

# PROPOSED RULEMAKINGS

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 93, 99, 105 AND 109 ]

### Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 93, 105 and 109 (relating to boat registration and numbering; operational conditions; and specialty boats and waterskiing activities) and delete Chapter 99 (relating to capacity plates). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments modify and update the Commission's boating regulations.

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2013.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendments to §§ 93.2 and 93.3 (relating to permanent and temporary registration; and application for boat registration) and the deletion of Chapter 99 are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics). The proposed amendment to § 93.13 (relating to issuing agents) is published under the statutory authority of section 5304 of the code (relating to issuing agents). The proposed amendment to § 93.102 (relating to application procedure and contents of applications for certificates of title) is published under the statutory authority of section 5325 of the code (relating to rules and regulations). The proposed amendments to §§ 105.3 and 109.4 (relating to unacceptable boating practices; and waterskiing, aquaplaning, kiteskiing and similar activities) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

#### D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's administrative and boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. On February 8, 2011, the Commission's Boating Advisory Board (BAB) considered each of the proposals and recommended that the Commission approve the publication of a proposed rulemaking containing the proposed amendments.

#### E. *Summary of Proposal*

(1) On June 1 and 2, 2011, the United States Coast Guard's (USCG) Boating Safety Division conducted an onsite program review of the Commonwealth's Recreational Boating Safety (RBS) program. Onsite program reviews are used by the USCG to help determine a state's eligibility to receive funding made available under the

Recreational Boating Safety Act (46 U.S.C.A. §§ 13101—13110) for the state RBS program.

During the program review, the USCG identified a deficiency that requires corrective action. Specifically, the issuance of a temporary registration certificate and decal that remains valid in excess of 60 days is not in compliance with Federal regulations. Currently, the Commission's regulations allow for temporary boat registrations to be valid for up to 90 days. Failure to correct this deficiency may jeopardize the Commission's eligibility for funding through the USCG-administered RBS program.

The Commission therefore proposes that §§ 93.2 and 93.13 be amended to read as set forth in Annex A.

(2) Due to changing Federal regulations at the time, the Commission made large-scale amendments to its capacity plate regulations in 1975 to conform to Federal regulations. The Commission again made modifications to its capacity plate regulations in 1994 as part of a year-long comprehensive review and update of the Commonwealth's boating regulations.

During the past 2 years, Commission staff have dealt with a number of capacity plate applications and inquiries that have revealed conflicts between the Commission's regulations and Federal regulations. Further research revealed that the Commonwealth is the only state that has capacity plate regulations that differ from Federal regulations and issues capacity plates. The Commission currently processes capacity plate applications for boats registered in this Commonwealth as well as boats registered in other states that may not be operated on waters in this Commonwealth. The Commission utilizes a capacity plate calculator provided by the USCG that was intended to provide guidance to boaters rather than to be used to meet State or Federal regulations. In fact, the USCG recently informed the Commission that it should discontinue its use of the capacity plate calculator for these purposes.

Federal capacity plate requirements apply to manufacturers and are enforced by the USCG. Therefore, it is unnecessary for the Commission to promulgate regulations regarding capacity plate requirements. The Commission therefore proposes that Chapter 99 be deleted. As a result of deleting Chapter 99, the references to capacity plate information in §§ 93.3(2)(x) and 93.102(b)(11), which require applicants to provide capacity plate information for boat registrations and certificates of title, respectively, must also be deleted.

The Commission proposes that Chapter 99 be deleted and §§ 93.3(2)(x) and 93.102(b)(11) be amended to read as set forth in Annex A.

(3) Based on information presented at its February 8, 2011, meeting, the BAB recommended amending §§ 105.3 and 109.4 regarding the operation of boats engaged in the activity of wake surfing. Specifically, the BAB recommended that the Commission adopt a 300-foot slow, no-wake zone for boats engaged in the activity of wake surfing, exclude wake surfing from the 20-foot minimum tow rope requirement, adopt a definition of "wake surfing" and allow wake surfing participants to wear a specifically designed wetsuit instead of the USCG-approved personal flotation device.

To date, there have not been propeller strike accidents reported Nationwide for participants in wake surfing activities. Boats with inboard motors are the preferred

configuration for wake surfing activity. The propellers of inboard motors are located in front of the boat's transom and pose less risk to a person being towed. Outboard and inboard/outboard motors pose a much greater risk to persons being towed since the propeller is located aft of the transom. Outboards and inboard/outboards used for wake surfing are often trimmed up to create more wake which increases exposure to the propeller. The Water Sports Industry Association has been working with states to encourage the use of "model language" in crafting legislation or regulations to protect the safety of towed watersport participants, such as wake surfers. The Commission therefore proposes the adoption of this model language in § 105.3(12) in addition to the changes previously recommended by the BAB to § 105.3(11). Additionally, the Commission proposes the clarification of the 20-foot measurement for tow ropes as being measured from the transom of the boat.

As previously noted, the BAB previously recommended the Commission adopt a 300-foot slow, no-wake zone for boats engaged in the activity of wake surfing. This recommendation was made in an effort to limit disturbance and damage resulting from excessive wakes created by boats engaged in wake surfing activity. However, upon further research of other states' regulations and a United States Naval Academy study on wave height and energy, Commission staff concluded that a 300-foot slow, no-wake zone will provide minimal additional benefits and unnecessarily limit wake surfing activity as compared to a 200-foot slow, no-wake zone. The Commission therefore proposes to add § 109.4(k) to contain additional regulations specific to wake surfing, including a slow, no-wake zone of 200 feet.

The Commission proposes that §§ 105.3 and 109.4 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
Executive Director

**Fiscal Note:** 48A-236. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 93. BOAT REGISTRATION AND NUMBERING

Subchapter A. REGISTRATION OF BOATS

§ 93.2. Permanent and temporary registration.

(a) *Boat not previously registered in this Commonwealth.*

(1) A person acquiring a boat which has not been previously registered in the person's name in this Commonwealth shall complete an application for boat registration as set forth in § 93.3 (relating to application for boat registration). The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for a period specified in subsection [ (d) ] (e). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date [ (month/year) ] (month/day/year), calculated in accordance with subsection [ (d) ] (e), on the decal. Before the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility.

\* \* \* \* \*

(b) *Boat previously registered in this Commonwealth but having expired registration.*

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth and possesses an expired registration shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for a period specified in subsection [ (d) ] (e). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date [ (month/year) ] (month/day/year), calculated in accordance with subsection [ (d) ] (e), on the decal. Before the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility. If the boat is displaying expired validation decals, the owner or operator shall remove the expired validation decals and replace them with the temporary validation decals. The previously assigned registration number currently on the boat will remain with the boat as long as the boat is registered in this Commonwealth.

\* \* \* \* \*

(c) *Boat previously registered in this Commonwealth having current registration.*

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth displaying current biannual validation decals shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the

completed application which will be recognized as the boat's certificate of registration for a period specified in subsection [ (d) ] (e). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date [ (month/year) ] (month/day/year), calculated in accordance with subsection [ (d) ] (e), on the decal. Before operating the boat on the waters of this Commonwealth, the owner or operator shall remove the prior validation decals and replace them with the temporary validation decals. The previously assigned registration number will remain with the boat as long as the boat is registered in this Commonwealth. It is unlawful for a person acquiring a boat described in this subsection to operate the boat on the waters of this Commonwealth until the registration is transferred to the new owner as provided in this section.

\* \* \* \* \*

(e) *Temporary decals.* The temporary validation decals are valid [ **until the last day of the second month after the date of issuance of the decal, which date will be not less than 60 nor more than 90 days after issuance of the decal** ] for 60 days including the date of issuance. The owner or operator shall ensure that the temporary validation decals are removed and the biannual validation decals, when received from the Commission, are displayed in place of the temporary validation decals. The temporary validation decal shall display the date on which it expires in the following format: [ **"Expires last day of (month)/(year)."** ] **"Expires (month)/(day)/(year)."** The authorized issuing agent shall enter the expiration date [ (month/year) ] (month/day/year) on the decal.

\* \* \* \* \*

§ 93.3. Application for boat registration.

(a) *New registration.* Application for a boat registration for a new boat or a used boat that was not previously registered in this Commonwealth shall conform with the following:

\* \* \* \* \*

(2) *Required information.* The applicant shall provide the following information on the application (REV-336) for a boat registration:

\* \* \* \* \*

(x) [ **The capacity plate information.**

(xi) [ **The temporary validation decal number, if one was issued.**

[ (xii) ] (xi) The primary usage such as, pleasure, rental/livery, manufacturer/dealer/jobber, commercial passenger, and the like.

[ (xiii) ] (xii) *A certificate of ownership.* For initial registration in this Commonwealth this shall be supported by title, bill of sale, a complete Form PFBC-734 "Affidavit of Purchase/Ownership" or other positive proof of ownership.

[ (xiv) ] (xiii) The date the applicant completed the form.

[ (xv) ] (xiv) The signature of the owners and certification, under penalty of law, that they are the owners of

the boat and that the information contained in the application is true and correct.

[ (xvi) ] (xv) Complete Sales and Use Tax information.

[ (xvii) ] (xvi) The date of birth of the primary registrant.

\* \* \* \* \*

§ 93.13. Issuing agents.

\* \* \* \* \*

(f) *Issuance of temporary boat registrations.*

\* \* \* \* \*

(7) An issuing agent shall indicate on temporary validation decals the month, **day** and year the temporary registration expires, using a black waterproof permanent ink marker or paint marker. The agency may not place any other marks on the decal.

(8) Within 10 days of the issuance of a temporary boat registration, the issuing agent shall submit to the Commission a properly completed "T-Sticker Summary Report" (Form PFBC-725) along with all applications, related documentation, applicable fees and Sales and Use Tax as required by the code [ **and** ], this chapter **and the Handbook for Issuing Pennsylvania Boat Registrations and Titles.**

\* \* \* \* \*

Subchapter B. TITLING OF BOATS

§ 93.102. Application procedure and contents of applications for certificates of title.

\* \* \* \* \*

(b) The applicant shall provide the following information on the application (REV-336) for a title:

\* \* \* \* \*

(11) [ **Capacity plate information.**

(12) [ **The primary usage such as, pleasure, rental/livery, manufacturer/dealer/jobber, commercial passenger, and the like.**

[ (13) ] (12) For boats with outboard internal combustion motors, the serial number, the manufacturer's name and the horsepower rating. If there are two motors, the applicant shall provide information for both motors.

[ (14) ] (13) The names and addresses of each lienholder (in the order of priority).

[ (15) ] (14) The date of lien encumbrance.

[ (16) ] (15) The date applicant completed the form.

[ (17) ] (16) The signature of the owner.

[ (18) ] (17) Complete Sales and Use Tax information.

\* \* \* \* \*

CHAPTER 99. [ **CAPACITY PLATES** ] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to rescind §§ 99.1—99.7 which appear in 58 Pa. Code pages 99-1—99-4, serial pages (227689)—(227692).)

Sec.  
99.1—99.7. (Reserved).

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

\* \* \* \* \*

(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 as measured from the transom of the boat. This prohibition does not apply to wake surfing as defined in § 109.4 (relating to waterskiing, aquaplaning, kiteskiing and similar activities).

(12) Operate a motorboat propelled by an outboard motor, inboard/outboard motor or water jet while a person is wake surfing in or on the wake of the motorboat.

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.4. Waterskiing, aquaplaning, kiteskiing and similar activities.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

Wake surfing—A competitive or recreational water sport in which a person on a wake board or similar style board rides in or on the wake of a motorboat.

Water ski—A device used by a person to be towed through or on water behind a boat. The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kite skis and similar devices.

\* \* \* \* \*

(f) PFDs. It is unlawful for a person to operate a boat on the waters of this Commonwealth for [ waterskiing ]:

(1) Waterskiing unless each person being towed is wearing a Type I, II, III or V United States Coast Guard-approved PFD. Inflatable PFDs may not be used to meet this requirement.

(2) Wake surfing unless the wake surfer is wearing a Type I, II, III or V United States Coast Guard-approved PFD or water ski wetsuit as defined in subsection (g). Inflatable PFDs may not be used to meet this requirement.

(g) Water ski wetsuits. A person engaged in slalom skiing on a marked course or a person engaged in barefoot, jump or trick skiing, or wake surfing may elect to wear a wetsuit designed specifically for the activity in lieu of the United States Coast Guard approved PFD required in § 97.1 (relating to personal flotation devices). A United States Coast Guard approved PFD of a type described in § 97.1 shall be carried in the tow boat for each skier electing to wear a water ski wetsuit. The nonapproved water ski wetsuit device shall meet the following criteria:

\* \* \* \* \*

(j) Kite skiing and parasailing. The following additional restrictions are applicable to kite skiing and parasailing:

\* \* \* \* \*

(3) Kite skiers and parasailers may not fly over or under overhead obstructions such as power and telephone

lines or bridges; nor may they fly over dams, locks, docks, launching ramps, swim areas, marinas or congested areas.

(k) Wake surfing. Boats engaged in the activity of wake surfing are limited to slow, no wake speed when within 200 feet of the following:

- (1) Shore line.
- (2) Docks.
- (3) Launching ramps.
- (4) Swimmers or downed skiers.
- (5) Persons wading in the water.
- (6) Anchored, moored or drifting boats.
- (7) Floats, except for ski jumps and ski landing floats.
- (8) Other marked areas.

[Pa.B. Doc. No. 12-1087. Filed for public inspection June 15, 2012, 9:00 a.m.]

[ 58 PA. CODE CHS. 65 AND 75 ]

Fishing; Special Fishing Regulations and Endangered Species

The Fish and Boat Commission (Commission) proposes to amend Chapters 65 and 75 (relating to special fishing regulations; and endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments modify and update the Commission's fishing regulations.

A. Effective Date

The proposed amendments to §§ 65.5, 65.6 and 65.14 (relating to catch and release areas; delayed harvest artificial lures only areas; and catch and release fly-fishing only areas), if approved on final-form rulemaking, will go into effect on January 1, 2013. The proposed amendments to §§ 75.1—75.3 (relating to endangered species; threatened species; and candidate species), if approved on final-form rulemaking, will go into effect upon publication in the Pennsylvania Bulletin.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to §§ 65.5, 65.6, 65.14 and 75.3 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to §§ 75.1 and 75.2 are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

D. Purpose and Background

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

### E. Summary of Proposal

(1) Currently fishing is not permitted from 1 hour after sunset to 1 hour before sunrise on special regulations areas managed under §§ 65.5, 65.6 and 65.14. None of the other special regulations programs that apply to angling in this Commonwealth carry an hourly angling restriction and clear biological rationale does not exist for placing fishing hours restrictions on waters managed under these three programs. Hourly fishing restrictions limit angling opportunity by denying angler access to fishing for part of the day.

For the purpose of simplifying the regulations and to encourage more angling opportunity, the fishing hours restrictions that currently apply to waters managed under these programs should be removed in favor of permitting angling on a 24-hour basis. The Commission therefore proposes that these sections be amended to read as set forth in Annex A.

(2) Eastern Mud Turtle (*Kinosternon subrubrum subrubrum*) is a small (3-4 inches) semiaquatic turtle. It has olive to brown colored shell and mottled skin with a domed carapace and two hinges on a reduced plastron. This small turtle is known to live in shallow wetlands and associated uplands that have still-water or slow-water habitats, such as marshes, swamps, seasonal forest pools, shallow ponds, creeks and ditches, all with soft substrates. In states surrounding this Commonwealth, *K. subrubrum* is listed as critically imperiled (S1) in New York, secure (S5) in Delaware and Maryland and not ranked/under review (SNR/SU) in New Jersey (NatureServe, 2008). White and White (2002) considered *K. subrubrum* to be common in Delmarva's Atlantic Coastal Plain but rare within the Maryland Piedmont (Cecil County). The historical range of *K. subrubrum* in this Commonwealth most likely included the entirety of the Atlantic Coastal Plain. As a result of intensive urbanization throughout the greater Philadelphia landscape, the current distribution in this Commonwealth is restricted to 350 hectares (865 acres) at two sites in Bucks County. These two known sites are located where there are already occurrences of other threatened or endangered species.

The Eastern Mud Turtle was rediscovered in this Commonwealth during the spring of 2008. This signified the first observation of this species in this Commonwealth in 45 years. The Commission engaged a 2-year study for this species which was concluded in 2011. The Eastern Mud Turtle was encountered at only two sites in the entirety of this Commonwealth. These isolated sites are separated by a distance of 5 airline miles, account for an area of only 865 acres (350 hectares) or 1.4 miles<sup>2</sup> (3.6 km<sup>2</sup>) and are completely surrounded by the major urban center of the Philadelphia region. The extent of occurrence for *K. subrubrum* in this Commonwealth is 1.4 miles<sup>2</sup>, under the maximum allotment of 40 miles<sup>2</sup> found in the Commission's Listing Criterion B.1. The area of occupancy for *K. subrubrum* in this Commonwealth is only 1.4 miles<sup>2</sup>, under the maximum allotment of 4 miles<sup>2</sup> found in the Commission's Listing Criterion B.2, and severely fragmented (Listing Criterion B.2.a). Additionally, declines are projected in the area of occupancy, area/extent/and or quality of habitat, number of locations or subpopulations and number of mature individuals (Listing Criterion B.2.b). Recent studies by the Commission and East Stroudsburg University (Ruhe and LaDuke, 2011) found only 11 total Eastern Mud Turtles in this Commonwealth, meeting the requirements for listing under Listing Criterion C.1 (under 250 mature individu-

als in this Commonwealth). Due to the low number of individuals found in this Commonwealth, a population decline observed during the recent study and the severe fragmentation of the Atlantic Coastal Plain Province in this Commonwealth, the species also meets Listing Criteria C.1.b.1 and D.1 (severe fragmentation, a decline of any rate and all subpopulations under 50 individuals; and population is characterized by an acute restriction in the area of occupancy (less than 40 square miles) or in number of locations (less than 5)). As the species meets Listing Criteria B.1., B.2., B.2.a., B.2.b, C.1., C.1.b.1 and D.1, the Amphibian and Reptile Technical Committee of the Pennsylvania Biological Survey (PABS) recommended the status of the Eastern Mud Turtle (*Kinosternon subrubrum subrubrum*) be elevated to "endangered" status in this Commonwealth.

Enough information is available to make the determination that this species is critically imperiled in this Commonwealth at present and to justify adding it to the Commonwealth's list of endangered species. Therefore, the Commission proposes that the Eastern Mud Turtle be added to the list of endangered species.

(3) Round Hickorynut (*Obovaria subrotunda*) is a freshwater mussel species distinguished by its almost perfectly round shape. The shell is thick and solid and dark-brown with a lighter band along the posterior-dorsal surface. It occurs in medium to larger rivers. The physical habitat of the Round Hickorynut has been generally described as consisting of sandy substrates with gravel or clay. The Round Hickorynut is distributed throughout the Ohio River basin (including the Cumberland and Tennessee Rivers) and parts of the Mississippi River basin, ranging from eastern Illinois to western Pennsylvania to Mississippi (Parmalee and Bogan, 1998). This species is also known from western Lake Erie and Lake St. Clair basins.

Historically, this species was reported from nine streams in this Commonwealth including the Ohio River, Beaver River (Mahoning River, Shenango River, Little Shenango River and Pymatuning Creek), Monongahela River and the Allegheny River (Crooked Creek) (Ortmann, 1909a, 1913, 1919; Strayer et al., 1991). Although historical records have been reported from Lake Erie in neighboring Ohio (for example, Shelford and Boesel, 1942), this species has not been reported from this Commonwealth's portion of Lake Erie. Besides Ortmann's efforts (1909a, 1919), few historical mussel surveys of this Commonwealth's freshwater mussel fauna were conducted (see Dennis, 1971 (western Pennsylvania) and Taylor, 1980 (Ohio River mainstem)). The Round Hickorynut may have occurred in other streams of this Commonwealth but was not reported.

Recent surveys, including predredging surveys, within the species' historical range within this Commonwealth (Crooked Creek, Allegheny River, Ohio River, Monongahela River, Beaver River, Mahoning River, Pymatuning Creek and Little Shenango River) did not detect live individuals of the Round Hickorynut. Live individuals of this species were recently detected in the Shenango River between the Pymatuning Reservoir and Shenango River Lake (Bursey, 1987; Nelson and Villella, 2010; C. Bier, personal communication). Nelson and Villella's 2010 surveys did not detect Round Hickorynut downstream of Shenango River Lake. The Round Hickorynut is only found in the Shenango River and co-occurs with other State and Federal listed mussel species.

The Round Hickorynut was previously identified by PABS as a State rare species, warranting an S1 ranking

(Critically Imperiled in Pennsylvania). It currently meets the following criteria for endangered status: A.2.c. Population reduction suspected to be met within next three generations; B.3. Extent of occupancy less than 50 miles; B.4.a. Severely fragmented or known to exist at fewer than 6 location(s); B.4.b.1. Continuing decline inferred for extent of occurrence; B.4.b.3. Continuing decline inferred in area, extent and/or quality of habitat; and B.4.b.4. Continuing decline inferred in number of locations or subpopulations. Of this Commonwealth's ten historical subpopulations, only the Shenango River subpopulation remains. Based upon the extent of occurrence, number of locations within this Commonwealth and threats to this species, the PABS Mollusk Subcommittee recommended that the Commission list the Round Hickorynut as an endangered species in this Commonwealth.

Enough information is available to make the determination that this species is critically imperiled in this Commonwealth at present and to justify adding it to the Commonwealth's list of endangered species. Therefore, the Commission proposes that the Round Hickorynut be added to the Commonwealth's list of endangered species.

(4) Pistolgrip (*Quadrula verrucosa*) is a freshwater mussel that has a posterior ridge that is very pronounced and constriction in the shell at the midpoint and the posterior slope of the shell is pleated. It occurs in a variety of habitats and conditions, ranging from riffles, runs and pools with variable substrates including mud, sand or coarse and fine gravel (Ortmann, 1919; Williams et al., 2008; Parmalee and Bogan, 1998).

The Pistolgrip is widely distributed throughout the Mississippi River basin including the Ohio, Cumberland and Tennessee River basins and ranges from western Pennsylvania to western Minnesota south to Texas and Mississippi (Parmalee and Bogan, 1998; Williams et al., 2008). The Pistolgrip is also native to the Mobile River basin (Alabama, Georgia, Mississippi and Tennessee) and may occur in other rivers draining into the western Gulf of Mexico (Williams et al., 2008).

Historically, this species was reported from eight streams in this Commonwealth, including the Ohio River, Beaver River (Mahoning River, Shenango River and Pymatuning Creek), Monongahela River (Dunkard Creek) and the Allegheny River (Ortmann, 1913, 1919).

Live individuals of this species were recently detected in the Shenango River between the Pymatuning Reservoir and Shenango River Lake (Bursey, 1987; Nelson and Villella, 2010; C. Bier, personal communication) and downstream of Shenango River Lake (Nelson and Villella, 2010). The Pistolgrip is only found in the Shenango River and co-occurs with other State and Federal listed mussel species.

The Pistolgrip was previously identified by PABS as a State rare species, warranting an S1 ranking (Critically Imperiled in Pennsylvania). The Pistolgrip meets the following endangered species listing criteria: B.3. Extent of occupancy less than 50 miles; B.4.a. Severely fragmented or known to exist at fewer than 6 location(s); B.4.b.1. Continuing decline inferred for extent of occurrence; B.4.b.3. Continuing decline inferred in area, extent and/or quality of habitat; and B.4.b.4. Continuing decline inferred in number of locations or subpopulations. Of this Commonwealth's eight historical subpopulations, only the Shenango River subpopulation remains. Based upon the extent of occurrence, number of locations within the Commonwealth and threats to this species, the PABS

Mollusk Subcommittee recommended that the Commission list the Pistolgrip as an endangered species in this Commonwealth.

Enough information is available to make the determination that this species is critically imperiled in this Commonwealth at present and to justify adding it to the Commonwealth's list of endangered species. Therefore, the Commission proposes that the Pistolgrip be added to the Commonwealth's list of endangered species.

(5) Rayed Bean (*Villosa fabalis*). On February 14, 2012, the United States Department of the Interior, Fish and Wildlife Service (FWS), designated *Villosa fabalis* (Rayed Bean) and Snuffbox (*Epioblasma triquetra*) as Federally endangered throughout their entire ranges. The Snuffbox was previously listed by the Commission at 39 Pa.B. 3442 (July 11, 2009). The Rayed Bean is a freshwater mussel species known to occur in Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Ontario, Canada. The Rayed Bean still occurs in the following streams and rivers in this Commonwealth: Allegheny River, French Creek, LeBoeuf Creek, Muddy Creek and Cussewago Creek. The Rayed Bean co-occurs with other State and Federal listed mussel species and is not known from within the permitted sand and gravel dredging area of the Allegheny River.

Section 102 of the code (relating to definitions) defines endangered species as "All species and subspecies of fish which: (1) have been declared by the Secretary of the United States Department of the Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*; or (2) have been declared by the executive director to be threatened with extinction and appear on the Pennsylvania Endangered Species List published in the *Pennsylvania Bulletin*." Because Rayed Bean has been designated as Federally endangered throughout its range, which includes this Commonwealth, the Commission proposes that it be added to the Commonwealth's list of endangered species.

(6) Chesapeake Logperch (*Percina bimaculata*) is a small to medium size fish (up to 7 inches) in the perch family. Little is known about this species and its habits, but it occurs primarily in larger waterways and lowermost sections of tributaries.

Its National range includes the Chesapeake Bay watershed in the District of Columbia (formerly), Maryland, Pennsylvania and Virginia (formerly), limited to lower sections of the Potomac (now extirpated) and Susquehanna Rivers and tributaries, and a few direct tributaries to the Chesapeake Bay (Haldeman, 1842; Smith and Bean, 1899; Jenkins and Burkhead, 1994).

In this Commonwealth, it occurs only in the Piedmont Province of the lower Susquehanna River drainage. Currently, it is restricted to the Susquehanna River and the lowermost section of four tributaries within the Conowingo Pool (Fishing Creek, Muddy Creek, Peters Creek and Michael Run) located in Lancaster and York Counties. It is also found in the Octoraro Creek watershed in Chester and Lancaster Counties.

The Chesapeake logperch *Percina bimaculata* was recently removed from taxonomic synonymy with the logperch *Percina caprodes* and recognized as a distinct and valid species with a limited global distribution restricted to the Chesapeake Bay watershed (Near, 2008). It meets fish listing criteria B3 and B4 for threatened status. To meet criterion B3, the extent of occupancy must be less than 50 miles in lotic waters (less than 10

miles would qualify for endangered status). The Chesapeake logperch only occurs in approximately 30 combined stream and river miles within this Commonwealth. It also meets criterion B4 which compares distributions using HUC 12 watersheds (within GIS software) to characterize their relative rarity within this Commonwealth. The Chesapeake logperch occupies only 7 of the 641 HUC 12 watersheds (~1%) within the Susquehanna Basin. Also, it is likely extirpated from at least two HUC 12 watersheds, those covering Lake Clarke and Lake Aldred on the Susquehanna River.

The Chesapeake logperch is classified as endangered by the American Fisheries Society Endangered Species Committee (Jelks et al., 2008, Fisheries 33(8): 372–407). It is classified as a threatened species in Maryland, the only other state where it has recently been documented. It is also listed in the 2010 update of *Threatened Fishes of the World* (Ashton and Near, 2010). The Chesapeake logperch's limited global distribution, extirpation from a significant portion of its historic range and extant threats make it a responsibility species for this Commonwealth and provides justification for listing it as a threatened species in this Commonwealth.

Enough information is available to make the determination that this species is threatened in this Commonwealth at present and to justify adding it to the Commonwealth's list of threatened species. Therefore, the Commission proposes that the Chesapeake Logperch be added to the Commonwealth's list of threatened species.

(7) American brook lamprey (*Lampetra appendix*) is one of the nonparasitic lampreys in this Commonwealth. It inhabits small to medium size creeks and, less-frequently, large streams and small rivers. Adults generally prefer sandy and gravelly riffles and runs for spawning, while ammocoetes prefer deposits of silt, sand, mud and detritus (Jenkins and Burkhead, 1993).

Its National range includes the Atlantic, Great Lakes and Mississippi River basins from St. Lawrence River, Quebec, west to Minnesota, south to Roanoke River system, Virginia, Tennessee River system, northern Alabama, and St. Francis and White river systems, Missouri and Arkansas; Martin River (Arctic basin), Northwest Territories, to Ugashik and Chatanika River (Pacific basin), Alaska. Populations tend to be uncommon (Page and Burr, 1991) and disjunctive across North America.

In this Commonwealth, it is restricted to the northwest and southeast corners of the State. It is known from the following drainages: Upper Allegheny River and tributaries, middle Allegheny River tributaries, Lake Erie tributaries, upper Genesee River and tributaries and Lower Delaware River tributary (White Clay Creek). It has been collected from Chester, Clarion, Crawford, Elk, Erie, Forest, McKean, Potter, Venango and Warren Counties.

Cooper (1983) shows the main distribution of the American brook lamprey to cover the northwest corner of this Commonwealth, including Lake Erie tributaries, portions of the middle and upper Allegheny River basin and the Genesee River headwaters. Cooper (1983) also cites a small population in White Clay Creek, Chester County. Additional historic data are known to fall within this same general distribution. We have found 9 104, 6 HUC 8 and 48 HUC 12 watersheds occupied based on historic data at the 104 and HUC 8 level. All historically occupied watersheds had occurrences from both pre-1971 and 1971–1990 periods.

The distribution of recent American brook lamprey collections closely mirrors that of the historic distribution

presented by Cooper (1983). Recent data (1991–2011) characterize it as relatively common in numerous waterways within northwest Pennsylvania (Fish and Boat Commission, Pennsylvania State University, R. Criswell and FWS, unpublished data). The FWS's Sea Lamprey Control Program has conducted distributional surveys for lampreys within the Erie Basin (Erie and Crawford Counties) using larval lamprey specific electrofishing gear since the mid-1980s. As a result, excellent lamprey information is available for those streams. Information available for other waterways tends to be less focused and more incidental due to brook lamprey ammocoete habitat preferences, relatively poor ammocoete recruitment to conventional electrofishing gear and short adult life span. In southeastern Pennsylvania (Chester County), the American brook lamprey is found in a relatively small area consisting of a single subbasin. Horowitz et al. (2008) reported American brook lamprey occurrences in four streams from the Mid-Atlantic Piedmont based on a previous study (Sweeney et al., 2004). Populations are also known from New Jersey to the east and from the Delmarva Peninsula to the south (Lee et al., 1980).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the American Brook Lamprey and recommended it be changed from "vulnerable" (S3) to "apparently secure" (S4) status (State Rank Definitions, 1996). The Fishes Technical Committee additionally recommended "delisting" status based on the aforementioned data and apparent commonality of the species in this Commonwealth (PABS definition of "delisted species"—species which were once listed but now cited for delisting (PABS Suggested Status Definitions, 2005)).

The American brook lamprey was listed in 1999 as a Pennsylvania candidate based on a limited distribution and apparent low numbers. Argent et al. (2000) provided the methodology and rationale for listing the American brook lamprey as a Pennsylvania candidate. Currently available data indicate little if any range reduction has occurred when historic and recent records are compared throughout the four occupied basins (Allegheny, Delaware, Erie and Genesee). Extreme fragmentation, fluctuation or decline of populations has not been documented or suspected. The American brook lamprey in this Commonwealth exceeds minimum requirements for multiple listing criteria. A significant reduction in range within this Commonwealth cannot be seen when historic and recent data were compared (Criteria A1 and A2). The extent of occupancy in streams and rivers is greater than the maximum of 150 miles for candidate status (Criterion B3). The attention paid to this species since being listed is likely responsible for subsequent efforts to survey historic sites and unassessed waters. The American brook lamprey currently appears secure within this Commonwealth, thereby justifying removal from the Commonwealth's list of candidate species. Therefore, the Commission proposes that American brook lamprey be removed from the Commonwealth's list of candidate species.

The Commission proposes that §§ 65.5, 65.6, 65.14, 75.1, 75.2 and 75.3 be amended to read as set forth in Annex A.

#### F. Paperwork

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

#### G. Fiscal Impact

The proposed amendments to Chapter 65 will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose new costs on the

private sector or the general public. The proposed amendments to Chapter 75 will not have direct adverse fiscal impact on this Commonwealth or its political subdivisions. The proposed amendments to Chapter 75 will not impose new direct costs on the private sector or the general public. The direct regulatory significance of designating a species as endangered or threatened is limited to prohibiting persons from taking, catching, killing or possessing these species in this Commonwealth. Because none of the species listed have commercial or recreational significance because of their rarity, there are no direct fiscal impacts from providing these protections.

The private sector and regulated community may assert that designation of certain species as endangered or threatened may have indirect fiscal impacts on them and the Commonwealth because of impacts on permitting decisions by the Department of Environmental Protection and other agencies. If an endangered or threatened species is found in an area slated for development, applicants for permits may be required to conduct additional studies or adjust the project to avoid adverse impacts on these species and their habitat. These are fiscal impacts resulting from regulatory and statutory authorities other than those under the aegis of the Commission. Many of the proposed additions to the list are found in the same watersheds as species already listed so there would be little additional burden placed on projects in those areas.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
Executive Director

**Fiscal Note:** 48A-237. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.5. Catch and release areas.

\* \* \* \* \*

(b) It is unlawful to fish in designated and posted catch and release areas except in compliance with the following requirements:

\* \* \* \* \*

(3) [ Fishing hours are 1 hour before sunrise to 1 hour after sunset.

(4) ] No trout may be killed or had in possession.

[ (5) ] (4) The program is open to fishing year-round; there is no closed season.

[ (6) ] (5) Wading is permitted unless otherwise posted.

[ (7) ] (6) Taking of baitfish or fishbait is prohibited.

[ (8) ] (7) A current trout/salmon permit is required.

\* \* \* \* \*

§ 65.6. Delayed harvest artificial lures only areas.

\* \* \* \* \*

(b) It is unlawful to fish in designated and posted delayed harvest, artificial lures only areas except in compliance with the following requirements:

\* \* \* \* \*

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

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

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

[ (6) ] (5) Taking of baitfish or fishbait is prohibited.

[ (7) ] (6) A current trout/salmon permit is required.

\* \* \* \* \*

§ 65.14. Catch and release fly-fishing only areas.

\* \* \* \* \*

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

\* \* \* \* \*

(6) [ Fishing hours are 1 hour before sunrise to 1 hour after sunset.

(7) ] Taking of baitfish or fishbait is prohibited.

[ (8) ] (7) Wading is permitted unless otherwise posted.

[ (9) ] (8) A current trout/salmon permit is required.

\* \* \* \* \*

CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

\* \* \* \* \*

(c) *Reptiles and amphibians*. The following species are endangered:

\* \* \* \* \*

(10) Blue-spotted Salamander, *Ambystoma laterale*.

(11) Eastern Mud Turtle, *Kinosternon subrubrum subrubrum*.

(d) *Invertebrates*. The following species are endangered:

\* \* \* \* \*

(7) Salamander mussel, *Simpsonaias ambigua*.

(8) Round hickorynut mussel, *Obovaria subrotunda*.

(9) Pistolgrip mussel, *Quadrula verrucosa*.



(10) **Rayed bean mussel, *Villosa fabalis*.**

§ 75.2. **Threatened species.**

\* \* \* \* \*

(b) *Fish*. The following species are threatened:

\* \* \* \* \*

(9) Gilt darter, *Percina evides*.

(10) **Chesapeake Logperch, *Percina bimaculata*.**

(c) *Amphibians and reptiles*. The following species are threatened:

\* \* \* \* \*

§ 75.3. **Candidate species.**

\* \* \* \* \*

(b) *Fishes*.

\* \* \* \* \*

(3) [ **American brook lamprey, *Lampetra appendix*.**

(4) ] Bowfin, *Amia calva*.

[ (5) ] (4) Central mudminnow, *Umbra limi*.

[ (6) ] (5) Eastern mudminnow, *Umbra pygmaea*.

[ (7) ] (6) Hornyhead chub, *Nocomis biguttatus*.

[ (8) ] (7) Brook stickleback, *Culaea inconstans*.

\* \* \* \* \*

[Pa.B. Doc. No. 12-1088. Filed for public inspection June 15, 2012, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

[ 52 PA. CODE CH. 59 ]

[ L-2009-2107155 ]

**Meter Location**

The Pennsylvania Public Utility Commission (Commission), on July 28, 2011, adopted a proposed rulemaking order which amends § 59.18 (relating to meter and regulator location) to be consistent with Federal regulations.

*Executive Summary*

The Commission is amending its existing regulations at 52 Pa. Code § 59.18 so that state regulations are consistent with the federal regulations that the Commission has already adopted. The new regulation includes language that allows natural gas utilities to have sole determination for meter set (meter and regulator) location. The determination should be based upon the interest of public safety. The proposed language requires NGDCs to relocate current inside regulators, which are connected to steel service lines, to the outside, with the exception of historic districts and high risk vandalism districts, within 10 years.

The amended language also provides for alternatives to relocating inside meter sets outside. These alternatives include installation of an Excess Flow Valve on steel service lines or relocating inside regulators to the outside if the meter set is connected to a steel service line. The

amended language imposes no additional regulatory requirements upon NGDCs that these utilities are not already subject to under the federal regulations.

Public Meeting held  
July 28, 2011

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

*Amendment to 52 Pa. Code § 59.18 Meter Location;*  
*Doc. No. L-2009-2107155*

**Proposed Rulemaking Order**

*By the Commission:*

In accordance with Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission formally commences its rulemaking process to amend its existing regulations at 52 Pa. Code § 59.18 “Meter Location” to the proposed language in Annex A.

*Background and Procedural History*

On August 21, 2008, the Commission directed the Bureau of Transportation, Gas Safety Division, to institute an investigation into the issue of gas meter placement and relocation in the context of service disputes between gas distribution companies and their customers. Pursuant to the Commission’s directive, the Gas Safety Division reviewed existing regulations and tariff language on meter location. The Gas Safety Division concluded that the Commission’s existing regulation is vague, inadequate, and out-of-date with respect to the federal standards which the PUC has adopted.

The issue of gas meter placement and relocation in the context of service disputes between NGDCs and their customers came before the Commission in two cases. *Mitchell v. Equitable Gas Company*, Docket No. C-20077457 (Final Opinion and Order Entered January 22, 2009); *Lucas v. Columbia Gas Company of Pennsylvania, Inc.*, Docket No. C-20065830 (Order entered June 3, 2008). In both cases, the meter relocation occurred due to a discovery and repair of leaking service lines. Each case involved a customer complaint filed after the utility charged for relocating the meter.

Specifically, customers had objected to being charged for the relocation of meters from inside their residences to an exterior location, and sought reimbursement of associated costs. The gas line from the meter outlet valve is considered customer owned property. Therefore, when the meters were relocated outside, the customer line was lengthened. Normally, a homeowner would have to contract with an Operator Qualified plumber to extend the house line outside to the meter. In the instances where the customers objected to the relocation of the meters, the NGDC required the meter to be relocated due to safety concerns.

After reviewing these and other cases, the PUC approved a motion offered by Commissioner Pizzingrilli finding that its regulations and the tariff provisions of gas utilities vary significantly:

[I]t is evident that there is ambiguity with respect to meter placement and relocation . . . [and] it is critically important that our regulations and company tariffs provide clear direction on meter location issues to ensure safe and reliable service.

As much of Pennsylvania’s natural gas infrastructure is aging and a number of gas utilities are in the process of embarking on significant infrastructure replacement initiatives, it is an opportune time to

assess the meter relocation policy to enable gas utilities to more efficiently address this issue in the context of these programs and to ensure safe and reliable service.<sup>1</sup>

The Commission then directed the Gas Safety Division to undertake a review of the regulations and to prepare a report with any recommendations.

#### *Discussion*

Before discussing the Gas Safety Division's report, it is noteworthy, that the Commission's only regulation governing gas meter location reads:

#### **52 Pa. Code § 59.18. Location of meters.**

Meters shall be installed in either of the following locations:

(1) Inside the building, preferably in a dry, well-ventilated place not subject to excessive heat, and as near as possible to the point of entrance of the pipe supplying service to the building.

(2) Outside the building at a location selected by the utility. A meter cover or housing is required if, in the judgment of the utility, conditions require the physical protection for the meter installation.

The U.S. Department of Transportation ("DOT") regulations, which the Commission has adopted<sup>2</sup> and has an agreement with the Pipeline and Hazardous Material Safety Administration ("PHMSA") to enforce, include the following:

#### **49 CFR 192.353—Customer meters and regulators: Location.**

(a) Each meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated. However, the upstream regulator in a series may be buried.

(b) Each service regulator installed within a building must be located as near as practical to the point of service line entrance.

(c) Each meter installed within a building must be located in a ventilated place and not less than 3 feet (914 millimeters) from any source of ignition or any source of heat which might damage the meter.

(d) Where feasible, the upstream regulator in a series must be located outside the building, unless it is located in a separate metering or regulating building.

#### **49 CFR 192.357—Customer meters and regulators: Installation.**

(a) Each meter and each regulator must be installed so as to minimize anticipated stresses upon the connecting piping and the meter.

(b) When close all-thread nipples are used, the wall thickness remaining after the threads are cut must meet the minimum wall thickness requirements of this part.

(c) Connections made of lead or other easily damaged material may not be used in the installation of meters or regulators.

(d) Each regulator that might release gas in its operation must be vented to the outside atmosphere.

The Commission's Gas Safety Division, in conjunction with the Law Bureau, implemented an investigation regarding meter set (meter and regulator) location. The Gas Safety Division issued ten data requests to the ten largest gas utilities under PUC jurisdiction. The data requests included questions related to the number of inside/outside meter sets, inside regulators, tariff language, inside meter set leak calls, reportable incidents associated with inside meter sets, meter relocation charges, inside leak surveys, and local ordinances requiring certain meter locations. All ten gas utilities responded. The data revealed that the Pennsylvania natural gas industry has approximately 27% of all meter sets located inside of residential dwellings. This average has been consistent over the last five years.

All the tariffs for the solicited utilities have tariff rules governing the location of meter sets. Each tariff states that the utility will make the ultimate siting determination. The basis for the utility decision for meter and regulator location is safety. The majority of the tariffs include language that allows for exceptions to outside siting. Allowance for inside meter and regulator sets are based upon historic area prohibitions and areas that have high amounts of vandalism.

The Commission is also concerned about the number of reportable incidents resulting, at least partially, from locating meters and regulators inside structures. The gas distribution utilities reported more than 4,000 leaks occurring on inside meter sets over a five year period. The number of reportable incidents<sup>3</sup> (65) over the past forty years, however, is more alarming. While it appears from the data that the inside meter and regulators were not always the primary factor for accidents, locating meters and regulators inside certainly contributed to these incidents through a release of natural gas. State and federal gas safety regulations require gas utilities to perform leak surveys over service lines periodically; however, several of the utilities reported that they could not comply with the leak survey requirements when the meter and regulator are inside a building, which prevents access. This is troubling because the state and federal regulations require leak surveys up to the meter. By not having access to the meter sets, the NGDCs cannot comply with the state and federal regulations and cannot detect inside leaks.

The state has experienced several gas explosions related to steel service lines being struck and pulled up from their stable position and subsequently pulling the service line from the inside meter set. Plastic service lines with inside meter sets do not pull away since the excavation equipment usually severs the line immediately after being struck. The combination of steel service line and inside meter set is a high risk factor for natural gas incidents.

The responding NGDCs also addressed the cost of moving meter sets from the inside to the outside. In most instances, if the customer requests a meter set relocation, the customer pays for the extension of the customer piping up to the outlet valve of the meter set. But the utilities have multiple exceptions as to who pays. Under federal regulations, Operator Qualified plumbers are the only plumbers who may perform work on service lines

<sup>1</sup> Gas Meter Location, Docket No. M-2008-2058386, Motion of Commissioner Kim Pizzingrilli (August 21, 2008).

<sup>2</sup> See Ratification and Adoption of Amendments to Part 192 of Title 49 of the *Code of Federal Regulations*, Docket No. M-00001347, Order entered March 16, 2000, 2000 Pa. PUC LEXIS 4; 52 Pa. Code § 59.33, safety.

<sup>3</sup> A reportable incident exists where there was a release of gas and (1) greater than \$50,000 in damages; (2) death or injury; or (3) a significant event in the determination of the distribution utility.

and meters. The Operator Qualified plumbers are certified and tested by the specific gas utility.

If a meter set is to be moved outside and the meter set was connected to a steel service line, the NGDC would replace the steel service line and move the meter set outside where practical. The cost of replacing the steel service line and moving the meter set outside is approximately \$4,000 per unit. The average cost of moving only a meter set from inside to outside is approximately \$500. UGI opined that most of the steel service lines with inside meter sets were connected to bare steel or unprotected steel mains which would also need to be replaced and would increase the cost.

Therefore, if an NGDC is replacing a natural gas main in accordance with its main replacement program, NGDC's should make all reasonable efforts to replace the bare or unprotected steel service lines in addition to relocating the meter set. In 2008, Columbia Gas of Pennsylvania, Inc. requested limited waivers of the tariff rules relating to customer service line replacement.<sup>4</sup> According to Columbia's existing tariff, certain customers are responsible for the installation, maintenance and replacement of their service lines. We agreed it would be inequitable to require these customers to replace their service lines at the customers' expense when the replacement was required by Columbia's main replacement and upgrade project. Thus, it would be prudent and more cost effective for NGDCs to coordinate their meter set relocation program (including steel service line replacement when necessary) with their main replacement program.

There are several alternatives, however, to relocating and replacement of inside meter sets and steel service lines. One alternative is to retrofit existing service lines with Excess Flow Valves. Excess Flow Valves (EFV) are currently mandated for all new and replaced service lines by federal law. See 49 U.S.C. 60110, 49 CFR 192.381. The cost of retrofitting a steel service line with EFV is approximately \$1,500. Another alternative to relocation and replacement is to relocate the inside regulator to the outside. The majority of gas distribution utilities do not allow inside regulators, however the companies that do allow them include UGI, PECO, and PGW. The relocation of the inside regulator costs approximately \$450.

Finally, several utilities provide service in historic districts where municipal laws require the meter set to be located inside structures. In many of these instances, the utilities are able to locate the regulator outside; however, there are instances when the utility must locate the entire meter set inside due to zoning ordinances. In addition, some utilities must locate meter sets inside due to vandalism concerns.

After review of the state and federal regulations pertaining to meter set location, gas distribution tariffs, and after meeting with the gas utilities, the Gas Safety Section concluded:

1. The Pennsylvania regulations at § 59.18 are silent as to reimbursement costs related to relocation of meters.
2. The Commission has adopted provisions of the Code of Federal Regulations, which address the safety issues related to meter set location and installation and thus are in conflict with the existing Pennsylvania regulations.
3. The collected data show that Pennsylvania has experienced 65 reportable incidents associated with inside meter sets and inside regulators over the last 40 years.

<sup>4</sup> Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement, Docket No. P-00072337.

4. The gas distribution utilities have had more than 4,000 leaks related to inside meter sets over the last five years.

5. Several of the gas distribution utilities cannot comply with the state and federal regulations pertaining to leakage surveys because they cannot get access to inside meter sets.

6. Inside meter sets with inside regulators are a major concern due to the possibility of high pressure gas flowing into a structure if the inside meter or inside regulator is detached from the service line. Three gas distribution utilities have high numbers of inside meter sets with inside regulators that are at higher risk for failure because the inside meter and regulator are connected to a steel service line. Steel service lines are susceptible to pulling from excavation equipment. Pennsylvania has experienced several catastrophic explosions due to steel service lines pulling away from inside meter sets and inside regulators.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 31, 2012, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Conclusion*

The Commission, therefore, formally commences its rulemaking process to amend its existing regulations by amending 52 Pa. Code § 59.18 consistent with Annex A to this Order, so that the state regulations are consistent with the federal regulations that the Commission has adopted. The new regulation includes language that allows the natural gas utilities to have sole determination for meter set (meter and regulator) location. The determination should be based upon the interest of public safety. The proposed language also requires NGDCs to relocate current inside regulators, which are connected to steel service lines, to the outside with the exception of historic districts and high risk vandalism districts within 10 years.

The proposed amended language also provides for alternatives to relocating inside meter sets outside. These alternatives include installation of an Excess Flow Valve on steel service lines or relocating inside regulators to the outside if the meter set is connected to a steel service line. The proposed amended language imposes no additional regulatory requirements upon NGDCs that these utilities are not already subject to under the federal regulations. The Commission seeks comments from all interested parties on this proposed regulation amendment, which is found at Annex A to this Order.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. § 501 and 1501; sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed regulations set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. A proposed rulemaking be opened to consider the regulations set forth in Annex A.

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

3. The Secretary shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this proposed rulemaking Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of any written comments referencing the docket number of the proposed regulations be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. A copy of this proposed rulemaking order and Annex A shall be served on the Office of Trial Staff, the Office of Consumer Advocate, and The Office of Small Business Advocate, and all Natural Gas Distribution Companies.

7. The contact person for this proposed rulemaking is Adam D. Young, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** 57-277. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 59. GAS SERVICE**  
**SERVICE AND FACILITIES**

§ 59.18. [ Location of meters ] Meter and regulator location.

[ Meters shall be installed in either of the following locations:

(1) **Inside the building, preferably in a dry, well-ventilated place not subject to excessive heat, and as near as possible to the point of entrance of the pipe supplying service to the building.**

(2) **Outside the building at a location selected by the utility. A meter cover or housing is required if, in the judgment of the utility, conditions require the physical protection for the meter installation. ]**

(a) *General requirements.*

(1) **When practical, a building may not have more than one service line. The service line must terminate in the building in which the service line enters.**

(2) **Meters shall be installed at the service regulator. When more than one meter is set on a particular premises, the meters must be set at one location. When it is necessary to install meters at multiple locations on the premises, the utility operator shall provide a tag or other means to indicate there are multiple meter locations.**

(3) **An outside, aboveground meter location must be used when availability of space and other conditions permit.**

(4) **When selecting a meter or service regulator location, a utility shall consider potential damage by outside forces, including:**

(i) **Vehicles.**

(ii) **Construction equipment.**

(iii) **Tools or other materials which could be placed on the meter.**

(iv) **Falling objects, such as packed snow or ice from a roof.**

(5) **When potential damage is evident, the meter or service regulator shall be protected or an alternate location selected.**

(6) **Meters and service regulators may not be installed in contact with soil or other potentially corrosive materials. A utility shall consider the potential for shorting out the insulating fitting when choosing a location.**

(7) **The meter location must accommodate access for meter reading, inspection, repairs, testing, changing and operation of the gas shut-off valve.**

(8) **The meter location must accommodate the installation of the service line in a straight line perpendicular to the main.**

(9) **Meters and service regulators may not be installed in the following locations:**

(i) **Directly beneath or in front of windows or other building openings which may be used as emergency fire exits.**

(ii) **Under interior or exterior stairways.**

(iii) **A crawl space with limited clearance.**

(iv) **Near building air intakes.**

(10) **When the Commission or a utility determines that a meter or regulator shall be moved for safety reasons, the costs associated with the relocation of the meter or regulator shall be borne by the utility. When a utility moves a meter in addition to the regulator, under this section, the cost of extending customer-owned facilities to the new meter location shall be borne by the utility.**

(11) **A customer requesting that a meter or regulator be moved shall pay the costs associated with**

relocation when the meter and regulator are currently situated in a suitable location under State and Federal guidelines.

(12) Utilities shall address meter location in their tariffs.

(b) *Outside meter or service regulator locations.* Outside meters or service regulators shall be installed in the following locations:

(1) Aboveground in a protected location adjacent to the building served.

(2) In a properly designed buried vault or meter box.

(i) The vault or meter box must be located on a customer's property, either adjacent to the building served or near the gas main.

(ii) Vaults may be located in a public right-of-way. Consent of local jurisdictions may be required.

(3) A utility shall consider proper design and location criteria for a meter box, including:

- (i) Ventilation.
- (ii) Vehicular traffic.
- (iii) Potential for soil accumulation.
- (iv) Surface water runoff.
- (v) High water table.
- (vi) Proximity to building air intakes or openings.
- (vii) Proximity to an excessive heat source.

(4) Piping installed through vault walls shall be properly coated to protect from corrosion.

(5) Vaults containing gas piping may not be connected by means of a drain connection to any other underground structure.

(6) When a meter box is located outside a paved surface, a utility shall consider the potential for fill, topsoil or sod being placed over the vault and, when practical, choose an alternate location.

(7) A utility shall refer to the guide material under 49 CFR 192.355 (relating to customer meters and regulators: protection from damage).

(c) *Inside meter or service regulator locations.*

(1) Inside meter locations shall be considered only when:

(i) An acceptable outside location is not available due to restrictions in Federally-approved historic districts or in high-risk vandalism districts.

(ii) Protection from ambient temperatures is necessary to avoid meter freeze-ups.

(2) Regulators must be located outside when a meter is located inside.

(3) Installed inside meters must be attached to an operable outside shut off valve.

(4) Regulators connected to steel service lines must be relocated to the outside by December 31, 2020.

(5) Meters and service regulators may not be located in engine, boiler, heater or electrical equipment rooms, living quarters, closets, restrooms, bathrooms or similar confined locations.

(6) Each service regulator installed within a building must be located as near as practical to the service line entry point. When selecting the service regulator location, venting requirements and the vent piping location and length shall be considered.

(7) When a meter or service regulator is located inside a building, a utility shall comply with 49 CFR 192.365 (relating to service lines: location of valves). A utility shall install a readily accessible shut-off valve outside the building.

(d) *Other meter or service regulator locations.* A utility may consider a specially constructed cabinet recessed in the building wall, sealed from inside the building and vented to and accessible from outside the building.

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## [ 52 PA. CODE CHS. 54, 62, 69 and 72 ]

[ L-00070186 ]

[ M-00072036 ]

### Withdrawal of Proposed Rulemaking and Proposed Statement of Policy; Universal Service and Energy Conservation Reporting Requirements; Customer Assistance Programs

*Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71—54.78 (electric); §§ 62.1—62.8 (natural gas) and Customer Assistance Programs, §§ 76.1—76.6; Doc. No. L-00070186*

*Proposed Revision to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261—69.267; Doc. No. M-00072036*

### Order Withdrawing Rulemaking and Policy Statement

On May 10, 2012, the Pennsylvania Public Utility Commission (Commission) entered an order discontinuing the Proposed Rulemaking on Universal Service and Energy Conservation Reporting Requirements and Customer Assistance Programs (CAP) at Doc. No. L-00070186 and the Proposed Revision to the Policy Statement on CAPs at Doc. No. M-00072036.

The proposed rulemaking order was published at 38 Pa.B. 776 (February 9, 2008). The Commission reopened the public comment period to provide interested parties with an opportunity to submit additional comments on specific topics at 40 Pa.B. 1764 (April 3, 2010). The order regarding the proposed revisions to the CAP Statement of Policy was published at 37 Pa.B. 6022 (November 10, 2007).

Several developments occurred since the initiation of these proceedings that impact the information that was used to draft the proposed rulemaking and proposed statement of policy. These developments include a change in policy regarding the integration of Low Income Home Energy Assistance Program grants with CAPs and the growth of CAPs during the economic decline. Both developments likely contributed to the increased costs of CAPs. The Commission wishes to re-evaluate a CAP design that differs from the one in the proposed rulemaking and proposed revisions to the CAP statement of policy to restore the balance between providing an affordable CAP

bill and ensuring that the rates to non-CAP customers, who fund CAPs, remain just and reasonable.

In addition, the Commission noted that it is conducting an investigation into the retail electricity market in this Commonwealth. Investigation of Pennsylvania's Retail Electricity Market, Doc. No. I-2011-2237952. Several universal service issues are being examined in this investigation, including whether CAP customers should be able to shop for electric supply and, if so, the protections that should be in place to ensure that the generation service is affordable. Further, the investigation may examine who will administer universal service programs and serve CAP customers in an environment where electric generation suppliers provide default service. The Commission determined that it was prudent to wait until the conclu-

sion of the universal service stakeholder process in the investigation before finalizing the proposed rulemaking and proposed revisions to the CAP statement of policy.

The Commission intends to initiate a new rulemaking and policy statement in the future.

A complete copy of the order is available on the Commission's web site at <http://www.puc.state.pa.us/general/search.aspx> by performing a search for Doc. No. L-00070186 and Doc. No. M-00072036.

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 12-1090. Filed for public inspection June 15, 2012, 9:00 a.m.]