

PROPOSED RULEMAKING

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 18]

Certified Lifeguards

The Department of Health (Department) proposes to amend § 18.42 (relating to certified lifeguards) to read as set forth in Annex A.

Background and Need for Amendments

Lifeguard certifying authorities provide certification courses designed to ensure that individuals seeking to become lifeguards are properly trained and prepared in the event of a water emergency. The regulation establishes requirements that lifeguard training courses must satisfy. The Department approves lifeguard certifying authorities based on these requirements. In 2020, the Department recognized the following lifeguard certifying authorities: 1) The American Red Cross; 2) Jeff Ellis and Associates; 3) Lifeguard-Pro; 4) YMCA; 5) The Boy Scouts of America; 6) StarGuard ELITE; 7) National Aquatic Safety Company; 8) American Aquatics & Safety Training; and 9) United States Lifesaving Association (beach and open water).

The existing regulation specifically names as recognized lifeguard certifying authorities American Red Cross, YMCA and Jeff Ellis and Associates, Inc. The Department has regularly received requests from lifeguard certifying authorities not listed in the regulation, such as Lifeguard-Pro, to have their names included in the regulation. The lifeguard certifying authorities not included argue that the American Red Cross, YMCA and Jeff Ellis and Associates, Inc. are their competition and that their names in the regulation give them more credibility and a competitive advantage. Additionally, it is argued that the regulation listing the names of some lifeguard certifying authorities can appear to be the Department recommending their services over others.

The Department mailed a letter to the lifeguard certifying authorities, including American Red Cross, YMCA and Jeff Ellis and Associates, Inc. asking for feedback, including support, opposition or alternatives, to amending the regulation to remove the names of specific lifeguard certifying authorities. The Department received support for removing the names from StarGuard ELITE and the Chair of the National Certification Committee of the United States Lifesaving Association. The Department did not receive any opposition or alternatives from the lifeguard certifying authorities. This proposed rulemaking package was developed based on the feedback from the lifeguard certifying authorities.

Description of Proposed Amendments

§ 18.42. *Certified lifeguards*

The Department proposes to delete the sentence “the Department recognizes the American Red Cross, the YMCA and Jeff Ellis and Associates, Inc. as lifeguard certifying authorities” from subsection (a) and to replace the words “other organizations” with the word “organizations” in paragraph (1). Removing all named lifeguard certifying authorities from the regulation will alleviate the concerns of those lifeguard certifying authorities that are not specifically named in the existing regulation. There will also be no need for the Department to annually amend the regulation based on the current

approved lifeguard certifying authorities and possible changes in names. The Department will continue to follow the process currently outlined in § 18.42 to approve and recognize lifeguard certifying authorities, with publication of the list of approved certifying authorities annually in the *Pennsylvania Bulletin*. The American Red Cross, the YMCA and Jeff Ellis Associates, Inc. already follow this process and will not be negatively impacted by the removal of their names from the regulation.

Fiscal Impact and Paperwork Requirements

Fiscal Impact

Commonwealth

Department

The Department approves all lifeguard certifying authorities, including the American Red Cross, the YMCA and Jeff Ellis and Associates, Inc., after conducting a review of materials submitted under the existing regulation and this proposed amendment will not alter this requirement. The Department will not be fiscally impacted by this proposed amendment.

Regulated community

There will be no fiscal impact on the lifeguard certifying authorities as a result of this proposed amendment. All lifeguard certifying authorities are required to comply with the existing regulation and this proposed amendment will not alter that requirement. In 2020, there were a total of nine approved lifeguard certifying authorities, including the American Red Cross, YMCA and Jeff Ellis and Associates, Inc. The removal of the American Red Cross, YMCA and Jeff Ellis and Associates, Inc. as specifically named entities in the regulation should have no impact on them because they already submit materials annually for approval like other lifeguard certifying authorities.

Local governments

This proposed rulemaking will not fiscally impact local governments.

General public

This proposed rulemaking will not fiscally impact the general public.

Paperwork Requirements

This proposed rulemaking will not impose any new or additional paperwork requirements on any of the previously listed entities. The existing application form and application procedures will continue to be used.

Statutory Authority

The Department's overarching authority to promulgate these regulations is found in section 1 of the Public Bathing Law (act) (35 P.S. § 672). In 1995, under section 501 of the Conservation and Natural Resources Act (71 P.S. § 1340.501) the Department of Environmental Resources (DER) was renamed as the Department of Environmental Protection and DER's duties and powers were reorganized. Under section 505 of the Conservation and Natural Resources Act (71 P.S. § 1340.505) the Department was transferred the following powers and duties from DER (Emphasis added.):

(1) The control of nuisances arising from the sanitary condition of tenements, lodging and boarding houses and management of the sanitary affairs of this

Commonwealth related to tenements, lodging and boarding houses, organized camps and public bathing places.

(2) The act of November 10, 1959 (P.L. 1400, No. 497), entitled "An act providing for the annual registration of organized camps for children, youth and adults; defining the duties of the Department of Health of the Commonwealth of Pennsylvania; and prescribing penalties."

(3) *The act of June 23, 1931 (P.L. 899, No. 299), known as the Public Bathing Law. As to the Public Bathing Law, the Department of Health shall have the authority to promulgate rules and regulations to protect the public health and safety at all public [bathing] places.*

Certified lifeguards are specifically addressed in section 4.1 of the act (35 P.S. § 675.1), which states that "the department shall promulgate regulations to determine the number of lifeguards required at a recreational swimming establishment using objective criteria that take into consideration industry standards." Moreover, the Department is to develop regulations related to lifeguards while consulting approved certifying authorities and recreational swimming establishments.

Effectiveness/Sunset Date

This proposed rulemaking will become effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking. A sunset date will not be imposed. The Department will monitor the regulations and update them as necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 9, 2022, 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 Senate Health and Human Services Committee and the House Health Committee. 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.

Contact Person

Interested persons are invited to submit comments, suggestions or objections to the proposed regulations within 30 days after publication of this notice in the *Pennsylvania Bulletin*. The Department prefers that comments, suggestions or objections be submitted by e-mail to RA-DHPUBLICBATHINGPL@pa.gov. Persons without access to e-mail may submit comments, suggestions or objections to Richard A. Pugh, Environmental Health Program Manager, Bureau of Community Health Systems, 30 Kline Plaza, Harrisburg, PA 17104, (717) 736-7393. Persons with a disability may submit questions in an alternative format such as by audio tape, Braille or by using V/TT (717) 783-6514 or the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document may contact Richard A. Pugh at the previously listed e-mail, address or telephone number so that necessary arrangements can be made. Comments should be identified as pertaining to proposed rulemaking 10-236 (Certified Lifeguards).

DR. DENISE A. JOHNSON,
Acting Secretary

Fiscal Note: 10-236. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART II. LOCAL HEALTH

CHAPTER 18. PUBLIC SWIMMING AND BATHING PLACES

GENERAL SAFETY

§ 18.42. Certified lifeguards.

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

(1) [**Other organizations**] **Organizations** that intend to qualify as certifying authorities shall submit materials, on an annual basis, to the Department to establish that their lifeguard training courses satisfy the criteria in subsection (b).

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