

RECEIVED

**FINAL RULEMAKING**

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

INDEPENDENT REGULATORY

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

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

**[ \_\_\_\_\_ Pa. B. \_\_\_\_\_ ]**

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

Authority

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

Purpose

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

### Affected Parties

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

### Fiscal Impact

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

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

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

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

### Cost and Paperwork Requirements

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

### Public Comment

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

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

### Discussion of Comments and Major Changes

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

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

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

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

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

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

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

- *Section 79.3 Enrollment*

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

- *Section 79.12 Applications*

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

- *Section 79.13 Requirements for Completion*
  - Paragraph (1) – IRRC expressed concern about the word “prescribed” because it is not clear what is meant by “prescribed program” nor who prescribes the program. Accordingly, per IRRC’s suggestion, the word “prescribed” was replaced with “approved.”
  - Paragraph (2) – IRRC expressed concern about the phrase “Compliance with Student Code of Conduct for the programs as established by the Commission.” Their concern was that the phrase was vague because it is not clear who establishes the Student Code of Conduct or where a copy of the document can be obtained. Accordingly, this paragraph was changed to read, “Compliance with Student Code of Conduct for such programs as reviewed and approved annually by the Commission and set forth in the course syllabus for each training program and on the Commission’s website;...”
  - Paragraph (3) – IRRC expressed concern that this regulation was not clear in explaining when a passing score on a component would be inapplicable and who would make that determination. IRRC expressed concern that the FETC would be unable to determine if a candidate satisfactorily completed a course without administering a written examination. It is the FETC’s position that what constitutes a satisfactory completion of a course is different for each course. Some of the courses require that students achieve a passing score on a written examination but not all of the courses have such a requirement. The phrase “if applicable” at the beginning of this paragraph serves the purpose of highlighting this fact. Nonetheless, the FETC has deleted “if applicable” from the final regulation and added the phrase “graded or evaluated, or both” before “written, oral and/or range components of a training program.”
  
- *Section 79.15 – Failure to Complete Basic Training*
  - Subsection (b) – The IRRC recommended replacing the phrase “for the reasons under § 79.13” with the phrase “requirements for completion under § 79.13.” The FETC did not fully follow this recommendation and instead replaced the phrase “for the reasons” with “requirements.”
  - Subsection (d) – IRRC expressed two concerns pertaining to this subsection.
    - The first concern that IRRC expressed was that this subsection was inconsistent with §§ 79.22 and 79.23 since these sections

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

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

- *Section 79.21 – Maintenance of Certification*

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

- *Section 79.22 – Range Requalification Examinations*

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

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

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

- *Section 79.24 – Extensions*
  - Subsection (a) was revised to add a reference to the FETC’s website. Additionally, subsection (a)(1)(iii) was revised to cross-reference subsections (a)(1)(i) and (ii) to better describe some of the types of supporting documentation that must be submitted.
  - IRRC pointed out that the cross-reference in subsection (d) was incorrect. This incorrect cross-reference has been corrected. Additionally, FETC revised this subsection to require that a request to conduct a range requalification examination be in writing.
  - IRRC expressed concern that subsection (e) was inconsistent with § 79.14. Subsection (e) provided that an officer who has been granted an extension will have his certification suspended on October 31 of the year in which the officer’s current certification expires whereas § 79.14 provided that a certification would remain valid through December 31. The FETC reconciled these two provisions by deleting the October 31 date and adding language providing that a granted extension shall be effective to the ending date of the granted period of extension.
  
- *Section 79.31 – Reasons for Revocation of Certification*
  - IRRC expressed concern about the provision in this section that provided the FETC with the authority “to revoke an officer’s certification for any reason...” IRRC alleged that this was inconsistent with the FETC legislation, specifically 61 P.S. § 332.5(2). Accordingly, the FETC revised this regulation by deleting the “for any reason” verbiage and cross-referencing § 79.21 (relating to Maintenance of Certification) of the regulations.
  - In referencing subpart (3), IRRC recommended that “Commission-sponsored event” be defined. The FETC revised this subpart by deleting the phrase “Commission-sponsored event” and adding “an event or training that is conducted by the Commission.” The FETC also clarified what constitutes “unprofessional conduct” for purposes of revoking certifications.
  - IRRC expressed three concerns with subpart (5): (1) that this subpart did not comport with the FETC Act, namely 61 P.S. § 332.5(2); (2) that an individual officer’s certification could be revoked due to the actions or inactions of others; and (3) that an individual officer’s certification could be revoked when an individual officer may not even have knowledge that the FETC is in need of information. Accordingly, this subpart was deleted in its entirety.

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

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

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



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

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

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

- *Section 79.44 – Non-Recertifiable Revocations*

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

- *Section 79.51 – Reimbursement of Expenses*

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

- *Section 79.61 – Approval of Instructors*

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

- Paragraph (a) was revised to explain that the submission process is via the FCTMS.
  - Paragraph (a)(1) was revised to comply with existing FETC practice in that the Academic CFI is not used by the FETC in designating CFIs. Accordingly, the bifurcation of CFI between Academic and Range was deleted.
  - Paragraph (a)(2) was revised to require that an instructor serve as a CFI for at least a 36 month period prior to being eligible for MI status.
  - Paragraph (b) was revised to indicate which date controls for purposes of calculating the 36-month period when a CFI subsequently attains MI status.
  - Paragraph (c)(1) was revised to comply with existing FETC practice.
  - Paragraph (d) was revised to reference the available reconsideration procedure should a CFI or MI whose certification is revoked by the FETC wish to pursue reconsideration.
- *Section 79.62 - Approval of Schools and Vendors*

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

- *Section 79.63 - Requirements for In-Service Training Course(s)*
  - Paragraph (b) was revised based upon an informal comment received from IRRC that the phrase “in such format and follow such procedures as established by the Executive Director” was vague. This comment was received after the allowable time period for submission of comments. Nonetheless, the FETC is deleting this phrase and simply requiring that the proposal be submitted in writing.
- *Section 79.64 – County-Conducted Basic Training & Section 79.65 – County-Conducted In-Service Training*

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

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

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

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

- *Section 79.84 – Hearings*

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

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

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

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

- *Section 79.87 – Hearing Examiner Recommendation*

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

*Effective Date*

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

*Sunset Date*

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

*Regulatory Review Act*

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

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

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

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

## ORDER

The FETC finds:

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

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

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

SCOTT SCHLECHTER  
Chairperson

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

RECEIVED

I.D. NUMBER: 41-018

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

AGENCY: BOARD OF PROBATION & PAROLE

2009 APR 13 PM 3:12

**TYPE OF REGULATION**

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

**FILING OF REGULATION**

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