

Regulatory Analysis Form

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2009 APR -6 PM 3:34

INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

*County Probation and Parole Officers'
Firearm Education and Training Commission*

(2) I.D. Number (Governor's Office Use)

41-018

IRRC Number:

2576

(3) Short Title

General Provisions: Procedures which are applicable to the various training programs and reimbursement mechanisms available for county probation and parole officers; obtaining and maintenance of certification to carry a firearm on duty; suspension and denial of certification; procedures for instructors, schools and vendors interested in participating in Commission training; procedures for contesting and appealing Commission actions and decisions.

(4) PA Code Cite

37 Pa. Code Part II, Chapter 79

(5) Agency Contacts & Telephone Numbers

Primary Contact: Todd Burns 717-787-5699 x-388

Secondary Contact: Linda Laub 717-787-5699 x-346

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

This regulation will implement Act 158 of 1994.

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

61 P.S. §§ 332.1 et seq.

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

No

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

The regulation is necessary to ensure the safety of the citizenry of the Commonwealth and to fulfill and comply with implementing language in Act 158 of 1994, which established the Commission and its purpose. The regulation is justified by the scope of the training and increasing number of county probation and parole officers who are subject to the requirements of Act 158.

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

Regulating Commission activities and training programs, which have a direct impact on public safety, are in the best interests of the general welfare of all Commonwealth residents.

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

Adoption of the regulation will benefit individual county probation and parole officers, their agencies and staff as well as potential schools, vendors and instructors interested in participating in Commission training initiatives. Trained officers will benefit the safety of the general public as a whole.

There is no feasible way to quantify the number of people who will benefit from this regulation.

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

This regulation will not have an adverse effect on any party.

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

Compliance with this regulation will be required by: Commission members and staff, county probation and parole officers who must be certified under the provisions of Act 158 of 1994, selected personnel in county probation departments for the purposes of reporting and conducting other activities authorized and approved by the Commission and instructors, vendors and schools interested in Commission training activities.

The number of individuals required to comply is estimated to be approximately 1,200.

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

Copies of the regulation were distributed to all armed Commonwealth county probation and parole departments. The regulation was published in the Pennsylvania Bulletin with a thirty-day comment period. Additionally, it was posted to the Commission's website and public comment was invited.

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

This regulation is not expected to result in any new costs or savings to the regulated parties, nor will it require any legal, accounting or consulting procedures.

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

This regulation will not result in increased costs to local governments who have elected to participate in the Act 158 of 1994 program, or require any legal, accounting or consulting procedures.

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

This regulation does not alter any current legal, accounting or consulting procedures and, therefore, implementation will not result in any costs or savings to effected parties.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

See below

Program	FY 04-05	FY 05-06	FY 06-07	FY 07-08
<i>County Probation and Parole Officers' Firearm Education and Training Commission</i>	\$446,083	\$332,365	\$404,870	\$448,149

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.
Not applicable because the regulation is simply codifying the existing program and does not generate new effects and costs.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.
The Commission did not consider non-regulatory alternatives. The regulation was designed to comply with the requirements of Act 158 of 1994.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.
The Commission did not consider an alternative regulatory scheme.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.
There are no federal standards governing county probation and parole officer training.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?
Not applicable. The regulation is Commonwealth-specific.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.
This regulation will not impact the existing regulations of any other state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.
After promulgation, the Commission will present informational briefings on the regulation to professional associations of county personnel, officials and members of the judiciary to ensure a wide spread awareness of the compliance requirements.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.
The regulation will not change existing reporting, record keeping or other paperwork requirements.

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

Particular needs of affected groups or persons, including but not limited to, the elderly, minorities, small businesses and farmers were considered and none were identified.

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

The regulation will become effective following the final publication in the Pennsylvania Bulletin.

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

The Commission will continually assess the regulation and the procedures it requires for compliance and will introduce revisions, which address any valid procedural concern that may arise.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
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(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

! Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

County Probation and Parole Officers'
Firearm Education and Training
Commission

DOCUMENT/FISCAL NOTE NO. 41-018

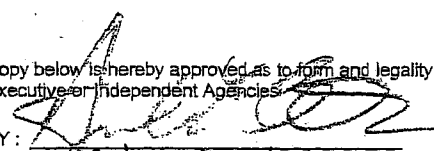
DATE OF ADOPTION October 1, 2008

BY: 
Scott Schlechter

TITLE Chairman

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY: 
Andrew C. Clark
NOV 12 2008

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

! Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

Final Regulations for the implementation of 61 P.S. §§ 332.1 *et seq*
(relating to the County Probation and Parole Officers' Firearm Education and Training Program)

County Probation and Parole Officers'
Firearm Education and Training Commission
37 Pa. Code Chapter 79

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FINAL RULEMAKING

2009 APR 13 PM 3:32 **BOARD OF PROBATION AND PAROLE**

INDEPENDENT REGULATORY
REVIEW COMMISSION

[37 PA. CODE PART II, CH. 79]

**County Probation And Parole Officers'
Firearm Education And Training Commission**

[Pa. B.]

The County Probation and Parole Officers' Firearm Education and Training Commission ("FETC") adds Chapter 79 (relating to the County Probation and Parole Officers' Firearm Education and Training Commission) to read as set forth in Annex A.

Authority

The County Probation and Parole Officers' Firearm Education and Training Law ("Law")(61 P.S. §§ 332.1 *et seq*) by this order, adopts the regulation set forth in Annex A pursuant to the authority of Section 332.5(13) of the Law which empowers the County Probation and Parole Officers' Firearm Education and Training commissioners, "to make rules and regulations and to perform other duties as may be reasonably necessary or appropriate to implement the training program for county probation and parole officers." Notice of the proposed rulemaking was published at 36 Pa.B. 6510 on October 28, 2006.

Purpose

This regulation implements the requirements of the County Probation and Parole Officers' Firearm Education and Training Law. The regulations contain procedures which must be followed by interested third parties and which are directly applicable to the training programs and reimbursement mechanisms that are available for county probation and parole officers. The first part of the regulations (Secs. 79.11 through 79.33) explain the processes involved in obtaining certification to carry firearms from the FETC, maintaining such certifications and revocation of these certifications. The next part (Secs. 79.51 and 79.52) explains the procedures, which are applicable to training expense reimbursements. The next part (Secs. 79.61 through 79.65) explain the procedures that interested instructors, schools and vendors must follow to be approved for use within the various FETC training and education programs. The final part (Secs. 79.71 through 79.87) explains the procedures that persons or schools who are aggrieved by FETC decisions should follow.

Affected Parties

The regulations are intended to provide guidance and direction to county probation and parole officers pertaining to the processes to be followed so that they can be certified to carry a firearm within their respective counties, maintain such certifications and be afforded an opportunity to be heard in the event their certifications are revoked by the FETC. Additionally, the regulations are intended to provide guidance and direction to any schools or vendors who wish to be considered for conducting FETC training and education programs.

Fiscal Impact

Commonwealth: The Commission has determined that the regulation will have no adverse financial impact on the Commonwealth since all funds budgeted for the Commission are derived from the County Probation and Parole Officers' Firearm Education and Training Fund, which, under the Law, is a restricted receipts account within the General Fund. Moneys for this fund are derived from costs imposed on any person who accepts Accelerated Rehabilitative Disposition or pleads guilty or nolo contendere or is convicted of a felony or misdemeanor. This fund is used exclusively for the training activities and expenses of the Commission.

Political Subdivisions: For those counties that choose to carry firearms, the regulation is implementing a program that is already in effect and funding for the program is in place in those counties. Therefore, there is no new significant fiscal impact for these counties, either direct or indirect. For counties electing to participate after the implementation of the regulation, the start-up costs of participation could be significant depending on numerous variables such as the number of officers or the type of equipment purchased by the county. Accordingly, it is impossible to estimate these costs.

Private Sector: The regulation will have no adverse fiscal impact on the private sector.

General Public: The regulation will not impose any costs and will have no adverse fiscal impact on the general public.

Cost and Paperwork Requirements

The regulation provides guidance and procedural information for implementing a program, which is already in effect and for which funding is already in place. Therefore, there will be no new fiscal impact. The regulation does not affect the existing reporting, record keeping, or other paperwork requirements of the Commission, other government units or the general public.

Public Comment

No public comments were received in response to the Proposed Regulations. Comments were received from the Independent Regulatory Review

Commission ("IRRC"); those comments are summarized below. No comments were received from the General Assembly or other state agencies.

Discussion of Comments and Major Changes

Following is a summary of the major comments received from IRRC within the public comment period following publication of the proposed rulemaking and the FETC's response to those comments.

- *General Comment – Economic or fiscal impact; clarity and lack of ambiguity; reasonableness of the requirements.*

IRRC expressed concern that many of the phrases within the regulation were vague. The reason for this concern was: (1) without adequate notice of what the requirements the FETC is imposing, the regulated community would have difficulty determining what actions on their part constitute compliance; (2) reference to nonregulatory documents should not be used to enforce standards contained in the regulation; and (3) the so-called lack of clarity would place the regulated community at a disadvantage with regard to compliance.

The FETC identified and reviewed the so-called vague phrases and made changes as appropriate. In some cases the phrases are needed so that the FETC can quickly respond to needed changes within the FETC processes and documents. It is the FETC's position that the phrases will not work to the detriment of the regulated community since the FETC maintains a close working relationship with them and consistently updates its website to provide the most current information to them pertaining to the activities of the FETC.

- *Section 79.2 Definitions*
 - The IRRC expressed concern that the definition of *Certified Firearms Instructor* was inconsistent with Section 79.61(b) of the regulations. Accordingly, the FETC changed this definition by adding the verbiage "and who is approved by the Commission pursuant to §§ 79.61(a)(1)(relating to Approval of Instructors) and deleting "who meets the minimum qualifications for instructors as established by the Commission and."
 - The IRRC expressed concern that the definition of *County-conducted training* was not in conformity with Section 79.61(a)(2) which includes training by the FBI, Pennsylvania State Police and the National Rifle Association. It is the FETC's position that § 79.61(a)(2) does not apply to county-conducted training but instead references the types of law enforcement classes that one must have completed to meet the minimum qualifications for a Certified Firearms Instructor ("CFI"). Accordingly, this change was not

made. However, the definition of *County-conducted training* was clarified to explain that it is referencing trainings conducted by a county but approved by the Commission.

- The IRRC expressed concern that the definition of *In-Service Training* contained the phrase “under the Act” and recommended deleting this phrase. The FETC deleted the phrase “under the Act” from this definition.
- The IRRC expressed three concerns with the definition of *Master Instructor*. The IRRC found this definition to be inconsistent with § 79.61(b) because § 79.61(b) requires that Master Instructors be approved by the FETC. The second concern was that the definition contained the phrase “Commission-CFI” rather than “CFI.” The third concern was that a cross-reference was lacking to more specifically describe the minimum qualifications. The FETC made these changes by deleting the word “Commission” from “Commission-Certified Firearms Instructor” and adding “and who is approved by the Commission pursuant to § 79.61(a)(2)(relating to Approval of Instructors) to the definition.
- The IRRC expressed concern about the potential inability of the regulated community to access the appropriate form for purposes of seeking action from the Commission. The Commission has moved to a virtually paperless process via its Firearms Commission Training Management System. Accordingly, a definition for the acronym pertaining to this system was added and the regulations changed to state when the submission is to be made via this system.

- *Section 79.3 Enrollment*

The IRRC expressed concern that this regulation section was too broad and inconsistent with the Act since the Act states four minimum requirements to participate in the training program or the participant can be granted a waiver. Accordingly, this regulation was changed to add at the end of the regulation the following language, “and be based upon all relevant factors pertaining to the ability of the Commission to hold a program including the number of openings in a particular training program, the timing of the submitted application for training, the financial viability of conducting the training and the availability of instructors and facilities to hold the program.”

- *Section 79.12 Applications*

Paragraph (b) is revised to explain that the submission process is via the FCTMS.

- *Section 79.13 Requirements for Completion*
 - Paragraph (1) – IRRC expressed concern about the word “prescribed” because it is not clear what is meant by “prescribed program” nor who prescribes the program. Accordingly, per IRRC’s suggestion, the word “prescribed” was replaced with “approved.”
 - Paragraph (2) – IRRC expressed concern about the phrase “Compliance with Student Code of Conduct for the programs as established by the Commission.” Their concern was that the phrase was vague because it is not clear who establishes the Student Code of Conduct or where a copy of the document can be obtained. Accordingly, this paragraph was changed to read, “Compliance with Student Code of Conduct for such programs as reviewed and approved annually by the Commission and set forth in the course syllabus for each training program and on the Commission’s website;...”
 - Paragraph (3) – IRRC expressed concern that this regulation was not clear in explaining when a passing score on a component would be inapplicable and who would make that determination. IRRC expressed concern that the FETC would be unable to determine if a candidate satisfactorily completed a course without administering a written examination. It is the FETC’s position that what constitutes a satisfactory completion of a course is different for each course. Some of the courses require that students achieve a passing score on a written examination but not all of the courses have such a requirement. The phrase “if applicable” at the beginning of this paragraph serves the purpose of highlighting this fact. Nonetheless, the FETC has deleted “if applicable” from the final regulation and added the phrase “graded or evaluated, or both” before “written, oral and/or range components of a training program.”

- *Section 79.15 – Failure to Complete Basic Training*
 - Subsection (b) – The IRRC recommended replacing the phrase “for the reasons under § 79.13” with the phrase “requirements for completion under § 79.13.” The FETC did not fully follow this recommendation and instead replaced the phrase “for the reasons” with “requirements.”
 - Subsection (d) – IRRC expressed two concerns pertaining to this subsection.
 - The first concern that IRRC expressed was that this subsection was inconsistent with §§ 79.22 and 79.23 since these sections

use the term "range" and this subsection uses the term "firing." Accordingly, the word "firing" was deleted from this subsection.

- The second concern that IRRC expressed pertained to the chief probation officer's submission of "...a request to the Executive Director seeking permission ..." IRRC's concerns was that this subsection did specify a time frame within which the Executive Director must respond to this request. Accordingly, this subsection was changed to require that the request be submitted in writing and the following sentence was added, "The Executive Director will grant or deny the permission, in writing, within 15 business days after receiving the written request from the officer's Chief Probation Officer."

- *Section 79.21 – Maintenance of Certification*

The IRRC recommended that the minimum number of hours of in-service training be set forth somewhere in the regulations. Additionally, IRRC recommended that the regulation state where the specifics of each in-service training will be published. Accordingly, the FETC revised this section of the regulation to explain how long an officer's certification is effective in subsection (a). The FETC added the following language to subsection (b)(1), "At least four (4) hours of" to the beginning of this subsection. The FETC also added language indicating that this four (4) hours must be completed on an annual basis and that the specifics of the training will be on the FETC website.

- *Section 79.22 – Range Requalification Examinations*

The IRRC questioned the need for limiting range requalifications to the period between April 1 and October 31 in subsection (c). This limitation is required due to the possibility of inclement weather during the winter months thereby making the outdoor ranges unavailable and it is required for administrative purposes. Nevertheless, the FETC revised this subsection of the regulation to delete the April 1st starting date but retained the October 31st end date. The FETC also carved out an exception for certain range requalification matters by adding language to the end of subsection (c). Additionally, subsection (e) was revised to add a reference to the FETC's website.

- *Section 79.23 – Failure to Complete Range Requalification or In-service Training*

The IRRC recommended that the regulation specify a time limit for achieving a passing score. Accordingly, the FETC revised this section to set forth a time frame within which an officer must achieve a passing score.

- *Section 79.24 – Extensions*

- Subsection (a) was revised to add a reference to the FETC's website. Additionally, subsection (a)(1)(iii) was revised to cross-reference subsections (a)(1)(i) and (ii) to better describe some of the types of supporting documentation that must be submitted.
- IRRRC pointed out that the cross-reference in subsection (d) was incorrect. This incorrect cross-reference has been corrected. Additionally, FETC revised this subsection to require that a request to conduct a range requalification examination be in writing.
- IRRRC expressed concern that subsection (e) was inconsistent with § 79.14. Subsection (e) provided that an officer who has been granted an extension will have his certification suspended on October 31 of the year in which the officer's current certification expires whereas § 79.14 provided that a certification would remain valid through December 31. The FETC reconciled these two provisions by deleting the October 31 date and adding language providing that a granted extension shall be effective to the ending date of the granted period of extension.

- *Section 79.31 – Reasons for Revocation of Certification*

- IRRRC expressed concern about the provision in this section that provided the FETC with the authority "to revoke an officer's certification for any reason..." IRRRC alleged that this was inconsistent with the FETC legislation, specifically 61 P.S. § 332.5(2). Accordingly, the FETC revised this regulation by deleting the "for any reason" verbiage and cross-referencing § 79.21 (relating to Maintenance of Certification) of the regulations.
- In referencing subpart (3), IRRRC recommended that "Commission-sponsored event" be defined. The FETC revised this subpart by deleting the phrase "Commission-sponsored event" and adding "an event or training that is conducted by the Commission." The FETC also clarified what constitutes "unprofessional conduct" for purposes of revoking certifications.
- IRRRC expressed three concerns with subpart (5): (1) that this subpart did not comport with the FETC Act, namely 61 P.S. § 332.5(2); (2) that an individual officer's certification could be revoked due to the actions or inactions of others; and (3) that an individual officer's certification could be revoked when an individual officer may not even have knowledge that the FETC is in need of information. Accordingly, this subpart was deleted in its entirety.

- *Section 79.32 – Revocation of Certification for Failure to Pass Range Requalification Examination.*
 - IRRC expressed concern that under subsection (a), certification is revoked immediately whereas under § 79.14 a certification remains valid through December 31. The FETC reconciled these provisions by revising § 79.21 to better recognize the requirements of not only § 79.32 but also §§ 79.31 and 79.33.
 - IRRC questioned why range requalification examination were not permitted after October 31. This limitation is required due to the possibility of inclement weather during the winter months thereby making the outdoor ranges unavailable and it is required for administrative purposes.
- *Section 79.41 – Failure to Achieve a Passing Score on a Range Requalification Examination*

Paragraphs (1) and (2) were changed to (a) and (b) for purposes of complying with the formatting requirements. Paragraph (a) was subsequently revised to explain that the submission process is done via the FCTMS.

- *Section 79.42 – Failure to Complete Range Requalification Within Required Time Frames*
 - Based upon the comments received from IRRC, the title of this section is changed to “Failure to Meet Range Requalification Requirements Time Frames.” Based upon this change, subsection (a) is revised to add language that is consistent with the title change.
 - Subsection (a)(1) was revised to add a reference to the FETC’s website.
 - IRRC expressed concern about subsection (b) limiting requalification to “in no case later than March 31st of the year in which the application is filed with the Executive Director.” IRRC questioned how an officer could comply by March 31st when subsection (a)(3) and § 79.22(c) limit range requalification examinations to the period between April 1 and October 31. IRRC also questioned why there is a limitation on requalifications to the months of January, February or March. The FETC revised this subsection to require that the recertification requirements set forth in § 79.42 be satisfied within 180 calendar days of the date that the application for recertification is granted by the FETC. Since there are a variety of reasons that officers seek recertification with a variety of different timeframes the FETC reserves the right to grant

the officer additional time depending upon the circumstances surrounding the request. The time frame that the officer must satisfy will be set forth in the FETC's approval letter that is sent to the affected officer.

- *Section 79.43 – Failure to Meet Mandatory In-Service Training Requirements*

Revisions were made to this section to add appropriate cross-references within this section to the FETC's website. Additionally, subsection (b) was revised to reference the approval letter process pertaining the re-Certification process.

- *Section 79.44 – Non-Recertifiable Revocations*

IRRC commented that the cross-reference printed in the *Pennsylvania Bulletin* was incorrect. This correction has been made.

- *Section 79.51 – Reimbursement of Expenses*

- In subpart (a), IRRC commented that the phrase "... but will, from time to time, be further specified by the Commission" was vague. It has been deleted.
- In subpart (d), IRRC commented that the phrase "... in accordance with Commission policies in effect on the dates of the county-conducted basic training or county-conducted in-service training" was vague. The Commission does not find this phrase to be vague. This phrase, when taken in the context of the entire section is explaining what types of reimbursements counties that conduct basic or in-service trainings can expect. These reimbursements vary and are generally based upon the FETC's annual budget. While the FETC did not revise this phrase, the last sentence of this subpart was deleted, per later comments received informally from IRRC, which were received after the allowable time period for submission of comments.

- *Section 79.61 – Approval of Instructors*

- IRRC recommended including a cross-reference in subsection (d) explaining how an instructor can appeal an action by the FETC under this section of the regulations. Accordingly, subsection (d) is revised to cross-reference § 79.72 (relating to Procedure for Officers, CFIs, MIs Vendors or Schools Seeking Reconsideration) of the regulation. Section 79.62(f) of the regulations was also changed to comply with IRRC's recommendation.

- Paragraph (a) was revised to explain that the submission process is via the FCTMS.
- Paragraph (a)(1) was revised to comply with existing FETC practice in that the Academic CFI is not used by the FETC in designating CFIs. Accordingly, the bifurcation of CFI between Academic and Range was deleted.
- Paragraph (a)(2) was revised to require that an instructor serve as a CFI for at least a 36 month period prior to being eligible for MI status.
- Paragraph (b) was revised to indicate which date controls for purposes of calculating the 36-month period when a CFI subsequently attains MI status.
- Paragraph (c)(1) was revised to comply with existing FETC practice.
- Paragraph (d) was revised to reference the available reconsideration procedure should a CFI or MI whose certification is revoked by the FETC wish to pursue reconsideration.

- *Section 79.62 - Approval of Schools and Vendors*

Paragraph (f) was revised to reference the available reconsideration procedure should a school or vendor whose certification is revoked by the FETC wish to pursue reconsideration.

- *Section 79.63 - Requirements for In-Service Training Course(s)*

- Paragraph (b) was revised based upon an informal comment received from IRRC that the phrase “in such format and follow such procedures as established by the Executive Director” was vague. This comment was received after the allowable time period for submission of comments. Nonetheless, the FETC is deleting this phrase and simply requiring that the proposal be submitted in writing.

- *Section 79.64 – County-Conducted Basic Training & Section 79.65 – County-Conducted In-Service Training*

IRRC commented that various phrases within Paragraphs (a), (c), (d) and (g) were vague. The referenced phrases in Paragraphs (a) and (c) have been revised to make reference to the FETC’s website as well as the terms and conditions which will be set forth in the FETC’s written approval letter. Additionally, paragraph (c) was revised to reference Forms 19 b and 19 c, respectively. which sets forth the procedures that a county must

follow when conducting this training. It is the FETC's position that Paragraph (d) is not vague. It specifically states that all training sites that a county wishes to utilize to conduct training must be pre-approved by the FETC's Executive Director. This is clear and not vague. However, at the suggestion of the IRRC, the phrase "meet Commission standards" was deleted. Paragraph (g) was revised to add a specific timeframe of 30 days for the submission to the FETC's Executive Director all required training forms and to reference the approval letter for purposes of determining which forms and materials must be submitted within the 30 day timeframe.

- *Section 79.72 Procedure for Officers or Schools Seeking Reconsideration*

IRRC expressed concerns about subsection (a)(5) which stated, "Results and opinion in letter-rulings will have no precedential authority and are subject to withdrawal or change at any time to conform to new or different interpretations of the law." IRRC alleged that the wording of this subsection would allow the FETC to independently reverse decisions based upon internal "new or different interpretations of the law." IRRC also questioned how an officer or school could rely on letter-ruling decisions if they can be changed or withdrawn. Finally, IRRC expressed concern that if a letter ruling is changed, the officer or school who wishes to appeal the change would not be able to do so because the appeal time period would have passed. Based upon these concerns, the FETC deleted the following language in subsection (a)(5), "...and are subject to withdrawal or change at any time to conform to new or different interpretations of the law." Additionally, the title of this section was changed to allow CFIs and MIs to seek reconsideration of FETC decisions. This latter change is also reflected in subsections (a) and (a)(1). Finally, subsections (a)(1) and (a)(2)(ii) were changed to address vendors who may be aggrieved by FETC decisions.

- *Section 79.84 – Hearings*

IRRC commented that this section was not identical to the cross-referenced 1 Pa. Code § 35.111. Accordingly, the FETC revised this language by deleting the identical reference and adding, "If a prehearing conference is held, it will be pursuant..."

- *Section 79.86 – Failure to Appear at a Hearing*

IRRC questioned the necessity of having subsection (c) in a regulation. IRRC also questioned why there was not a "good cause" requirement in subsection (c). Subsection (c) addresses a situation that is not addressed in subsections (a) and (b). It addresses those situations whereby a hearing examiner, for whatever reason, appears for a hearing when none of the parties appear. This can occur due to the fault of the hearing examiner or due to miscommunications among the parties and the hearing examiner. Subsection (c) mandates that in such instances, regardless of

whether good cause exists or not, that the hearing be re-scheduled. Accordingly, no change was made based upon this comment. However, subsections (a) and (c) were revised to include CFIs and MIs in the process.

- *Section 79.87 – Hearing Examiner Recommendation*

IRRC recommended that the FETC review and explain the cross reference to appeals “in accordance with Pa.R.A.P. and 2 Pa.C.S. §§ 501-508 and 701-704 (relating to Administrative Agency Law).” The FETC has reviewed this cross reference and finds it to be accurate and correct. It is a cross reference to the statutory law and rules of court related to appeals of administrative agency adjudications.

Effective Date

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

Sunset Date

No sunset date has been assigned. The FETC will review the efficacy of this regulation on an ongoing basis.

Regulatory Review Act

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), the FETC submitted a copy of this regulation to the Independent Regulatory Review Commission (“IRRC”) and to the Chairpersons of the House and Senate Standing Committees on Judiciary on _____. In compliance with the Regulatory Review Act, the FETC also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the FETC reviewed and considered comments received from the Committees, the IRRC and the public.

In accordance with § 5.1(j.1) and (j.2) of the Regulatory Review Act, this regulation was [deemed] approved by the Committees on _____. The IRRC met on _____ and approved the regulation.

In addition to submitting the final-form rulemaking, the FETC has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the FETC. A copy of this form is available to the public upon request.

ORDER

The FETC finds:

- (a) The public notice of intention to adopt the administrative regulation by this Order has been given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa.Code §§ 7.1 and 7.2.
- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the County Probation and Parole Officers' Firearm Education and Training Law.

The FETC acting pursuant to Section 332.5(13) of the County Probation and Parole Officers' Firearm Education and Training Law orders:

- (a) The regulation of the FETC is adopted to read as set forth in Annex A of this Order.
- (b) The Chairperson of the FETC shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.
- (c) The Chairperson of the FETC shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon final publication in the *Pennsylvania Bulletin*.

SCOTT SCHLECHTER
Chairperson

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

RECEIVED

I.D. NUMBER: 41-018

SUBJECT: COUNTY PROBATION AND PAROLE OFFICERS'
FIREARM EDUCATION AND TRAINING COMMISSION

AGENCY: BOARD OF PROBATION & PAROLE

2009 APR 13 PM 3:12

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation **Preamble ONLY**

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/13/09	<u>Michele Moss</u>	HOUSE COMMITTEE ON JUDICIARY
4/13	<u>R. D. C.</u>	MAJORITY CHAIRMAN <u>Caltagirone</u>
4/13	<u>Jim Greenleaf</u>	SENATE COMMITTEE ON JUDICIARY
4/13/09	<u>Jim Greenleaf</u>	MAJORITY CHAIRMAN <u>Greenleaf</u>
4/13/09	<u>St. Belmont</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

ANNEX A

Title 37. Law

PART II – Board of Probation & Parole

Chapter 79 - County Probation and Parole Officers' Firearm Education and Training Commission

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GENERAL PROVISIONS

§ 79.1. Scope.

This part sets forth standards and procedures relating to the Certification of county probation and parole officers and their qualification to carry or use firearms in the performance of their duties.

§ 79.2. Definitions.

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

Act – The County Probation and Parole Officers' Firearm Education and Training Law (61 P.S. §§ 332.1 – 332.9).

Basic Training – The initial training provided by the Commission.

[CFI -] Certified Firearms Instructor (CFI) – A firearms instructor [who meets the minimum qualifications for instructors as established by the Commission] who is approved by the Commission pursuant to § 79.61(a)(1)(relating to Approval of Instructors.)

County Conducted Training – Any Commission approved training not presented by the Commission but presented by a County.

Executive Director- The administrative officer reporting directly to the Commission who is responsible for program management.

FCTMS – Firearms Commission Training Management System.

In-Service Training – The continuing training necessary for county probation and parole officers to maintain Certification [under the act].

Master Instructor (MI) - A [Commission-CFI] Certified Firearms Instructor who meets the minimum qualifications to become an MI and who is approved by the Commission pursuant to § 79.61(a)(2)(relating to Approval of Instructors.)

(b) The definitions in section 2 of the act (61 P.S. §§ 332.2) are incorporated by reference.

§ 79.3. Enrollment

Enrollment in programs under this part will be [at the discretion of the Executive Director] based upon all relevant factors pertaining to the ability of the Commission to hold a program including the number of openings in a particular training program, the timing of the submitted application for training, the financial viability of conducting the training and the availability of instructors and facilities to hold the program.

INITIAL CERTIFICATION OF OFFICERS

§ 79.11. Certification.

Certification of those county probation/parole officers who have satisfactorily completed Basic Training or who have been granted a waiver by the Commission will be recognized through the issuance of a certificate, which will bear a certification number.

§ 79.12. Applications.

(a) The requirements for program participation or waiver in section 7 of the act (61 P.S. § 332.7) are incorporated by reference.

(b) Application procedures to participate in a training program(s) approved by the Commission will require any officer or county, or both, to submit such information [required on a form and] in such format [and within time parameters] as specified [by the Executive Director] on FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

§ 79.13. Requirements for Completion

Satisfactory completion is defined as meeting the following requirements:

- (1) Attendance at the entire [prescribed] approved training program;
- (2) Compliance with Student Code of Conduct for such programs as [as established] reviewed and approved annually by the Commission and set forth in the course syllabus for each training program and on the Commission's website; and
- (3) [If applicable, attainment of a passing score on any and all written, oral or range components of a training program] Attainment of a passing score on all components of a training program that are graded or evaluated, or both, including written, oral and range components of a training program.

§ 79.14. Duration of Certification.

The Certification of officers by the Commission as a result of satisfactory completion of the Basic Training during a calendar year shall remain valid through December 31 of the following calendar year, unless revoked pursuant to § 79.31 (relating to Reasons for Revocation of Certification).

§ 79.15. Failure to Complete Basic Training.

(a) Any officer who fails to achieve a passing score on the written examination portion of Basic Training will not be allowed to continue in that Basic Training program. The officer may reapply to the Commission to enroll and participate in subsequent Basic Training programs.

(b) If an officer achieves a passing score on the written examination, but otherwise fails to complete the Basic Training [for the reasons] requirements under § 79.13 (relating to Requirements for Completion), the officer's passing score will be recognized by the Commission for 1 year from the date of attainment of the passing score on the written examination. If the officer enrolls in a subsequent Basic Training program during this 1-year period, the officer will be required to attend and complete only the portion of the Basic Training that was not successfully completed.

(c) If an officer fails to achieve a passing score on the range portion of Basic Training, the Executive Director will notify the officer's Chief Probation Officer, by means of certified mail, that the officer did not achieve a passing score on this portion of Basic Training.

(d) Any officer who fails to achieve a passing score on the [firing] range portion of Basic Training may be afforded one additional opportunity to shoot the [firing] range portion of Basic Training within 90 calendar days from the date the officer fails to achieve a passing score if the officer's Chief Probation Officer submits a written request to the Executive Director seeking permission for the officer to shoot the range portion of Basic Training within 45 calendar days of the date that the officer failed to achieve a passing score. The Executive Director will grant or deny the permission, in writing,

within 15 business days after receiving the written request from the officer's Chief Probation Officer.

- (1) The request must include the following:
 - (i) A proposed date, time and location for the shoot;
 - (ii) The name of the CFI who will conduct the examination; and
 - (iii) A written statement from a CFI that the CFI provided remedial range training and that the officer is competent to pass the [firing] range portion of Basic Training.
- (2) The examination may be subject to monitoring by the Commission without notice.

MAINTENANCE OF CERTIFICATION

§ 79.21. Maintenance of Certification.

(a) Certifications are effective until December 31st of the calendar year following the issuance of the original or renewed Certification unless such Certification has been revoked pursuant to § 79.31 (relating to Reasons for Revocation of Certification), or § 79.32 (relating to Revocation of Certification for Failure to Pass Range Requalification Examination), or § 79.33 (relating to Revocation of Certification for Failure to Submit a Timely Request.)

[a](b) To maintain Certification beyond December 31 of the calendar year following the issuance of the original Certification or renewed Certification, an officer must successfully complete the following:

(1) At least four (4) hours of In-Service Training, on an annual basis, the specifics of which the Commission shall publish by the end of the first quarter of each calendar year on the Commission's website (<http://www.fetc.state.pa.us/fetc/site/default.asp>); and

(2) A range requalification examination under § 79.22 (relating to Range Requalification Examinations).

[b](c) This section (relating to Maintenance of Certification) does not apply to the extent an officer's certification is revoked pursuant to § 79.31 (relating to Reasons for Revocation of Certification).

§ 79.22. Range Requalification Examinations.

- (a) Range requalification examinations will require the officer to demonstrate continuing proficiency which includes weapons handling, range safety, and marksmanship.
- (b) A range requalification examination shall be completed during a Commission conducted event or a training event sanctioned by the Commission.
- (c) Range requalification examinations must be conducted [between April 1 and October 31 each calendar year] by October 31 of each calendar year, except as specified in § 79.42(b)(relating to Failure to Meet Range Requalification Requirements Time Frames).
- (d) The course of fire for the range requalification examination shall be conducted using the same procedures that are followed for the [firing] range portion of Basic Training.
- (e) Counties or departments desiring to conduct a range requalification examination shall follow an application process specified [by the Commission] on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>)
 - (1) The first time that a county or CFI conducts a Commission-sanctioned range requalification examination, oversight must be provided by a member of the Commission, a Commission-approved representative, or a CFI who is not employed by the county or counties whose personnel are being examined.
 - (2) In subsequent years, the county may conduct the Commission sanctioned range requalification examination without oversight.
 - (3) Any county conducting Commission sanctioned range requalification examinations is subject to periodic inspection and audit by the Executive Director or a representative of the Commission.

§ 79.23. Failure to Complete Range Requalification or In-Service Training.

- (a) Any officer who fails to achieve a passing score on any evaluation, which is a part of the range requalification examination or In-Service Training, will be permitted one additional opportunity to achieve a passing score on the portion failed within 30 calendar days of failing to achieve a passing score on any portion of an evaluation, or prior to October 31st of each calendar year, whichever timeframe is shorter.
- (b) Any officer who fails to satisfactorily complete an In-Service Training requirement shall not receive credit for the Commission-specified number of hours of training

for that course, and may be subject to revocation of Certification under §§ 79.31 - 33 (relating to Revocation of Certification).

§ 79.24. Extensions.

- (a) An officer who is unable to comply with § 79.21 (relating to Maintenance of Certification) due to extraordinary circumstances may, through their Chief Probation Officer, submit a written request, on a form and in a format [prescribed by the Executive Director] set forth on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) to the Executive Director by October 31 of the year in which the officer's current Certification will expire.
 - (1) The request must include the following:
 - (i) The specific reason for the requested extension of time;
 - (ii) The specific length of time of the requested extension; and
 - (iii) [Supporting documentation] Documentation to support the information that the officer supplied pursuant to §§ 79.24(a)(1)(i) and (ii), above, including, but not limited to, documents such as copies of military orders or a letter from the Chief Probation Officer.
 - (2) When the request is due to medical reasons, the supporting documentation must include a written statement from the officer's physician indicating that at the present time and for the period of the requested extension the officer is not medically capable of participating in a range requalification examination or In-Service Training.
- (b) The Executive Director will review the written request for extension of time and make a recommendation to the Commission. The Commission will provide written notification to the officer and the officer's Chief Probation Officer of its decision.
- (c) If the request for extension is approved, the officer shall comply with § 79.21 (relating to Maintenance of Certification) no later than the ending date of the granted period of extension.
- (d) If the extension is to comply with § 79.21[(a)](b)(2)(relating to Range Requalification Examinations), the officer's Chief Probation Officer shall send a written request to the Executive Director to conduct a range requalification examination.
 - (1) The Executive Director must receive the request no later than 15 business days prior to the date of the range requalification examination.

- (2) The range requalification examination may occur at any time during the period of the Commission-approved extension.
- (e) The Certification of an officer who has been granted an extension pursuant to § 79.24 (relating to Extensions) [shall be suspended on October 31 of the year in which the officer's current certification expires] shall be effective to the ending date of the granted period of extension.

REVOCATION OF CERTIFICATION

§ 79.31. Reasons for Revocation of Certification.

The Commission may revoke an officer's Certification for [any reason including any of the following] failure to comply with the requirements of § 79.21 (relating to Maintenance of Certification) or for:

- (1) Conviction of any crime that subjects the officer to the disabilities under the Gun Control Act of 1968 (18 U.S.C. § 921 *et seq*), or the Uniform Firearms Act of 1995 (18 Pa.C.S.A. § 6101 *et seq*), or both; or
- (2) Unsafe conduct during any Commission training; or,
- (3) Unprofessional conduct, as delineated in the Student Code of Conduct, during [a Commission-sponsored event] an event or training that is conducted by the Commission; or
- (4) Providing false or misleading information, either orally or in writing, to the Commission, its employees or agents.
- [(5) Failure on the part of a county, an individual officer or group of officers to timely comply with requests for information which may be made from time to time by the Commission.]

§ 79.32 Revocation of Certification for Failure to Pass Range Requalification Examination.

- (a) The Executive Director, upon receipt of the range requalification examination results, will immediately revoke the Certification of an officer who fails to requalify.
- (b) The officer who has failed to requalify will be notified of the revocation of Certification in writing.
 - (1) Copies of the revocation notification will be sent to the Chief Probation Officer and President Judge of the officer's employing county and judicial district.

- (2) The notice of revocation of Certification will advise the officer that one additional opportunity to successfully complete the range requalification examination is available after the officer participates in Commission sanctioned remedial training.
 - (i) Before an officer takes a Commission sanctioned remedial training, a CFI, who has previously conducted remedial training, shall provide written documentation to the Executive Director stating that the officer to be re-examined has demonstrated sufficient improvement which warrants another opportunity to take a requalification re-examination.
 - (ii) The requalification examination shall occur within no more than [60] 30 days of the initial failure of the range requalification examination.
 - (iii) Range requalification examinations will not be permitted after October 31 of the calendar year in which the failure occurred.
- (c) Unless the officer successfully completes the range requalification examination after completion of the Commission sanctioned remedial training, the revocation of Certification will remain in effect.

§ 79.33 Revocation of Certification for Failure to Submit a Timely Request.

If the officer's Chief Probation Officer fails to submit a request for a range requalification examination to the Executive Director prior to the expiration of the extension period granted by the Commission pursuant to § 79.24 (relating to Extensions), the officer's Certification will be immediately revoked upon expiration of the extension period and no further extensions will be granted.

RECERTIFICATION OF OFFICERS FOLLOWING REVOCATION

§ 79.41. Failure to Achieve a Passing Score on a Range Requalification Examination.

When an officer's Certification has been revoked due to the officer's failure to achieve a passing score pursuant to § 79.23 (relating to Failure to Complete Range Requalification or In-Service Training), the officer seeking re-Certification shall:

[(1)](a) Submit an application [to the Executive Director in] in such format as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) [a form approved by the Executive Director]. Such application shall be co-signed by the Chief Probation Officer who shall state[s] that the officer is competent and safe to participate in Commission training activities; and

[(2)](b) Enroll in, attend, and satisfactorily complete a Commission sponsored Basic Training.

§ 79.42. Failure to Meet Range Requalification Within Required Time Frames.

- (a) When an officer's Certification has been revoked due to the officer's failure to meet the [range requalification] time requirements of range requalifications in § 79.22 (relating to Range Requalifications), the officer seeking re-Certification shall do the following:
- (1) Submit an application to the Executive Director within 20 calendar days of the effective date of the revocation of Certification. The application must be [in] on a form set forth on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) [approved by the Executive Director] and shall be co-signed by the Chief Probation Officer.
 - (2) Pass any written examinations, as described in § 79.13 (relating to Requirements for Completion). The examinations will be administered by the Executive Director, a designee, or other authorized Commission staff or a Commission member; and
 - (3) Successfully complete the range requalification requirements as set forth in § 79.22 (relating to Range Requalifications).
- (b) The requirements for Recertification set forth in § 79.42 (relating to Failure to Complete Range Requalification Within Required Time Frames) shall be completed within 180 calendar days [within the time frame specified by the Executive Director, but in no case later than March 31st] of the date [year] in which the application is [filed with the Executive Director] granted by the Commission, unless, due to extraordinary circumstances, the Commission grants additional time.

§ 79.43. Failure to Meet Mandatory In-Service Training Requirements.

- (a) When an officer's Certification is revoked due to the officer's failure to meet any mandatory In-Service Training requirements [established by the Commission] set forth in § 79.21(b)(relating to Maintenance of Certification), the officer seeking Recertification shall do the following:
- (1) Submit an application to the Executive Director which must be in such format as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) and [on a form approved by the Executive Director and also] shall be co-signed by the Chief Probation Officer.

- (2) Enroll in, attend and complete a Commission-sponsored Basic Training Program, or enroll in, attend and complete the next available offering(s) of any mandatory In-Service Training, which were not completed as required by the Commission, and
 - (3) Successfully complete the range requalification examination as set forth in § 79.22 (relating to Range Requalification).
- (b) The requirements for re-Certification set forth in § 79.43 (relating to Failure to Meet Mandatory In-Service Training Requirements) shall be set forth in the Commission's written approval letter which will direct the officer to the training or examination that must be completed and the timeframe within which this must be completed prior to the officer being recertified. [completed within a time frame established at the discretion of the Executive Director] .

§ 79.44. Non-Recertifiable Revocations.

When an officer's Certification is revoked pursuant to § 79.31 [(a))(1) or [(d))(4) or both (relating to Reasons for Revocation of Certificate), the officer shall be ineligible for recertification.

TRAINING EXPENSE

§ 79.51. Reimbursement of Expenses.

- (a) Subject to the availability of funds, the Commission may assume the costs or reimburse expenses incurred, or both, during an officer's attendance at a Basic Training Program or In-Service Training (including range requalification). The reimbursement will not include personnel costs. Expenses determined eligible by the Commission will be reimbursed at rates that are currently recognized by the Commonwealth of Pennsylvania. [, but will, from time to time, be further specified by the Commission.]
- (b) Instructors are not eligible for Commission reimbursement for any expenditure incurred when engaged in county-conducted Basic Training under § 79.64 (relating to County-Conducted Basic Training) or an In-Service Training course developed by an entity other than the Commission or a Commission approved vendor under § 79.63 (relating to Requirements for In-Service Training Course(s) or county-conducted In-Service Training pursuant to § 79.65 (relating to County-Conducted In-Service Training).
- (c) Students are not eligible for Commission reimbursement for any expenditure incurred when they participate in county-conducted Basic Training under § 79.64 (relating to County-Conducted Basic Training) or an In-Service Training course developed by an entity other than the Commission or a Commission approved vendor under § 79.63 (relating to Requirements for In-Service Training Course(s)

or county-conducted In-Service Training pursuant to § 79.65 (relating to County-Conducted In-Service Training).

- (d) The Commission may reimburse, in accordance with Commission policies in effect on the date(s) of such county-conducted Basic Training or county-conducted In-Service Training, the county for selected expenditures associated with the county-conducted Basic Training or county-conducted In-Service Training, or both. [Such reimbursement shall be solely at the discretion of the Commission.]

§ 79.52. Reimbursement Limitations.

The Commission will assume only the costs or reimburse eligible training expenses, or both, incurred for an officer's initial Basic Training. Reimbursement of expenses will be contingent upon the county's compliance with all Commission regulations, policies and procedures and upon the satisfactory submission of any requested information, data, forms, reports or documents. Commission reimbursement for ammunition and lodging is available for only one Basic Training per officer.

APPROVAL OF INSTRUCTORS, SCHOOLS and VENDORS

§ 79.61. Approval of Instructors.

- (a) An individual seeking approval to become a CFI or MI in programs offered by the Commission shall submit an application in such format as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>). [to the Executive Director on forms established by the Commission. An individual may apply for designation as an Academic CFI, Range CFI, or both or as an MI.]
 - (1) [Minimum qualifications for Academic CFI - The application for approval as an Academic CFI in areas of instruction other than range firearms techniques will include, but not be limited to, a resume or materials, or both, which evidence the education, qualifications and experience deemed appropriate by the Commission for the particular area of instruction.]

Minimum qualifications for [Range] CFI - The application for approval as a [Range] CFI in any Commission training, waiver or requalification examination program will include, but not be limited to, verification that the applicant has satisfactorily completed a law enforcement firearms instructor training course offered by entities such as: FBI, PSP, National Rifle Association, or any other course which from time to time may be approved by the Commission and documentation that the applicant has conducted at least 12 hours of law enforcement firearms instruction within the 24 months preceding the application submission date.

- (2) [3]Minimum qualifications for an MI - The applicant must be a Commission CFI for a period of 36 months following approval as a CFI by the Commission and submit an application for designation as an MI to the Executive Director. The applicant shall have been a lead instructor for the academic/classroom portion of a Commission Basic Training Program and a range master for the range portion of the training.
- (b) Certifications for both CFI and MI shall be for a period of 36 months following approval by the Commission unless sooner revoked by the Commission. When a CFI attains MI status, the 36 month period shall be calculated based upon the date that MI status is attained.
- (c) To renew certification an instructor shall be required to submit an application for renewal of certification. The application must at least include, documentation demonstrating that the instructor has provided the following:
- (1) For CFI certification renewal, a minimum of ~~6~~ 12 hours of relevant academic and range instruction ~~and a minimum of 6 hours of range firearms instruction~~ to county probation personnel in the preceding 36 months, including at least 1 Basic Training. The requirement to conduct 1 Basic Training during the preceding 36 month period for CFI renewal may be waived by the Commission.
- (2) For MI certification renewal, a minimum of 12 hours of relevant academic instruction and a minimum of 12 hours of range firearms instruction to county probation personnel in the preceding 36 months.
- (d) The Commission reserves the right to revoke its certification of any CFI or MI, or both, without notice. An affected CFI or MI may seek reconsideration of such revocations via § 79.72 (relating to Procedure for Officers, CFIs, MIs, Vendors or Schools Seeking Reconsideration.)

§ 79.62. Approval of Schools and Vendors.

- (a) Schools certified under 53 Pa.C.S. §§ 2162 – 2171 (relating to municipal police education and training) are pre-approved to conduct training as the Commission may, from time to time and in particular geographic areas of the Commonwealth, require.
- (b) Vendors and other entities may become approved to conduct Commission training, as the needs of the Commission dictate, through the Commonwealth's competitive bid process. Selected vendors will enter into a contract with the Commission to conduct specific training, to a particular population, for a specific period of time and to contractual standards. Approval of these entities to conduct Commission training may terminate upon expiration of the contract.

- (c) Schools and vendors conducting training for the Commission shall use only instructors and curricula which have been pre-approved by the Commission.
- (d) Training conducted by a school or vendor must be approved and scheduled through the Executive Director, in writing, prior to any advertisement, registration or other obligation for that training.
- (e) The Commission will inspect each approved school or vendor actively providing training at least once every two years, but reserves the right to monitor, without notice, any training conducted by approved schools or vendors, and to review and inspect related program records, materials and facilities at any time.
- (f) The Commission reserves the right to suspend or revoke the approval of any school or vendor without notice. An affected school or vendor may seek reconsideration of such revocations via § 79.72 (relating to Procedure for Officers, CFIs, MIs, Vendors or Schools Seeking Reconsideration.)

§ 79.63. Requirements for In-Service Training Course(s).

- (a) To receive credit toward[s] Commission mandated In-Service Training, counties shall obtain pre-approval from the Commission to conduct an In-Service Training course developed by an entity other than the Commission or a Commission approved school or vendor.
- (b) Counties seeking approval of an In-Service Training course developed by an entity other than the Commission or a Commission approved school or vendor shall submit an application to the Executive Director at least 90 calendar days prior to the first proposed day of training. The [application] proposal must [be in such format and follow such procedures as established by the Executive Director.] be submitted in writing to the Executive Director.
- (c) Upon approval by the Commission, the approved In-Service Training course may be conducted by the County in accordance with the provisions of § 79.65 (relating to County-Conducted In-Service Training).
- (d) The Commission prior to the first proposed day of training must approve any changes or modifications to the In-Service Training course that is approved by the Commission.

§ 79.64. County-Conducted Basic Training.

- (a) To be recognized by the Commission, a [A] Basic Training [course] conducted by a county must be pre-approved by the Commission and be carried out in accordance with the terms and conditions set forth in the Commission's approval letter. [with policies and procedures established by the Commission as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>).]

- (b) An MI shall supervise all county-conducted Basic Training.
- (c) A county desiring to conduct a Basic Training shall submit an application for County-Conducted Basic Training, including all required documentation, to the Executive Director on Form 19 b [forms and under procedures established by the Executive Director.] as found on the Commission's website (<http://www.fetc.state.pa.us/fetc/site/default.asp>).
- (d) County-conducted Basic Training must be conducted on training sites, both classroom and range, that [meet Commission standards and] are pre-approved by the Executive Director.
- (e) Only students who have submitted a Basic Training application, which has been approved by the Executive Director, shall participate in a county-conducted Basic Training.
- (f) The entire county-conducted Basic Training must be completed within 30 consecutive calendar days and on the dates, times and at locations specified in the application.
- (g) Upon request of the Executive Director or at the conclusion of the training, the county shall submit to the Executive Director all forms and materials [required] referenced in the Commission's Basic Training approval letter [to by the Executive Director] in 30 calendar days. [the time frame specified]
- (h) A county that is conducting an approved Basic Training may accept any Commission-approved student for participation in the training.
- (i) Materials to support county-conducted Basic Training may be provided to the county by the Commission solely at the discretion of the Commission.
- (j) The Commission reserves the right to monitor and inspect any and all aspects of any county-conducted Basic Training without notice to the county that is conducting the training.

§ 79.65. County-Conducted In-Service Training.

- (a) [Counties may conduct In-Service Training courses that have been approved and adopted by the Commission in accordance with policies and procedures established by the Commission.] To be recognized by the Commission, an In—Service Training course must be pre-approved by the Commission and conducted in accordance with the terms and conditions set forth in the Commission's approval letter.
- (b) An MI shall supervise all county-conducted In-Service Training.

- (c) A county desiring to conduct In-Service Training shall submit an application for county-conducted In-Service Training, including the required documentation, to the Executive Director on Form 19c [forms and following procedures as established by the Executive Director.] as found on the Commission's website (<http://www.fetc.state.pa.us/fetc/site/default.asp>).
- (d) County-conducted In-Service Training must be conducted on training sites, both classroom and range, that [meet Commission standards and] are pre-approved by the Executive Director.
- (e) Only students who have submitted an application for In-Service Training that has been approved by the Executive Director shall participate in county-conducted In-Service Training.
- (f) The entire county-conducted In-Service Training must be completed within 30 consecutive calendar days and on the dates, times and at the locations specified in the application.
- (g) Upon request of the Executive Director or at the conclusion of the training, the county shall submit to the Executive Director all forms and materials referenced in the Commission's In-Service Training approval letter [required by the Executive Director] in 30 calendar days. [the time frame specified]
- (h) A county that is conducting approved In-Service Training may accept any Commission-approved student for participation in the training.
- (i) Materials to support county-conducted In-Service Training may be provided to the county by the Commission solely at the discretion of the Commission.
- (j) The Commission reserves the right to monitor and inspect all aspects of any county-conducted In-Service Training without notice to the county conducting such training.

RECONSIDERATION OF COMMISSION DECISIONS

§ 79.71. Decisions of Instructors.

Commission instructors have the authority to summarily and immediately terminate an officer's participation in any Commission sanctioned training activity if any Commission instructor believes, in the Commission instructor's sole discretion, that an officer presents a safety concern, disrupts the learning environment, or violates the Commission's Student Code of Conduct.

§ 79.72. Procedure for Officers, CFIs, MIIs or Schools Seeking Reconsideration.

(a) *Procedure.* An officer, CFI, MI or school shall first seek reconsideration of a Commission decision through a letter-ruling process, which consists of the following steps:

(1) The officer, CFI, MI or school shall submit to the Executive Director a written request for reconsideration no later than 20 days after mailing of a Commission notice, which results in adverse action for the school or individual.

(2) The request for reconsideration must [be in a format acceptable to the Executive Director and must], at a minimum, contain the following details:

(i) The name, address, telephone number and electronic mail address of the aggrieved individual or school; and

(ii) A copy of the Commission notice, which results in adverse action for the school or individual; and

(iii) A concise and thorough explanation of the basis for the Request for Reconsideration; and

(iv) The relief being sought.

(3) The Commission will review the request for reconsideration at its next regularly scheduled meeting. The individual or entity seeking reconsideration will be notified of the time and place of the meeting.

(4) Following review of the request for reconsideration, the Commission will render a decision regarding the request for reconsideration. Within 10 days of the date of the decision, the Commission will forward to the individual or entity, by means of certified mail, return receipt requested, a letter ruling specifying the decision and the reasons for the Commission's decisions and explaining the right to a formal hearing if the individual/school/vendor does not accept the results set forth in the letter.

(5) Results and opinions set forth in letter-rulings will have no precedential authority [and are subject to withdrawal or change at any time to conform to new or different interpretations of the law].

(b) *Cross-reference.* This section supplements 1 Pa.Code § 35.10 (relating to form and content of formal complaints.).

NOTICE AND HEARINGS

§ 79.81. General Rules of Administrative Practice and Procedure.

Title 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the proceedings of the Commission insofar as it is not superseded by §§ 79.82 – 79.87.

§ 79.82. Notice.

- (a) If an officer, CFI, MI or school wishes to pursue an appeal to a formal hearing, the officer, CFI, MI or school shall submit to the Executive Director a written Request for Hearing no later than 30 calendar days after mailing of the Commission's letter-ruling regarding the Request for Reconsideration.
- (b) A Request for Hearing must be in writing and contain at least the following information:
 - (1) The name, address, telephone number and electronic mail address of the officer or school filing the written Request for Hearing; and
 - (2) A copy of the Commission's letter-ruling on the Request for Reconsideration; and
 - (3) A concise statement of the complaint; and
 - (4) A concise statement of all relevant facts and the grounds upon which the complaint is based; and
 - (5) The relief being sought.
- (c) The date of receipt by the Executive Director of the written hearing request from the officer, CFI, MI or school and not the date of deposit in the mails is determinative of a timely request for a hearing.
- (d) This section supplements 1 Pa.Code § 35.10 (relating to form and content of formal complaints).

§ 79.83. Appointment of Hearing Examiner

- (a) When the Executive Director receives a Request for Hearing, the Commission's chairperson or a designee will appoint a hearing examiner to preside over the formal hearing.
- (b) It will be the responsibility of the appointed hearing examiner to schedule the hearing and conduct it in accordance with this section and 1 Pa.Code Part II (relating to general rules of administrative practice and procedure.).
- (c) Subsection (a) supplements 1 Pa.Code § 35.185 (relating to designation of presiding officers.) Subsection (b) supplements 1 Pa.Code § 35.187 (relating to authority delegated to presiding officers.).

§ 79.84. Hearings.

- (a) Hearings will be conducted in accordance with 2 Pa.C.S. §§ 501-508 and 701-704 (relating to Administrative Agency Law).
- (b) Legal counsel may represent the aggrieved individual or entity and the costs incurred for such representation shall be borne by the individual or entity.
- (c) The hearing examiner will notify the aggrieved individual and, if applicable, the aggrieved entity and the Commission of the date, time and location of the hearing at least 60 days prior to the selected date. A courtesy copy will be forwarded to the appropriate Chief Probation Officer and President Judge. This subsection supersedes 1 Pa.Code § 35.105 (relating to notice of non-rulemaking proceedings).
- (d) A prehearing conference may be held at the discretion of the hearing examiner. [This subsection is identical to] If a prehearing conference is held, it will be pursuant to 1 Pa.Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings).

§ 79.85. Continuances.

- (a) Continuances of hearings conducted under this section will only be granted upon a showing of good cause by the party requesting the continuance.
- (b) Requests for continuances shall be made in writing to the hearing examiner.
- (c) A party's objections, if any, to a request for a continuance must be in writing and delivered to the hearing examiner and the other party. Objections shall be made immediately upon receipt of notification of a request for a continuance.
- (d) This section supersedes 1 Pa.Code § 31.15(b) (relating to extension of time).

§ 79.86. Failure to Appear at a Hearing.

- (a) If an officer, CFI, MI or school or the officer's, CFI's, MI's or school's representative fails to appear at the scheduled hearing without good cause, as determined by the hearing examiner, the Request for Hearing shall be deemed abandoned and shall be dismissed with prejudice.
- (b) If the Commission fails to appear at the hearing without good cause as determined by the hearing examiner, the hearing shall proceed in absentia.
- (c) If neither the officer, CFI, MI or school nor the Commission or their representatives appear at the hearing, the hearing examiner shall reschedule the hearing.

§ 79.87. Hearing Examiner Recommendation

- (a) Within 30 days of conclusion of the hearing(s), the hearing examiner will propose findings of fact and conclusions of law to the Commission.
- (b) Upon receipt and after review of the hearing examiner's proposed findings of fact and conclusions of law and any exceptions and briefs, which may be submitted by either party, the Commission, or its designee(s), shall issue a final adjudication.
- (c) The Executive Director shall forward the Final Adjudication to the officer, CFI, MI or school, or their legal counsel, if the officer, CFI, MI or school has made the Executive Director aware of such representation, and the appropriate Chief Probation Officer and President Judge.
- (d) The officer, CFI, MI, school or Commission shall have the right to appeal the Final Adjudication in accordance with Pa.R.A.P. and 2 Pa.C.S. §§ 501-508 and 701-704 (relating to Administrative Agency Law).

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

I.D. NUMBER: 41-018

SUBJECT: COUNTY PROBATION AND PAROLE OFFICERS' FIREARM EDUCATION AND TRAINING COMMISSION

AGENCY: BOARD OF PROBATION & PAROLE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

INDEPENDENT REGULATORY REVIEW COMMISSION

2009 APR -6 PM 3:35

RECEIVED

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/6/09	<i>A. Squicchi</i> (Marius)	HOUSE COMMITTEE ON JUDICIARY
4/6/09	<i>Patricia Tamayo</i>	MAJORITY CHAIRMAN <u>Caltagirone</u>
4/6	<i>Jean Wallace</i>	SENATE COMMITTEE ON JUDICIARY
4/6	<i>Jean Wallace</i>	MAJORITY CHAIRMAN <u>Greenleaf</u>
4/6/09	<i>Kathy Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)