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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable Stewart J. Greenleaf, Chairman
Senate Judiciary Committee
19 East Wing
Harrisburg, PA 17120

Re: Regulation #41-18 (IRRC #2576)
Board of Probation and Parole
County Probation and Parole Officers' Firearm Education
and Training Committee

Dear Senator Greenleaf:

On December 27, 2006, we delivered our comments on the above-captioned regulation to Larry J. Straitiff, Chairman, Board of Probation and Parole. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable Jay Costa, Jr., Minority Chairman
Senate Judiciary Committee
15 East Wing
Harrisburg, PA 17120

Re: Regulation #41-18 (IRRC #2576)
Board of Probation and Parole
County Probation and Parole Officers' Firearm Education
and Training Committee

Dear Senator Costa:

On December 27, 2006, we issued comments on the above-captioned regulation and delivered our comments to Larry J. Straitiff, Chairman, Board of Probation and Parole. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable Thomas Caltagirone, Majority Chairman
House Judiciary Committee
106 Irvis Office Building
Harrisburg, PA 17120

Re: Regulation #41-18 (IRRC #2576)
Board of Probation and Parole
County Probation and Parole Officers' Firearm Education
and Training Committee

Dear Representative Caltagirone:

On December 27, 2006, we issued comments on the above-captioned regulation and delivered our comments to Larry J. Straitiff, Chairman, Board of Probation and Parole. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

February 5, 2007

Honorable Ronald Marsico, Minority Chairman
House Judiciary Committee
218 Ryan Office Building
Harrisburg, PA 17120

Re: Regulation #41-18 (IRRC #2576)
Board of Probation and Parole
County Probation and Parole Officers' Firearm Education
and Training Committee

Dear Representative Marisco:

On December 27, 2006, we issued comments on the above-captioned regulation and delivered our comments to Larry J. Straitiff, Chairman, Board of Probation and Parole. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

Comments of the Independent Regulatory Review Commission

on

Board of Probation and Parole Regulation #41-18 (IRRC #2576)

County Probation and Parole Officers' Firearm Education and Training Commission

December 27, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the October 28, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Board of Probation and Parole to respond to all comments received from us or any other source.

1. General. – Economic or fiscal impact; Clarity and lack of ambiguity; Reasonableness of the requirements.

This regulation contains many phrases that are vague. Examples include “as specified by the Executive Director,” “compliance with a Student Code of Conduct as established by the Commission,” “in-service training, the specifics of which the Commission will publish,” “follow an application process specified by the Commission,” “on a form and in a format prescribed by the Executive Director” and requiring “supporting documentation.” These phrases are problematic for three reasons.

First, a regulation has the full force and effect of law. It establishes binding norms on the regulated entity and the agency that promulgated the regulation. The vague phrases in question would allow requirements to be imposed at the agency’s discretion without the opportunity for comment or review through the regulatory process. Therefore, without adequate notice as to what requirements the agency is imposing, it would be difficult if not impossible for regulated parties to discern what actions on their part would constitute compliance.

Second, reference to non-regulatory documents is problematic because those documents cannot be used to enforce standards contained in regulation. In addition, this approach would allow an agency or department to bypass the formal regulatory review process and the laws that govern the promulgation of regulations.

Third, many sections in which the vague phrases are found lack details that would allow the regulated community to comply with the regulation. These sections also fail to provide the criteria the Commission will use to evaluate a particular action or request. This lack of clarity would place the regulated community at a distinct disadvantage because the rules and expectations of the Commission could change.

We urge the County Probation and Parole Officers' Firearm Education and Training Commission (Commission) to evaluate all of the vague phrases we have identified in bold text in Appendix A. The Commission should either delete the language or add the needed detail that would allow the

regulated community to know what they are expected to do and how the Commission will evaluate their actions.

2. Section 79.2. Definitions. – Clarity; Reasonableness.

CFI – Certified Firearms Instructor

This definition uses the phrases "...minimum qualifications...as established by the Commission." However, in addition to meeting minimum qualifications, Section 79.61(b) of the regulation requires instructors to be approved by the Commission. This definition should be amended to be consistent with the regulation.

County-conducted training

This definition states, "Commission-approved training not presented by the Commission." Section 79.61(a)(2) includes training by the FBI, Pennsylvania State Police and the National Rifle Association. These courses would not necessarily be conducted by a county, but would be included under this definition. This definition needs to be amended to include only courses conducted by the county.

In-service training

This definition is not clear. In-service training is defined as "continuing training necessary...to maintain certification under the Act." (Emphasis added.) The phrase "under the Act" is not needed and could be confusing. The County Probation and Parole Officers' Firearm Education and Training Law (Act) addresses in-service training at 61 P.S. § 332.5(7) by requiring the Commission to establish "a minimum number of hours in in-service training as provided for by regulation...." (Emphasis added.) Hence, we recommend deleting the phrase "under the Act" from the regulatory definition.

MI - Master Instructor

We have three concerns.

First, in addition to meeting minimum qualifications, Section 79.61(b) of the regulation requires instructors to be approved by the Commission. This definition should be amended to be consistent with the rest of the regulation.

Second, this definition should use the defined term "CFI" rather than "Commission-CFI."

Finally, a cross-reference should be added to the minimum qualifications.

3. Section 79.3. Enrollment. – Consistency with statute; Reasonableness.

Discretion of the Executive Director

This provision states "Enrollment in programs under this part will be at the discretion of the Executive Director." This language is inconsistent with the Act and overly broad. The Act (61 P.S. § 332.7) specifies four minimum requirements to participate in the training program or

be granted a waiver. The regulation should be amended to be consistent with the Act.

4. Section 79.13. Requirements for completion. – Consistency with statute; Reasonableness; Clarity.

Prescribed training program

Paragraph (1) requires “Attendance at the entire **prescribed** training program.” (Emphasis added.) It is not clear what is meant by a “prescribed” program or who prescribes the program. Sections 79.61 to 79.65 are titled “Approval of instructors, schools and vendors.” We recommend replacing the word “prescribed” with “approved.”

Student Code of Conduct for the programs as established by the Commission

In order to satisfactorily complete basic training, Paragraph (2) requires “Compliance with Student Code of Conduct for the programs as established by the Commission.” The phrase “for the programs as established by the Commission” is vague because it is not clear when the Commission establishes the Student Code of Conduct or where a copy of the document can be obtained. The regulation should include these details to make this provision enforceable.

If applicable, attainment of a passing score

The requirement in Paragraph (3) sets forth a requirement for satisfactory completion that “If applicable, attainment of a passing score on any and all written, oral or range components of a training program.” It is not clear under what circumstances a passing score on a component would not be applicable and who would make that determination. Without an evaluation of the candidate’s knowledge and skills, how would the Commission determine a candidate “satisfactorily completed basic educational and training requirements” as required by 61 P.S. § 332.5(11) for certification? We recommend deleting the phrase “if applicable.” Alternatively, the Commission should explain why it is needed and how it would be applied.

5. Section 79.15. Failure to complete basic training. – Clarity.

Subsection (b)

For consistency, we recommend replacing the phrase “for the reasons under § 79.13” with the phrase “requirements for completion under § 79.13.”

Range and firing range

Subsection (d) uses the term “firing range” whereas Subsection (c) and Sections 79.22 and 79.23 use the term “range.” For consistency, Subsection (d) should use the term “range.”

Request to the Executive Director

Subsection (d) allows the officer’s chief probation officer to submit “...a request to the Executive Director seeking permission....” However, the regulation does not state when or how the Executive Director will respond to that request. The regulation should specify a time frame

for the Executive Director to respond with approval or disapproval of the request.

6. Section 79.21 Maintenance of certification. – Consistency with statute; Clarity.

“Minimum number of hours in in-service training”

The Act (61 P.S. § 332.5(7)) directs the Commission “To require in accordance with this act county probation and parole officers to attend a minimum number of hours in in-service training as provided for by regulation....” The minimum number of hours of in-service training should be established either within this section or elsewhere in the regulation.

Publication

Paragraph (a)(1) requires a certified officer to complete “In-service training, the specifics of which the Commission will publish by the end of the first quarter of each calendar year.” The regulation should specify the in-service training requirements including the number of hours. Further information such as the date, location and time are appropriate for publication elsewhere, but the regulation should specify where this will be published and how certified officers can readily access to that publication.

7. Section 79.22. Range requalification examinations. – Need.

Requalification conducted between April 1 and October 31

Subsection (c) limits range requalification examinations to the period between April 1 and October 31. Why is this limitation needed?

8. Section 79.23. Failure to complete range requalification or in-service training. – Clarity.

Time limit

Subsection (a) permits one additional opportunity to achieve a passing score. The regulation should specify a time limit for achieving the passing score.

9. Section 79.24. Extensions. – Reasonableness; Clarity.

Cross reference

In Subsection (d), the cross-reference should be corrected to § 79.21(a)(2).

Date of suspension

Under Subsection (e), certification is suspended on October 31 if an extension is granted. However, under Section 79.14 a certification remains valid through December 31. The Commission should reconcile these provisions.

10. Section 79.31. Reasons for revocation of certification. – Statutory authority; Reasonableness; Clarity.

Revoke certification for any reason

Under the Act (61 P.S. § 332.5(2)), the Commission has the specific power and duty “to revoke an officer’s certification for failure to comply with educational and training requirements established by the Commission.” The opening sentence of this section of the regulation states, “The Commission may revoke an officer’s certification for **any reason....**” (Emphasis added.) The Commission should either amend this provision to be consistent with the Act or explain its statutory authority to revoke certification for any reason.

Commission-sponsored event

Regarding Paragraph (3), there is no definition of a “Commission-sponsored event” in the regulation or the Act. The regulation should define this term.

Failure to timely comply with requests for information

There are three concerns with Paragraph (5).

First, how does this provision relate to the requirement to comply with educational and training requirements in the Act (61 P.S. § 332.5(2))?

Second, how can an officer’s certification be revoked for failure to provide information on the part of the county or a group of officers? The Commission needs to explain why an individual officer’s certification should be revoked due to the actions or inactions of others.

Third, as written, the regulation would allow certification to be revoked when a certified officer may not even have knowledge of an information request or may not recognize the request. The regulation should specify what information the Commission intends to request, whether the request must be in writing and who within the Commission is authorized to make the request.

11. Section 79.32. Revocation of certification for failure to pass range requalification examination. – Reasonableness.

Immediately revoked

Under Subsection (a), certification is revoked immediately if an officer fails to requalify. However, under Section 79.14 a certification remains valid through December 31. The Commission should reconcile these provisions.

October 31

Relating to our comment on Section 79.22(c), why are range requalification examinations not permitted after October 31 under Subparagraph (b)(2)(iii)?

12. Section 79.42. Failure to complete range requalification within required time frames. – Need, Reasonableness; Feasibility; Clarity.

In no case later than March 31st

Subsection (b) limits requalification to “in no case later than March 31st of the year in which the application is filed with the Executive Director.” We have two questions.

First, how can an officer comply by March 31 when Subsection (a)(3) and Section 79.22(c) limit range requalification examinations to the period between April 1 and October 31? These provisions need to be reconciled.

Second, this would limit requalification to the months of January, February or March. Why is the limitation to March 31 needed? Can an officer reasonably meet this requirement?

13. Section 79.44. Nonrecertifiable revocations. – Clarity.

As printed in the *Pennsylvania Bulletin*, the cross reference to Section 79.31(a) or (d) should be corrected to Section 79.31(1) or (4).

14. Section 79.61. Approval of instructors. – Clarity; Reasonableness.

Appeal procedure

Under Subsection (d), the Commission reserves the right to revoke instructor certification without notice. Subsection (d) should also include a cross-reference to how an instructor can appeal that action by the Commission. It is also appropriate to include this cross-reference in Sections 79.71 and 79.72.

15. Section 79.72. Procedure for officers or schools seeking reconsideration. – Need; Reasonableness; Clarity.

Letter-rulings

Paragraph (a)(5) states, “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.” It is not clear what value a letter-ruling has if it is “subject to withdrawal or change at any time to conform to new or different interpretations of the law.” We have several concerns and questions.

First, what or who could establish “new or different interpretations of the law”? While it is reasonable for these interpretations of the law to stem from court decisions, the wording of the regulation also would allow the Commission to independently reverse decisions based on internal “new or different interpretations of the law.” The regulation should be amended to narrow the scope of what new or different interpretations of the law would result in change or withdrawal of a letter-ruling.

In addition, how can an officer or school rely on letter-ruling decisions if they can be changed or

withdrawn? What notice would the officer or school receive? How would withdrawal of a letter-ruling be reasonable and what would then be the status of the officer or school after they relied upon a favorable letter-ruling? Why would a letter-ruling be withdrawn rather than changed?

Finally, the opportunity to appeal a change or withdrawal is not clear in the regulation and may actually be prohibited in certain circumstances. Section 79.82(a) requires an officer or school that wishes to pursue an appeal to a formal hearing "no later than 30 calendar days after the mailing of the Commission's letter-ruling regarding the request for consideration." If the change or withdrawal occurred after 30 days, the officer or school could not appeal under the regulation. The regulation should allow appeal to a formal hearing when a letter-ruling is changed or withdrawn.

16. Section 79.84. Hearings. – Clarity.

"Identical to 1 Pa. Code § 35.111"

Subsection (d) states, "This subsection is identical to 1 Pa. Code § 35.111." It is not clear how this provision is "identical" to 1 Pa. Code § 35.111. We recommend amending Subsection (d) to clarify its relationship to 1 Pa. Code § 35.111.

17. Section 79.86. Failure to appear at a hearing. – Need; Reasonableness.

Subsection (c)

This subsection states, "If neither the officer or school nor the Commission or their representatives appear at the hearing, the hearing examiner will reschedule the hearing." Why is this provision needed in regulation? Why is there no "without good cause" requirement as included in Subsections (a) and (b)?

18. Section 79.87. Hearing examiner recommendation. – Clarity.

Cross references

The Commission should 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 the Administrative Agency Law)."

Appendix A

Section	
79.2(a)	(Definition of "CFI – Certified Firearms Instructor") A firearms instructor who meets the minimum qualifications for instructors as established by the Commission.
79.12(b)	Application procedures to participate in training programs approved by the Commission will require any officer or county, or both, to submit information required on a form and in a format and within time parameters as specified by the Executive Director.
79.13(2)	Compliance with Student Code of Conduct for the programs as established by the Commission.
79.21(a)(1)	In-service training, the specifics of which the Commission will publish by the end of the first quarter of each calendar year.
79.22(e)	Counties or departments desiring to conduct a range requalification examination shall follow an application process specified by the Commission.
79.24(a)	An officer who is unable to comply with § 79.21 (relating to maintenance of certification) due to extraordinary circumstances may, through the officer's 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 of the year in which the officer's current certification will expire.
79.24(a)(1)(iii)	Supporting documentation.
79.31(3)	Unprofessional conduct during a Commission-sponsored event.
79.31(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.
79.41(1)	Submit an application to the Executive Director in a form approved by the Executive Director...
79.42(a)(1)	...The application must be in a form approved by the Executive Director and co-signed by the chief probation officer.
79.42(b)	The requirements for recertification 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 31st of the year in which the application is filed with the Executive Director.
79.43(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 do the following:
79.43(a)(1)	Submit an application to the Executive Director which must be in a form approved by the Executive Director and also co-signed by the chief probation officer.
79.43(a)(2)	Enroll in, attend and complete a Commission-sponsored basic training program, or enroll in, attend and complete the next available

	offerings of any mandatory in-service training, which were not completed as required by the Commission.
79.43(b)	The requirements for recertification in § 79.43 (relating to failure to meet mandatory in-service training requirements) shall be completed within a time frame established at the discretion of the Executive Director.
79.51(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, but will, from time to time, be further specified by the Commission.
79.51(d)	The Commission may reimburse, in accordance with Commission policies in effect on the dates of the 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....
79.61(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.
79.61(a)(1)	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.
79.64(a)	Basic training conducted by a county must be carried out in accordance with policies and procedures established by the Commission.
79.64(c)	A county desiring to conduct basic training shall submit an application for county-conducted basic training, including the required documentation, to the Executive Director on forms and under procedures established by the Executive Director.
79.64(d)	County-conducted basic training must be conducted on training sites, both classroom and range, that meet Commission standards and are preapproved by the Executive Director.
79.64(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.
79.65(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.
79.65(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 forms and following procedures as established by the Executive Director.
79.65(d)	County-conducted in-service training must be conducted on training sites, both classroom and range, that meet Commission standards and are preapproved by the Executive Director.
79.65(g)	Upon request of the Executive Director or at the conclusion of the training, the county shall submit the forms and materials required by the Executive Director in the time frame specified.
79.71	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(a)(2)	The request for reconsideration must be in a format acceptable to the Executive Director and must, at a minimum, contain the following details: