

PROPOSED RULEMAKING

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Fee Increase

The State Board of Veterinary Medicine (Board) proposes to amend § 31.41 (relating to schedule of fees), pertaining to fees for veterinarians and certified veterinary technicians, and add § 31.104 (relating to schedule of fees), pertaining to fees for registered animal protection organizations (APO) and euthanasia technicians, to read as set forth in Annex A. This proposed rulemaking will provide for an incremental increase to all application fees and renewal fees over the upcoming three biennial renewal cycles.

Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The initial graduated increase for application fees will be implemented on the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*, and then increased on December 1, 2026, and again on December 1, 2028.

Biennial renewal fees will increase by 3%, beginning with the December 1, 2024—November 30, 2026, biennial renewal period. This fee increase will impact licenses and certificates that expire on November 30, 2024.

Biennial renewal fees will increase again by 3% for the December 1, 2026—November 30, 2028, biennial renewal period. This fee increase will impact licenses and certificates that expire on November 30, 2026.

Biennial renewal fees will increase again by 3% for the December 1, 2028—November 30, 2030, renewal period. This fee increase will impact licenses and certificates that expire on November 30, 2028.

Statutory Authority

Under section 13(a) of the Veterinary Medicine Practice Act (act) (63 P.S. § 485.13(a)), the Board is required to set fees required for examination, licensure, certification, registration, renewal of licenses and registrations, renewal of certificates and temporary permits. Under section 13(b) of the act, if the revenues raised by fees, fines and civil penalties imposed under the act are not sufficient to meet expenditures over a 2-year period, the Board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.

The Commissioner is appointed by the Governor and has a number of powers and duties relative to the various professional and occupational licensing boards and commissions. Specifically, under section 810(a)(7) of The Administrative Code of 1929 (71 P.S. § 279.1(a)(7)), the Commissioner has the power and duty, “[u]nless otherwise provided by law, to fix the fees to be charged by the several professional and occupational examining boards within the department.”

Background and Purpose

Under section 13(b) of the act, the Board is required to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act pro-

vides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees. The Board’s current biennial license/certificate renewal fees for veterinarians and veterinary technicians were established in 2010 at 40 Pa.B. 4757 (August 21, 2010).

The Board receives an annual report from the Department of State’s Bureau of Finance and Procurement (BFP) regarding the Board’s income and expenses. The BFP presented the following information to the Board at its public meeting on January 7, 2022.

In Fiscal Years (FY) 2018-2019 and 2019-2020, the Board incurred expenses of \$1,345,557.59 and \$1,397,676.97, respectively, and received \$2,239,892.27 and \$155,537.20 in revenue, respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$2,743,234.56) outpaced its total revenue (\$2,395,429.47) by \$347,805.09. The Board’s overall remaining balance at the end of FY 2019-2020 was \$1,751,478.31.

In FYs 2020-2021 and 2021-2022, the Board’s expenses were \$1,347,700.03 and \$1,268,000.00 (projected), respectively, with revenues of \$2,281,280.29 and \$156,000.00 (projected), respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$2,615,700.03) outpaced its total revenue (\$2,437,280.29) by \$178,419.74. The Board’s overall remaining balance at the end of FY 2021-2022 was \$1,573,058.57.

In FYs 2022-2023 and 2023-2024, the Board’s expenses were projected to be \$1,388,000.00 and \$1,306,000.00, respectively, with revenues projected to be \$2,486,000 and \$164,000, respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$2,694,000) are projected to outpace its total revenue (\$2,650,000) by \$44,000. The Board’s overall remaining balance at the end of FY 2023-2024 is projected to be \$1,529,058.57.

According to the BFP’s projections, if the Board were to keep its current fee structure in place (no increases for any of its fees), the Board’s biennial revenue would remain at \$2,645,000 for each of the next 6 years. However, its expenses are projected to grow each year, so that the amount the Board would be spending above and beyond its revenue would become increasingly larger each successive year. The Board’s projected revenue would fall short of meeting its expenses by \$131,000 in FY 2024-2025/FY 2025-2026, then by \$213,000 in FY 2026-2027/FY 2027-2028, and then by \$299,000 in FY 2028-2029/FY 2029-2030. Those projections also show a significant reduction in the Board’s overall remaining balance, which by the end of FY 2029-2030 would be down to \$886,058.57.

Given that its revenues generated by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period, the Board voted on January 7, 2022, to adopt the proposed graduated fee increases for application and biennial renewal fees contained in the BFP’s report.

Description of Proposed Amendments

The BFP recommended a graduated fee increase that would be achieved over three biennial renewal periods rather than immediately. The fee increases are set so that the fees collected during each biennium more accurately reflect the anticipated costs for that period. The Board’s proposal would create the following fee schedule over the next three renewal cycles:

<i>Biennial Renewal Fees</i>				
	<i>Current</i>	<i>December 1, 2024—November 30, 2026 Biennial Registration Fee</i>	<i>December 1, 2026—November 30, 2028 Biennial Registration Fee</i>	<i>December 1, 2028—November 30, 2030 Biennial Registration Fee and thereafter</i>
Veterinarians	\$360	\$371	\$382	\$393
Veterinary technicians	\$100	\$103	\$106	\$109
Registered APOs		\$52	\$54	\$56
Euthanasia technicians		\$26	\$27	\$28

Despite the proposed increases, even the highest proposed renewal fee in 2028 would be lower than some surrounding states (Connecticut and Rhode Island), but will be higher than other surrounding states (Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Vermont and West Virginia). The highest known biennial renewal fee for veterinarians in the Northeast quadrant of the United States is Rhode Island at \$580, while the lowest known biennial renewal fee is New Hampshire at \$150. Some boards do not announce current renewal fees until it is time for licensure renewal.

Application fees are proposed to be raised to reflect the true administrative cost to the Board to process each individual application. The proposed application fees are then increased on a graduated basis so that the application fees collected during each biennium reflect the anticipated costs of processing applications for that biennium. These fees are designed to cover the cost to process applications and are borne by individual applicants. Actual cost calculations for application fees are based upon the following formula:

$$\begin{aligned} & \text{number of minutes to perform the function} \\ & \quad \times \\ & \text{pay rate for the classification of the personnel performing the function} \\ & \quad + \\ & \text{a proportionate share of administrative overhead} \end{aligned}$$

The BFP recommends increasing the current application fees on a graduated basis for veterinarians, veterinary technicians and continuing education (CE) program approval. Furthermore, the BFP recommends increasing the application fee for two applications related to new classes of registrants/licensees created by the Animal Destruction Method Authorization Law (ADMAL) (3 P.S. §§ 328.101—328.1102): registered APOs and licensed euthanasia technicians. The initial fees for these new classes of registrants/licensees were included in the Board’s proposed rulemaking (16A-5726) which was published at 52 Pa.B. 1980 (April 2, 2022). The Board expects to promulgate the final-form rulemaking (16A-5726), which adds Subchapter B and §§ 31.101—31.130, and begin registering APOs and licensing euthanasia technicians in the spring of 2024. Being new classes of licensure and at the Board’s request, the BFP recommended not increasing the application fees until December 2026 for these categories (rather than December 2024) to allow a larger number of initial applicants to take advantage of the lower, initial application fee and because the total number of registered APOs and licensed euthanasia technicians remains speculative. Finally, the proposed fee for APO reinspection will be contemporaneously increased with the fee for application for initial registration of an APO, which includes the initial inspection fee. Only those APOs that fail the initial inspection are expected to pay the reinspection fee. Accordingly, with regard to reinspections, the ultimate cost to the regulated community is expected to be minimal.

The “duplicate license or certificate” fee (\$5) will not be increased because it is set by statute, specifically section 226 of the Bureau of Professional and Occupational Affairs Fee Act (BPOA Fee Act) (63 P.S. § 1401-226). Similarly, the “late renewal” fee (\$5 per month or part of month) will not be increased because it is set by section 225 of the BPOA Fee Act (63 P.S. § 1401-225). Finally, the “certification of scores or hours” fee will not be increased because: 1) the BFP did not suggest that it be increased; and 2) this fee is all but obsolete—the Board having no record of ever having charged this fee. In November of 2000, the North American Veterinary Licensing Examination (NAVLE), administered by the International Council for Veterinary Assessment (ICVA), replaced paper-and-pencil tests such as the National Board Examination (NBE) and Clinical Competency Test (CCT) as the sole computer-based examination for veterinary medical licensure in the United States and Canada. The Board established the “certification of scores or hours” fee in June of 2000 for those licensees who passed the NBE and CCT prior to 2000 and sought licensure in another jurisdiction, so that the Board could certify those scores and provide them to another jurisdiction, if requested. See 30 Pa.B. 3044 (June 17, 2000). Licensure by reciprocity/endorsement, coupled with the fact that NAVLE scores are certified by the exam administrator, ICVA, has practically eliminated the need for the “certification of scores or hours” fee. However, because a licensee may possibly request that the Board certify NBE or CCT scores/hours, the Board has decided not to eliminate or raise this fee in this proposed rulemaking.

This proposed rulemaking will create the following application fee schedule over three renewal cycles:

<i>Application Fees (and APO Reinspection Fee)</i>				
	<i>Current</i>	<i>Upon Publication as Final</i>	<i>Effective December 1, 2026</i>	<i>Effective December 1, 2028</i>
Veterinarian	\$35	\$125	\$131	\$138
Veterinary technicians	\$35	\$78	\$82	\$86
APO registration		\$244	\$256	\$269
APO reinspection		\$216	\$228	\$241
Euthanasia technicians		\$87	\$91	\$96
CE program approval	\$35	\$108	\$113	\$119

Despite the proposed increases, the Board’s new application fees will be lower than some surrounding states (Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio and West Virginia) but will be higher than other surrounding states (Maine, Rhode Island and Vermont). The highest known application fee for veterinarians in the Northeast quadrant of the United States is Rhode Island at \$580, while the lowest known application fee for veterinarians is Maine at \$95.

The BFP also recommends that the fee for verification of licensure be incrementally increased over three renewal cycles:

<i>Verification of Licensure Fee</i>				
	<i>Current</i>	<i>Upon Publication as Final</i>	<i>December 2026</i>	<i>December 2028</i>
Verification of licensure	\$15	\$20	\$21	\$22

Although some surrounding states do not charge a verification of licensure fee, the Board’s new verification of licensure fee will be on par with the states that do charge this fee (Delaware (\$35), Maryland (\$25), Massachusetts (\$15), New Hampshire (\$20), New Jersey (\$25), New York (\$25), Rhode Island (\$50), Vermont (\$25) and West Virginia (\$25)).

Fiscal Impact

This proposed rulemaking will not have any fiscal impact on the general public.

This proposed rulemaking will increase application and biennial renewal fees on a graduated basis. Board applicants, licensees and certificate holders will be required to comply with the regulation. The fees may be paid by applicants, licensees or certificate holders, or may be paid by their employers, should their employers choose to do so. This proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Approximately 1,025 applicants biennially will be impacted by the increased application fees. Specifically, the number of applicants affected are as follows: (Note: numbers provided for APOs and euthanasia technicians are estimated because the Board is expected to issue registrations/licenses to these individuals in the spring of 2024).

Veterinarians:	533
Veterinary technicians:	398
APOs:	10
Euthanasia technicians:	50
CE programs:	34

Applicants will be affected as follows:

	<i>Current</i>	<i>Upon Publication as Final</i>	<i>Effective December 1, 2026</i>	<i>Effective December 1, 2028</i>
Veterinarian	\$35 × 533 = \$18,655	\$125 × 533 = \$66,625 (+\$47,970)	\$131 × 533 = \$69,823 (+\$51,168)	\$138 × 533 = \$73,554 (+\$54,899)
Veterinary technicians	\$35 × 389 = \$13,615	\$78 × 389 = \$30,342 (+\$16,727)	\$82 × 389 = \$31,898 (+\$18,283)	\$86 × 389 = \$33,454 (+\$19,839)
Registered APOs	\$244 × 50 = \$12,200	\$244 × 10 = \$2,440	\$256 × 10 = \$2,560 (+\$120)	\$269 × 10 = \$2,690 (+\$250)
APO reinspection	\$216	\$216	\$228	\$241
Euthanasia technicians	\$87 × 50 = \$4,350	\$87 × 50 = \$4,350	\$91 × 50 = \$4,550 (+\$200)	\$96 × 50 = \$4,800 (+\$450)
CE program approval	\$35 × 34 = \$1,190	\$108 × 34 = \$3,672 (+\$2,482)	\$113 × 34 = \$3,84 (+\$2,652)	\$119 × 34 = \$4,046 (+\$2,856)

Based upon the graduated application fee increases, the total economic impact per biennial renewal period is as follows:

FYs 2024-2025 and 2025-2026:	\$67,179
FYs 2026-2027 and 2027-2028:	\$72,423
FYs 2028-2029 and 2029-2030:	\$78,294
Total:	\$217,896

Approximately 8,850 licensees/certificate holders will be impacted by the increased biennial renewal fees:

Veterinarians:	5,576
Veterinary technicians:	3,174
APOs:	50
Euthanasia technicians:	50

Currently licensed individuals will be affected as follows:

	<i>Current</i>	<i>December 1, 2024—November 30, 2026 biennial registration fee</i>	<i>December 1, 2026—November 30, 2028 biennial registration fee</i>	<i>December 1, 2028—November 30, 2030 biennial registration fee and thereafter</i>
Veterinarians	\$360 × 5,576 = \$2,007,360	\$371 × 5,576 = \$2,068,696	\$382 × 5,576 = \$2,130,032	\$393 × 5,576 = \$2,191,368
Veterinary technicians	\$100 × 3,174 = \$317,400	\$103 × 3,174 = \$326,922	\$106 × 3,174 = \$336,444	\$109 × 3,174 = \$345,966
Registered APOs	\$50 × 50 = \$2,500	\$52 × 50 = \$2,600	\$54 × 60 = \$3,240	\$56 × 70 = \$3,920
Euthanasia technicians	\$25 × 50 = \$1,250	\$26 × 50 = \$1,300	\$27 × 100 = \$2,700	\$28 × 150 = \$4,200

Based upon the previously listed biennial renewal fee increases, the economic impact is as follows:

FYs 2024-2025 and 2025-2026:	\$71,008
FYs 2026-2027 and 2027-2028:	\$142,156
FYs 2028-2029 and 2029-2030:	\$213,444
Total:	\$426,608

Thus, the total economic impact of the proposed fee increase to applicants, licensees, certificate holders, registrants or employers, if employers choose to pay application or licensing fees, is \$644,504.

Paperwork Requirements

This proposed rulemaking will require the Board to alter some of its electronic forms to reflect the new application and biennial renewal fees; however, this proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The Board continuously monitors its regulations as required by Executive Order 1996-1 (4 Pa. Code §§ 1.371—1.382 (relating to regulatory review and promulgation)). Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 12, 2024, the Board submitted a copy of this proposed regulation and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Counsel, State Board of Veterinary Medicine, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference “Regulation No. 16A-5732 (Fees),” when submitting comments.

THOMAS N. GARG, VMD,
 Chairperson
 State Board of Veterinary Medicine

ARION R. CLAGGETT,
 Acting Commissioner
 Bureau of Professional and Occupational Affairs

Fiscal Note: 16A-5732. No fiscal impact; recommends adoption.

Annex A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

(Editor’s Note: The designation of Subchapter A, which is proposed to be added in this proposed rulemaking, was also proposed to be added in proposed rulemaking 16A-5726 published at 52 Pa.B. 1980 (April 2, 2022). Final-form rulemaking 16A-5726 was approved by IRRC at its June 20, 2024, meeting.)

Subchapter A. VETERINARIANS, CERTIFIED VETERINARY TECHNICIANS AND VETERINARY ASSISTANTS
FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

[*Veterinarian fees for services:*

Application to original, reactivated, reissued or reciprocal license	\$35
Application for continuing education program approval	\$35
Verification of licensure	\$15
Certification of scores or hours	\$25
Duplicate license	\$5
Late renewal fee per month or part of month	\$5
<i>Veterinarian biennial renewal:</i>	
Biennial renewal fee	\$360
<i>Certified veterinary technician fees for services:</i>	
Application for certification	\$35
Application for continuing education program approval	\$35
Verification of certification	\$15
Certification of scores or hours	\$25
Late renewal fee per month or part of month	\$5
Duplicate license	\$5
<i>Certified veterinarian technician biennial renewal:</i>	
Biennial renewal fee	\$100]

(a) *Application fees (original, reactivated, reissued, reciprocal or endorsement):*

(Editor’s Note: The blank in the first column of effective dates refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin).

	<u>Effective</u>	<u>Effective December 1, 2026</u>	<u>Effective December 1, 2028</u>
<u>Veterinarian</u>	\$125	\$131	\$138
<u>Certified veterinary technician</u>	\$78	\$82	\$86
<u>Continuing education program approval</u>	\$108	\$113	\$119

(b) *Biennial renewal fees:*

	<u>December 1, 2024— November 30, 2026 biennial renewal fee</u>	<u>December 1, 2026— November 30, 2028 biennial renewal fee</u>	<u>December 1, 2028— November 30, 2030 and thereafter biennial renewal fee</u>
<u>Veterinarian</u>	\$371	\$382	\$393
<u>Certified veterinary technician</u>	\$103	\$106	\$109

(c) *Miscellaneous fees:*

(Editor’s Note: The blank in the first column of effective dates refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin).

	<u>Effective</u>	<u>Effective December 1, 2026</u>	<u>Effective December 1, 2028</u>
<u>Verification of licensure or certification</u>	\$20	\$21	\$22
<u>Duplicate license or certificate</u>	\$5		
<u>Late renewal fee per month or part of month</u>	\$5		
<u>Certification of scores or hours</u>	\$25		

(Editor’s Note: Subchapter B and § 31.104 are proposed to be added in proposed rulemaking 16A-5726 published at 52 Pa.B. 1980 (April 2, 2022). Final-form rulemaking 16A-5726 was approved by IRRC at its June 20, 2024, meeting. This proposed rulemaking also proposes to add Subchapter B and an updated version of § 31.104, which are printed in regular type to enhance readability.)

**Subchapter B. ANIMAL PROTECTION ORGANIZATIONS AND EUTHANASIA TECHNICIANS
GENERAL PROVISIONS**

§ 31.104. Schedule of fees.

The Board will charge the following fees for the administration of this subchapter:

(a) *Application fees (original, reactivated, reissued, reciprocal or endorsement):*

(Editor’s Note: The blank in the first column of effective dates refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin).

	<i>Effective</i>	<i>Effective December 1, 2026</i>	<i>Effective December 1, 2028</i>
Registered Animal Protection Organization (includes initial inspection fee)	\$244	\$256	\$269
Euthanasia technician	\$87	\$91	\$96

(b) *Biennial renewal fees:*

	<i>December 1, 2024—November 30, 2026 biennial renewal fee</i>	<i>December 1, 2026—November 30, 2028 biennial renewal fee</i>	<i>December 1, 2028—November 30, 2030 and thereafter biennial renewal fee</i>
Certified Animal Protection Organization	\$52	\$54	\$56
Euthanasia technician	\$26	\$27	\$28

(c) *Miscellaneous fees:*

(Editor’s Note: The blank in the first column of effective dates refers to the date of publication of the final-form rulemaking in the Pennsylvania Bulletin).

	<i>Effective</i>	<i>Effective December 1, 2026</i>	<i>Effective December 1, 2028</i>
Verification of licensure or certification	\$20	\$21	\$22
Animal Protection Organization reinspection fee (for certificate of registration)	\$216	\$228	\$241

Duplicate license or certificate \$5
Late renewal fee per month or part of month \$5

[Pa.B. Doc. No. 24-889. Filed for public inspection June 28, 2024, 9:00 a.m.]

**STATE BOARD OF CERTIFIED
REAL ESTATE APPRAISERS**

**[49 PA. CODE CH. 36]
Distance Education and PAREA**

The State Board of Certified Real Estate Appraisers (Board) proposes to amend Chapter 36, Subchapter A (relating to general provisions) by amending §§ 36.1, 36.11—36.13, 36.31, 36.42 and 36.43 and adding § 36.45 (relating to asynchronous distance education) and Subchapter C (relating to certified Pennsylvania evaluators) by amending §§ 36.224, 36.262 and 36.263 (relating to distance education courses; continuing education subject matter; and distance education) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Under section 3 of the Assessors Certification Act (ACA) (63 P.S. § 458.3) “[t]he board may promulgate rules and regulations consistent with the statutes of this Commonwealth to administer and enforce the provisions of this act.” Section 4(d) of the ACA (63 P.S. § 458.4(d)) provides that continuing education is a condition of biennial renewal for certified Pennsylvania evaluators.

Section 5(1) of the Real Estate Appraisers Certification Act (act) (63 P.S. § 457.5(1)) authorizes the Board to pass upon the qualifications and fitness of applicants for certification or licensure and to adopt and revise rules and regulations requiring applicants for certification to pass examinations relating to qualifications for certification. Section 5(2) of the act states that the Board is empowered “[t]o adopt and, from time to time, revise such rules and regulations as may be necessary to carry out the provisions of this act.” Under section 6(c)(4)(i)—(iii) of the act (63 P.S. § 457.6(c)(4)(i)—(iii)), applicants for licensure as an appraiser trainee or certification as a residential or general real estate appraiser must satisfy the requirements of the act, the Board’s regulations and the Appraiser Qualification Criteria of the Appraiser

Qualifications Board (AQB) of The Appraisal Foundation. Under section 10(b), (b.1) and (b.2) of the act (63 P.S. § 457.10(b), (b.1) and (b.2)), continuing education is a condition of biennial renewal for certified residential and general appraisers, certified broker/appraisers and licensed appraiser trainees if, and only to the minimum extent, required under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub.L. No. 101-73, 103 Stat. 183), as amended (12 U.S.C. §§ 3331—3356).

The Appraisal Subcommittee (ASC) was created as a result of Title XI of FIRREA. See 12 U.S.C. § 3310. Under 12 U.S.C. § 3346, the ASC provides Federal oversight for all appraiser programs of every state appraiser regulatory agency in the United States. See 12 U.S.C. §§ 3332, 3346 and 3347. As required by 12 U.S.C. § 3332(b), the ASC monitors and reviews the practices, procedures, activities and organizational structure of The Appraisal Foundation. The Appraisal Foundation is an organization authorized by Congress to set standards and qualifications for real estate appraisers and provides voluntary guidance on recognized valuation methods and techniques for all valuation professionals. The AQB and the Appraisal Standards Board (ASB) are independent boards that are under the umbrella of The Appraisal Foundation. Through The Appraisal Foundation, all state appraiser programs must meet the minimum Federal standards that are established by the AQB for appraiser education, experience and examination, as well as Federal standards established by the ASB, for uniform standards of professional appraisal practice. See 12 U.S.C. §§ 3345 and 3339. Under 12 U.S.C. § 3338(b)(4), the ASC is authorized to use appropriated or collected funds to make grants to The Appraisal Foundation to defray costs related to AQB and ASB activities.

This proposed rulemaking is needed to comply with the distance education and virtual supervision requirements of the act of December 22, 2021 (P.L. 488, No. 100) (Act 100 of 2021), 63 Pa.C.S. § 3107.1 (relating to virtual operation). Under 63 Pa.C.S. § 3107.1(c), “[e]ach licensing board. . . shall establish rules and regulations for continuing education that provides for distance education if continuing education is required for a license, certificate, registration or permit in a practice act.” In addition, 63 Pa.C.S. § 3107.1(d) requires each licensing board that has supervision requirements for licensure to “establish rules and regulations providing for virtual supervision in a manner that meets the requirements for licensure, certification, registration or permit and is acceptable to the licensing board. . . .”

Background and Purpose

The AQB establishes the Federal minimum education, experience, examination and continuing education requirements for real property appraisers; the minimum standards are published in The Real Property Appraiser Qualification Criteria (AQB Qualification Criteria), which is available on The Appraisal Foundation web site at www.appraisalfoundation.org. In the AQB Qualification Criteria, effective January 1, 2022, the AQB established the new minimum requirements for distance education while also adding standards for virtual training and mentoring through Practical Applications of Real Estate Appraisal (PAREA). See AQB Qualification Criteria, pages 13, 14 and 30—36.

The Board reviewed its existing regulations regarding distance education. Currently, a distance education course provider must receive approval for course design and

delivery mechanism from the International Distance Education Certification Center (IDECC). In addition, a written examination must be proctored by an official approved by a college, university or other course provider. There is no provision for remote proctoring.

During the novel coronavirus (COVID-19) pandemic, the use of online platforms for qualifying and continuing education courses increased significantly. As a result of lessons learned during the pandemic, the AQB refined the Federal distance education standards in a number of ways. First, distance education is now divided into three distinct categories: synchronous, asynchronous and hybrid. Synchronous is a distance education offering where the instructor and the learner are in separate locations but have live, simultaneous interaction on an online platform. Asynchronous is a distance education offering where the instructor and learner do not have simultaneous interaction; computer-based learning is used. Hybrid is an educational offering that uses both in-person and online synchronous or asynchronous interaction.

Second, the AQB considers synchronous distance education to be substantially the same as a traditional, in-person course. See AQB Qualification Criteria, page 9. Providers of synchronous distance education will have to meet the same classroom hour requirements as a traditional, in-person course. The classroom hour requirement mandates that a class hour is defined as 60 minutes, of which at least 50 minutes must be instruction. The prescribed number of class hours includes time for examinations. The classroom hour requirement also mandates that course credits are obtained from certain types of education providers, including colleges or universities, real estate appraisal or real estate-related organizations, state or Federal agencies or commissions, proprietary schools and The Appraisal Foundation or its Boards (AQB and ASB). See AQB Qualification Criteria, III.A and III.B, pages 8-9. To meet the classroom hour requirement, synchronous distance education does not require the education provider to seek additional approval from a certifying entity for course design and course delivery mechanism. See AQB Qualification Criteria, page 9. The IDECC is an example of an entity that certifies the design and delivery mechanism of distance education courses.

Third, unlike synchronous distance education, asynchronous distance education will require additional approval for course design and course delivery mechanism as part of the classroom requirement. See AQB Qualification Criteria, III.A, III.B and III.D.1-3, pages 8-9. The AQB has determined, however, that entities other than the IDECC can also provide approval of course design and delivery mechanism for an asynchronous distance education course. The AQB established a list of the additional approval sources. See AQB Qualification Criteria, page 9. The AQB did not eliminate the IDECC as a valid delivery mechanism approval entity for distance education courses. See AQB Qualification Criteria Q & As, effective September 8, 2023, page 5.

Fourth, hybrid courses must meet the classroom hour requirements of its component parts, whether the component parts are composed of in-person education, synchronous distance education or asynchronous distance education. See AQB Qualification Criteria, pages 8-9.

Finally, remote proctoring of an examination, including biometric proctoring, is acceptable. Biometric proctoring provides that student identity is continually verified through processes, such as facial recognition, consistency in keystroke cadence and the observation of activity in

the testing location, so that aberrant behavior or activity can be readily observed. See AQB Qualification Criteria, footnote 1, page 10.

The distance education requirements contained in this proposed rulemaking reflect the minimum Federal standards as adopted by the AQB. See AQB Qualification Criteria, pages 9–11. This proposed rulemaking provides AQB-compliant distance education standards for continuing education for certified real estate appraisers, certified broker/appraisers and licensed appraiser trainees. It also provides AQB-compliant distance education standards for qualifying education for certified real estate appraisers and licensed appraiser trainees. Although assessor/evaluator programs are not subject to the Federal oversight of the ASC, certified Pennsylvania evaluator stakeholders expressed support for complying with the same distance education standards as appraisers and the Board agreed with this approach. Currently, § 36.224 of the regulations regarding distance education for certified Pennsylvania evaluators requires that a distance education course provider must receive approval for course design and delivery mechanism from the IDECC. Appraiser and assessor stakeholders have considered the IDECC approval process to be lengthy and, consequently, burdensome. The AQB's Federal distance education standards, however, would provide welcome relief to certified Pennsylvania evaluator course providers because synchronous distance education does not require additional approval for course design and delivery mechanism. Also, approval for course design and delivery mechanism for asynchronous distance education can be obtained from a number of different sources, not just the IDECC. Therefore, in uniformity with appraiser requirements, this proposed rulemaking provides AQB-compliant distance education standards for certified Pennsylvania evaluator qualifying and continuing education courses.

The Board reviewed its current regulations regarding virtual supervision. Currently, the Board's regulations do not provide for virtual supervision or mentoring of appraiser candidates. Appraiser training requires that a candidate becomes licensed as an appraiser trainee under the direct supervision and control of a supervisory appraiser. The appraiser trainee must obtain appraisal experience by conducting physical inspections of the interior and exterior of properties. The appraiser trainee is permitted to assist in the performance of only those appraisals that are within the supervisory appraiser's scope of practice.

The updates to the AQB Qualification Criteria include Federal standards for PAREA as an alternative to the traditional supervisory appraiser/appraiser trainee model of experience training. Under the traditional supervisory appraiser/appraiser trainee model, the trainee conducts onsite physical inspections of the interior and exterior of subject properties to fulfill the experience requirement for certified residential or general real estate appraiser. The trainee assists in the performance of appraisals that are within their supervisory appraiser's scope of practice. Appraiser trainees often have supervisory appraisers whose scope of practice is limited to a certain geographic location where certain types of properties are more common than others. PAREA is the concept of using simulated computer-based, virtual training and mentoring to fulfill the experience requirement to become a certified real estate appraiser. The PAREA program must be approved by the AQB and follow all AQB requirements. A participant in the PAREA program meets virtually with a mentor, who is a certified real estate appraiser. The PAREA program allows a participant to learn

how to conduct virtual inspections of various types of properties that may have been unavailable to an appraiser candidate under the traditional supervisory appraiser/appraiser trainee model, such as condominiums. A virtual inspection is an interior and exterior inspection that takes place remotely without the appraiser candidate being physically present at the property. The mentor provides the PAREA participant with guidance, advice and counseling as the participant performs specific tasks and completes assigned work. See AQB Real Property Appraiser Qualification Criteria Q & As, effective July 18, 2023, pages 67-68. PAREA provides the necessary experience for a candidate to be qualified to take the certified real estate appraiser examination.

PAREA is an important part of the National effort to promote diversity, equity and inclusion in the appraisal profession. Real estate appraising is an aging profession. In an article on <https://www.fanniemae.com/> entitled, "Intriguing Future of Appraisal Careers," it was noted that 49% of appraisers are 51 years of age to 65 years of age, and 13% are 66 years of age or older. See Fannie Mae Perspectives Blog, Intriguing Future of Appraisal Careers by Jacob Williamson, VP, Single-Family Credit Risk Collateral Management, Federal National Mortgage Association (FNMA aka Fannie Mae), June 3, 2019. The number one complaint that the AQB has received regarding entering the appraisal profession is that potential candidates cannot find a supervisory appraiser to complete the experience requirement for certification. Women, people of color and people who live in rural areas have a particularly hard time finding a credentialed appraiser who will agree to supervise them. The goal is for PAREA to make the appraisal profession more accessible to diverse groups of people, which is necessary for the survival of the profession.

This proposed rulemaking adds PAREA as an alternative to the traditional supervisory appraiser/appraiser trainee model of experience training for certified real estate appraiser candidates. The Board proposes to allow 100% of the experience requirement for certified residential real estate appraiser candidates to be fulfilled through completion of an AQB-approved certified residential appraiser PAREA program. The approved PAREA programs require participants to complete educational prerequisites prior to commencement of training for the Certified Residential Module.

This proposed rulemaking also allows 50% of the experience requirement for certified general real estate appraiser candidates to be fulfilled through completion of an AQB-approved certified residential appraiser PAREA program. Since the AQB has not yet authorized the development of a certified general appraiser PAREA program that would cover commercial or nonresidential experience, the nonresidential portion (50%) of the experience requirement for certified general appraiser candidates would have to be completed through the traditional supervisory appraiser/appraiser trainee model.

The Board began its discussions with stakeholders using two different annexes: one addressing distance education, and the other addressing virtual supervision. The Board discussed distance education at public meetings on January 20, 2022; March 2, 2022; April 14, 2022; May 26, 2022; July 7, 2022 and August 19, 2022. The Board discussed virtual supervision (including PAREA) at public meetings on April 14, 2022; May 26, 2022; July 7, 2022 and August 19, 2022. As a result of these discussions and because the statutory requirements set forth in Act 100 of 2021 address distance education and virtual

supervision together, the proposed regulatory amendments were merged into one proposed annex. The merger of the proposed regulations was discussed at the September 29, 2022, public meeting.

Prior to the merger, at the April 14, 2022, Board meeting, the Board reviewed and discussed the three written comments that had been received from stakeholders regarding the distance education annex. In attendance at the April 14, 2022, meeting were the manager of State and Industry Affairs at the Appraisal Institute, the Public Policy Manager of the Pennsylvania Association of Realtors and the Executive Director of the Assessors Association of Pennsylvania (AAP). One written comment submitted on March 10, 2022, by an AQB-Certified USPAP Instructor, stated, “. . . [u]pon review, I can find nothing constructive to offer that would enhance or clarify this document as written. . . .” The Executive Director of the AAP commented that the proposed distance education regulations were great and coincided with previous Board discussions.

At the May 26, 2022, public meeting, the Board voted to amend § 36.31 (relating to provider registration/appraisal courses) of the distance education annex to address a question that frequently presents itself, especially at the time of biennial license renewal. Licensees often ask whether the Board will accept continuing education course credits for courses that were not submitted for approval in this Commonwealth yet were approved by another state appraiser regulatory agency. Since all state appraiser regulatory agencies must comply with Federal AQB standards for qualifying and continuing education courses, the Board determined that course credit from a Commonwealth Board-approved education provider will be accepted for an appraisal course that was approved by another state appraiser regulatory agency. The Board also discussed the virtual supervision annex and made a number of amendments to the annex based on stakeholder engagement.

At the August 19, 2022, regularly scheduled public meeting, the Appraisal Institute expressed their support for the proposed regulatory changes regarding distance education. The Appraisal Institute made one suggestion regarding the definition of “asynchronous.” Where the annex read that asynchronous education consisted of “pre-recorded lectures, webinars or videos for instruction,” the Appraisal Institute suggested the following language:

Using computer-based learning, pre-recorded lectures, webinars or videos for instruction, students progress at their own pace and follow a structured course content and quiz/exam format.

The Appraisal Institute expressed its belief that the inclusion of “computer-based learning” would more broadly cover the types of asynchronous learning options that may be offered. The Board agreed with the Appraisal Institute’s assessment and voted to adopt this suggested amendment.

The Appraisal Institute also suggested, for the virtual supervision annex, that the phrase “an AQB-approved PAREA program” should be modified to read “an AQB-approved Certified Residential PAREA Program” in §§ 36.11, 36.12 and 36.13 (relating to qualifications for certification as residential real estate appraiser; qualifications for certification as general real estate appraiser; and experience options for preparation of appraisal reports; experience logs) of the regulations. This modification clarifies that completion of the Licensed Residential PAREA Program alone will not be acceptable in this

Commonwealth since the Commonwealth does not have a licensed residential real estate appraiser classification. The Board agreed with the Appraisal Institute’s recommendation and voted to adopt this suggested amendment.

As previously stated, the proposed regulatory amendments were merged into one proposed annex and discussed at the September 29, 2022, public meeting. There was no opposition to the merger of the two proposed regulations.

Description of the Proposed Amendments

The Board proposes to amend Chapter 36, Subchapter A, to reflect the Federal updates to the AQB Qualification Criteria regarding distance education and PAREA.

Section 36.1 (relating to definitions) is proposed to be amended by adding definitions for the terms “asynchronous,” “biometric proctoring,” “hybrid,” “mentor,” “PAREA” and “synchronous” and amending the definition of “distance education.” The definitions for these terms are drafted to conform with the AQB Qualification Criteria.

The Board proposes to amend § 36.11(b)(3)(i) pertaining to qualifications for certification as a residential real estate appraiser to reflect the updated AQB standards that must be met for a qualifying education course to be taught through synchronous, asynchronous and hybrid distance education. Subsection (b)(3)(ii) is proposed to be amended to reflect that a final, closed-book examination for a qualifying education course for certified residential appraiser candidates may be proctored in person or remotely by an official approved by a college or university or other course provider, consistent with AQB standards. The subsection authorizes biometric proctoring of the examination, consistent with AQB standards. Subsection (f) is proposed to be added to reflect that an applicant for certified residential appraiser can meet 100% of the experience requirement by successfully completing an AQB-approved certified residential PAREA program provided conditions, as required by the AQB Qualification Criteria, are met.

The Board proposes to amend § 36.12(b)(3)(i) to reflect the updated AQB standards that must be met for a qualifying education course to be taught through synchronous, asynchronous and hybrid distance education. Subsection (b)(3)(ii) is proposed to be amended to reflect that a final, closed-book examination for a qualifying education course for certified general appraiser candidates may be proctored in person or remotely by an official approved by a college or university or other course provider. Subsection (b) also authorizes biometric proctoring of the examination. Subsection (f) is proposed to be added to reflect that an applicant for certified general appraiser can meet 50% of the experience requirement by successfully completing an AQB-approved certified residential PAREA program. Subsection (f) also informs certified general appraiser applicants that they must complete the nonresidential portion of the experience requirement by obtaining licensure as an appraiser trainee, under the direct supervision of a supervisory appraiser, and comply with §§ 36.12(e) and 36.13 of the regulations and the AQB Qualification Criteria.

Section 36.12a(b)(4)(i) (relating to qualifications for licensure as appraiser trainee) is proposed to be amended to reflect the updated AQB standards that must be met for a qualifying education course to be taught through synchronous, asynchronous and hybrid distance education. The Board further proposes to amend subsection (b)(4)(ii) to allow a final, closed-book examination for a qualifying education course for licensed appraiser trainee

candidates to be proctored in person or remotely by an official approved by a college or university or other course provider. This subsection also authorizes biometric proctoring of the examination.

Under this proposed rulemaking, § 36.13(a)(2) would be amended by adding subparagraph (v), which would allow an applicant to complete 100% of the experience requirement for certification as a residential appraiser in an AQB-approved certified residential PAREA program, provided that the applicant satisfies the requirements of § 36.13(c.1), which would require an applicant for certification as a residential real estate appraiser to submit to the Board a copy of their certificate of completion from the certified residential PAREA program. See AQB Qualification Criteria, page 14. This provision clarifies that no appraisal logs or samples need to be submitted to the Board. Proposed subparagraph (vi) would allow an applicant to complete 50% of the experience requirement for certification as a general appraiser in an AQB-approved certified residential PAREA program, provided that the applicant satisfies the requirements of proposed subsection (c.2). See AQB Real Property Appraiser Qualification Criteria Q & As, effective July 18, 2023, pages 55-56. Proposed subsection (c.2) requires an applicant for certification as a general real estate appraiser to submit to the Board a copy of their certificate of completion from the certified residential PAREA program. In addition, the applicant must meet the nonresidential, commercial portion of the experience requirement for certified general appraiser by obtaining licensure as an appraiser trainee, under the direct supervision of a supervisory appraiser, and submitting appraisal logs and appraisal samples to the Board.

The Board proposes to add § 36.31(b) to clarify that education providers must obtain Board approval for each course that they wish to offer for qualifying education and continuing education credit. The Board is not establishing a new fee, but rather proposes to clarify that the applicable education provider application fee can be found in § 36.6 (relating to fees) and must be paid. In addition, subsection (c) is proposed to be added to clarify that the Board will accept course credits from a Commonwealth Board-approved education provider whose course has been approved by another state appraiser regulatory agency provided that the course meets the Board's requirements for qualifying education relating to classroom hours and for continuing education relating to subject matter and sources of continuing education and distance education. Under subsection (c), a Board-approved provider does not have to submit an application or pay a fee for courses approved by other state appraiser regulatory agencies.

Section 36.42(a) (relating to subject matter and sources of continuing education) currently states that continuing education subject matter and sources must comply with the requirements of the AQB Qualification Criteria. The Board proposes to amend subsection (a) by adding "classroom hours" as a requirement that must comply with the AQB Qualification Criteria for continuing education.

The Board proposes to amend § 36.43 (relating to distance education) to reflect the AQB standards that must be met for a continuing education course to be taught through synchronous, asynchronous and hybrid distance education. Paragraph (2) would allow an examination for a continuing education course to be proctored in person or remotely by an official approved by a college or university or another course provider. This paragraph also authorizes biometric proctoring of the examination.

The Board proposes to add § 36.45 (relating to asynchronous distance education) which will provide the classroom hour requirements that are specific to asynchronous distance education. The course must provide a way for the learner to interact with the instructor through verbal or written communication. The course content must be approved by an acceptable entity such as the AQB, the Board or another state appraiser regulatory agency, or an accredited college, community college or university that offers distance education programs. The course delivery mechanism must be approved by an acceptable entity such as the AQB, an AQB-approved organization, a college or university that qualifies for content approval that awards academic credit for the distance education course or a college or university that qualifies for content approval under subsection (b)(3) with a distance education delivery program that approves course design and delivery that incorporate interactivity.

The Board proposes to amend Subchapter C so that certified Pennsylvania evaluators can benefit from the same updates to distance education standards as appraisers. As noted previously, although assessor/evaluator programs are not subject to the Federal oversight of the ASC, certified Pennsylvania evaluator stakeholders expressed support for complying with the same distance education standards as appraisers as the AQB requirements eliminate unnecessary barriers to the delivery of distance education courses.

The Board proposes to amend § 36.224 to include the AQB standards that must be met for a qualifying education course to be taught through synchronous, asynchronous and hybrid distance education. Paragraph (2) would also be amended to reflect that a final, closed-book examination for a qualifying education course for certified Pennsylvania evaluator candidates may be proctored in person or remotely by an official approved by a college or university or another course provider. This paragraph also authorizes biometric proctoring of the examination.

The Board proposes a minor amendment in § 36.262(c) to fix a clerical error which the Board wishes to correct by changing the word "of" to "or" for sentence clarity.

The Board proposes amendments to § 36.263 to include the AQB standards that must be met for a continuing education course to be taught through synchronous, asynchronous and hybrid distance education. Paragraph (2) is amended to reflect that an examination for a continuing education course may be proctored in person or remotely by an official approved by a college or university or another course provider. The paragraph also authorizes biometric proctoring of the examination.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The application costs for approval of qualifying education and continuing education courses are borne by education providers.

Sunset Date

The Board continuously monitors the cost effectiveness of the Board's regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 3, 2024, the Board 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 chairperson of the

Consumer Protection and Professional Licensure Committee of the Senate and to the chairperson of the Professional Licensure Committee of the House. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall 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 Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ronald K. Rouse, Esquire, Board Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference "16A-7029 (Distance Education and PAREA)" when submitting comments.

MARK V. SMELTZER, Sr.,
Chairperson

Fiscal Note: 16A-7029. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter A. GENERAL PROVISIONS

GENERAL PROVISIONS

§ 36.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Appraisal review—An analysis of a completed appraisal report to determine if it conforms to specific requirements and guidelines and to ensure that the report is consistent and mathematically correct.

Asynchronous—A distance education offering where the learner and instructor are in separate locations and their interaction is not simultaneous. Using computer-based learning, learners progress at their own pace and follow a structured course content and quiz or exam schedule.

Biometric proctoring—A remote proctoring tool that uses software to continually verify a person's identity and activity through processes such as facial recognition, consistency in keystroke cadence and monitoring the activity of the remote testing location, so that aberrant behavior or activity such as eye movement, body position or speech can be readily observed.

Board—The State Board of Certified Real Estate Appraisers within the Bureau of Professional and Occupational Affairs in the Department of State of the Commonwealth.

* * * * *

Certified residential real estate appraiser—A person who holds a certificate issued under the authority of section 6(a)(1) and (d) of the act and § 36.11 (relating to qualifications for certification as residential real estate appraiser) and who is authorized to perform appraisals of residential properties of one-to-four dwelling units in all transactions, whether Federally-related or non-Federally-related.

Distance education—Except as otherwise required by AQB Qualification Criteria, an educational process based on the geographical separation of the learner and instructor, which provides interaction between the learner and instructor [**and includes**], **is offered in synchronous, asynchronous or hybrid format and may include testing.** Examples include CD-ROM or DVD-ROM, on-line learning, correspondence courses, **pre-recorded lectures, webinars,** video conferencing, and video and remote television courses.

FIRREA—The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub.L. No. 101-73, 103 Stat. 183).

* * * * *

Highest and best use analysis—A study which represents the reasonable and probable use that results in the highest present value of the land or improved property after considering all legally permissible, physically possible and economically feasible uses.

Hybrid—An educational offering that uses both **in-person and online synchronous or asynchronous interaction.**

IDECC—International Distance Education Certification Center.

In good standing—

(i) When referring to an individual certified or licensed by the Board to perform appraisals, an individual who is authorized under the act to perform appraisals or to act as a licensed appraiser trainee.

(ii) The term includes an individual who has an active, unrestricted certificate or license, or a certificate or license that is on probation or subject to a restriction ordered by the Board.

(iii) The term does not include an individual who holds a certificate or license that is inactive, expired, suspended or revoked.

Licensed appraiser trainee—A person who holds a license issued under section 6(a.1) of the act and § 36.12a (relating to qualifications for licensure as appraiser trainee) and who is authorized to assist a certified residential real estate appraiser or certified general real estate appraiser in the performance of an appraisal.

Mentor—A State-certified residential or general real estate appraiser who meets the AQB Qualification Criteria for guiding, advising and counseling PAREA program participants.

PAREA—Practical Applications of Real Estate Appraisal—An AQB-approved simulated experience training program that serves as an alternative to the licensed appraiser trainee pathway to licensure

under § 36.12a and provides creditable appraisal experience without direct supervision of a supervisory appraiser.

Real estate counseling—Providing, for a fee, disinterested and unbiased advice, professional guidance and judgment in the broad field of real estate, involving all segments of the business, including marketing, leasing, managing, planning, financing, appraising, providing testimony and other similar services. Real estate counseling is a specialty area in which the counselor clearly identifies the real estate problem to be solved, determines the most satisfactory solutions and, where appropriate, follows through on the implementation.

* * * * *

Review appraiser—A person who performs an appraisal review.

Synchronous—A distance education offering where the instructor and learners are in separate locations but have live, simultaneous interaction using an online platform.

USPAP—The Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of The Appraisal Foundation.

QUALIFICATIONS FOR CERTIFICATION OR LICENSURE

§ 36.11. Qualifications for certification as residential real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* An applicant for certification as a residential real estate appraiser shall submit evidence to the Board of having completed the classroom hours required by the AQB Qualification Criteria as of the date of the application.

(1) *Length of classroom hour and courses; course examination requirement.*

* * * * *

(3) *Distance education.* Distance education courses must comply with the requirements in the AQB Qualification Criteria. A distance education course is acceptable to meet the classroom hour requirement if the course **complies with paragraphs (1) and (2)**, is approved by the Board and meets all of the following conditions:

(i) The course is presented [**by one of the following**] **in one of the following ways**:

(A) [**An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines**] **Synchronous distance education.**

(B) [**A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program**] **Asynchronous distance education that meets the requirements of § 36.45 (relating to asynchronous distance education).**

(C) **Hybrid distance education that meets the class hour requirements of its component parts, whether in person, synchronous or asynchronous.**

(ii) The applicant successfully completes a written, **closed-book final** examination proctored **in person** or

remotely by an official approved by the college, university or other course provider. **Biometric proctoring is acceptable.**

(iii) The length and content of the course meet the requirements of paragraph (1) and subsection (c), respectively.

* * * * *

(e) *Experience.* An applicant’s experience must comply with all of the following:

(1) An applicant for certification as a residential real estate appraiser shall satisfy the experience requirements in the AQB Qualification Criteria.

* * * * *

(4) Acceptable categories of appraisal experience include all of the following:

(i) Fee and staff appraisals.

* * * * *

(x) Case studies or practicum courses that are approved by the AQB Course Approval Program.

(f) Experience through PAREA. Notwithstanding the requirements of subsection (e), an applicant can meet 100% of the experience requirement by successfully completing an AQB-approved certified residential PAREA program, under all of the following conditions:

(1) The applicant must comply with the prerequisites for entry into a PAREA program contained in the AQB Qualification Criteria.

(2) The PAREA program must be approved by the AQB and continuously comply with the requirements of the AQB Qualification Criteria.

(3) The PAREA program must provide the applicant with a mentor who meets the requirements of the AQB Qualification Criteria.

(4) The applicant must successfully complete the entire certified residential PAREA program and submit a certificate of completion to the Board to receive credit for 100% of the experience requirement. There is no credit for partial completion of the program.

§ 36.12. Qualifications for certification as general real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* An applicant for certification as a general real estate appraiser shall submit evidence to the Board of having completed the classroom hours required by the AQB Qualification Criteria as of the date of application.

(1) *Length of classroom hour and courses; course examination requirement.*

* * * * *

(3) *Distance education.* Distance education courses must comply with the requirements in the AQB Qualification Criteria. A distance education course is acceptable to meet the classroom hour requirement if the course **complies with paragraphs (1) and (2)**, is approved by the Board[,] and meets all of the following conditions:

(i) The course is presented [**by one of the following**] **in one of the following ways**:

(A) [An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines] Synchronous distance education.

(B) [A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program] Asynchronous distance education that meets the requirements of § 36.45 (relating to asynchronous distance education).

(C) Hybrid distance education that meets the class hour requirements of its component parts, whether in person, synchronous or asynchronous.

(i) The applicant successfully completes a written, closed-book final examination proctored in person or remotely by an official approved by the college, university or other course provider. Biometric proctoring is acceptable.

(iii) The length and content of the course meet the requirements of paragraph (1) and subsection (c), respectively.

(c) *Content of appraisal education.*

* * * * *

(e) *Experience.* An applicant's experience must comply with all of the following:

(1) An applicant for certification as a general real estate appraiser shall satisfy the experience requirements in the AQB Qualification Criteria.

* * * * *

(4) Acceptable categories of appraisal experience include:

(i) Fee and staff appraisals.

* * * * *

(x) Case studies or practicum courses that are approved by the AQB Course Approval Program.

(f) Experience through PAREA. Notwithstanding the requirements of subsection (e), an applicant can meet 50% of the experience requirement by successfully completing an AQB-approved certified residential PAREA program, under all of the following conditions:

(1) The applicant must comply with the prerequisites for entry into a PAREA program contained in the AQB Qualification Criteria.

(2) The PAREA program must be approved by the AQB and continuously comply with the requirements of the AQB Qualification Criteria.

(3) The PAREA program must provide the applicant with a mentor who meets the requirements of the AQB Qualification Criteria.

(4) The applicant shall successfully complete the entire certified residential PAREA program and submit a certificate of completion to the Board to receive credit for 50% of the experience requirement. There is no credit for partial completion of the program.

(5) The completed certified residential PAREA program may only count towards the residential portion of the certified general real estate appraiser experience requirement.

(6) To complete the nonresidential portion of the experience requirement, the applicant must meet all of the following requirements:

(i) Obtain licensure as an appraiser trainee.

(ii) Be under the direct supervision of a supervisory appraiser.

(iii) Comply with the requirements of subsection (e), § 36.13 (relating to experience options for preparation of appraisal reports; experience logs) and the AQB Qualification Criteria.

§ 36.12a. Qualifications for licensure as appraiser trainee.

* * * * *

(b) *Appraisal classroom hours.* An applicant for licensure as an appraiser trainee shall comply with the qualifying educational standards required by the AQB Qualification Criteria.

(1) *Content of appraisal education.*

* * * * *

(4) *Distance education.* Distance education courses must comply with the requirements in the AQB Qualification Criteria. A distance education course is acceptable to meet the classroom hour requirement if the course **complies with paragraphs (1)–(3)**, is approved by the Board and meets all of the following conditions:

(i) The course is presented [**by one of the following**] **in one of the following ways:**

(A) [**An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines**] Synchronous distance education.

(B) [**A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program**] Asynchronous distance education that meets the requirements of § 36.45 (relating to asynchronous distance education).

(C) Hybrid distance education that meets the classroom hour requirements of its component parts, whether in person, synchronous or asynchronous.

(ii) The applicant successfully completes a written, closed-book final examination proctored in person or remotely by an official approved by the college, university or other course provider. Biometric proctoring is acceptable.

(iii) The content and classroom hours of the course meet the requirements of paragraphs (1) and (2).

* * * * *

§ 36.13. Experience options for preparation of appraisal reports; experience logs.

(a) An applicant for certification as a residential real estate appraiser or a general real estate appraiser under §§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser) shall have acquired experience in the preparation of appraisal reports in one or more of the following:

(1) Prior to September 3, 1998:

* * * * *

(2) On or after September 3, 1998:

(i) As a certified broker/appraiser.

(ii) As an assistant to a certified residential real estate appraiser or certified general real estate appraiser, provided the experience is acquired before October 1, 2010, and the assistant satisfies the requirements of subsection (b).

(iii) As a licensed appraiser trainee assisting a certified residential real estate appraiser or certified general real estate appraiser, provided the trainee satisfies the requirements of subsection (c).

(iv) As a certified residential real estate appraiser assisting a general real estate appraiser in an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units, provided the residential appraiser satisfies the requirements of subsection (d).

(v) As an applicant for certification as a residential real estate appraiser completing 100% of the experience requirement in an AQB-approved certified residential PAREA program, provided the applicant satisfies the requirements of subsection (c.1).

(vi) As a licensed appraiser trainee applying for certification as a general real estate appraiser completing 50% of the experience requirement in an AQB-approved certified residential PAREA program, provided the applicant satisfies the requirements of subsection (c.2).

(b) For experience acquired before October 1, 2010, an assistant to a certified general real estate appraiser or certified residential real estate appraiser shall comply with all of the following requirements when preparing an appraisal report:

* * * * *

(c) A licensed appraiser trainee shall comply with all of the following requirements when preparing an appraisal report for a certified general real estate appraiser or certified residential real estate appraiser:

(1) The trainee may not be supervised by more than one residential or general appraiser on each appraisal assignment.

(2) The trainee shall perform an inspection of the interior and exterior of the property.

(3) The trainee may not arrive at an independent determination of value.

(4) The trainee shall comply with USPAP.

(5) The trainee shall complete and co-sign a Board-approved appraiser trainee checklist that relates to the trainee's work on the appraisal report and that is made part of the appraisal report submitted to the client.

(c.1) An applicant for certification as a residential real estate appraiser who acquires experience through an AQB-approved certified residential PAREA program shall submit the certificate of completion to the Board as documentation of compliance with the experience requirement. Appraisal logs or appraisal samples do not need to be submitted to the Board.

(c.2) An applicant for certification as a general real estate appraiser who acquires experience through an AQB-approved certified residential PAREA program shall submit the certificate of completion to the Board as documentation of compliance with the residential portion of the experience requirement. An applicant must also meet all of the following requirements:

(1) Obtain licensure as an appraiser trainee.

(2) Meet the requirements of subsections (c) and (d).

(3) Submit appraisal logs as well as appraisal work samples to the Board for the nonresidential portion of the experience requirement for a certified general real estate appraiser.

(d) A certified residential real estate appraiser shall comply with all of the following requirements when preparing an appraisal report for a certified general real estate appraiser:

* * * * *

APPROVAL PROCESS—PROVIDERS

§ 36.31. Provider registration/appraisal courses.

(a) Real estate appraisal or real estate related organizations, State or Federal agencies or commissions, proprietary schools and other providers other than accredited colleges or universities and community or junior colleges, seeking to offer appraisal courses for classroom hour credit or continuing education credit shall complete and file with the Board an application for Board approval as a provider for appraisal courses. Application forms and a list of Board approved providers of appraisal courses may be obtained from the Administrative Office of the Board, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-4866.

(b) An education provider must obtain Board approval for qualifying education and continuing education courses and shall pay the applicable provider course application fee as required under § 36.6 (relating to fees).

(c) Notwithstanding the course approval requirement in subsection (b), the Board will accept course credit hours from a Commonwealth Board-approved education provider whose appraisal course was approved by another state appraiser regulatory agency. The course must meet the requirements for qualifying education under §§ 36.11(b), 36.12(b) and 36.12a(b) (relating to qualifications for certification as residential real estate appraiser; qualifications for certification as general real estate appraiser; and qualifications for licensure as appraiser trainee) or for continuing education under §§ 36.42 and 36.43 (relating to subject matter and sources of continuing education; and distance education), if applicable.

CONTINUING EDUCATION

§ 36.42. Subject matter and sources of continuing education.

(a) Continuing education subject matter, classroom hours and sources must comply with the requirements in the AQB Qualification Criteria.

* * * * *

§ 36.43. Distance education.

Distance education courses must comply with the requirements in the AQB Qualification Criteria. A distance

education course is acceptable for continuing education credit if it is approved by the Board and meets all of the following conditions:

- (1) The course is presented by one of the following:
 - (i) A course provider **of synchronous distance education** that presents the course to an organized group in an instructional setting with a person qualified and available to answer questions, provide information and monitor attendance.

- (ii) An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines.

- (iii) **[A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program] A provider of asynchronous educational course offerings that meets the requirements of § 36.45 (relating to asynchronous distance education).**

- (2) With regard to a course presented under paragraph (1)(ii) or (iii), the certified real estate appraiser or the licensed appraiser trainee either successfully completes a written examination proctored **in person or remotely** by an official approved by the college, university or other course provider or successfully completes the course mechanisms required for course accreditation that evidence the learner's mastery and fluency of the course content. **Biometric proctoring is acceptable.**

- (3) The **[content and length of the course] subject matter, classroom hours and source of continuing education** meet the requirements of § 36.42 (relating to subject matter and sources of continuing education).

(Editor's Note: Section 36.45 is proposed to be added and is printed in regular type to enhance readability.)

§ 36.45. Asynchronous distance education.

An asynchronous distance education course is acceptable to meet classroom hour requirements for qualifying education or continuing education if:

- (a) The course provides a way for the learner to interact with the instructor through verbal or written communication.

- (b) The course content is approved by any of the following:

- (1) The AQB.
 - (2) The Board or another state appraiser regulatory agency.

- (3) An accredited college, community college or university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or National accreditation association, or by an accrediting agency that is recognized by the United States Secretary of Education.

- (c) The course delivery mechanism is approved by any of the following sources:

- (1) The AQB.
 - (2) An AQB-approved organization providing approval of course design and delivery, including The Appraisal Foundation or other independent AQB-approved entity.

- (3) A college or university that qualifies for content approval under subsection (b)(3) that awards academic credit for the distance education course.

- (4) A college or university that qualifies for content approval under subsection (b)(3) with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

- (5) IDECC.

Subchapter C. CERTIFIED PENNSYLVANIA EVALUATORS

QUALIFICATIONS FOR CERTIFICATION

§ 36.224. Distance education courses.

A distance education course is acceptable to meet the classroom hour requirement if the course is approved by the Board, **complies with § 36.223 (relating to providers of appraisal/assessment courses)** and meets the following conditions:

- (1) The course is presented **[by one of the following] in one of the following ways:**

- (i) **[An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines] Synchronous distance education.**

- (ii) **[A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program] Asynchronous distance education that complies with § 36.45 (relating to asynchronous distance education).**

- (iii) **Hybrid distance education that meets the class hour requirements of each of the course's component parts, whether in person, synchronous or asynchronous.**

- (2) **[The applicant successfully completes a written examination proctored by an official approved by the college, university or other course provider] The applicant must successfully complete a written, closed-book final examination proctored in person or remotely by an official approved by the college, university or other course provider. Biometric proctoring is acceptable.**

- (3) The content and length of the course meet the requirements of § 36.222 (relating to required courses of study).

CONTINUING EDUCATION

§ 36.262. Continuing education subject matter.

* * * * *

- (c) Credit for the classroom hour requirement may be obtained from accredited colleges or universities and community or junior colleges. Subject to Board approval under § 36.241 (relating to provider registration/appraisal or assessment courses) credit for the classroom hour requirement may also be obtained from real estate appraisal **[of] or** assessment related organizations, State or Federal agencies or commissions, proprietary schools, and other providers.

* * * * *

§ 36.263. Distance education.

A distance education course is acceptable for continuing education credit if it is approved by the Board and meets the following conditions:

(1) The course is presented by one of the following:

(i) A course provider **of synchronous distance education** that presents the course to an organized group in an instructional setting with a person qualified and available to answer questions, provide information and monitor attendance.

(ii) An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines.

(iii) **[A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program] A provider of asynchronous educational course offerings that meets the requirements of § 36.45 (relating to asynchronous distance education).**

(2) With regard to a course presented under paragraph (1)(ii) or (iii), the certified Pennsylvania evaluator either successfully completes a written examination proctored **in person or remotely** by an official approved by the college, university or other course provider or successfully completes the course mechanisms required for course accreditation that evidence the learner’s mastery and fluency of the course content. **Biometric proctoring is acceptable.**

(3) The content and length of the course meets the requirements of § 36.262 (relating to continuing education subject matter).

[Pa.B. Doc. No. 24-890. Filed for public inspection June 28, 2024, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 117]

Boating; Boat Rental Businesses

The Fish and Boat Commission (Commission) proposes to amend Chapter 117 (relating to boat rental businesses). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). These proposed amendments update the Commission’s regulations relating to boat rental businesses and generally promote boating safety, ensuring renters receive training regarding the boat, waters, safety equipment and rules. The more specific rationale for each amended section is described as follows:

1.) Section 117.1 (relating to definitions) is proposed to be amended to include paddleboards as a rental boat, which provides standardization and clarity.

2.) Section 117.3 (relating to responsibilities) is proposed to be amended to include business reporting standards, safety orientation requirements and necessary documentation livery operators are required to provide to the Commission. These proposed amendments will help the Commission identify liveries, facilitate annual safety inspections and standardize regulation updates and best practices. These proposed changes also ensure that rental boats are registered or permitted, that those conducting

orientation receive standardized education, a written rental agreement that formalizes the transaction and serves as a record of lawful rental and renter orientation and that the Commission is informed of incidents involving rentals.

3.) Section 117.4 (relating to motorboat liveries) is proposed to be amended to clarify livery operators’ requirements for verifying proper safety training for renters and proper measures to take to oversee the operation of rented personal watercraft. These amendments will ensure livery operators are monitoring the use of rental boats and providing information about the area in which the rental boat may be used.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect January 1, 2025.

B. Contact Person

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, 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.fishandboat.com.

C. Statutory Authority

The proposed amendments to §§ 117.1, 117.3 and 117.4 are published under the statutory authority of section 5122 (relating to registrations, licenses, permits, plates and statistics) of the code.

D. Purpose and Background

The specific purpose and background of the proposed amendments are described in more detail under the summary of proposal.

E. Summary of Proposal

Boat rental businesses, also known as liveries, provide introductory experiences for newcomers to boating, convenient adventures for outdoor recreationists and opportunities to participate in boating without the commitment of boat ownership. They also provide unique experiences such as whitewater rafting, overnight stays in houseboats and opportunities to try the latest trends in boating technology. Boat rental operations in this Commonwealth have increased in number and expanded available opportunities in recent years. Because these businesses provide a wide variety of services to a broad diversity of people and are often a gateway to boat ownership, boat rental businesses play an important role in boating safety.

The Commission is authorized to promulgate rules and regulations relating to boat rental business operators under 30 Pa.C.S. § 5122(a)(2). These regulations authorize the Executive Director to provide guidance relating to boat rental orientation and introduction requirements which are posted on the Pennsylvania Boat Rental Business page of the Commission’s web site. Frontline waterways conservation officers initially identified issues, including lack of clarity, with current boat rental regulations and guidelines. Additionally, technological advances have created specific challenges and opportunities regarding boat rental business operations. In response, Commission staff launched a Livery Workgroup in February 2022, conducting livery visits and interviews and established an online boat rental business questionnaire to identify challenges, gather information and recommend updates to the Commission’s boat rental business regulations and guidelines to enhance communications and compliance, increase boating safety and reduce conflicts on the water. Boat rental business operators were invited

to review and provide feedback on the draft regulatory amendments and safety orientation guidelines prepared by Commission staff. Commission staff reviewed and considered all input as final modifications were made to the drafts before presenting the proposed changes to the Boating Advisory Board. Commission staff proposes that §§ 117.1, 117.3 and 117.4 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-355. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 117. BOAT RENTAL BUSINESSES

§ 117.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Boat livery—A commercial enterprise (person, partnership, corporation or other legal entity) that rents or leases rental boats to other persons for use on the waters of this Commonwealth.

Boat rental business—A boat livery.

Boat rental transaction—The exchange of consideration in the form of money, goods or services for the use of a rental boat for a period of time.

Livery operator—The owner or lessee of a boat livery and [**employees**] **employees** and other persons authorized to act on behalf of the boat livery.

Rental boat—A vessel propelled by oars, paddles, sail or power, rented or leased in this Commonwealth.

(i) The term includes canoes, kayaks, **paddleboards**, inflatable boats, rowboats, sailboats, personal watercraft and other motorboats.

(ii) The term does not include inner tubes or similar devices not considered to be boats under this title.

§ 117.3. Responsibilities.

(a) [**It is unlawful for a livery operator to permit a rental boat to depart from the boat rental busi-**

ness without the equipment required by this title for the type of boat being rented] [Reserved].

(a.1) A livery operator shall provide their business information, including business name, address and types of boats rented, on a form provided by the Commission. If a change in business name, address or contact information occurs, the livery must provide an update to the Commission within 15 business days. Advertising by any means, including, but not limited to, web sites, business cards, brochures, newspapers, periodicals or billboards, that a person provides boat rentals shall be prima facie evidence of a boat livery operation.

(a.2) A livery operator who conducts the required safety orientation for motorboat rentals must possess a boating safety education certificate issued by the Commission or other valid documentation specified by this title and produce it upon the request of a waterways conservation officer or other officer authorized to enforce the code.

(a.3) It is unlawful for a livery operator to permit a rental boat to depart from the boat rental business without the equipment required by this title for the type of boat being rented and a boat registration or use permit affixed to the boat as required by this title for the access area or waterway where the boat will be operated during the rental period.

(b) A livery operator shall [**offer to all persons renting**] **provide to all persons operating rental boats an orientation/introduction to boating safety and conditions, including a review of the laws and regulations applicable to the type of boat being rented and the waters on which the boat will be used. The Executive Director will provide guidance [in the preparation] on the content and documentation of this orientation. [Persons who produce a Boating Safety Education Certificate issued or approved by the Commission under § 91.6 (relating to certificates) are exempt from review.]**

(c) Boat rental transactions shall be made using a written agreement, specifying the name and address of the **boat rental business and** lessee, [**number of persons in the lessee's party and date of departure**] **the names of the individuals completing the required orientation/introduction to boating safety and the rental period. The lessee shall provide a copy of the boat rental agreement upon request to a waterways conservation officer or other officer authorized to enforce the code.**

(d) Livery boats shall be clearly marked on both sides for easy identification of the business. Each boat shall be marked with letters, numbers or decals at least 3 inches tall.

(e) A livery operator shall only rent boats that meet or exceed minimum United States Coast Guard requirements for boats of that type. Rental boats shall be of a design and material suitable for their intended use.

(f) A livery operator shall [**submit a boating accident report for**] **notify the Commission of all reportable accidents involving one or more of the rental boats in accordance with Chapter 101 (relating to boating accidents). This requirement is in addition to the requirement that the operator of the boat file a boating accident report in accordance with Chapter 101.**

(g) It is unlawful for a livery operator to rent or use a boat in excess of its capacity as set forth by the manufacturer for the total number of passengers, total weight or maximum horsepower.

§ 117.4. Motorboat liveries.

(a) **[In addition to the requirements of § 117.3 (relating to responsibilities), a livery operator that rents boats equipped with motors greater than 25 horsepower and personal watercraft shall verify that operators of these boats either possess a permanent Boating Safety Education Certificate or have obtained a temporary Boating Safety Certificate from the livery. The Executive Director may authorize boat liveries to issue temporary Boating Safety Education Certificates, effective for the period of rental only, to operators of these boats if the boat livery and the operator comply with the requirements governing the rental of boats and the operation of boat liveries as defined in this chapter. The Executive Director will establish rules and guidelines for the issuance of temporary certificates.] Persons born on or after January 1, 1982, who rent a boat powered by greater than 25 horsepower or a personal watercraft are exempt from possessing a Boating Safety Education Certificate when the livery operator verifies the renter has completed the required orientation/introduction to boating safety and conditions in accordance with**

the Executive Director's guidance established by § 117.3 (relating to responsibilities).

(b) A personal watercraft livery shall take measures to oversee the operation of rented personal watercraft **[by persons who possess only a temporary Boating Safety Education Certificate]**. These measures shall include one of the following:

(1) The designation of a specified **[, marked]** area of operation for rented personal watercraft **as delineated on a map carried onboard the boat.**

(2) The provision of qualified observers employed by the livery to directly observe the operation of rented personal watercraft **and provide immediate assistance in case of an incident or breach of terms of the rental agreement.** No more than seven personal watercraft may be under the observation of a single observer at any one time. Qualified observers shall be at least 16 years of age, have at least 10 hours of experience operating personal watercraft and have successfully completed the requirements for a permanent Boating Safety Education Certificate. The permanent Boating Safety Education Certificate shall be in the observer's possession when performing duties under this paragraph.

(c) A personal watercraft livery may not lease, hire or rent a personal watercraft to or for use by a person who is 15 years of age or younger.

[Pa.B. Doc. No. 24-891. Filed for public inspection June 28, 2024, 9:00 a.m.]