

# Regulatory Analysis Form

This space for use by IRRC

(1) Agency

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

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

41 - 018

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 2006 OCT 11 AM 11:14  
 INDEPENDENT REGULATORY  
 RENEWAL COMMISSION

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: Lee VanBrederode 717-783-4692  
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 proposed 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 proposed 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 1200.*

(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 proposed regulation have been and are being distributed to all Commonwealth counties and probation and parole departments. The regulation will be published in the Pennsylvania Bulletin with a thirty-day comment period. Additionally, it has been posted to the Commission's website and public comment is invited. Links for public comment have been provided.*

(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
<b>SAVINGS:</b>	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
<b>COSTS:</b>	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
<b>REVENUE LOSSES:</b>	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 02-03	FY 03-04	FY 04-05	Current (FY 05-06)
County Probation and Parole Officers' Firearm Education and Training Commission	\$372,500	\$228,324	\$446,083	\$199,222 as of 31 March 06

(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 proposed 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 proposed 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 proposed 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  
BUREAU

(Pursuant to Commonwealth Documents Law)

2576

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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: Amy M. Elliott  
(Deputy Attorney General)

SEP 19 2006

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 Jan. 24, 2006

By: Larry Straitiff  
Larry Straitiff

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  
SEP 6 2006

DATE OF APPROVAL  
Andrew C. Clark  
(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 PROPOSED RULEMAKING**

Proposed 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

# PROPOSED RULEMAKING

## BOARD OF PROBATION AND PAROLE

[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") proposes to add 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 rulemaking is proposed under the authority of the County Probation and Parole Officers' Firearm Education and Training Law ("Law") (61 P.S. §§ 332.1 *et seq.*). Section 332.5(13) of the Law 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."

#### Purpose

This regulation will implement the requirements of the County Probation and Parole Officers' Firearm Education and Training Law. This rulemaking proposes to promulgate regulations containing 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 proposed 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.

## Explanation of Regulatory Requirements

The proposed rulemaking is enumerated and detailed as follows:

### *§§ 79.1 – 79.3 (relating to general provisions)*

These sections provide the scope of the proposed rulemaking and the definitions of words and terms used in Chapter 79.

### *§§ 79.11 – 79.15 (relating to initial certification of officers)*

These sections provide procedures for filing applications so that interested county probation and parole officers may apply to take the basic training program conducted by the FETC. These sections also address the specific requirements that must be met by each county probation and parole officer to be considered certified and the duration of such certification. If a county probation and parole officer fails to successfully complete the basic training program, these sections explain the process that must be followed to take the basic training program again.

### *§§ 79.21 – 79.24 (relating to maintenance of certification)*

These sections set forth the requirements that county probation and parole officers must satisfy each year to maintain their certification to carry a firearm. The sections explain the procedures that must be met to successfully complete firing range requalification examinations and what occurs if a particular county probation and parole officer does not successfully satisfy these procedures. The procedure that must be followed by county probation and parole officers who wish to seek an extension on their certification is also explained within these sections.

### *§§ 79.31 – 79.33 (relating to revocation of certification)*

These sections set forth the reasons that a particular county probation and parole officer's certification to carry a firearm could be revoked.

### *§§ 79.41 – 79.44 (relating to recertification of officers following revocation)*

These sections set forth the three (3) different procedures that county probation and parole officers who have had their certification to carry a firearm revoked can follow to be recertified to carry.

### *§§ 79.51 – 79.52 (relating to reimbursement of training expenses)*

These sections explain the types of reimbursements that may be made by the FETC to students and instructors, namely for attending or teaching the FETC Basic Training program. These sections also place limitations on the amount of reimbursements that may be made by the FETC.



*§§ 79.61 – 79.65 (relating to approval of instructors, schools and vendors)*

These sections explain what criterion is considered by the FETC when approving instructors to conduct the various FETC training and education programs. The procedure that interested individuals must follow to be considered for approval is set forth in these sections. These sections also set forth the procedures that schools and vendors must follow to be approved to conduct training and education programs for the FETC. These sections also explain what criteria must be met on a continuous basis for such instructors, schools and vendors to remain approved by the FETC. These sections also set forth the procedure that counties within the Commonwealth must follow so that any training and education programs that the county creates and conducts can be an approved FETC course. If a county conducts an FETC training or education program, these sections explain what procedures that county must follow so that the class participants can receive the appropriate FETC recognition of such training or education program.

*§§ 79.71 – 79.72 (relating to requests for reconsideration of Commission decisions)*

These sections explain the reconsideration process that county probation and parole officers or schools who are aggrieved by a Commission decision are to follow.

*§§ 79.81 – 79.87 (relating to notice and hearings)*

These sections provide appeal procedures.

*Affected Parties*

The proposed rulemaking is 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 proposed rulemaking is 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 proposed rulemaking 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 proposed regulations, 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 proposed regulation will have no adverse fiscal impact on the private sector.

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

#### Cost and Paperwork Requirements

The proposed 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 proposed regulation does not affect the existing reporting, record keeping, or other paperwork requirements of the Commission, other government units or the general public.

#### 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.

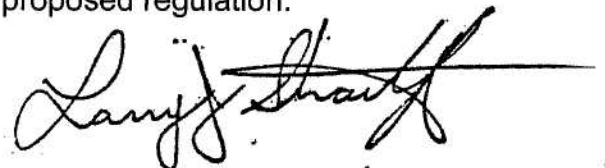
#### Contact Person

Interested persons are invited to submit written comments regarding the proposed regulations within thirty (30) days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the County Probation and Parole Officers' Firearm Education and Training Commission, 1101 S. Front Street, Suite 5600, Harrisburg, Pennsylvania 17104-2522, Attention: Executive Director, Henry L. Van Brederode.

Regulatory Review

The FETC submitted a copy of the proposed regulation to the Independent Regulatory Review Commission ("IRRC") and to the Chairpersons of the House and Senate Standing Committees on Judiciary on October 11, 2006, in accordance with § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The FETC also provided IRRC and the Committees a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request. If IRRC has an objection to any portion of the proposed regulation, it must so notify the FETC within ten (10) days of the close of the Committees' review period.

The notification shall specify the regulatory review criterion that has not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the FETC, the General Assembly and the Governor prior to the final publication of the proposed regulation.

A handwritten signature in black ink, appearing to read "Larry Straitiff", with a long horizontal line extending to the right from the end of the signature.

LARRY STRAITIFF  
Chairperson

**ANNEX A**

**Title 37. Law**

**PART II – Board of Probation & Parole**

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

**GENERAL PROVISIONS**

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**79.2 Definitions.**

**79.3 Enrollment**

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**79.12 Application.**

**79.13 Requirements for Completion**

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**79.15 Failure to Complete Basic Training.**

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**79.22 Range Requalification Examinations.**

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**79.24 Extensions.**

**REVOCAION OF CERTIFICATION**

**79.31 Reasons for Revocation of Certification.**

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

**79.33 Revocation of Certification for Failure to Submit a Timely Request**

### **RECERTIFICATION OF OFFICERS FOLLOWING REVOCATION**

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

**79.42 Failure to Complete Range Requalification Within Required Time Frames.**

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

**79.44 Non-Recertifiable Revocations**

### **TRAINING EXPENSE**

**79.51 Reimbursement of Expenses.**

**79.52 Reimbursement Limitations.**

### **APPROVAL OF INSTRUCTORS, SCHOOLS and VENDORS**

**79.61 Approval of Instructors.**

**79.62 Approval of Schools and Vendors.**

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

**79.64 Requirements for County-Conducted Basic Training**

**79.65 Requirements for County-Conducted In-Service Training**

### **REQUEST FOR RECONSIDERATION OF COMMISSION DECISIONS**

**79.71 Decisions of Instructors.**

**79.72 Procedure for Officers or Schools Seeking Reconsideration.**

## **NOTICE AND HEARINGS**

**79.81 Title 1 PA Code Part II.**

**79.82 Notice.**

**79.83 Appointment of Hearing Examiner**

**79.84 Hearings.**

**79.85 Continuances.**

**79.86 Failure to Appear at a Hearing.**

**79.87 Hearing Examiner Recommendation**

## **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.

*Certified Firearms Instructor (CFI)* – A firearms instructor who meets the minimum qualifications for instructors as established by the Commission.

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

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

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

*Master Instructor (MI)* - A Commission Certified Firearms Instructor who meets the minimum qualifications to become an MI.

(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.

## **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 shall 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 shall require any officer and/or county to submit such information as required on a form and in such format and within time parameters as specified by the Executive Director.

### **§ 79.13. Requirements for Completion**

Satisfactory completion is defined as:

- (1) Attendance at the entire prescribed training program;
- (2) Compliance with Student Code of Conduct for such programs as established by the Commission; and
- (3) If applicable, attainment of a passing score on any and all written, oral and/or 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<sup>st</sup> 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 shall 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 under § 79.13 (relating to Requirements for Completion), the officer's passing score shall be recognized by the Commission for a period of one 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 one-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, via 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 request to the Executive Director seeking permission for the officer to shoot the firing range portion of Basic Training within 45 calendar days of the date that the officer failed to achieve a passing score.

(1) Such request shall include:

- (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) To maintain Certification beyond December 31<sup>st</sup> of the calendar year following the issuance of the original Certification or renewed Certification, an officer must successfully complete the following:
- (1) In-Service Training, the specifics of which the Commission shall publish by the end of the first quarter of each calendar year; and
  - (2) A range requalification examination under § 79.22 (relating to Range Requalification Examinations).
- (b) This section (relating to Maintenance of Certification) shall 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 shall require the officer to demonstrate continuing proficiency which includes weapons handling, range safety, and marksmanship.
- (b) A range requalification examination must 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<sup>st</sup> and October 31<sup>st</sup> each calendar year.
- (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.
- (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 such 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.
- (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 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, to the Executive Director by October 31<sup>st</sup> of the year in which the officer's current Certification will expire.
  - (1) Such request shall include:
    - (i) The specific reason for the requested extension of time;
    - (ii) The specific length of time of the requested extension; and
    - (iii) Supporting documentation.
  - (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(2)(relating to range requalification examinations), the officer's Chief Probation Officer shall send a request to the Executive Director to conduct a range requalification examination.
  - (1) The Executive Director shall receive such 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<sup>st</sup> of the year in which the officer's current Certification expires.

## **REVOCAION OF CERTIFICATION**

### **§ 79.31. Reasons for Revocation of Certification.**

The Commission may revoke an officer's Certification for any reason including, but not limited to:

- (a) 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
- (b) Unsafe conduct during any Commission training; or,
- (c) Unprofessional conduct during a Commission sponsored event; or
- (d) Providing false or misleading information, either orally or in writing, to the Commission, its employees or agents.
- (e) 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 (1) 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) Such requalification examination shall occur within no more than 60 days of the initial failure of the range requalification examination.
    - (iii) In no case will range requalification examinations be permitted after October 31<sup>st</sup> 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 shall 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 shall 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:

- (a) Submit an application to the Executive Director in such form as approved by the Executive Director. Such application shall be co-signed by the Chief Probation Officer who shall state that the officer is competent and safe to participate in Commission training activities; and
- (b) Enroll in, attend, and satisfactorily complete a Commission sponsored Basic Training.

**§ 79.42. Failure to Complete 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 requirements of § 79.22 (relating to Range Requalifications), the officer seeking re-Certification shall:
  - (1) Submit an application to the Executive Director within twenty (20) calendar days of the effective date of the revocation of Certification. Such application will be in such form as 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). Such examinations shall be administered by the Executive Director, his 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 the time frame specified by the Executive Director, but in no case later than March 31<sup>st</sup> of the year in which the application is filed with the Executive Director.

**§ 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, the officer seeking Recertification shall:
  - (1) Submit an application to the Executive Director which shall be in such form as 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 completed within a time frame to be 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), (d) 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 and/or reimburse expenses incurred during an officer's attendance at a Basic Training Program or In-Service Training (including range requalification). Such reimbursement shall not include personnel costs. Expenses determined eligible by the Commission shall be reimbursed at rates that are currently recognized by the Commonwealth of Pennsylvania, but shall, 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 pursuant to § 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 pursuant to § 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 pursuant to § 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 pursuant to § 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 and/or reimburse eligible training expenses incurred for an officer's initial Basic Training. Reimbursement of expenses shall 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 (1) 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 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 and/or materials which evidence the education, qualifications and experience deemed appropriate by the Commission for the particular area of instruction.
  - (2) 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, NRA, 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.
  - (3) Minimum qualifications for an MI - The applicant must be a Commission CFI and submit an application for designation as an MI to the Executive Director. The applicant must 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 such 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.
- (c) To renew certification an instructor shall be required to submit an application for renewal of certification, which shall at least include, documentation demonstrating that the instructor has provided the following:
  - (1) For CFI certification renewal, a minimum of 6 hours of relevant academic instruction and a minimum of 6 hours of range firearms instruction to county probation personnel in the preceding 36 months.
  - (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.

**§ 79.62. Approval of Schools and Vendors.**

- (a) Schools certified under the Municipal Police Officers Education and Training Commission (53 Pa.C.S.A. § 2162) are pre-approved to conduct such 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) All schools and vendors conducting training for the Commission shall use only instructors and curricula which have been pre-approved by the Commission.
- (d) All 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.

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

- (a) To receive credit towards Commission mandated In-Service Training, counties must 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 must be in such format and follow such procedures as established by 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) A Basic Training conducted by a county must be carried out in accordance with policies and procedures established by the Commission.
- (b) An MI must 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 forms and pursuant to procedures established by the Executive Director.
- (d) All 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 all forms and materials required by the Executive Director in the time frame specified.
- (h) A county that is conducting an approved Basic Training may, at its discretion, accept any Commission-approved student for participation in such 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.
- (b) An MI must 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 all required documentation, to the Executive Director on forms and following procedures as established by the Executive Director.
- (d) All 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 will submit all forms and materials required by the Executive Director in the time frame specified.

- (h) A county that is conducting approved In-Service Training may, at its discretion, accept any Commission-approved student for participation in such 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 any and 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 or Schools Seeking Reconsideration.**

An officer or school shall first seek reconsideration of a Commission decision through a letter-ruling process, which shall consist of the following steps:

- (a) The officer or school shall submit to the Executive Director a written Request for Reconsideration no later than twenty (20) days after mailing of a Commission notice, which results in adverse action for the school or individual.
- (b) Such Request for Reconsideration shall be in a format that is acceptable to the Executive Director and shall, at a minimum, contain the following details:
  - (1) Name, address, telephone number and electronic mail address of the aggrieved individual or school; and
  - (2) A copy of the Commission notice, which results in adverse action for the school or individual; and
  - (3) A concise and thorough explanation of the basis for the Request for Reconsideration; and
  - (4) The relief being sought.

- (c) 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.
- (d) Following review of the Request for Reconsideration, the Commission will render a decision regarding the Request for Reconsideration. Within ten (10) days of the date of the decision, the Commission will forward to the individual or entity, via certified mail, return receipt requested, a letter ruling specifying the decision and the reasons for the Commission's decision(s) and explaining the right to a formal hearing if the individual/school does not accept the results set forth in the letter.
- (e) Results and opinion 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.
- (f) *Cross-reference.* This section supplements 1 Pa.Code § 35.10 (relating to form and content of formal complaints.).

## **NOTICE AND HEARINGS**

### **§ 79.81. Title 1 PA Code Part II.**

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 this section.

### **§ 79.82. Notice.**

- (a) If an officer or school wishes to pursue an appeal to a formal hearing, the officer 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 shall 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 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 the chairperson's designee shall appoint a hearing examiner to preside over the formal hearing.
- (b) It shall 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) Section 79.83(a) supplements 1 Pa.Code § 35.185 (relating to designation of presiding officers.) Section 79.83(b) supplements 1 Pa.Code § 35.187 (relating to authority delegated to presiding officers.).

**§ 79.84. Hearings.**

- (a) Hearings shall be conducted in accordance with 2 Pa.C.S.A. §§ 502-508 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 shall 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 shall be forwarded to the appropriate Chief Probation Officer and President Judge. This paragraph 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 subparagraph is identical 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 shall 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 shall 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 or school or the officer'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 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 shall 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 or school, or their legal counsel, if the officer or school has made the Executive Director aware of such representation, and the appropriate Chief Probation Officer and President Judge.
- (d) The officer, school or Commission shall have the right to appeal the Final Adjudication in accordance with the requirements of the Rules of Appellate Procedure and the Administrative Agency Law.

**County Probation Officers' Firearm  
Education and Training Commission  
Notice of Proposed Rulemaking**

**PA Code Cite:** 37 Pa. Code Chapter 79

**Regulation Title:** Implementation of 61 P.S. §§ 332.1 *et seq* (relating to the County Probation & Parole Officers' Firearm Education and Training Program)

**I.D. Number:** 41-018

**CHAIRMAN'S CERTIFICATION**

I, Larry Straitiff, do hereby certify that I have reviewed this regulation and determined that the regulation is consistent with the principles outlined in Executive Order 1996-1.

  
Larry Straitiff, Chairman (Date) 5/23/2006

OA Central

1990 to 1999

 1996-1 Regulatory Review and Promulgation

<h1>EXECUTIVE ORDER</h1> <p>Commonwealth of Pennsylvania Governor's Office</p>		
<b>Subject:</b> Regulatory Review and Promulgation		<b>Number:</b> 1996-1
<b>Date:</b> February 6, 1996	<b>Distribution:</b> B	<b>By Direction of:</b> Thomas J. Ridge, Governor

WHEREAS, the volume and scope of regulations promulgated by Commonwealth agencies has grown at an alarming rate in recent years; and

WHEREAS, a regulation should be promulgated only after a determination that it is necessary to address a compelling public interest; and

WHEREAS, political subdivisions and the private sector have often been asked to comply with regulations that were drafted and promulgated without meaningful input from these members of the regulated community; and

WHEREAS, burdensome regulations have placed undue restrictions on the regulated community and have hampered Pennsylvania's ability to compete effectively with other states; and

WHEREAS, despite the increasing volume and burden of regulations, they remain an appropriate and necessary means of protecting the public health and safety.

NOW, THEREFORE, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania, the Regulatory Review Act, and other laws, do hereby establish the following procedures regarding the review and promulgation of regulations:

**1. General Requirements.** In the drafting and promulgating of new regulations and the application and review of existing regulations, all agencies shall adhere to the following principles:

- a. Regulations shall address a compelling public interest.
- b. Costs of regulations shall not outweigh their benefits.
- c. Regulations shall be written in clear, concise and, when possible, nontechnical language.
- d. Regulations shall address definable public health, safety, or environmental risks.
- e. Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law.



- f. Compliance shall be the goal of all regulations.
- g. Where viable nonregulatory alternatives exist, they shall be preferred over regulations.
- h. Regulations shall be drafted and promulgated with early and meaningful input from the regulated community.
- i. Regulations shall not hamper Pennsylvania's ability to compete effectively with other states.
- j. All agency heads shall be held directly accountable for regulations promulgated by their respective agencies.

## 2. Evaluation of Existing Regulations.

- a. Existing regulations shall be reviewed by agencies for consistency with the aforementioned principles. Any regulations that are inconsistent with these principles shall be considered for amendment or repeal.
- b. Agency heads shall have the flexibility to construct a program that reviews their existing regulations to assure consistency with these principles. A plan and schedule for review of existing regulations is to be submitted to the Governor's Policy Office within six months of the effective date of this order. All review programs shall commence within one year of the effective date of this order.
- c. Regulations proposed for repeal should be submitted to the General Counsel, Secretary of the Budget, and Governor's Policy Director along with a Repeal Analysis Form. The analysis shall state:
  - The name of the agency.
  - The name of a contact person at that agency.
  - A short title of the regulation.
  - An explanation of the regulation.
  - A justification for the proposed repeal.
  - A proposed schedule for repeal – noting any public comment periods.
  - Any costs and/or savings associated with the repeal.
- d. If a statute prohibits the repeal of a regulation that the agency deems to be inconsistent with the aforementioned principles, the agency head shall submit to the General Counsel, Governor's Policy Director, and Secretary for Legislative Affairs the specific citation for the statute that prohibits the repeal and the citation for any regulation that is determined to be inconsistent with the aforementioned principles, the nature of and reason for the inconsistency, and a recommendation for legislative action, if appropriate.

## 3. Pre-Drafting and Drafting Guidelines.

- a. Before drafting a regulation, agencies, where practical, shall undertake extensive public outreach to those who are likely to be affected by the regulation. Creating advisory committees, using regulatory negotiation, and developing other creative procedures are encouraged as means to solicit the public's input during the regulatory development process.
- b. Those to be affected by the regulation should continue to be consulted during the drafting process. When appropriate, members of the regulated community should be involved with the formulation of language, the development of standards, and any other areas in which the regulated community has an interest and/or can provide insight. During the regulation

development and drafting process, agencies should advise and consult with the Governor's Policy Office, Office of General Counsel, and the Budget Office whenever the agency determines that any such involvement would hasten the review process.

c. Each agency shall develop its own policies regarding public involvement tailored best to meet the needs of the agency and the regulated community.

d. Within six months of the effective day of this order, agencies shall submit to the Governor's Policy Office their internal guidelines for pre-drafting and drafting public outreach.

#### **4. Review by Governor's Office.**

a. Prior to submitting a proposed rulemaking, the agency head shall evaluate each regulation and attest to the fact that the regulation addresses a compelling public need that can be best remedied by the promulgation of the regulation.

b. The agency head shall submit to the General Counsel, Secretary of the Budget, and Governor's Policy Director a written Regulatory Analysis. The analysis shall state:

- The name of the agency.
- The name of a contact person at that agency.
- A short title for the regulation and a citation from the Pennsylvania Code.
- Whether the regulation is a proposed, final-form or final-omitted rulemaking.
- A brief, clear and, if possible, nontechnical explanation of the regulation.
- The statutory authority or mandate for the regulation.
- The compelling public need that justifies the regulation.
- The public health, safety, or environmental risks associated with nonregulation.
- Individuals or groups that are likely to benefit from the regulation.
- Individuals, groups, or entities that will be required to comply with the regulation.
- The outreach conducted by the agency with the regulated community prior to submission of the regulation.
- An estimate of the costs and/or savings associated with compliance and implementation.
- A cost/benefit analysis of the regulation.
- Nonregulatory alternatives considered and the reasons for their dismissal.
- Alternative regulatory schemes considered and the reasons for their dismissal.
- A statement of the compelling Pennsylvania interest if the regulation exceeds federal standards.
- Any requirements that would place Pennsylvania at a competitive disadvantage compared to other states.
- An intra-agency review schedule for the regulation.

c. Each regulation submitted for review shall contain a brief preamble, written in clear and concise language, which shall describe in nontechnical terms the compelling public need the regulation is designed to address, what the regulation requires in legal and practical terms, and who the regulation is likely to affect.

d. The regulatory analysis, along with the preamble and draft regulation, will be reviewed by the Office of General Counsel for form, language, and legal authority. The Governor's Policy Office will review the request to determine that public interest is compelling, that no viable alternative to the regulation exists, and that the costs of the regulation reasonably relate to the benefits. The Office of General Counsel will also consider whether the proposed regulation exceeds federal standards. If the regulation does exceed federal standards, the Policy Office will then evaluate whether the regulation is justified by a compelling and unique Pennsylvania interest. The Budget Office will evaluate the cost analysis prepared by the agency and prepare a fiscal note for the regulation.

e. No agency shall proceed with a proposed, final-form or final-omitted regulation until the General Counsel, Secretary of the Budget, and Policy Director have informed the agency that the regulation is consistent with the regulatory principles and overall policies of the Administration. Review by these three offices will be conducted in a fair and timely manner.

#### **5. Nonregulatory Documents.**

a. Nonregulatory public documents such as internal guidelines, policy statements, guidance manuals, decisions, rules and other written materials that provide directives, guidance, or other relevant compliance related information to the public shall be cataloged by every agency.

b. The cataloged titles of these documents, along with an agency contact and phone number, shall be published in the *Pennsylvania Bulletin* on August 3, 1996. Each year thereafter every agency shall publish and update its list in the *Pennsylvania Bulletin* on the first Saturday in August.

**6. Petitions.** To further the goal of greater public participation in the regulatory process; individuals, groups, and businesses are encouraged to use the regulatory petition process outlined in *1 PA Code Section 35.18*. Agencies that have not already done so shall develop internal procedures to receive and review petitions in a fair and timely manner.

**7. Continual Review of Regulations.** All regulations shall be reviewed in accordance with the review schedule published annually by each agency. As part of its review, the agency shall determine whether the regulation continues to effectively fulfill the goals for which it was intended and remains consistent with the previously-mentioned principles.

**8. Regulatory Agendas.** Semiannually, on February 1 and July 1, each agency head shall submit to the General Counsel, the Secretary of the Budget, and the Governor's Policy Office Director, for publishing in the *Pennsylvania Bulletin*, an agenda of regulations under development or consideration. The agenda shall describe the regulations being considered, the proposed date for promulgation, the need and legal basis for the action being taken, and the status of regulations previously listed on the agenda. Each item on the agenda shall also include a contact person within the agency from whom additional information may be obtained.

**9. Exemptions.** The procedure prescribed by this Order shall not apply to:

a. Emergency regulations as defined in the Regulatory Review Act.

b. Any regulation for which consideration or reconsideration under the terms of this order would conflict with deadlines imposed by statute, consent decree or by judicial order, provided that any such regulation shall be reported to the Director of the Governor's Policy Office together with a brief explanation of the conflict. The agency shall publish in the *Pennsylvania Bulletin* a statement of the reasons why it is impracticable for the agency to follow the procedures of this order with respect to such a rule. The agency, in consultation with the Governor's Policy Office, shall adhere to the requirements of this order to the extent permitted by statutory or judicial deadlines.

#### **10. Applicability.**


a. This order shall apply to all agencies under the jurisdiction of the Governor's Office.

b. This order is intended only to improve the internal management of executive agencies and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Commonwealth, its agencies, its officers or any person.

**11. Effective Date.** This order is effective immediately

**12. Rescission.** Executive Order 1982-2 is rescinded.

**Attached File:**

 [1996-1.pdf](#)

Content Last Modified on 8/8/2003 4:15:10 PM

**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**

- X Proposed Regulation  
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

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
10/11	<i>Christine Cease</i>	HOUSE COMMITTEE ON JUDICIARY
10/11	<i>Deise Patton</i>	SENATE COMMITTEE ON JUDICIARY
10/11/06	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
10/11/06	<i>Wayne Gaus</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)