

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Department of Health		RECEIVED 2001 MAR 15 PM 2:24 IRRC Number: 2002
(2) I.D. Number (Governor's Office Use) 10-155		
(3) Short Title Recreational Swimming Establishment Lifeguard Requirements		
(4) PA Code Cite 28 PA Code Section 18.1; 28 PA Code Section 18.42	(5) Agency Contacts & Telephone Numbers Primary Contact: Deborah Griffiths Office of Legislative Affairs Room 806A Health & Welfare P.O. Box 90 Harrisburg, PA 17108 (717) 783-3985 Secondary Contact: Dennis Wilson Bureau of Community Health Systems Room 628 Health and Welfare P.O. Box 90 Harrisburg, PA 17108 (717) 787-4366	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and non-technical language.		

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These regulations require certain facilities defined as “recreational swimming establishments” to have the appropriate number of certified lifeguards on duty during facility operation. Lifeguard certifying authorities who are approved by the Department will be identified to assure uniform lifeguard certification procedures. If the Department determines that a “recreational swimming establishment” is not in compliance with the regulatory requirements, the facility will be closed until the Department has conducted a re-inspection and issued a written authorization to reopen.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Statutory authority for these regulations is established by Act 75 of 1998; P. L. 531, 35 P.S. §675.1(b) and §679(a).

Prior to the passage of Act 75, the Pa. Supreme Court decision, *Spooner v. Secretary of Commonwealth*, 574 A. 2d 600 (Pa. 1990) held that the Department of Environmental Resources exceeded the scope of its statutory authority when it required lifeguards at public bathing facilities.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes, the regulations are mandated by Act 75 of 1998, P. L. 531, 35 P.S. §675.1(b).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Act and regulations address the need for safety at public bathing places by requiring certified lifeguards at certain public swimming facilities that, prior to this legislation, were not required to retain lifeguards. The Act and regulations further provide for specific certification requirements for lifeguards. Statistics maintained by the (federal) Center for Disease Control state that from 1990 through 1998, 1,030 drowning deaths occurred in Pennsylvania.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The public health, safety, and general welfare risks associated with non-regulation are the increased number of drownings and other injuries which may occur when lifeguards are not required at certain public bathing facilities, when lifeguards are not properly trained or not present in adequate numbers or are permitted to do multiple tasks while on duty at pool side.

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(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The beneficiaries of this legislation are all persons who use a recreational swimming establishment as defined by this Act. Those facilities who comply with the regulation also will have an affirmative defense to a personal injury lawsuit and may also benefit from lower liability insurance rates. Patrons of these facilities will benefit through the assurance of adequately trained lifeguards and that an adequate number of lifeguards are on duty to protect the bathers when the facility is in operation. Enhanced public safety and facilities that are properly maintained with adequate certified lifeguards will benefit the general public, the industry and promote tourism within the Commonwealth.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No entities are perceived to be adversely affected by these regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

These regulations would apply to all facilities, defined as a recreational swimming establishment, which are designed, constructed, or designated for use by individuals for the primary purposes of swimming, if a fee is charged for admission. This includes swimming pools, water rides, wave pools and swimming beaches and other outdoor swimming facilities as defined by the Act. The facilities that will be required to comply with the regulations include water parks and municipal, county and state-owned bathing places that charge a fee for the use of the facility. The exact number of recreational swimming establishments, as defined by Act 75, is unknown as this term has never been recognized as a category of Public Bathing Place facilities for statistical purposes.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A stakeholder group composed of representatives from the PA Department of Health, PA Department of Conservation and Natural Resources, American Red Cross, Young Men's Christian Association, PA Travel Council and Amusement Parks Association, Ellis and Associates Inc., Independent Insurance Agents of PA, and aquatics experts were consulted at a stakeholder meeting held at the PA Department of Health and Welfare Building on October 1, 1998. Information and suggestions provided by stakeholders were taken into consideration when drafting these regulations.

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Following the publication of the proposed regulations in the *Pennsylvania Bulletin*, comments were received from Senator Harold F. Mowery, Jr., Majority Chairman, Senate Public Health & Welfare Committee, Senator Vincent J. Hughes, Minority Chairman, Senate Public Health & Welfare Committee and the Independent Regulatory Review Commission (IRRC). These additional comments were reviewed and considered in drafting these regulations.

A second stakeholder group composed of representatives from the PA Department of Health, PA Department of Conservation and Natural Resources, American Red Cross, Ellis and Associates, Inc., waterpark operators and representatives of county and municipal-owned pools were consulted at a stakeholder meeting held at the Health and Welfare Building on February 12, 2001.

Information and suggestions provided by the second stakeholder group were also taken into consideration when drafting these regulations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Some recreational swimming establishments will incur costs to recruit and retain certified lifeguards. That expense will vary with the number of lifeguards necessary, the annual hours of operation, supplies pertinent to lifeguarding operations, bookkeeping, and related expenses. Some costs may be offset by reduced liability insurance rates. Assuming full-time employment of 40 hours per week for a 14-week season at \$6.00 per hour, the cost of an additional lifeguard would be \$3360.00. Using the same figures for the work week and length of the season, the cost of an additional lifeguard would be \$3920.00 based on wages of \$7.00 an hour. Indoor pools typically hire high school and college students on a part-time basis. For an indoor pool that is open all year, the cost of a lifeguard is approximately \$7,000.00 based on working 20 hours per week, 50 weeks per year and wages of \$7.00 an hour. However, most recreational swimming establishments which will be affected by these regulations already employ lifeguards to be on duty during the hours of operation to ensure the health and safety of patrons.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Based on the analysis in paragraph 17, a negligible cost or savings to local governments is anticipated.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including and legal, accounting, or consulting procedures which may be required.

Based on the analysis in paragraph 17, a negligible cost or savings to state government is anticipated.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	0	0	0	0	0
Local Government	\$0	0	0	0	0	0
State Government - DCNR	\$50,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000
Total Savings	\$0	0	0	0	0	0
COSTS:						
Regulated Community	\$0	0	0	0	0	0
Local Government	\$0	0	0	0	0	0
State Government	\$0	0	0	0	0	0
Total Costs	\$0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	\$0	0	0	0	0	0
Local Government	\$0	0	0	0	0	0
State Government	\$0	0	0	0	0	0
Total Revenue Losses	\$0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Costs were derived per the analysis in paragraph 17.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY - 3	FY - 2	FY - 1	Current 2000-2001 estimate
Bathing Place	\$436,891	\$459,297	\$455,180	\$798,320
DCNR	\$48,201,000	\$54,968,000	\$58,420,000	\$60,133,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Potential savings in reduced liability insurance rates may outweigh the potential costs incurred through hiring lifeguards (or additional lifeguards if the recreational swimming establishment already hired lifeguards) during the operational season.

Current year estimate includes the addition of nine (9) sanitarian positions to the program.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Non-regulatory alternatives were not options. The regulations were required to address the mandates prescribed by Act 75 requiring the Department to determine certification procedures for lifeguard certifying authorities and the number of lifeguards required for recreational swimming establishments.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

In addition to the system presented in the proposed regulations which has been withdrawn by the Department, an alternative regulatory scheme considered was requiring one lifeguard for every 2,000 square feet of water surface area at the facility. This was dismissed as it was considered too inflexible and imposed a significant burden on the regulated community.

Another alternative regulatory scheme considered was utilizing only the number of bathers to determine the number of lifeguards required at a recreational swimming establishment. This concept was dismissed based on the difficulty of maintaining adequate lifeguard numbers since bather load can fluctuate dramatically depending on weather, holidays, events and numerous other variables. No final cost projections were made as it was determined that the alternatives were not efficient.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. There are no provisions in these regulations that are more stringent than federal standards. The regulations are consistent with industry protocols.

Nationally recognized lifeguard training organizations, such as the American Red Cross and Ellis and Associates, recommend that all lifeguards be able to survey their assigned area every 10 seconds and be able to respond to a distressed swimmer within 20 seconds. This standard, called the "10/20 rule", is the basis upon which the majority of lifeguards are trained. A comprehensive study conducted by the New York State Department of Public Health and a private aquatics safety consulting firm, Pia Consulting, supports the position that the standard of one lifeguard for every 3,400 square feet of water surface area meets the minimum requirements of the 10/20 rule.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Lifeguard certification procedures are similar to those in place in other states. This regulation will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These regulations would affect 28 PA Code 18.1 and 18.42 by adding the definitions of a Certified Lifeguard and Recreational Swimming Establishment (18.1) and modifying subsection 18.42 (Lifeguards) to repeal Number (a) and Qualifications (b). Added would be subsections 18.42 (a) Recognized lifeguard certifying authorities, (b) Requirements for a Lifeguard Certifying Authority, (c) Required number of lifeguards and (d) Violation of certified lifeguard requirement.

(27) Will any public hearings or information meetings be scheduled? Please provide the dates, times, and locations, if available.

No other public meetings are scheduled. The Department has invited stakeholder input prior to, and during the Regulatory Review Process. Please also see information provided in Section 16.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Current Department inspection forms will not have to be altered. The regulations require each lifeguard certifying authority applying to be listed as a recognized lifeguard certifying authority to complete and submit an "Application for Recognition as a Lifeguard Certifying Authority" as part of the application process. A copy is attached and marked "Attachment #1".

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulations do not include any special provisions.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date of the regulations is September 30, 2001.

(31) Provide the schedule for continual review of the regulation.

Effectiveness of the regulations will be monitored on a continuing basis and through the annual sanitary surveys conducted by the Department. The Department performs an operational inspection of each public bathing facility before it is opened. If the facility is a recreational swimming establishment, the Department will review the number of certified lifeguards who will be on duty and that the lifeguard(s) is/are appropriately certified consistent with the lifeguard certifying authorities approved by the Department.

APPLICATION FOR RECOGNITION AS A LIFEGUARD CERTIFYING AUTHORITY

Instructions: Please complete and forward this application to Pennsylvania Department of Health, Environmental Health Administrator, 628 Health and Welfare Building, Harrisburg, PA 17120. Be advised that the applicant must meet the requirements of Title 28, Chapter 18.42(a)(b) of the Pennsylvania Code. Please respond to ALL of the following questions. Use additional sheets of paper if necessary and attach them to this application. COPIES OF THE WRITTEN LESSON PLAN, THE TEXTBOOK, AND THE INSTRUCTOR'S GUIDE MUST BE SUBMITTED WITH THE COMPLETED APPLICATION.

1. Date of Application _____
2. Application is: ☐ Original ☐ Renewal
3. Applicant's Name _____
4. Applicant's Address _____
 City _____ State _____
 Zip Code _____ County _____
5. Applicant's Telephone # _____ e-mail address _____
6. Contact Person's Name _____
7. Contact Person's Address _____
 City _____ State _____
 Zip Code _____
8. Contact Person's Telephone # _____ e-mail address _____
9. Is your course conducted pursuant to a written training plan, instructor's manual, and textbook? ☐ Yes ☐ No Briefly explain the training plan. _____

10. Does your course provide for certification in cardiopulmonary resuscitation? ☐ Yes ☐ No
 Briefly explain the certification process. _____

11. Does your course provide for instruction in first aid? ☐ Yes ☐ No
 Briefly explain the first aid instruction. _____

12. Does your course include a system for evaluating swimming ability?
☐ Yes ☐ No Briefly explain the evaluation process. _____

13. Does your course provide for instruction in lifeguarding responsibilities?
☐ Yes ☐ No Briefly explain that instruction. _____

14. Does your course provide a method for testing and certification? ☐ Yes ☐ No
Briefly explain those methods. _____

15. Does your course include a certificate which expires if renewal criteria are not
satisfied? ☐ Yes ☐ No
16. Have the instructors of your course completed training that includes certification in
lifeguard instruction, student evaluation, program planning, and conducting practice first aid,
cardiopulmonary resuscitation, and rescue sessions? ☐ Yes ☐ No Briefly explain those methods.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMITTEE

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<p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>BY _____ DEPUTY ATTORNEY GENERAL</p> <p>_____ DATE OF APPROVAL</p> <p>Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Health</u> (Agency)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>10-155</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY <u>Robert S. Zimmerman, Jr.</u></p> <p>TITLE <u>Secretary of Health</u></p>	<p>Copy below is hereby approved as to form and legality. Executive or independent Agencies.</p> <p>BY <u>Howard G. Bue</u></p> <p><u>3/15/01</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p>Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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DEPARTMENT OF HEALTH

TITLE 28. HEALTH AND SAFETY

[28 PA. CODE CH. 18]

Recreational Swimming Establishment Lifeguard Requirements

Notice is hereby given that the Department of Health (Department) has amended 28 Pa. Code Chapter 18 (relating to public swimming and bathing places) by adding definitions for “certified lifeguard” and “recreational swimming establishment” in §18.1 (relating to definitions), and by amending §18.42 (relating to lifeguards), as set forth in Annex A hereto. The Department also has included in §18.42 the requirements for the number of lifeguards, lifeguard qualifications, requirements for lifeguard certifying authorities, identification of the lifeguard certifying authorities who are recognized by the Department and an enforcement provision for recreational swimming establishments that are not in compliance with the regulatory requirements.

PURPOSE OF THE REGULATIONS

The Act of June 18, 1998 (P.L. 531, No. 75) (Act 75), *amending* the Public Bathing Law (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 has promulgated these regulations in consultation with established certifying authorities and recreational swimming establishments.

The lifeguard requirements of Act 75 and the regulations are intended to enhance public safety by requiring adequate lifeguard coverage at certain types of swimming

facilities and by setting forth requirements for the certification of lifeguards. The former provisions of §18.42, requiring lifeguard coverage for public bathing places, were invalidated by the Pennsylvania Supreme Court in 1990 as exceeding the promulgating agency's regulatory authority. Spooner v. Secretary of Commonwealth, 574 A.2d 600 (Pa. 1990), *aff'g per curiam*, 539 A.2d 1 (Pa. Cmwlth. 1988). The Conservation and Natural Resources Act (P.L. 89, No. 18) (71 P.S. §§134.101-134.103), which dismantled the former Department of Environmental Resources and transferred certain powers and duties to other agencies, also required the Department to administer the Public Bathing Law. The Department has amended §18.42 to delete the inoperative language and to add language which corresponds to the requirements of Act 75.

Act 75 granted authority to the Department to promulgate regulations to require an adequate number of certified lifeguards at certain types of swimming facilities. Application of these lifeguard requirements is limited to "recreational swimming establishments" as defined in Act 75. Two major factors governing the applicability of the regulations are that the recreational swimming establishment must be open to the public and charge a fee for admission.

Notice of Proposed Rulemaking was published at 29 Pa.B. 820 (February 13, 1999), and provided for a 30-day public comment period.

Comments were received from Senator Harold F. Mowery, Jr., Majority Chairman, Senate Public Health & Welfare Committee; Senator Vincent J. Hughes, Minority Chairman, Senate Public Health & Welfare Committee; and the Independent Regulatory Review Commission (IRRC). The comments and the Department's response are set forth herein.

REQUIREMENTS OF THE REGULATIONS

§18.1. Definitions

A "certified lifeguard" is defined in section 2(5) of the Public Bathing Law (35 P.S. §673(5)) as:

...an individual who has a current certification in lifeguarding from a certifying authority recognized by the Department in a notice published in the *Pennsylvania Bulletin*."

The Department has added the statutory definition to this section of the regulations.

No comments addressing this definition were received. This definition is adopted as proposed.

A "recreational swimming establishment" is defined in section 2(6) of the Public Bathing Law (35 P.S. §673(6)) as:

...a facility that is designed, constructed and/or designated for use by individuals for the primary purpose of swimming, where a fee is charged for admission." This definition shall include, but is not limited to,

swimming pools, water rides, wave pools and swimming beaches and other outdoor swimming facilities. The term excludes those facilities owned by condominiums, other property owner associations, rental arrangements which 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, his family and personal guests.

The Department has added the statutory definition to this section of the regulations.

Comment: The proposed rulemaking added criteria to the definition for “recreational swimming establishment” that was beyond the scope of Act 75. The added sentence, “During any time a facility otherwise excluded by the definition provides access to the general public and charges a fee for admission, it shall be considered a recreational swimming establishment.” should be deleted in the final-form regulations. The General Assembly made denying access to the public a condition of exclusion only for private clubs and private organizations. All of the listed facilities in Act 75 that precede “...private clubs and private organizations” are excluded unconditionally, i.e. those facilities owned by condominiums, other property owner associations, rental arrangements which include three or more families or social units, hotels or motels, campgrounds, private clubs and private organizations.

Response: The Department agrees with this recommendation. The proposed additional sentence of the definition of “recreational swimming establishment” has been deleted.

§18.42. Certified lifeguards

The Department has changed the title of this section to “Certified lifeguards” to reflect the Act 75 directive. Former subsections (a) and (b) are replaced with new subsections (a), (b), (c) and (d).

Subsection (a) Recognized lifeguard certifying authorities

The Department has identified the American Red Cross, the YMCA and Ellis and Associates as approved lifeguard certifying authorities. This is consistent with the practice in various other states as these organizations are nationally recognized and accepted lifeguard certifying authorities.

Any other authority that provides certification for lifeguards can apply to be approved by the Department as a qualified, certifying authority. The authority applying for approval must submit materials to the Department on an annual basis to establish that its lifeguard training course satisfies the requirements of subsection (b). The Department will publish a list of approved certifying authorities on an annual basis in the *Pennsylvania Bulletin*.

Comment: The criteria listed in the proposed subsection (a) may be interpreted by facilities in a different manner than the Department’s interpretation. The Department should publish an annual list of those organizations that qualify as a lifeguard certifying authority.

Response: This recommendation has been accepted by the Department. A new provision has been added to specifically provide that the Department will annually publish a list of qualified certifying authorities in the *Pennsylvania Bulletin*. The Department has also identified three nationally recognized lifeguard certifying authorities as approved by the Department.

Subsection (b) **Requirements for a lifeguard certifying authority**

In addition to the American Red Cross, the YMCA and Ellis and Associates, any other lifeguard certifying authority may apply to be approved by the Department. This subsection specifies the criteria that are required for a certifying authority's lifeguard training course to be recognized by the Department. The criteria are based on nationally recognized lifeguard certifying authority standards.

Comment: Proposed subsection (a)(8) would require a lifeguard certifying authority to use instructors that have completed an *approved* lifeguard instructor's certification program, but the regulation does not indicate what an approved lifeguard instructor's certification program is or who approves these programs. The Department should clarify or, alternatively, publish, on an annual basis, a list of the approved lifeguard instructor's certification programs.

Response: The Department agrees with the recommendation of publishing an annual notice in the *Pennsylvania Bulletin* listing the qualified certifying authorities. Additionally, proposed subsection (a)(8), now subsection (b)(8), has been clarified and establishes the minimum requirements for the instructors as part of the requirements for a lifeguard certifying authority to be approved by the Department.

Subsection (c) **Required number of lifeguards**

This subsection, which had been proposed as subsection (b), provides the Department's criteria for determining that a minimum number of certified lifeguards are on duty at a recreational swimming establishment to protect the safety of the public when that establishment is in operation. Traditionally, the number of lifeguards required at public bathing places, pursuant to national standards, has been based on the surface area of the facility, the user load (number of swimmers in the pool) or a combination of both.

The required number of certified lifeguards is based on a determination of water surface area and bather load. Computations based upon water surface area and bather load will provide a consistent method for determining the number of lifeguards needed, even though there may be considerable differences in the design, size and/or type of facility and variable user load.

An additional safety consideration imposed by this subsection is that a lifeguard, while on duty at the waterside at a facility, may not be assigned any other tasks which will divert the lifeguard's attention from the persons using the facility.

Other provisions for bather safety relate to wading pools, diving boards and water slides. Unless there is an unobstructed view of the wading pool from an existing lifeguard station, an additional certified lifeguard is required to be stationed by the wading pool when

the recreational swimming establishment is open. If the recreational swimming establishment has a diving board or water slide, a certified lifeguard must be on duty within 50 feet from the diving well or plunge area.

Comment: The proposed regulations must determine the number of lifeguards. The proposed regulations would permit the operators of recreational swimming establishments to determine the number of lifeguards needed based on the criteria listed in the proposed regulations. The proposed criteria lack the required certainty and uniformity needed to determine the number of lifeguards at recreational swimming establishments.

Response: The Department has accepted this comment. It has revised subsection (c) to require a certified lifeguard for every 3,400 square feet of water surface area or fraction thereof, plus an additional lifeguard if the bather load exceeds one bather for every 50 square feet of water surface area. Of this required number of lifeguards, the pool owner must ensure that a lifeguard is stationed within 50 feet of water slides and diving wells. The Department has determined that the requirement most capable of certainty and uniformity is based on a determination of the square feet of water surface area. That criterion will determine a minimum number of certified lifeguards that must be on duty. However, additional certified lifeguards will need to be on duty when other criteria in the regulation dictate.

Comment: With respect to proposed subsection (b)(1) requiring a lifeguard coverage plan, there is a need for some degree of certainty that recreational swimming establishments are safe that cannot be ensured simply by requiring a lifeguard coverage plan.

Response: The final-form regulations address this concern. Nationally recognized lifeguard training organizations, such as the American Red Cross and Ellis and Associates, recommend that all lifeguards be able to survey their assigned area every ten seconds and be able to respond to a distressed swimmer within twenty seconds. This standard, called the "10/20 rule", is the basis upon which the majority of lifeguards are trained. A comprehensive study conducted by the New York State Department of Public Health and a private aquatics safety consulting firm, Pia Consulting, supports the position that the standard of one lifeguard for every 3,400 square feet of water surface area meets the minimum requirements of the 10/20 rule. A copy of the study is available from the Department of Health, Bureau of Community Health Systems upon request. The final-form regulations require additional lifeguards when the bather load reaches a point where the increased number of bathers becomes a distraction to the lifeguard or if the shape or design of the pool impairs the lifeguard's view of the bathers.

Comment: Operators of recreational swimming establishments are entitled to know with reasonable certainty the requirements they need to satisfy to comply with Department regulations, and they are entitled to know those requirements in advance of opening to the public.

Response: The final-form regulations identify three nationally recognized lifeguard certifying authorities as approved by the Department. Additionally, the final-form regulations list the specific criteria needed for other lifeguard certifying authorities to be approved by the Department as a recognized lifeguard certifying authority. A list of approved authorities will be published, on an annual basis, in the *Pennsylvania Bulletin*.

The final-form regulations also provide a very specific formula to calculate the number of certified lifeguards required by a recreational swimming establishment. The formula is capable of a uniform and consistent application by the owners of recreational swimming establishments.

Additional assessment by the Department will be triggered only when an unusual configuration of the swimming area compromises the ability of lifeguards to monitor bather safety notwithstanding the regulatory formula for determining the number of lifeguards to assign.

Comment: The regulations should specify the required number of lifeguards for a particular facility based on the size of the facility, participants on site, support staff, and scheduled activities. Alternatively, the Department should include more definitive criteria to determine adequate lifeguard coverage.

Response: The Department has determined that the formula that has the highest probability of uniform interpretation and application by the owners of the facilities is one that enables calculating the number of lifeguards based on square footage of water surface area plus bather load. The final-form regulations include a provision that provides the operator with the option to close portions of the water surface area with safety ropes during periods of scheduled activities, such as aquatic aerobics or swim team practice or times when the bather load is low in comparison to the size of the facility. Varying design configurations, the many variables involved in attempting to pre-determine the number of participants who may use the facility on a given day/week/month and the necessity, if any, of support staff which may vary significantly based on the size, nature and scheduled activities of the facility are variables that the Department viewed as too indefinite to address in meaningful regulations. The regulations do include bather load considerations and require additional lifeguard coverage when the number of bathers or configuration of the swimming area may affect the lifeguard's ability to survey the assigned area and response time.

Comment: The proposed regulation did not meet the legislative intent of Act 75 because the Department would not be reviewing the Lifeguard Coverage Plan. Section 8(a) of the Public Bathing Law (35 P.S. §679(a)) empowers the Department to conduct such examinations and investigations to determine, among other listed matters, whether there is compliance by

recreational swimming establishments with the provisions of the act and the rules and regulations of the Department.

Response: The list of factors in the proposed regulations for a recreational swimming establishment to consider in determining the number of lifeguards needed has been entirely rewritten. The final-form regulations provide a precise formula for each recreational swimming establishment to make an accurate determination. Pursuant to that formula, based on square feet of water surface area or fraction thereof, the operator may determine, in advance of the facility opening to the public, the exact minimum number of lifeguards required by that facility to be in compliance with the regulatory requirements. Additional certified lifeguards are based on bather load to permit flexibility to the pool owner and to avoid excess lifeguards when bather load is low. It will not be necessary for the Department to actually review a "Lifeguard Coverage Plan." Additionally, the Department has added subsection (d) to provide that the Department will order the pool to be closed if the recreational swimming establishment is not in compliance with any of the lifeguard requirements.

Comment: The regulation could include a process for approving the Lifeguard Coverage Plan for both currently permitted facilities and also for new facilities. The regulation could include a resolution process for the Department and the facility to address any deficiencies in the Lifeguard Coverage Plan, a process for a facility to amend its Plan due to a change in operation, the Department's criteria for closing a facility and a resubmission process following Department disapproval.

Response: It is the intention of the Department to include an inspection of facilities with current permits as part of the annual inspection. The surveyor/inspector will specify the number of lifeguards on duty and, if appropriate, the bather load at the time of the inspection on the Public Bathing Place Report. A specific section of the Public Bathing Place Report requires a determination as to whether there are any violations with respect to the lifeguards. In addition to the inspection for the

number of lifeguards on duty, the surveyors conducting inspections on behalf of the Department will review lifeguard certificates to ensure that the lifeguards on duty are certified by an approved certifying authority. The same inspection process can be used and the same procedure will apply for an inspection of a new facility when it is opened to the public. However, it will not be necessary for the Department to review or approve a "lifeguard coverage plan" as originally described in the proposed regulations, as that provision has been omitted in the final-form regulations.

Additionally, the Department has added a new provision requiring closure of the pool if a recreational swimming establishment is determined to not be in compliance with the regulations for the number of certified lifeguards required to be on duty at poolside. Under the final-form regulations, the pool may not be re-opened until the Department has conducted a re-inspection of the facility and issued written authorization for the pool to be re-opened.

Comment: The proposed regulations did not indicate when the recreational swimming establishments must come into compliance with the regulations. The regulation should specify a reasonable time period after final publication for facilities to meet the new requirements.

Response: The effective date is September 30, 2001. This will provide adequate time for recreational swimming establishments to make any necessary changes to be in compliance with the regulations. It is not expected that any facility will experience undue hardship in complying with the regulations as, at most, it may result in hiring additional certified lifeguards.

Comment: If the Department amends the proposed regulations to include more specific standards on adequate lifeguard coverage and a process for approval of a lifeguard coverage plan, the Department should consider issuing advance notice of final rulemaking in order for recreational swimming establishments,

subject to the regulations, to have an opportunity to review and comment on the new standards.

Response: The Department has amended the proposed rulemaking and established a specific standard for determining the minimum number of required certified lifeguards. The standard was adopted after taking into consideration comments from the original stakeholders' meeting on October 1, 1998, plus additional comments and recommendations from members of the regulated community at a stakeholder meeting held on February 12, 2001 at the Health and Welfare Building in Harrisburg. It is not expected that this will impose an undue hardship or burdensome requirement on any recreational swimming establishment. The Department believes that an effective date of September 30, 2001 will permit the recreational swimming establishments that are subject to the regulation to effectuate any changes necessary to achieve compliance with the regulations.

Subsection (d) **Violation of certified lifeguard requirement**

This is a new provision that has been added to the final-form regulations.

The Public Bathing Law requires the Department to enter upon any bathing or swimming place and determine whether the provisions of that act and the rules and regulations of the Department are being satisfied or violated. (35 P.S. §679(a)).

If it is determined that a bathing or swimming place is being maintained contrary to those provisions, the facility is to be closed to all persons and the bathing or swimming pool is to be drained and kept dry until provision is made to comply with the statute and the Department has given permission to reopen. (35 P.S. §679(b)).

If a recreational swimming establishment is found to be in violation of any of the provisions relating to the required number of certified lifeguards, the final-form regulations provide for closing the pool, which is consistent with the provisions of Act 75. Unless there are other violations which create a serious risk to the health or safety of the bathers, the Department would not require the pool to be drained. The Department has determined that draining a pool can result in damage to the pool. Also, in a drought or weather conditions limiting the use of water, draining a pool could result in the pool remaining dry and unable to be used for a substantial period of time even after the violations have been corrected.

The Department believes the most practical and efficient provision, consistent with enforcing the requirement that owners of recreational swimming establishments have an adequate number of certified lifeguards on duty at poolside, is to provide for closure of the pool if there is a determination that the facility has an inadequate number of appropriately certified lifeguards. The pool will remain closed until the Department has conducted a re-inspection and provided written authorization to reopen to the owner of the recreational swimming establishment.

The Department intends to conduct the re-inspection as soon as possible after the facility owner provides notice that the pool is in compliance with regulatory requirements.

WHO IS AFFECTED BY THE REGULATIONS

The regulations will affect swimming and bathing facilities when they are open for use by the general public and a fee is charged for admission. These establishments include, but are not limited to, swimming pools, water rides, wave pools and swimming beaches. The regulations will also enhance the safety of the public when they use recreational swimming establishments.

COST AND PAPERWORK ESTIMATES

These regulations will have little fiscal impact on the Commonwealth, local government, the private sector and the general public. Most recreational swimming establishments, as defined by Act 75, currently employ lifeguards to protect the safety of their patrons. As a result of these regulations, facilities utilizing lifeguards may derive a benefit of lower liability insurance rates which may offset potential costs incurred. The regulations will not significantly increase paperwork. Based on current hiring practices, the Department of Conservation and Natural Resources estimates that it will incur an additional \$150,000 in annual expenses for lifeguard salaries as a result of these regulations.

EFFECTIVE DATE/SUNSET DATE

These regulations will be effective September 30, 2001. Effectiveness of the regulations will be monitored on a continuing basis and as part of the annual sanitary inspections conducted by the Department.

STATUTORY AUTHORITY

The final-form regulations are promulgated pursuant to Act 75. Act 75 requires the Department to determine appropriate authorities to certify lifeguards and to issue regulations to determine the number of lifeguards required at a recreational swimming establishment.

REGULATORY REVIEW

Under Section 5(a) of the Regulatory Review Act (Act), (71 P.S. §745.5(a)), on January 28, 1999, the Department submitted a copy of Notice of Proposed Rulemaking, published at 29 Pa.B. 820 (February 13, 1999), 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. In compliance with Section 5(c) of the Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In compliance with Section 5.1(a) of the Act, the Department submitted a copy of the final-form regulations to IRRC and the Committees on Public Health and Welfare and Health and Human Services, on _____. In addition, the Department provided IRRC and the Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

The final-form regulations were (deemed) approved by the House Health and Human Services Committee on _____ and (deemed) approved by the Senate Public Health and Welfare Committee on _____. IRRC met on _____ and approved the regulation in accordance with Section 5.1(e) of the Act. The Office of Attorney General approved the regulations on _____.

CONTACT PERSON

Questions regarding these final-form regulations may be submitted to Dennis C. Wilson, Environmental Health Specialist, Department of Health, Bureau of Community Health, 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 by audio tape or Braille. Speech or hearing impaired persons may use V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Services at 1-800-654-5984 [TT].

Persons with disabilities who would like to obtain this document in an alternative format (i.e. large print, audiotape or Braille) should contact Mr. Wilson so that necessary arrangements may be made.

FINDINGS

The Department finds that:

- (1) Public notice of intention to adopt the regulations 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 regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

ORDER

The Department of Health, acting under the authorizing statute, orders that:

- (1) The regulations of the Department at 28 Pa. Code Chapter 18 are amended by adding definitions for “certified lifeguard” and “recreational swimming establishment” to §18.1 and by amending §18.42 as set forth in Annex A.
- (2) The Secretary of Health 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.
- (3) The Secretary of Health shall submit this Order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.
- (4) The Secretary of Health shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (5) This Order shall take effect September 30, 2001.

ANNEX A

Title 28. HEALTH AND SAFETY

PART II. LOCAL HEALTH

CHAPTER 18. PUBLIC SWIMMING AND BATHING FACILITIES

Section 18.1. Definitions.

Certified lifeguard – An individual who has a current certificate in lifeguarding, from a lifeguard certifying authority, as recognized by the Department in a notice published yearly in the Pennsylvania Bulletin.

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. The term includes swimming pools, water rides, wave pools and swimming beaches and other outdoor swimming facilities. The term excludes those facilities owned by condominiums, other property owner associations, rental arrangements which 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. When a facility otherwise excluded by this definition provides access to the general public and charges a fee for admission, it shall be considered a recreational swimming establishment.~~

Section 18.42. Certified [Lifeguards] lifeguards.

(a) *[Number.* One or more competent lifeguards in adequate number shall be on duty at the waterside at all times the public bathing place is open to use by bathers, and may not be assigned other tasks which will divert attention from the safety of the bather.

(b) *Qualifications.* Lifeguards shall be capable swimmers, skilled in lifesaving methods and in methods of artificial resuscitation as evidenced by the possession of a currently valid certificate or other proof of proficiency from a recognized agency offering instructions in these fields.]

Recognized lifeguard certifying authorities. LIFEGUARD CERTIFYING AUTHORITIES RECOGNIZED BY THE DEPARTMENT ARE THE AMERICAN RED CROSS, THE YMCA AND ELLIS AND ASSOCIATES. ANY OTHER ORGANIZATION THAT INTENDS TO QUALIFY AS A CERTIFYING AUTHORITY SHALL SUBMIT MATERIALS, ON AN ANNUAL BASIS, TO THE DEPARTMENT TO ESTABLISH THAT ITS LIFEGUARD TRAINING COURSE SATISFIES THE CRITERIA IN SUBSECTION (B). THE MATERIALS MUST BE RECEIVED BY 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."

THIS FORM IS AVAILABLE FROM THE DEPARTMENT. THE DEPARTMENT WILL ANNUALLY PUBLISH A LIST OF APPROVED CERTIFYING AUTHORITIES, ON OR BEFORE DECEMBER 1 OF EACH YEAR, IN THE *PENNSYLVANIA BULLETIN*.

(B) ***REQUIREMENTS FOR A LIFEGUARD CERTIFYING AUTHORITY.*** The Department will recognize 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, instructors' manual, and text book.
- (2) It provides for instruction CONFIRMATION OF COURSE COMPLETION FOR CERTIFICATION in cardiopulmonary resuscitation.
- (3) It provides for instruction in first aid.
- (4) It includes a system for evaluating swimming ability.
- (5) It provides for instruction in lifeguarding responsibilities and pool operation.
- (6) It provides a method for testing and certification.
- (7) It includes a certificate which expires if renewal criteria are not satisfied.
- (8) Its instructors have completed an approved lifeguard instructors' certification program ARE CERTIFIED LIFEGUARDS AND HAVE SUCCESSFULLY COMPLETED A TRAINING COURSE THAT INCLUDES CERTIFICATION IN LIFEGUARD INSTRUCTION, STUDENT EVALUATION, PROGRAM PLANNING, CARDIOPULMONARY RESUSCITATION, AND CONDUCTING PRACTICE FIRST AID AND RESCUE SESSIONS.

~~(9) Upon successful completion of the course, the names of certified individuals are entered into an accessible information system.~~

~~(b)~~ (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) Develop, write, and adhere to a lifeguard coverage plan for the recreational swimming establishment incorporating the standards of a Department recognized lifeguard certifying authority which specifies how the recreational swimming establishment shall provide an adequate number of certified lifeguards at relevant times. This plan shall be posted in an area commonly utilized by lifeguard staff and shall be available to the Department and any member of the public upon request.~~

~~(2) Consider facility size, design and utilization.~~

~~(3) Station one or more lifeguards at waterside when the recreational swimming establishment is open and not assign other tasks which could divert the attention of lifeguards from the safety of users.~~

~~(4) Ensure that the entire area of the recreational swimming establishment can be visually monitored by lifeguards at least every 10 seconds.~~

~~(5) Ensure that the lifeguard to victim response time is 20 seconds or less.~~

~~(6) Monitor and evaluate lifeguard staff performance during actual or simulated operational conditions, and modify the lifeguard coverage plan as necessary to ensure the safety of users.~~

~~(7) Provide appropriate lifeguard orientation and regular inservice training at least yearly on the topics of lifesaving techniques, safety equipment, and emergency procedures.~~

(1) AT LEAST ONE CERTIFIED LIFEGUARD FOR EVERY 3,400 SQUARE FEET OF WATER SURFACE AREA OR FRACTION THEREOF SHALL BE ON DUTY AT THE WATERSIDE AT ALL TIMES THE RECREATIONAL SWIMMING ESTABLISHMENT IS OPEN TO USE BY BATHERS.

(I) THE WATER SURFACE AREA SHALL MEAN THE TOTAL SURFACE AREA OF WATER ACCESSIBLE TO THE BATHERS, INCLUDING A WADING POOL.

(II) THE OPERATOR MAY REDUCE THE WATER SURFACE AREA BY CLOSING PORTIONS OF THE SWIMMING AREA WITH SAFETY ROPES, PROVIDED THAT ADEQUATE SUPERVISION IS MAINTAINED TO PREVENT PATRONS FROM ENTERING THE CLOSED PORTIONS OF THE SWIMMING AREA.

(III) UNDER CIRCUMSTANCES WHERE THE ABILITY OF A CERTIFIED LIFEGUARD TO SURVEY 3,400 SQUARE FEET OF WATER SURFACE AREA IS IMPAIRED, SUCH AS WHEN THE SIZE AND SHAPE OF THE SWIMMING AREA PREVENTS THE CERTIFIED LIFEGUARD FROM MONITORING THAT AREA FROM A FIXED LIFEGUARD STATION, THE

DEPARTMENT MAY REQUIRE ADDITIONAL CERTIFIED LIFEGUARDS TO ASSURE THE SAFETY OF THE BATHERS.

(2) WHEN THE BATHER LOAD IS SUCH THAT THERE IS LESS THAN 50 SQUARE FEET OF WATER SURFACE AREA FOR EACH BATHER, AT LEAST ONE ADDITIONAL CERTIFIED LIFEGUARD SHALL BE ON DUTY AT WATERSIDE. TO DETERMINE BATHER LOAD, THE OPERATOR SHALL DIVIDE THE TOTAL WATER SURFACE AREA BY THE TOTAL NUMBER OF BATHERS IN THE RECREATIONAL SWIMMING ESTABLISHMENT.

(3) IF THERE IS A WADING POOL, WHEN IT IS OPEN TO THE PUBLIC, THERE MUST BE AN UNOBSTRUCTED VIEW OF THE WADING POOL FROM A FIXED LIFEGUARD STATION OR A SEPARATE CERTIFIED LIFEGUARD SHALL BE ON DUTY TO GUARD THE WADING POOL.

(4) 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 PLUNGE AREA WHEN THE DIVING BOARD OR WATER SLIDE IS OPEN TO THE PUBLIC. THE CERTIFIED LIFEGUARD MUST BE STATIONED WITHIN 50 FEET OF THE DIVING WELL OR SLIDE PLUNGE AREA. IF THE SWIMMING AREA INCLUDES BOTH A DIVING WELL AND SLIDE PLUNGE AREA, 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. IF THE DIVING WELL OR PLUNGE AREA IS PHYSICALLY SEPARATED FROM THE SWIMMING AREA, A CERTIFIED

LIFEGUARD MUST BE ASSIGNED TO MONITOR THE DIVING WELL OR SLIDE PLUNGE AREA EXCLUSIVELY AND THE OPERATOR MUST EXCLUDE THE WATER SURFACE AREA OF THE DIVING WELL OR PLUNGE AREA FROM THE WATER SURFACE AREA OF THE RECREATIONAL SWIMMING ESTABLISHMENT FOR THE PURPOSE OF DETERMINING THE NUMBER OF ADDITIONAL CERTIFIED LIFEGUARDS REQUIRED PURSUANT TO PARAGRAPH (1).

(5) A CERTIFIED LIFEGUARD MAY NOT BE ASSIGNED OTHER TASKS WHICH WILL DIVERT ATTENTION FROM THE SAFETY OF THE BATHERS WHILE ON DUTY TO WATCH BATHERS TO ENSURE THEIR SAFETY.

(D) VIOLATION OF CERTIFIED LIFEGUARD REQUIREMENT. THE DEPARTMENT WILL 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 SUCH TIME AS THE DEPARTMENT HAS PERFORMED A FOLLOW-UP INSPECTION, HAS FOUND THAT THE FACILITY HAS MET THE REQUIREMENTS OF SUBSECTION (C) AND HAS PROVIDED THE FACILITY WITH WRITTEN AUTHORIZATION TO REOPEN.

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

March 15, 2001

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Department of Health Final-Form Regulations
Recreational Swimming Establishment Lifeguard Regulations
No. 10-155

Dear Mr. Nyce:

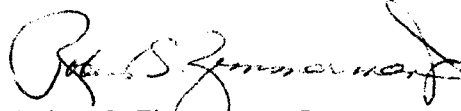
Enclosed is a copy of the final-form regulations for review by the Commission pursuant to the Regulatory Review Act (Act) (71 P.S. §§745.1-745.15). Section 5.1(a) of the Act provides that, upon completion of the agency's review of comments following proposed rulemaking, the agency is to submit to the Commission and the standing committee, a copy of the agency's response to the comments received, the names and addresses of commentators who have requested additional information relating to the final-form regulations, and the text of the final-form regulations which the agency intends to adopt.

The Department has addressed all comments received on the proposed rulemaking in the Preamble. No person who submitted a comment during the thirty (30) day comment period requested a copy of the final-form regulations. The Department convened a second stakeholder's meeting on January 12, 2001 to obtain additional input. Concerns discussed at this meeting have also been considered.

Section 5.1(e) of the Act provides that within ten (10) days following the expiration of the standing committee review period, or at its next regularly scheduled meeting, the Commission shall approve or disapprove the final-form regulations.

The Department will provide the Commission with any assistance it requires to facilitate a thorough review of the regulations. If you have any questions, please contact Deborah Griffiths, Director, Office of Legislative Affairs, (717) 783-3985.

Sincerely,

A handwritten signature in black ink, appearing to read "R. S. Zimmerman, Jr.", written over a horizontal line.

Robert S. Zimmerman, Jr.
Secretary of Health

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER: 10-155

SUBJECT: Recreational Swimming Establishment Lifeguard Requirements

AGENCY: DEPARTMENT OF HEALTH

2001 MAR 15 PM 2:26

REGULATORY
REVIEW COMMISSION



TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

3/15/01

R. Wachob

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES

3/15/01

Karen Shaffer

SENATE COMMITTEE ON PUBLIC HEALTH AND
WELFARE COMMITTEE

3/15/01

Kristi Kreiser

SENATE COMMITTEE ON PUBLIC HEALTH AND
WELFARE COMMITTEE

3/15/01

E. Pagan

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

March 15, 2001