

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CH. 225 ]

### Prohibition of Excessive Overtime in Health Care Act Regulations

The Department of Labor of Industry (Department) proposes to add Chapter 225 (relating to prohibition of excessive overtime in health care) to read as set forth in Annex A under section 5 of the Prohibition of Excessive Overtime in Health Care Act (act) (43 P. S. § 932.5)

#### *Statutory Authority*

The Department is required to promulgate regulations to implement the act under section 5 of the act.

#### *Background*

The act prohibits health care facilities or employers that provide clinical care services from requiring its employees to work in excess of an agreed to, predetermined and regularly scheduled daily work shift. The act allows for mandating overtime for unforeseeable emergent circumstances and requires health care facilities or employers to use reasonable efforts to obtain staff before overtime may be mandated. The act prohibits retaliation against employees for refusing to work in excess of its limitation and provides for the Department to hold hearings, implement administrative fines and order corrective action for violations of the act. The Bureau of Labor Law Compliance (Bureau) has enforced the act since it took effect on July 1, 2009.

#### *Regulatory Review and Promulgation*

Since October 2008, the Department has met with numerous organizations whose members would be affected by the act and this proposed rulemaking. Additionally, on December 3, 2009, the Department held a public stakeholders meeting in which it provided information regarding the regulatory process and received testimony from stakeholders affected by the act and the regulations.

The following organizations presented testimony at the stakeholders meeting: Pennsylvania Association of Staff Nurses & Allied Professionals; Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities; The Hospital & Healthsystem Association of Pennsylvania; Service Employees International Union; and Bruce Ludwig.

The following groups provided written comments: Department of Public Welfare; Department of Corrections; Pennsylvania State Education Association; Department of Military and Veterans Affairs; the Pennsylvania Association of Staff Nurses & Allied Professionals; Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities; The Hospital & Healthsystem Association of Pennsylvania; Service Employees International Union; and Bruce Ludwig.

The Department reviewed this proposed rulemaking with the following Commonwealth agencies: Department of Public Welfare; Department of Corrections; Department of Military and Veterans Affairs; and Office of Administration.

#### *Purpose*

The proposed rulemaking is necessary to set forth the complaint and hearing process for alleged violations committed under the act.

#### *Summary of Proposed Rulemaking*

##### *§ 225.1. Purpose and scope*

This section states that the purpose of this chapter is to implement the act's complaint and investigation procedures and administrative penalties assessment provisions.

##### *§ 225.2. Definitions*

This section provides the following definitions necessary to interpret the act and the regulations: "act," "Bureau," "employer" and "Secretary." It also contains definitions for "employee" and "health care facility" from section 2 of the act (43 P. S. § 932.2).

##### *§ 225.3. Complaint and investigation procedure*

This section enumerates the complaint and investigation procedure for alleged violations of the act. Under this section, aggrieved employees may file a complaint with the Department within 60 days of the alleged violation of the act. The complaint must be in writing and signed. This section details the information which must be in the complaint and the procedure to correct an insufficient complaint. It also allows the Department to dismiss a complaint that does not comply with the requirements.

##### *§ 225.4. Administrative penalties*

This section enumerates the factors the Department will consider when imposing penalties under section 6 of the act (43 P. S. § 932.6), including the size of business, history of previous violations and good faith attempts by the health care facility or employer to address the violation at issue.

##### *§ 225.5. Administrative notice of violation and proposed penalty*

This section enumerates the notice of violation and penalty procedure. Under this section, the Bureau will issue an administrative decision containing findings and proposed penalties which will be served by first class mail upon the violating health care facility or employer. A health care facility or employer served with an administrative decision and proposed penalty may accept the notice and pay the penalty, request a reduction in penalty or contest the administrative decision and proposed penalty. The request for reduction in penalty must be made within 10 days of the mailing date of the administrative decision and propose an alternative penalty and set forth mitigating circumstances. The filing of a request for reduction does not toll or extend the 30-day period appeal period.

##### *§ 225.6. Contesting an administrative decision and proposed penalty*

This section enumerates the procedure to be used by a health care facility or employer to contest an adverse administrative decision. The health care facility or employer contesting the administrative decision must file a written request for a hearing with the Bureau within 30 days of the mailing date of the administrative decision. The Bureau will notify the complainant of a hearing request. The section provides that untimely request for a

hearing may be dismissed. A request for a hearing acts as a supersedeas of the administrative decision.

§ 225.7. *Hearing*

This section sets out the hearing process. The process begins with the Secretary assigning a hearing officer to schedule a de novo proceeding. The parties to the hearing are the Bureau and the health care facility or employer. The Bureau has the burden of proof that the health care facility violated the act and that the proposed penalty is appropriate.

§ 225.8. *Petition to intervene*

This section sets out the manner in which a third party may request to intervene in the hearing. A petition to intervene shall be filed with the hearing officer and the existing parties. The existing parties may file an answer to the petition.

§ 225.9. *Adjudications*

This section states that the Secretary will issue a written adjudication including relevant findings and the rationale for the adjudication. The adjudication will be served on all parties of record and include notification of appeal rights.

§ 225.10. *Appeal rights*

This section notifies parties that an appeal to the Secretary's adjudication may be filed to Commonwealth Court.

*Affected Persons*

Certain Commonwealth agencies, health care facilities and certain employees of those healthcare facilities and Commonwealth agencies as defined in section 2 of the act may be affected by this proposed rulemaking. The health care facilities and agencies affected include general or special hospitals, psychiatric hospitals, rehabilitation hospitals, hospices, ambulatory surgical facilities, long-term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis, inpatient drug and alcohol treatment facilities, facilities which provide clinically-related health services and are operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare, and mental retardation facilities operated by the Department of Public Welfare.

Employees affected are those who are involved in direct patient care activities or clinical care services and who receive an hourly wage or are classified as a nonsupervisory employee for collective bargaining purposes. Employees include individuals employed through a personnel agency that contracts with a health care facility to provide personnel.

These proposed regulations will affect the complaint and hearing process for alleged violations committed under the act.

*Fiscal Impact*

It is anticipated that there will be costs to the Department as a result of this proposed rulemaking. The Department cannot anticipate the costs of investigating and adjudicating alleged violations because there is not a basis for comparison for this activity. It is not expected that the levying of administrative fines will demonstrably offset costs. The Bureau has enforced the act since July 2009.

*Paperwork Requirements*

The Bureau has already prepared and posted information and complaint forms on the Department's web site at

www.dli.state.pa.us. The act does not contain recordkeeping requirement for employers.

*Sunset Date*

A sunset date is not appropriate for this proposed rulemaking. The Bureau will periodically monitor this proposed rulemaking and submit amendments as needed.

*Effective Date*

The proposed rulemaking will be effective upon publication of a final-form rulemaking in the *Pennsylvania Bulletin*.

*Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Karen Galli, Deputy Chief Counsel, 651 Boas Street, 10th Floor, Harrisburg, PA 17120, fax (717) 783-5027, kgalli@pa.gov within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 26, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Labor and Industry Committees. 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.

JULIA K. HEARTHWAY,  
*Secretary*

**Fiscal Note:** 12-91. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY  
PART XII. BUREAU OF LABOR STANDARDS  
CHAPTER 225. PROHIBITION OF EXCESSIVE  
OVERTIME IN HEALTH CARE**

Sec.	
225.1.	Purpose and scope.
225.2.	Definitions.
225.3.	Complaint and investigation procedure.
225.4.	Administrative penalties.
225.5.	Administrative notice of violation and proposed penalty.
225.6.	Contesting an administrative decision and proposed penalty.
225.7.	Hearing.
225.8.	Petition to intervene.
225.9.	Adjudications.
225.10.	Appeal rights.

**§ 225.1. Purpose and scope.**

This chapter implements the complaint and investigation procedures in the act and the administrative penalties assessment provisions in the act.

**§ 225.2. Definitions.**

(a) Terms used in this chapter have the same meanings and are defined in the same manner as the act.

(b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Prohibition of Excessive Overtime in Health Care Act (43 P. S. §§ 932.1—932.6).

*Bureau*—The Bureau of Labor Law Compliance or its successor bureau within the Department assigned with enforcement of the act.

*Employee*—

(i) An individual employed by a health care facility or by the Commonwealth or a political subdivision or instrumentality of the Commonwealth who is involved in direct patient care activities or clinical care services and who receives an hourly wage or is classified as a nonsupervisory employee for collective bargaining purposes.

(ii) The term includes an individual employed through a personnel agency that contracts with a health care facility to provide personnel.

(iii) The term does not include a physician, physician assistant, dentist or worker involved in environmental services, clerical, maintenance, food service or other job classification not involved in direct patient care and clinical care services.

*Employer*—A health care facility as defined in section 2 of the act (43 P. S. § 932.2) or the Commonwealth, a political subdivision or an instrumentality of the Commonwealth engaged in direct patient care activities or clinically-related services.

*Health care facility*—

(i) A facility which provides clinically related health services, regardless of whether the operation is for profit or nonprofit and regardless of whether operation is by the private sector or by State or local government.

(ii) The term includes the following:

(A) A general or special hospital, a psychiatric hospital, a rehabilitation hospital, a hospice, an ambulatory surgical facility, a long-term care nursing facility, a cancer treatment center using radiation therapy on an ambulatory basis and an inpatient drug and alcohol treatment facility.

(B) A facility which provides clinically related health services and which is operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare.

(C) A mental retardation facility operated by the Department of Public Welfare.

(iii) The term does not include the following:

(A) An office used primarily for private or group practice by a health care practitioner.

(B) A facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of a church or a religious denomination.

(C) A facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other individuals in a religious profession who are members of the religious denomination conducting the facility.

*Secretary*—The Secretary of the Department or the Secretary's designee.

### § 225.3. Complaint and investigation procedure.

(a) Upon receipt of a complaint or its own initiative, the Bureau will investigate alleged violations of the act.

(b) An aggrieved employee who believes there is a violation of this act against him by a health care facility may file a complaint, within 60 days of the violation, with the Department.

(c) The complaint must be in writing, signed and set forth the grounds for the complaint. A complaint must contain:

(1) The name and address of the complainant.

(2) The name and address of the employer against whom the complaint is filed.

(3) A statement of the facts forming the basis of the complaint or conclusion that there has been a violation of the act, including the date, time and place of the alleged violation.

(4) The name of witnesses.

(5) Other information that may be pertinent to an investigation.

(d) The Bureau will prepare complaint forms that will be available on the Department's web site at [www.dli.state.pa.us](http://www.dli.state.pa.us).

(e) The Bureau will accept complaints that are not placed on the complaint form.

(f) The Bureau will record the date of receipt on a complaint. If a complaint does not provide the information required under subsection (c), the Bureau will advise the complainant in writing of the procedures necessary to comply with subsection (c) and allow the party 15 days from the date of the Bureau's letter to provide the required missing information. If the party fails to provide information fully conforming to the requirements of subsection (c), the Bureau may dismiss the complaint and will notify the complainant in writing of the dismissal.

### § 225.4. Administrative penalties.

(a) The Department may impose any of the following penalties under section 6 of the act (43 P. S. § 932.6):

(1) A fine of \$100 to \$1,000 per violation. A violation is comprised of each discrete time that a health care facility or employer does not comply with the act or this chapter.

(2) Order a health care facility or employer to take an action which the Department deems necessary to correct a violation of section 3 of the act (43 P. S. § 932.3) or this chapter. Actions ordered may include payment of restitution to employees, directives for compliance with the act such as changes to policy and procedures to insure future compliance and nonretaliation orders. An order must be based on the facts of each individual complaint and practices of the health care facility and employer.

(b) The Department may base administrative penalties on the following factors:

(1) Size of business. The Department will take into consideration the number of employees of the health care facility on the date the violation occurred.

(2) History of previous violations. The Department will take into consideration the number of assessed violations for the health care facility in a preceding 12-month

period. Only violations for which penalties were assessed and which are not subject to further appeal will be included.

(3) Good faith of health care facility or employer. The Department will take into consideration the health care facility's good faith attempts to abate the violation at issue in the complaint and any attempts the facility has made to abate future violations.

**§ 225.5. Administrative notice of violation and proposed penalty.**

(a) After the completion of an investigation on an alleged violation of the act and upon finding that the act has been violated, the Bureau will issue an administrative decision containing findings and proposed penalties.

(b) The Bureau will serve by first class mail upon the violating health care facility or employer a copy of its administrative decision and proposed penalty.

(c) A health care facility or employer served with an administrative decision and proposed penalty may accept the notice and pay the penalty, request a reduction in penalty or contest the administrative decision and proposed penalty under § 225.6 (relating to contesting an administrative decision and proposed penalty).

(d) A request for a reduction in the penalty shall be made in writing to the Bureau within 10 days of the mailing date of the administrative decision and propose an alternative penalty for the Bureau's consideration setting forth mitigating circumstances. The Bureau will expeditiously act on the request for reduction of the penalty within 10 days of receipt. The filing of a request for reduction does not toll or extend the 30-day period for requesting a hearing under § 225.6.

(e) After the completion of an investigation of alleged violations of the act and upon findings that the act has not been violated, the Bureau will provide written notice to the complainant and the health care facility or employer that the investigation has been closed.

**§ 225.6. Contesting an administrative decision and proposed penalty.**

(a) A health care facility or employer may contest an adverse administrative decision by requesting a hearing.

(b) The health care facility or employer contesting the administrative decision shall file an original and two copies of a written request for a hearing with the Bureau within 30 days of the mailing date of the administrative decision. The hearing request shall be mailed to the Bureau at the address listed on the administrative decision.

(c) The Bureau will notify the complainant of any request made for hearing under this section.

(d) An untimely request for a hearing may be dismissed without further action by the Bureau.

(e) Filing of a request for a hearing shall act as a supersedeas of the administrative decision on the violation and proposed penalties.

**§ 225.7. Hearing.**

(a) The Secretary will assign the request for a hearing to a hearing officer who will schedule a de novo proceeding. The parties will receive reasonable notice of the hearing date, time and place.

(b) The hearing will be conducted in a manner to provide parties the opportunity to be heard. The hearing officer will not be bound by strict rules of evidence.

Relevant evidence of reasonably probative value may be received into evidence. Reasonable examination and cross-examination of witnesses will be permitted.

(c) The parties may be represented by legal counsel, but legal representation at the hearing is not required.

(d) Testimony will be recorded and a full record kept of the proceeding.

(e) The parties will be provided the opportunity to submit briefs addressing issues raised at the hearing.

(f) The Bureau and the health care facility or employer will be the parties at the hearing.

(g) The Bureau will have the burden of proving by a preponderance of the evidence that the health care facility violated the act and that the proposed penalty is appropriate under the factors in § 225.4(b) (relating to administrative penalties).

(h) To the extent not covered by this chapter, hearings will be governed by 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

**§ 225.8. Petition to intervene.**

(a) The Bureau and the health care facility or employer will be the parties at the hearing.

(b) A person other than the Bureau and the health care facility or employer may request to intervene in a hearing under the following conditions:

(1) He can demonstrate any of the following:

(i) A right conferred by law.

(ii) An interest which may be so directly affected that it may be bound by the Department's action and its interest is not adequately represented by existing parties in the hearing.

(2) The party files a petition to intervene with the presiding officer and the existing parties in the hearing under 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene) no later than 30 days before the scheduled hearing unless the party shows good cause and there is no prejudice to the existing parties from the late filing. Existing parties may file an answer under 1 Pa. Code § 35.36 (relating to answers to petitions to intervene) within 20 days or other time set by the presiding officer.

(c) As soon as possible after the time set for filing of answers, the hearing officer will rule on the petition and may grant or deny intervention in whole or in part or may limit the intervenor's participation in the hearing. The hearing officer may tentatively grant intervention before the hearing only to avoid detriment to the public interest and if the hearing officer issues a final ruling on intervention before the hearing begins.

(d) A hearing officer will not grant a petition to intervene during a hearing unless good cause is shown for the late filing, the parties have the opportunity to respond or object and the petition complies with this section.

**§ 225.9. Adjudications.**

(a) The Secretary will issue a written adjudication. The adjudication will include relevant findings and conclusions and the rationale for the adjudication.

(b) The adjudication will include a notification to the parties of appeal rights to Commonwealth Court.

(c) The adjudication will be served upon all parties, intervenors and counsel of record.

### § 225.10. Appeal rights.

A party aggrieved by an adjudication rendered under § 225.9 (relating to adjudications) may file an appeal to Commonwealth Court within 30 days from mailing of the decision as prescribed by law or rule of court.

[Pa.B. Doc. No. 12-1301. Filed for public inspection July 13, 2012, 9:00 a.m.]

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 115 ]

### Boating; Boats Carrying Passengers for Hire

The Fish and Boat Commission (Commission) proposes to amend Chapter 115 (relating to boats carrying passengers for hire). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to 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 Chapter 115 are published under the statutory authority of section 5123(a)(1) of the code (relating to general boating regulations) and deemed necessary for the health and safety of passengers, operators and persons on, in or towed by boats on, in or along the waters of this Commonwealth.

#### D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. On February 9, 2012, the Commission's Boating Advisory Board considered the proposal and recommended that the Commission approve the publication of this proposed rulemaking.

#### E. Summary of Proposal

The current regulations in Chapter 115 regarding the operation of boats carrying passengers for hire were adopted in 1994. With the exception of some minor procedural amendments in 1999 and 2003, significant changes have not been made to the regulations in the past 18 years. During this period, boat accidents involving passenger for hire vessels have occurred in other states, most notably the capsizing of the tour boat *Ethan Allen* on Lake George, New York in 2005, which prompted Commission staff to re-examine the Commission's current regulations. In July 2011, a workgroup consisting of Commission staff, a passenger for hire business owner and vessel operator met to discuss proposed amendments to the regulations.

The most significant proposed change to the current regulations involves a requirement that the passenger capacity of vessels in the program be determined through United States Coast Guard-approved stability testing. The current passenger for hire fleet in this Commonwealth numbers 18 vessels owned and operated by 13 businesses. The vessels are tour boats and range in size from 18 to 75 feet. Most are pontoon boats with the exception of four larger vessels operated on Lake Raystown and Conneaut Lake. Under the current regulations, only boats carrying more than 49 passengers or having more than 1 passenger carrying deck are required to undergo stability testing. In all other cases, passenger capacity is determined by means of manufacturer supplied capacity plates. In the *Ethan Allen* accident, the vessel was initially rated for 50 passengers but had been modified with the addition of a solid canopy and other superstructure. On the day of the accident, the *Ethan Allen* carried 47 passengers plus the operator and capsized after striking the wake of another vessel during a turn. Twenty passengers died as a result of the accident. The National Transportation Safety Board concluded that had the vessel undergone appropriate stability testing after modification, it would have been certified for only 14 passengers. Members of the workgroup agreed that requiring stability testing on passenger for hire boats is the most appropriate method to address concerns regarding capacity and loading. A marine surveyor who currently inspects 6 of the 18 boats in the program advised staff that with the assistance of the boat owner stability testing can be performed on boats in the program without excessive cost. After obtaining an initial test, boats will not be required to have a new stability test unless modified or involved in an accident.

Other proposed amendments to Chapter 115 include the following:

- Increasing the required amount of liability insurance to reflect more realistic damage and personal injury estimates in case of an accident.
- A housekeeping change to indicate that passenger for hire vessels are now a Bureau of Law Enforcement program area.
- Requiring passenger for hire vessel operators and crew members to maintain certification in CPR and basic first aid. These certifications are currently required for holders of fishing guide/charter boat permits.
- Requiring that the initial physical examination include a standard drug screen. This requirement is being proposed at the suggestion of two vessel owners.
- Eliminating the requirement that licensed operators disclose changes in their physical condition when applying for renewal of their license and instead requiring that operators obtain a new physical examination with each renewal of their license.
- Removing the requirement that the vessel operator license, currently an 8 1/2" x 11" paper certificate, be displayed on the boat next to the certificate of inspection in favor of the issuance of a wallet sized identification card that the operator will be required to carry and display while in operation of the boat.
- Adding language indicating that operator licenses are good on water under the jurisdiction of the Commonwealth for vessels up to and including the size listed on the license and thereby clarifying the intent that operators may work on any passenger for hire vessel certified by the Commission and are not limited to one employer.

- Eliminating the requirement that the Commission maintain an approved list of marine surveyors in favor of a requirement that marine surveys be conducted by individuals accredited through one of the National marine surveyors associations.

- Adding language indicating that individuals with United States Coast Guard certification appropriate to the size and type of boat they intend to operate in the Commission’s program will be able to obtain a waiver of the state licensing requirements upon presentation of their Coast Guard credentials and certification in CPR and first aid.

The Commission proposes that Chapter 115 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 impose increased costs on the private sector for marine surveys and stability tests. The proposed rulemaking will increase the frequency of dry dock examinations from once every 6 years to once every 3 years. Examinations are estimated to cost between \$500 and \$800 depending upon the boat. Stability testing will be a one-time expense unless the boat is modified or involved in an accident. Testing is estimated to cost between \$600 and \$1,500 for most boats. Testing for boats with hulls 65 feet or longer or unusual hull designs may range from \$3,500 to \$10,000. The proposed rulemaking will not impose new costs on 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-235. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 115. BOATS CARRYING PASSENGERS FOR HIRE**

**§ 115.1. Purpose.**

This chapter establishes regulations for boats carrying passengers for hire [ **to protect the health and safety of the passengers and operators** ]. The regulations

**in this chapter are promulgated under section 5123(a)(1) of the code (relating to general boating regulations) and deemed necessary for the health and safety of passengers, operators and persons on, in or towed by boats on, in or along the waters of this Commonwealth.** The definition “passenger-carrying boat” as set forth [ **at** ] in section 102 of the code (relating to definitions) applies to this chapter and to the term “boats carrying passengers for hire.”

**§ 115.2. Initial certification.**

\* \* \* \* \*

(b) An applicant shall submit the following documentation in addition to the application form:

(1) *Form PFBC-291c*. A Form PFBC-291c, Vessel Characteristic Report, has two parts. Part A is to be completed and signed by the owner. Part B is to be completed by a qualified [ **licensed** ] **accredited** marine surveyor [ **, approved by the Commission,** ] who conducted the inspection within 6 months preceding the date of the application. The inspection report shall include a statement by the marine surveyor as to whether or not the boat is suitable for the use intended, or if not suitable, the requirements necessary to bring about compliance. The report shall also include the opinion of the marine surveyor as to the total number of persons who may be carried on the boat. [ **If the boat is to carry more than 49 passengers or have more than one passenger carrying deck, this opinion shall be based on the performance of the boat in an incline experiment. This does not waive the requirement for an incline experiment for other boats if the marine surveyor determines a need for one because of other design conditions.** ] The opinion of the marine surveyor shall be based on a United States Coast Guard-approved stability test suitable for the type and size of boat.

(2) *Proof of financial responsibility*. An [ **owner of a boat carrying passengers for hire** ] applicant shall furnish the Commission proof of financial responsibility. The proof shall evidence the [ **licensee’s** ] **applicant’s** ability to respond in damages on account of accidents arising out of the maintenance or use of the passenger carrying boat. The minimum amount of coverage shall be [ **\$250,000** ] **\$500,000** because of injury or death to one person in an accident and [ **\$500,000** ] **\$1,000,000** because of injury or death to two or more persons in an accident and [ **\$10,000** ] **\$25,000** because of damage to property of others in an accident. Proof of financial responsibility shall be in a form acceptable to the Commission and shall provide for notice to the Commission in the event of cancellation of liability insurance.

**§ 115.3. Recertification.**

(a) A boat carrying passengers for hire shall have reinspections and recertifications as follows:

(1) [ **A boat with a wooden formed hull. Inspection and dry dock examination by a qualified marine surveyor, approved by the Commission, at least once every 3 years.**

(2) *Other boats*. In-water inspection at least once every 3 years and dry dock examination at least once every 6 years both to be conducted by a qualified marine surveyor approved by the Commission. ] An in-water inspection and dry dock

examination shall be conducted by a qualified accredited marine surveyor at least once every 3 years.

(2) A stability test shall be conducted by a naval architect or other qualified individual to maintain certification for passenger carrying boats certified as of January 1, 2013. The stability test shall be United States Coast Guard-approved, suitable for the type and size of boat and utilize the current Assumed Average Weight per Person standard adopted by the United States Coast Guard. Results of the stability test shall be forwarded to the Commission prior to the first commercial use of the boat in 2013. The Commission will accept results of a stability test conducted after December 1, 2011, if the boat was not involved in an accident or was not structurally modified since the stability testing.

(3) A new stability test shall be conducted whenever a boat has been involved in an accident or has been structurally modified.

\* \* \* \* \*

§ 115.4. Annual safety inspections.

(a) Annual safety inspections are required every year after the year of initial certification. When the vessel is ready for inspection, the owner shall apply for an annual safety inspection [ in writing ] by electronic mail or telephone to the regional law enforcement office for the region in which the boat is to operate. The application shall be submitted at least 30 days prior to the requested date of inspection. This annual inspection shall be conducted prior to the first commercial use of the boat or within 30 days of the date of issue on the certificate of inspection if the boat operates year round.

\* \* \* \* \*

§ 115.5. Certification of inspection.

\* \* \* \* \*

(c) Validation of certificates. The certificate of inspection will be valid with the original signatures of the Director, Bureau of [ Boating ] Law Enforcement or a designee, the inspecting officer and the owner.

(d) Compliance. It is unlawful to operate a boat carrying passengers for hire if the boat is not in compliance with the certificate of inspection. [ Compliance with subsection (b)(10)—(13) and (16) is deemed necessary for the health and safety of passengers and operators as set forth at section 5123(a)(1) of the code (relating to general boating regulations). ]

§ 115.7. [ Approved ] Accredited marine surveyors.

[ The Commission will maintain a list of approved qualified marine surveyors. A marine surveyor may request approval by the Commission by submitting a letter listing education, licenses, registration, accreditation and other pertinent information which will attest to qualifications as a marine surveyor. Upon approval, the Commission will notify the surveyor that their name has been added to the list. ] For purposes of this chapter, an accredited marine surveyor is a surveyor who has been accredited by one of the National marine surveyors associations.

§ 115.8. Personnel requirements of passenger carrying boats.

\* \* \* \* \*

(c) To qualify as a crew member, an individual shall meet the following conditions. The individual shall:

\* \* \* \* \*

(3) Possess a valid Boating Safety Education Certificate.

(4) Possess and maintain current certification in basic CPR and basic first aid skills. Crew members shall present proof of CPR or first aid certification upon request of the Commission.

§ 115.9. Licenses for operators.

(a) Eligibility. Persons, 18 years of age and older, [ of good character and ] in good physical condition and who possess a valid Boating Safety Education Certificate are eligible for licensing as operators of passenger-carrying boats.

(b) Physical examination. The physical condition of an applicant for an operator's license shall be certified by a physician after a physical examination. The physician's certification shall include a statement attesting [ to unimpaired color sense of the applicant ] that the applicant displays normal color vision. [ The ] This requirement [ of unimpaired color sense ] may be waived if the operation of vessels for which the license is sought will be limited to daylight hours. [ Licensees shall notify the Commission of changes in physical condition that may affect their ability to operate a boat carrying passengers for hire. ] The physician's certification must include a statement that the applicant was subject to and passed a standard drug screen as part of the physical examination.

(c) Application. An application for a boat operator's license shall be made on the form provided by the Commission. The completed form shall be submitted with the applicable fee as listed in section [ 5104(b) ] 5104(a)(6) of the code (relating to fees).

(d) Examination. [ Persons applying for a license to operate a boat carrying passengers for hire ] An applicant for a boat operator's license shall pass a professional examination to demonstrate sufficient experience and capabilities to assume the responsibilities for operation of a passenger-carrying boat. Examination will include oral questions and a practical test of boating skills using the boat—or a boat of identical size and type—for which an operator's license is being requested. If the applicant does not pass the oral examination or the practical test, 30 days is required prior to taking a retest. A request for the retest shall be submitted on Form PFBC-292.

(e) CPR and first aid. An applicant for a boat operator's license shall possess current certification in basic CPR and basic first aid skills. A licensed boat operator shall maintain current certifications in these areas and present proof of CPR and first aid certification upon request of the Commission.

(f) Contents and display of boat operator's license. The operator's [ certificate ] license shall contain a photograph of the licensee[ , approximately 2 inches by 2 inches in dimension ]. In addition, it will list the name and the limitations on the operator with respect to size of vessel authorized to operate[ , ] and day or night restrictions [ and area or body of water in which authorized to operate ]. Licenses issued under this sec-

tion are valid on any water under the sole jurisdiction of the Commonwealth for boats up to and including the size listed on the license. The Commission will validate the operator's [ certificate ] license. [ The operator shall display the operator's certificate alongside the certificate of inspection required by § 115.3 (relating to recertification) onboard the boat. It is unlawful to fail to display the validated operator's certificate as provided in this section. ] The operator shall carry and display the license while in actual operation of a passenger carrying boat and produce the license upon request of the Commission.

[ (f) ] (g) *Expiration.* [ Operator certificates ] Licenses issued under this section will expire on December 31, 5 years from the date of issuance.

(h) *Waiver.* The Commission will waive the licensing requirement of this section for an individual possessing a current valid United States Coast Guard certification appropriate for the size and type of boat he intends to operate upon presentation of proof of his Coast Guard Merchant Mariner Credential or other Coast Guard certification and proof of certification in basic CPR and first aid.

§ 115.10. Renewal of operator's license.

\* \* \* \* \*

(b) Applicants for renewal of licenses shall [ disclose changes in their physical condition or operational capabilities that might affect their ability to operate a boat carrying passengers for hire ] undergo a new physical examination and submit a new physician's certification as described in § 115.9(b) (relating to licenses for operators).

(c) If there are no changes to the limitations imposed by the original license, a practical [ or written ] examination is not required. An oral examination may be required if there have been significant changes to regulations concerning safe operation of boats, carriage requirements for safety equipment or carrying passengers for hire.

(d) A licensed operator who does not renew a license as required by subsection (a) shall reapply in accordance with § 115.9 [ (relating to licenses for operators) ].

§ 115.12. Applicability of other regulations.

The boats governed by this chapter shall comply with this subpart with regard to registration, equipment, accident reporting and operation. Also see Chapters 93, 95, 97, 101, 103, 105 and 107.

[Pa.B. Doc. No. 12-1302. Filed for public inspection July 13, 2012, 9:00 a.m.]