or water of unknown or questionable safety, whereby there may be a flow from one system to the other, the direction depending on the pressure differential between the two systems.

Department—The Department of Health of the Commonwealth.

Garbage—Putrescible wastes, except sewage and body waste, including animal and vegetable offal.

Local health department—Each county department of health under the Local Health Administration Law (16 P. S. §§ 12001—12028), and each department of health in a municipality approved for a Commonwealth grant to provide local health services under section 25 of the Local Health Administration Law (16 P. S. § 12025).

Maximum bather load—The maximum number of bathers that the recreational swimming establishment is designed to accommodate, as defined in the plans and specifications submitted as part of the permit application using the guidelines set forth in the Department's publication, *Public Bathing Place Manual*.

National Electrical Code—The National Electrical Code published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

Person—An individual, partnership, corporation, association, municipality, county, authority, the Commonwealth or other private or public entity.

Public bathing place—An outdoor or indoor place used for amateur, professional or recreative swimming or bathing whether or not a fee is charged for admission or for the use of the place, exclusive of a bathing place at a private, single-family residence which is used solely by the owner of the residence, his family and their personal guests.

Recreational swimming establishment—A facility that is designed, constructed or designated for use by individuals for the primary purpose of swimming, if a fee is charged for admission.

(i) The term includes swimming pools, water rides, wave pools and swimming beaches and other outdoor swimming facilities.

(ii) The term excludes those facilities owned by condominiums, other property owner associations, rental arrangements that include three or more families or social units, hotels or motels, campgrounds, private clubs and private organizations which do not provide access to the general public, swimming facilities used exclusively for hydrotherapy and residential swimming facilities used solely by the owner of a residence, the owner's family and personal guests.

Refuse—Nonputrescible wastes generally regarded and classified as rubbish, trash, junk and similar designations which have been rejected by the owner or possessor thereof as useless or worthless to him.

Rope and float line—A continuous line, at least 1/4 inch in diameter, that is supported by buoys and attached to opposite sides of a swimming pool.

Sewage—A substance which contains the waste products or excrements or other discharges from the bodies of human beings or animals and a noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

Sewerage system—A community or individual system, whether publicly or privately owned, for the collection and disposal of sewage or industrial wastes of a liquid nature, including various devices for the treatment of sewage or industrial wastes.

Source—A well, spring, cistern, infiltration gallery, stream, reservoir, pond or lake from which, by any means, water is taken either intermittently or continuously for use by the public.

Swimming pool—A body of water of a size in relation to the bathing load that the quality and quantity of the water confined must be mechanically controlled for the purpose of purification and contained in an impervious structure.

Turnover period—The number of hours required to completely replenish the water in a pool, or recirculate a quantity of water equal to the capacity of the pool.

Wading pool—A body of water designed for use by children which is not deeper than 3 feet and of a size in relation to the bathing load that the quality and quantity of the water confined must be mechanically controlled for the purpose of purification and contained in an impervious structure.

Waters of this Commonwealth—Rivers, streams, creeks, rivulets, lakes, dammed water, ponds, springs and other bodies of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Water supply—A source or sources of water, as well as, water treatment, storage, transmission and distribution facilities.

GENERAL SAFETY

§ 18.42. Certified lifeguards.

(a) *Recognized lifeguard certifying authorities.* The Department recognizes the American Red Cross, the YMCA and Jeff Ellis and Associates, Inc. as lifeguard certifying authorities.

(1) Other organizations that intend to qualify as certifying authorities shall submit materials, on an an-

nual basis, to the Department to establish that their lifeguard training courses satisfy the criteria in subsection (b).

(2) The materials shall be submitted to the Department on or before June 30 of each year and shall include a completed form entitled "Application for Recognition as a Lifeguard Certifying Authority" in the submission.

(3) This form is available from the Department.

(4) The Department will publish a list of approved certifying authorities annually, on or before December 1 of each year, in the *Pennsylvania Bulletin*.

(b) *Requirements for a lifeguard certifying authority.* The Department will consider approval of a lifeguard certifying authority if the certifying authority's lifeguard training course satisfies the following requirements:

(1) The course is conducted pursuant to a written training plan, instructor's manual and text book.

(2) The course provides for confirmation of course completion for certification in cardiopulmonary resuscitation.

(3) The course provides for certification in first aid.

(4) The course includes a system for evaluating swimming ability.

(5) The course provides for instruction in lifeguarding responsibilities.

(6) The course provides a method for testing and certification.

(7) The course includes a certificate which expires, in no longer than 3 years, if renewal criteria are not satisfied.

(8) The instructors of the course have successfully completed a training course that includes:

(i) Certification in lifeguard instruction.

(ii) Student evaluation.

(iii) Program planning.

(iv) Cardiopulmonary resuscitation.

(v) Conducting practice first aid and rescue sessions.

(c) *Required number of lifeguards.* A recreational swimming establishment shall have on duty an adequate number of certified lifeguards to protect the safety of users. To ensure an adequate number of certified lifeguards, the operator of a recreational swimming establishment shall comply with the following requirements:

(1) At least one certified lifeguard for every 4,000 square feet of water surface area, plus one certified lifeguard for any fraction thereof, equal to or greater than 1,000 square feet, shall be on duty at the waterside at all times the recreational swimming establishment is open to use by bathers for general swim purposes. At no time may there be less than two certified lifeguards present and available to aid bathers when the recreational swimming establishment is open to the general public for recreational swimming.

(i) The water surface area means the total surface area of water accessible to the bathers, including any wading pools.

(ii) The operator may reduce the water surface area by closing portions of the swimming area with a rope and float line, provided that the operator maintains adequate notification and supervision to prevent patrons from entering the closed portions of the swimming area. For the purposes of this section, "adequate" means sufficient

to accomplish the task, but it does not require any additional certified lifeguards above the minimum number established in this section.

(iii) Under circumstances when the ability of a certified lifeguard to survey 4,000 square feet of water surface area is impaired, such as when the size or shape, or both, of the recreational swimming establishment prevents the certified lifeguard from monitoring the assigned area from a designated location, the Department may require additional certified lifeguards to assure the safety of the bathers.

(2) The bather load of the recreational swimming establishment may not exceed the maximum bather load as defined in the permit application.

(3) During periods when swim meets, swim team practices, learn-to-swim programs, lifeguard training, or other special events in which the use of the recreational swimming establishment is restricted to only those persons participating in the special events, at least one certified lifeguard, whose sole duty is to protect the bathers, shall be present at waterside during the event.

(4) When a wading pool is open to the public, the certified lifeguard shall have an unobstructed view of the entire wading pool from a certified lifeguard's assigned station. If the certified lifeguard does not have an unobstructed view, an additional certified lifeguard shall be on duty to guard only the wading pool.

(5) If the recreational swimming establishment has a diving board or water slide, a certified lifeguard shall be on duty to monitor the diving well or catch area when the diving board or water slide is open to the public.

(i) The certified lifeguard shall be stationed within 50 feet of the diving well or slide catch area.

(ii) If the swimming area includes both a diving well and slide catch area, or the recreational swimming establishment has multiple slides or diving boards, the operator may not assign a certified lifeguard to monitor both areas unless that lifeguard is stationed within 50 feet of each and can monitor both areas simultaneously.

(iii) If the diving well or slide catch area is physically separated from the main swimming area, a certified lifeguard shall be assigned to monitor the diving well or slide catch area exclusively, and the operator shall exclude the water surface area of the diving well or slide catch area from the water surface area of the recreational swimming establishment for the purpose of determining the number of additional certified lifeguards required under paragraph (1).

(6) While on duty to watch bathers, a certified lifeguard may not be assigned other tasks which may divert attention from the safety of the bathers, or which are outside the lifeguard's training and certification.

(d) *Violation of certified lifeguard requirement.* The Department may order to be closed to the public any recreational swimming establishment that it finds to be in violation of any of the provisions of subsection (c), until the Department has done the following:

(1) Performed a follow-up inspection.

(2) Found that the facility has met the requirements of subsection (c).

(3) Provided that facility with written authorization to reopen.

[Pa.B. Doc. No. 05-8. Filed for public inspection December 30, 2004, 9:00 a.m.]