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INDEPENDENT REGULATORY REVIEW COMMISSION

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

March 11, 2009

R. Scott Schlechter, Chairman
County Probation and Parole Officers' Firearm Education and Training Commission
1101 South Front Street, Suite 5600
Harrisburg, PA 17104-2522

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

Dear Chairman Schlechter:

In our review of this regulation, we identified the following concerns with the clarity of the County Probation and Parole Officers' Firearm Education and Training Commission's (Commission) final-form regulation. We recommend that you consider tolling the review period to consider making the following changes:

1. Section 79.2(a). The definition of "Certified Firearms Instructor."
 - a. We suggest deleting the phrase "who meets the minimum qualifications for instructors as established by the Commission and" so that the definition relies on the qualifications already in the regulation. We note that minimum qualifications are specified in Section 79.61(a)(1). The remaining language would state "a firearms instructor who is approved by the Commission pursuant to § 79.61(a)(1) (relating to Approval of Instructors)."
 - b. The cross reference to "§§ 79.61(a)(1) and (2) (relating to Approval of Instructors.))" includes qualifications for Master Instructors in § 79.61(a)(2). The cross reference should only be to §79.61(a)(1).
2. Section 79.2(a). The definition of "Master Instructor."
 - a. The cross reference to "§ 79.61(a)(3) (relating to Approval of Instructors.))" should be corrected to "§ 79.61(a)(2)."

- b. The deletion of the word "Commission" from the proposed regulation needs to be shown in brackets in the final-form regulation as "[Commission]".
3. Section 79.13(2). The conjunction "or" is problematic. We suggest that the regulation rely on one source for the Student Code of Conduct.
4. Section 79.13(3). This provision states, "Attainment of a passing score on any and all graded or evaluated, or both, written, oral and/or range components of a training program." We suggest rewording this provision to more clearly explain the Commission's intent. We suggest that the Commission consider "Attainment of a passing score on all components of a training program that are evaluated, including written, oral and range components."
5. 79.24(a)(1)(iii). The final-form language requires supporting documentation, but does not specify what the Commission considers to be acceptable documentation. We suggest either providing examples of acceptable documentation such as a copy of military orders or an affidavit from a third party, or alternatively using wording similar to Paragraph (a)(2).
6. Section 79.31(3). Under this provision, "unprofessional conduct" can result in revoking an officer's certification. The regulation should specify what constitutes "unprofessional conduct" so that the officer has notice of the conduct that can result in losing certification.
7. Section 79.32(b)(2)(iii). The word "will" should be added between the words "examinations" and "not."
8. Section 79.43(a)(1). The word "and" should be added between the end of the citation to the website and the word "shall."
9. Section 79.43(b). This provision states requirements "shall be completed within a timeframe established by the Executive Director." We suggest replacing this phrase with a more definite timeframe, or that the regulation specify that the Commission's written approval of this application will direct the applicant to the training or examination that must be taken to maintain certification.
10. Section 79.61(a). The three paragraphs under Subsection (a) in the proposed regulation were amended to two paragraphs in the final-form regulation. However, the reformatting of the final-form regulation does not show the deletion of the designation of Paragraph (3). We note this is related to the concerns identified with the cross-references in the definitions of "Certified Firearms Instructor" and "Master Instructor."
11. Section 79.64(a). This provision states, "A Basic Training conducted by a county must be carried out in accordance with policies and procedures as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>)." The regulation requires compliance with policies and procedures not in the regulation by deferring to the website. We suggest deleting this provision or adding the policies and procedures to

the regulation. If the Commission believes it needs more flexibility than can be afforded by a regulation, we suggest the Commission implement this provision in another way, such as a Statement of Policy.

12. Section 79.64(d). The requirement to meet “Commission standards” is not clear in the regulation. We also note the requirements to “meet Commission standards” and for “pre-approval by the Executive Director” appear to be redundant. We suggest either deleting the phrase “meet Commission standards and” or adding the standards to the regulation. If the Commission believes it needs more flexibility than can be afforded by a regulation, we suggest the Commission implement this provision in another way, such as a Statement of Policy.
13. Section 79.64(g). The phrase “all forms and materials required by the Executive Director” is not clear. The regulation should specify or cross reference within the regulation the materials required to be submitted.
14. Section 79.65(a). This provision states, “Counties may conduct In-Service Training courses that have been approved and adopted by the Commission in accordance with policies and procedures set forth on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>).” The regulation requires compliance with policies and procedures not in the regulation by deferring to the website. We suggest deleting this provision or adding the policies and procedures to the regulation. If the Commission believes it needs more flexibility than can be afforded by a regulation, we suggest the Commission implement this provision in another way, such as a Statement of Policy.
15. Section 79.65(d). The requirement to meet “Commission standards” is not clear in the regulation. We also note the requirements to “meet Commission standards” and for “pre-approval by the Executive Director” appear to be redundant. We suggest either deleting the phrase “meet Commission standards and” or adding the standards to the regulation. If the Commission believes it needs more flexibility than can be afforded by a regulation, we suggest the Commission implement this provision in another way, such as a Statement of Policy.
16. Section 79.65(g). The phrase “all forms and materials required by the Executive Director” is not clear. The regulation should specify or cross reference within the regulation the materials required to be submitted.
17. Sections 79.12(b), 79.22(e), 79.24(a), 79.41(a), 79.42(a)(1), 79.43(a)(1), 79.61(a), 79.64(c) and 79.65(c). While the final-form regulation refers to the website, the reference provided is to the home page of the FETC. Since these provisions are presented as enforceable requirements in regulation, we suggest using a more specific web address to direct a person to the specific form or format required for compliance.

Given Mr. Burns’ indication yesterday at the Senate Judiciary Committee meeting that a tolling would be an acceptable method to resolve these concerns, the Board must deliver a written notice to both of the Standing Committees and our Commission on the same day. The written notice

must be delivered before either Committee takes action on the regulation, or before the end of the Committees' review period at 10:30 on March 18, 2009, whichever occurs first.

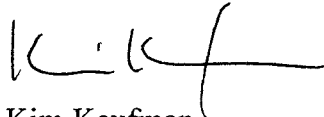
As required by Section 307.5 of our regulations, written notice must include:

1. A citation to the section(s) the Board is considering revising,
2. A description of the revisions the Board is considering, and
3. An explanation of how the revisions will satisfy the concerns listed above.

If your written notice includes revisions that are beyond the scope of our recommendations, the Commission may object to tolling the review period. If we object, we are required to notify you and the Committees within two business days after receipt of your tolling notice. If the Commission objects to your tolling notice, the review period will not be tolled and your regulation will be considered by the Commission at our public meeting on March 19, 2009. If the Commission does not object, the review period is tolled for up to 30 days beginning with receipt of your letter and ending on the day you resubmit the regulation.

We look forward to meeting with you to discuss and resolve these concerns. Please contact me if you have any questions.

Sincerely,



Kim Kaufman
Executive Director

cc: Todd Burns, Executive Director
Robert A. Mulle, Esq., Office of Attorney General