

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p><b><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></b></p> <p><b>Received by IRRC 06/09/2023</b></p>
<p>(1) Agency</p> <p>Department of Health</p>		<p>IRRC Number: <b>3346</b></p>
<p>(2) Agency Number: 10</p> <p>Identification Number: 236</p>		
<p>(3) PA Code Cite: 28 Pa. Code § 18.42</p>		
<p>(4) Short Title: Certified Lifeguards</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact:</p> <p>Richard A. Pugh Environmental Health Program Manager 717-736-7393 <a href="mailto:RA-DHPUBLICBATHINGPL@pa.gov">RA-DHPUBLICBATHINGPL@pa.gov</a></p> <p>Secondary Contact:</p> <p>Melisa Rader Director of the Bureau of Community Health Systems 717-787-4366 <a href="mailto:RA-DHPUBLICBATHINGPL@pa.gov">RA-DHPUBLICBATHINGPL@pa.gov</a></p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>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 Pennsylvania Department of Health (Department) approves lifeguard certifying authorities based on these requirements. In 2022, 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 &amp; Safety Training; 9) United States Lifesaving Association (beach and open water); and 10) World Academy of Safety &amp; Health.</p> <p>The regulation specifically names as recognized lifeguard certifying authorities American Red Cross, YMCA, and Jeff Ellis and Associates, Inc. The Department is amending the existing regulation to</p>		

remove all named lifeguard certifying authorities.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Department's overarching authority to promulgate these regulations is found in the Public Bathing Law, act of June 23, 1931, P.L. 899, § 1; 35 P.S. §§ 672--680d (the act). In 1995, The Department of Environmental Resources (DER) was renamed the Department of Environmental Protection and DER's duties and powers were reorganized. 71 P.S. § 1340.501. 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.*

71 P.S. § 1340.505. 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. 35 P.S. § 675.1. The act defines the term "certified lifeguard" 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*." 35 P.S. § 673(5). The Department typically publishes this notice annually in the *Pennsylvania Bulletin* and on its website.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The amendment to 28 Pa. Code § 18.42 is not mandated by Federal or State law or court order, or Federal regulation. There are no relevant State or Federal court decisions. The Department is authorized to regulate lifeguards under the Public Bathing Law. 35 P.S. § 675.1.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Department is amending the regulation used to recognize qualified lifeguard certifying authorities.

The regulation specifically names three entities that are recognized by the Department as a lifeguard certifying authority: 1) the American Red Cross; 2) YMCA; and 3) Jeff Ellis and Associates, Inc. All other lifeguard certifying authorities are not specifically recognized or named in the regulation.

Entities that were not named or did not exist at the time the existing regulation was promulgated have repeatedly asked to have their names included in the regulation. It has been argued by these entities that the American Red Cross, YMCA, and Jeff Ellis and Associates, Inc. are competitors in the lifeguard certifying industry and that having their names listed in the regulation give them more credibility and a competitive advantage over them. It is also argued that by listing the names of some entities and not all, the Department is recommending the services of those listed over those that are not listed.

There is no statute or regulation requiring the Department to include the names of certifying authorities in Chapter 18. As such, instead of continuing to amend the regulation to add recognized lifeguard certifying authorities that come into existence, need to be removed, or need to change their name, the Department is removing in this final-form rulemaking the name of any entity from the regulation. By removing the names and having all entities treated the same, the Department believes that all lifeguard certifying authorities will be treated equally and fairly. The benefit, if any, that American Red Cross, YMCA, and Jeff Ellis and Associates, Inc. receive from having their names listed in the regulation would end.

(11) 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 regulations.

There are no Federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

There are other states that list specific lifeguard certifying authorities. The amount of organizations listed, and the specific ones, vary per state.

- In Maryland, the regulation requires that a lifeguard hold a lifeguard certification from either the American Red Cross, the Boy Scouts of America, the YMCA, Ellis and Associates' National Pool and Waterpark Lifeguard Training, or an organization that has a lifeguard training program equivalent to the American Red Cross lifeguard training.
- Ohio similarly requires training from either the American Red Cross, the YMCA, the Boys Scouts of America, Ellis and Associates, NASCO, Star Guard, and any other person agency or organization whose training is comparable to the named lifeguard certifying authorities.
- Delaware also includes similar language and lists the YMCA, the American Red Cross, Ellis and Associates, Aquatic Resource Service Associates or an approved equivalent.

On the other hand, there are states that do not list specific lifeguard certifying authorities. New York regulations provide only requirements that must be included in certification. Pennsylvania's regulation also includes requirements for lifeguard certifying authorities.

Whether the Department's regulation specifically lists some lifeguard certifying authorities or not, should have no bearing on its ability to compete with other states. By removing the name of specific lifeguard certifying authorities, Pennsylvania's regulations will be more similar to New York's. Additionally, the Department lists each year recognized lifeguard certifying authorities in the *Pennsylvania Bulletin* and on its website.

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

No, the amendment to the regulation will not affect any other regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

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.

Prior to drafting the proposed rulemaking, the Department mailed a letter to the lifeguard certifying authorities asking for feedback, including support, opposition, or alternatives to removing the name of any lifeguard certifying authority from the regulation. On August 24, 2020, Wess Long, President of StarGuard ELITE, a lifeguard certifying authority, responded with the following:

Our firm would have no objections to this amendment and would support this change. It does create an unfair playing field and confusing situation for aquatic facilities when a firm like ours has to explain why we are not explicitly listed in the regulation.

Additionally, on August 25, 2020, B. Chris Brewster, Chair of the National Certification Committee of the United States Lifesaving Association provided support for the amendment as it "would appear to be a prudent step that removes the appearance of bias in favor or against any specific lifeguard certifying authority." The Department did not receive any opposition or alternatives from the lifeguard certifying authorities.

Prior to drafting the final-form rulemaking, on September 12, 2022, the Department again mailed a letter to the lifeguard certifying authorities asking for feedback. The Department did not receive any responses from the lifeguard certifying authorities.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

In 2022, the Department approved a total of ten lifeguard certifying authorities. The Department applied the North America Industry Classification System (NAICS) standards to all of the lifeguard certifying authorities currently approved by the Department. Under the NAICS, a lifeguard certifying authority is a small business if it has \$8 million or less in total income annually. The Commonwealth's Department of Labor and Industry (L&I) defines a small business by the number of employees rather than total annual income. The Department does not maintain data on annual income, or the number of individuals employed by the lifeguard certifying authorities as this information is not required for entities to be recognized as a lifeguard certifying authority. Therefore, the Department is not able to determine whether any of the approved lifeguard certifying authorities are a small business.

The amendment will apply regardless of whether a lifeguard certifying authority is considered a small business. The amendment will affect the three lifeguard certifying authorities that are specifically named in the current regulation: 1) American Red Cross; 2) YMCA; and 3) Jeff Ellis and Associates, Inc. These lifeguard certifying authorities will only be affected by the removal of their names from the regulation. Because the American Red Cross, YMCA, and Jeff Ellis and Associates, Inc. already submit materials to the Department annually for approval as a lifeguard certifying authority, they will not be negatively affected by the removal of their names from the regulation. It is anticipated that the removal of specific named entities in the regulation will have a positive effect on the other lifeguard certifying authorities, in that it will no longer appear that the Department is favoring one lifeguard certifying authority over another.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All lifeguard certifying authorities are currently required to comply with the regulation and this amendment will not alter that requirement. In 2022, there were a total of ten approved lifeguard certifying authorities.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There will be no financial or economic impact or social impact on the lifeguard certifying authorities as a result of the amendment.

In 2022, there were a total of ten approved lifeguard certifying authorities, including the American Red Cross, YMCA, and Jeff Ellis and Associates, Inc. The Department applied the North America Industry Classification System (NAICS) standards to all of the lifeguard certifying authorities currently approved by the Department. Under the NAICS, a lifeguard certifying authority is a small business if it has \$8 million or less in total income annually. The Commonwealth's Department of Labor and Industry (L&I) defines a small business by the number of employees rather than total annual income. The Department does not maintain data on annual income, or the number of individuals employed by the lifeguard

certifying authorities as this information is not required for entities to be recognized as a lifeguard certifying authority. Therefore, the Department is not able to determine whether any of the approved lifeguard certifying authorities are a small business.

All lifeguard certifying authorities are required to comply with the existing regulation and the amendment will not alter that requirement. 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 to the Department annually for approval like other lifeguard certifying authorities. It is anticipated that the removal of specific named entities in the regulation will have a positive impact on the other lifeguard certifying authorities, in that it will no longer appear that the Department is favoring one lifeguard certifying authority over another.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The Department anticipates no costs or adverse effects as a result of the amendment. Any costs and adverse effects that are caused by the amendment are outweighed by the need to eliminate any misconception that the Department is favoring certain lifeguard certifying authorities over others. Further, by removing specifically named lifeguard certifying authorities from the regulation, the Department will not have to annually amend the regulation based on the current list of approved lifeguard certifying authorities and possible changes in names. Instead, the Department will continue to follow the process currently outlined in section 18.42 to approve and recognize lifeguard certifying authorities, with publication of the list of approved certifying authorities annually in the *Pennsylvania Bulletin*. The entities specifically named in the existing regulation, the American Red Cross, the YMCA, and Jeff Ellis Associates, Inc. already follow this process.

(19) 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. Explain how the dollar estimates were derived.

There will be no costs or savings to the lifeguard certifying authorities as a result of the amendment. All lifeguard certifying authorities are required to comply with the existing regulation and this amendment will not alter that requirement. In 2022, there were a total of ten 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 to the Department annually, like other unnamed lifeguard certifying authorities.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amendment will not increase costs or savings to local governments.

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

be required. Explain how the dollar estimates were derived.

There will be no costs or savings to the Department as a result of the amendment. The Department already approves lifeguard certifying authorities, including the American Red Cross, YMCA, and Jeff Ellis and Associates, Inc. after conducting a review of materials submitted under the existing regulation and this amendment will not alter this requirement.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork will be required by this amendment.

(22a) Are forms required for implementation of the regulation?

The existing application form and application procedures will continue to be used, with no changes. No new or additional forms will be required.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Not applicable. The existing application form and application procedures will continue to be used. No new or additional forms will be required.

(23) 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0

<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 2019-2020</b>	<b>FY -2 2020-2021</b>	<b>FY -1 2021-2022</b>	<b>Current FY 2022-2023</b>
State Health Care Centers	\$22,505,000	\$12,054,000 <sup>1</sup>	\$24,972,000	\$24,972,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation.

(a) See answer to Question 15. The Department is not able to determine whether any of the lifeguard certifying authorities are considered a small business. However, there should be no adverse impact to small businesses, because this amendment only removes the names of three large lifeguard certifying authorities from the regulation.

<sup>1</sup> Supplemented by \$10,000,000 in funding from the Coronavirus Relief Fund.



(b) The amendment does not change reporting, recordkeeping and other administrative costs required for compliance.

(c) *See* answer to Question 15. The Department is not able to determine whether any of the lifeguard certifying authorities are considered a small business. However, there should be no effect on small businesses, because this amendment only removes the names of three large lifeguard certifying authorities from the regulation.

(d) There are no known less instructive or less costly alternative methods of achieving the purpose of the amendment.

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

Because the purpose of the amendment is to have all lifeguard certifying authorities treated the same in the regulation, there are no special provisions that have been developed to meet the particular needs of affected groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The purpose of the amendment is to have all lifeguard certifying authorities treated the same in the regulation. The only other alternative considered was to repeatedly amend the regulation as more lifeguard certifying authorities request to be added, need to be removed, or change their name. As this would be burdensome on the Department, it was determined that removing all specifically named lifeguard certifying authorities would be the least burdensome and acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

- a) Less stringent compliance or reporting requirements were not considered.
- b) Less stringent schedules or deadlines for compliance or reporting were not considered.
- c) Consolidation or simplification of compliance or reporting requirement were not considered.
- d) The establishment of performance standards for small businesses were not considered.

e) The exemption of small business from all or any part of the regulations were not considered.

The Department does not maintain the necessary data to determine whether any of the lifeguard certifying authorities are considered to be a small business but believes that there should be no impact on small businesses. The main impact, if any, of this amendment will be on the three large lifeguard certifying authorities that are currently named in the regulation. See answer to Question 15.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period:

30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*.

B. The date or dates on which any public meetings or hearings will be held: N/A.

C. The expected date of delivery of the final-form regulation: Summer 2023

D. The expected effective date of the final-form regulation:

Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

E. The expected date by which compliance with the final-form regulation will be required:

Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

F. The expected date by which required permits, licenses or other approvals must be obtained:

Lifeguard certifying authorities are required under section 18.42 to submit materials and a completed application form to the Department on or before June 30 of each year for approval as a lifeguard certifying authority. The amendment will not change this requirement.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department regularly reviews the validity and efficacy of its regulations and will continue to do so in the future.

CDL-1

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

**Received by IRRC  
06/09/2023**

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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><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><b><u>Department of Health</u></b> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>10-236</u></p> <p>DATE OF ADOPTION: <u>March 28, 2023</u></p> <p>BY: <u>Debra L. Bogen, M.D.</u></p> <p><i>Debra L. Bogen MD</i></p> <p>TITLE: <b><u>Acting Secretary of Health</u></b> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: _____ <i>Adrian Black</i></p> <p>•</p> <p><u>May 9, 2023</u> DATE OF APPROVAL</p> <p>Deputy General Counsel (<del>Chief Counsel, Independent Agency</del>) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF HEALTH**

**TITLE 28. HEALTH AND SAFETY**

**PART II. LOCAL HEALTH**

**CHAPTER 18. PUBLIC SWIMMING AND BATHING PLACES**

**28 PA. CODE § 18.42**

**CERTIFIED LIFEGUARDS**

The Department of Health (Department) amends 28 Pa. Code § 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 2022, 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; 9) United States Lifesaving Association (beach and open water); and 10) World Academy of Safety & Health.

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.

Prior to drafting the proposed regulation, 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. Prior to drafting the final-form regulation, the Department again mailed a letter to the lifeguard certifying authorities, again asking for feedback regarding the amendments to the regulation. The Department did not receive a response to this letter.

*Description of Amendments*

*§ 18.42. Certified lifeguards.*

As explained on proposed, the Department deletes 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 replaces 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.

*Summary and Response to Comments*

Notice of the proposed rulemaking was published at 52 Pa.B 3587 (June 25, 2022). Publication was followed by a 30-day public comment period, during which the Department received no comments. Additionally, the Independent Regulatory Review Commission (IRRC) indicated that it did not have any objections, comments or recommendations to offer on the regulation. IRRC advised that if the final-form rulemaking is delivered without revisions, and the committees do not take any action, it will be deemed approved. The House Health Committee and the Senate Health and Human Services Committee did not submit comments. The Department has made no changes from the proposed rulemaking to the final-form rulemaking.

*Fiscal Impact*

*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 amendment will not alter this requirement. The Department will not be fiscally impacted by this amendment.

*Regulated community*

There will be no fiscal impact on the lifeguard certifying authorities as a result of this amendment. All lifeguard certifying authorities are required to comply with the existing regulation and this amendment will not alter that requirement. In 2022, there were a total of ten 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*

The amendment will not fiscally impact local governments.

*General public*

The amendment will not fiscally impact the general public.

*Paperwork Requirements*

The amendment 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 the Public Bathing Law, act of June 23, 1931, P.L. 899, § 1; 35 P.S. §§ 672—680d (the act). In 1995, the Department of Environmental Resources (DER) was renamed the Department of Environmental Protection and DER's duties and powers were reorganized. 71 P.S. § 1340.501. 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.*

71 P.S. § 1340.505. 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. 35 P.S. § 675.1. The act defines the term “certified lifeguard” 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*.” 35 P.S. § 673(5). The Department typically publishes this notice annually in the *Pennsylvania Bulletin* and on its website.

#### *Effectiveness/Sunset Date*

The regulations will become effective upon their publication in the *Pennsylvania Bulletin* as final regulations. 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 notice of this proposed rulemaking, published at 52 Pa.B. 3587 (June 9, 2022), to IRRC and the Chairpersons of the Senate Health and Human Services Committee and the House Health Committee for review and comment.



The Department did not receive any public, legislative, or IRRC comments on the proposed regulation. In preparing the final-form rulemaking, the Department has made no revisions based on the lack of comments.

Under section 5.1(e) of the Regulatory Review Act, 71 P.S. § 745.5a(e), on \_\_\_\_\_, the final-form rulemaking was deemed approved by the Senate Health and Human Services Committee and the House Health Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved the final-form rulemaking.

#### *Contact Person*

Additional information regarding this final-form rulemaking may be obtained by contacting Richard A. Pugh, Environmental Health Program Manager, Bureau of Community Health Systems, (717) 736-7393, at the following address: 30 Kline Plaza, Harrisburg, PA 17104, or by emailing [RA-DHPUBLICBATHINGPL@pa.gov](mailto:RA-DHPUBLICBATHINGPL@pa.gov). Persons with a disability who wish to submit comments, suggestions, or objections regarding the final regulation may do so by using the above number or address. Speech and/or hearing-impaired persons may use the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### *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 promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were submitted.

(3) No amendments were made to this final-form rulemaking and therefore the final-form rulemaking does not enlarge the original purpose of the proposed rulemaking.

(4) The adoption of the regulations is necessary and appropriate for the administration of the Public Bathing Law.

*Order*

(1) The regulations of the Department at Title 28 of the Pennsylvania Code at § 18.42 are amended to read as set forth in Annex A.

(2) The Department shall submit this final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(3) The Department shall submit this final-form regulation to IRRC, the State Health and Human Services Committee and the House Health Committee as required by law.

(4) The Department shall certify this final-form regulation, as approved for legality and form, and shall deposit it with the Legislative Reference Bureau as required by law.

(5) This final-form regulation shall take effect on publication in the *Pennsylvania Bulletin*.

**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).

\* \* \* \* \*



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE SECRETARY

June 9, 2023

Mr. David Sumner  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17101

Re: Department of Health – Final Regulation No. 10-236  
Certified Lifeguard Regulations  
28 Pa. Code § 18.42

Dear Mr. Sumner:

Enclosed are final-form certified lifeguard regulations for review by the Independent Regulatory Review Commission (IRRC) in accordance with the Regulatory Review Act (71 P.S. §§ 745.1—745.15). The purpose of this final-form rulemaking is to remove specifically named lifeguard certifying authorities, American Red Cross, YMCA and Jeff Ellis and Associates, Inc., from the regulation. Entities that were not named or did not exist at the time the existing regulation was promulgated have repeatedly asked to have their names included in the regulation. There is no statute or regulation requiring the Department to include the names of certifying authorities in Chapter 18. Rather than continually amending the regulation to add, remove or modify certifying authorities, the Department is amending the regulation to remove the name of any entity from the regulation. Removing specific names from the regulation will ensure that all lifeguard certifying authorities are treated equally and fairly.

The Regulatory Review Act provides that upon completion of the agency's review of comments following proposed rulemaking, the agency is to submit to the Committee a copy of the agency's response to the comments received, the names and addresses of the 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. *See* 71 P.S. §745.5a(a).

The Department did not receive any comments on the proposed rulemaking or requests for additional information relating to the final-form rulemaking. IRRC indicated that it did not have any objections, comments or recommendations to offer on the regulation, and advised that if the final-form rulemaking was delivered without revisions, and the committees did not take any action, it would be deemed approved. The Department has not made any revisions from the proposed rulemaking to the final-form rulemaking.

The Act also provides that IRRC may have until its next scheduled meeting which occurs no less than 30 days after receipt of the final-form regulation to approve or disapprove the final-form regulation. *See* 71 P.S § 745.5a(e).

The Department will provide IRRC with any assistance it requires to facilitate a thorough review of the regulations. If you have any questions, please contact Daniel Myers, Director of the Office of Legislative Affairs, at (717) 787-6009.

Sincerely,

A handwritten signature in cursive script that reads "Debra L. Bogen MD".

Debra L. Bogen, M.D., FAAP  
Acting Secretary of Health  
Pennsylvania Department of Health

Enclosures

**From:** [Bradbury, Joan](#)  
**To:** [Smith, Pamela \(Health\)](#); [Brooks, Senator Michele](#)  
**Subject:** Re: Final-Form Certified Lifeguard Regulation (10-236)  
**Date:** Friday, June 9, 2023 8:19:33 AM

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Received. Thank you

**Received by IRRC  
06/09/2023**

Joan Bradbury  
Executive Director  
Senate HHS Committee  
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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Friday, June 9, 2023 8:10:47 AM  
**To:** Brooks, Senator Michele <mbrooks@pasen.gov>; Bradbury, Joan <jbradbury@pasen.gov>  
**Subject:** Final-Form Certified Lifeguard Regulation (10-236)

**CAUTION : External Email**

Good morning,

Attached are final-form certified lifeguard regulations (10-236) from the Department of Health.

Under the Regulatory Review Act, the Department is required to deliver a final-form regulatory package to the Standing Committees of the General Assembly and the Independent Regulatory Review Commission (IRRC) **on the same day**, with IRRC receiving the package last. Confirmation of receipt by the Standing Committees is required for delivery to IRRC.

Please respond as soon as possible to this email indicating that you have received the attached final-form regulatory package so that I can deliver the package to IRRC **today, June 9, 2023**.

Thanks,  
Pam

**Pamela G. Smith** | Assistant Chief Counsel  
Pennsylvania Department of Health | Office of Legal Counsel  
625 Forster Street | Harrisburg, PA 17120 - 0701  
Phone: 717.783.2500 | Fax: 717.705.6042  
[www.health.state.pa.us](http://www.health.state.pa.us)

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**From:** [Fricke, Erika L.](#)  
**To:** [Smith, Pamela \(Health\)](#); [Frankel, Dan](#)  
**Subject:** RE: Final-Form Certified Lifeguard Regulation (10-236)  
**Date:** Friday, June 9, 2023 8:09:28 AM

Received by IRRC  
06/09/2023

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Received!

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Friday, June 9, 2023 8:08 AM  
**To:** Frankel, Dan <DFrankel@pahouse.net>; Fricke, Erika L. <EFricke@pahouse.net>  
**Subject:** Final-Form Certified Lifeguard Regulation (10-236)  
**Importance:** High

Good morning,

Attached are final-form certified lifeguard regulations (10-236) from the Department of Health.

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**From:** [Freeman, Clarissa](#)  
**To:** [Smith, Pamela \(Health\)](#); [Haywood, Senator Art](#)  
**Subject:** Re: Final-Form Certified Lifeguard Regulation (10-236)  
**Date:** Friday, June 9, 2023 8:22:51 AM

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06/09/2023

Received.  
Thank you,  
Clarissa Freeman

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Friday, June 9, 2023 8:11:46 AM  
**To:** Haywood, Senator Art <art.haywood@pasenate.com>; Freeman, Clarissa <clarissa.freeman@pasenate.com>  
**Subject:** Final-Form Certified Lifeguard Regulation (10-236)

■ EXTERNAL EMAIL ■

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Good morning,

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**From:** [Michael Siget](#)  
**To:** [Smith, Pamela \(Health\)](#); [Kathy Rapp](#)  
**Subject:** RE: Final-Form Certified Lifeguard Regulation (10-236)  
**Date:** Friday, June 9, 2023 8:10:21 AM

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Received. Thank you.

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Friday, June 9, 2023 8:09 AM  
**To:** Kathy Rapp <Kl rapp@pahousegop.com>; Michael Siget <Msiget@pahousegop.com>  
**Subject:** Final-Form Certified Lifeguard Regulation (10-236)  
**Importance:** High

Good morning,

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