

**This Regulation contains the revised Preamble
Original Preamble is located in Related Documents**

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

State Police – Municipal Police Officers' Education & Training Commission

(2) Agency Number:

Identification Number: 17-75

IRRC Number: 2661

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INDEPENDENT REGULATORY
COMMISSION

(3) Short Title:

Retired Law Enforcement Officers Identification and Qualification Cards

(4) PA Code Cite:

37 Pa. Code Chapter 221

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Syndi L. Guido, 717-772-0905, 1800 Elmerton Avenue, Harrisburg, PA 17110, FAX No. 717-705-1750, sguido@state.pa.us

Secondary Contact: Major John Gallaher, 717-346-4086, 8002 Bretz Drive, Harrisburg, Pa 17112, FAX No. 717-346-7782, jgallaher@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation adds Chapter 221 to Title 37. The new chapter provides for the issuance of identification and qualification cards for retired law enforcement officers, pursuant to 53 P.S. § 753.1 et seq. Specifically, the regulation provides for eligibility, requirements and contents of the "Retired Law Enforcement Identification Card," as well as issuance and replacement of the card. It also provides for the eligibility, issuance, and replacement of the qualification card, as well as its contents.

(9) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The date by which the agency must receive public comments: | _____ |
| B. The date or dates on which public meetings or hearings will be held: | _____ |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | _____ |
| D. The expected effective date of the final-form regulation: | Upon publication
in the <i>PA Bulletin</i> |
| E. The date by which compliance with the final-form regulation will be required: | Upon publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | Upon publication |

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

Due to the unique nature of this regulation, it will be continuously reviewed and updated if necessary.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Act of December 13, 2005, P. L. 432, 53 P.S. § 753.7.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Pursuant to the Retired Law Enforcement Identification Act, the Act of December 13, 2005, P. L. 432, 53 P.S. § 753.7, the Municipal Police Officers' Education and Training Commission is required to promulgate regulations necessary to carry out the provisions of the act.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Retired Law Enforcement Identification Act, the Act of December 13, 2005, P. L. 432, 53 P.S. § 753.7, mandates the Municipal Police Officers' Education and Training Commission to promulgate regulations necessary to carry out the provisions of the act.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

N/A

(16) 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.

Retired law enforcement officers who wish to carry a concealed firearm and certified law enforcement firearms instructors will need to comply with this regulation.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

- Law enforcement agency must bear cost of providing I.D. cards.
- Retired law enforcement officers are charged up to \$15.00 for I.D. card.
- Firearms instructors must pay \$2.00 for each qualification card.
- Retired law enforcement officers are charged up to \$5.00 for cost of obtaining confirmation number (CHRIA check, etc.) from Sheriff.

The amount of the above fees is set by the act. The cost of the identification card, qualification card, and confirmation number is a minimum of \$22.00 per retired officer. The Commission estimates 4,000 retired officers participating in this voluntary program for a total cost of \$88,000.

(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. Explain how the dollar estimates were derived.

N/A

(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. Explain how the dollar estimates were derived.

Costs associated with converting a current position to an administrative assistant needed to establish and maintain two databases – one for participating retired officers and one for qualified firearms instructors. This employee will also serve as the point of contact for any inquiry regarding the implementation of this new program. It is estimated to be a full time work on the initial year (\$33,400), reduced to half time work in subsequent years once the program is in operation (\$16,700). In addition, the statute requires sheriffs to conduct a check of the Pennsylvania Instant Check System before issuing a qualification card. Each check costs the Department approximately \$12. With an estimated 4,000 applications, the cost to the Department would be \$48,000. However, the statute only authorizes the Department to collect \$5 for each records check or \$20,000. Consequently, the Department must absorb the additional \$28,000 cost

Regulatory Analysis Form

of the check.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community		88,000	88,000	88,000	88,000	88,000
Local Government						
State Government		61,400	44,700	44,700	44,700	44,700
Total Costs		149,400	132,700	132,700	132,700	132,700
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Program	FY -3	FY -2	FY -1	Current FY
General Fund – Municipal Police Training	3,846,000	3,846,000	4,269,000	4,932,000
Motor License Fund – Municipal Police Training	3,846,000	3,846,000	4,269,000	4,932,000

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The costs are a reasonable means to effectuate the federal Law Enforcement Officers' Safety Act of 2004, which permits retired officers to carry a firearm interstate.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The regulation was discussed and voted upon at the Commission's public meetings.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

None. The action cannot be accomplished through any alternative method.

(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 regulations.

The regulations are not more stringent than federal standards. They are simply a means of effectuating the provisions of the Law Enforcement Officers' Safety Act of 2004, 18 U.S.C. § 926C, in the Commonwealth.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not put the Commonwealth at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Copies of qualification cards from certified law enforcement firearms instructors and the sheriffs must be maintained by the Commission, as well as copies of qualification cards confiscated by the sheriff for those persons who are not issued unique approval numbers.

Regulatory Analysis Form

(28) 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.

N/A

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
BOARD COMMISSION

DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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

Pennsylvania State Police
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 17-75

DATE OF ADOPTION _____

By: Col. Frank E. Pawlowski

Colonel Frank E. Pawlowski
TITLE Commissioner

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY: Andrew C. Clark
JUN 26 2009
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

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

Title 37. Law

Part IV. Municipal Law Enforcement Officers' Education and Training Commission

Subpart B. Retired Law Enforcement Identification and Qualification

Chapter 221. Retired Law Enforcement Officers Identification and Qualification Cards

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PROPOSED RULEMAKING

**MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING
COMMISSION**

[37 PA. CODE CH. 221]

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Retired Law Enforcement Officers Identification and Qualification Cards

Description and Purpose

Pursuant to the Retired Law Enforcement Identification Act, the Act of December 13, 2005, P.L. 432, No. 79, 53 P.S. § 753.7 (the "act"), the Municipal Police Officers' Education and Training Commission (Commission) is required to promulgate regulations necessary to carry out the provisions of the act. This proposed rulemaking provides for the eligibility, requirements, contents, issuance, and replacement of identification and qualification cards for retired law enforcement officers in Pennsylvania.

Statutory Authority

This proposed rulemaking is authorized by the Act of December 13, 2005, P.L. 432, No. 79, 53 P.S. § 753.7.

Effect

This proposed rulemaking will affect former law enforcement officers who retired from Pennsylvania law enforcement agencies.

Effective Date/Sunset Date

These regulations will be continually monitored and updated as needed. Therefore, no sunset date has been set.

Comments and Responses

The Commission received several comments from members of the public who were concerned that the proposed regulations did not apply to individuals who retired from a federal or out-of-state law enforcement agency. To address these concerns, the Commission amended § 221.31 (relating to eligibility for a qualification card). The Commission made no change to § 221.21 (relating to eligibility for an identification card). For purposes of issuing a retired law enforcement officer identification card, the state law only governs individuals who retired from Pennsylvania's law enforcement agencies. Individuals who retired from a federal or out-of-state agency are authorized to

carry under 18 U.S.C. § 926C(d)(2) by obtaining an identification card from the agency they retired from coupled with a qualification card issued in Pennsylvania.

One commentator was concerned that §§ 221.21 and 221.31 could be interpreted to mean an individual was not eligible for an identification or qualification card unless he spent an aggregate of 15 or more years with a single, Pennsylvania law enforcement agency. These sections have been clarified to eliminate that concern. One retiree asked whether the Commission or his former agency would determine whether he had retired in good standing with the requisite years of service. Section 221.21 has been revised to clarify that the decision will be made by the current head of the public agency from which the officer retired.

The Commission also received these additional comments from IRRC:

IRRC noted that the terms “agency,” “public agency,” “law enforcement agency,” “issuing agency,” law enforcement agency from which the applicant retired,” and “retiring agency” seemed to be used interchangeably throughout the regulation. The final-form regulation has been revised to use the term “public agency” with more consistency.

Sections 221.23(b), 221.24(a), and 221.34(a) either require or permit a retired law enforcement officer to make requests related to identification and qualification cards. IRRC said the final-form regulation should specify whether these requests must be in writing. Public agencies in Pennsylvania that employ law enforcement officers vary greatly in terms of size and internal operating procedures. Accordingly, the Commission decided to leave the required form of request to the discretion of the individual public agencies and firearms instructors.

The definition of “certified law enforcement firearm instructor” in § 221.2 contains the phrase “or other certification approved by the ...Commission.” IRRC believes the regulation should set forth the specific methods for obtaining “other certification” from the Commission. The Commission declined this suggestion as unnecessary because substantially similar language exists in the Commission’s current regulations regarding approval of CPR certifications and police training courses.

IRRC said the Commission should explain how a retired officer’s eligibility for a retired law enforcement identification card is affected by the Pension Forfeiture Act. IRRC’s suggestion was prompted by an objection from the Fraternal Order of Police, Pennsylvania State Lodge to § 221.21(4), which requires an officer to have a nonforfeitable right to benefits under the retirement plan of a public agency in order to be eligible for an identification card. That eligibility requirement is mandated by the federal law, 18 U.S.C. § 926C(c)(3)(B)(5). Based on this eligibility requirement, the FOP mistakenly contends that no retired officer has a truly nonforfeitable right to benefits because a public official or employee’ pension is subject to forfeiture if he or she is convicted of certain criminal offenses. However, the Pension Forfeiture Act only pertains to offenses committed in relation to one’s office or employment. Therefore, if an

officer retires without committing one of the enumerated offenses, he or she has a nonforfeitable right to retirement benefits.

IRRC commented on a discrepancy between language in the act and § 221.21(5) and § 221.31(2)(x) of the proposed rulemaking. Section § 221.21(5) has been removed. Section 221.31(2)(x) has been revised to be consistent with the act.

IRRC noted that § 221.22(b)(9) requires the identification card to contain “other information” as designated by the Commission. IRRC asked how one would know what other information to put on the card. IRRC also felt this provision seems to conflict with subsection (a), which requires all cards to be uniform. The Commission expressed a similar concern about § 221.32(b)(9). Subsection (b)(9) has been eliminated in both § 221.22 and § 221.32.

IRRC asked why it is an option for a retired officer to obtain a replacement card under §§ 221.24(a) and 221.34(a) but it is a requirement to do so under § 221.24(b) and 221.34(b). If the identification card originally issued to a retired officer has been lost, stolen, destroyed, mutilated, or is illegible and the retired officer wants to carry a concealed weapon pursuant to the federal Law Enforcement Officers Safety Act, the retired officer may choose to obtain a replacement card. If the officer does not want to carry a weapon, he or she may choose not to have the identification card replaced. On the other hand, if there is an error on the card or information on the card is no longer correct, the card needs to be replaced with one containing accurate information. IRRC also asked why there is a fee for a replacement card under the former subsections but not the latter subsections. IRRC also asked the amount of the fees. IRRC questioned whether an individual must apply for replacement cards. IRRC noted that § 221.23 specifies the time frame within which a law enforcement agency must issue an initial identification card but does not set forth a timeframe for issuing a replacement card. These subsections have been amended to clarify that there is a fee for all types of replacement cards unless the need for a replacement card is based on an error caused by the public agency. Then no fee will be charged. The Commission declined to set forth the amount of the fee in the regulation itself. The cost of replacing the card will depend on the cost of producing the cards at that point in time. The Commission does not want to have to change its regulation any time production costs change. The specific procedure and timeframe for obtaining a replacement card will be determined by the agency issuing the identification card.

IRRC noted that commentators questioned what entity would be responsible for verifying that a retired officer meets the 16 criteria under § 221.31(2). This is a self-verification process in which the retiree certifies, under penalty of 18 Pa. § 4904, that he or she meets all of the eligibility criteria.

IRRC commented on Representative Ronald Marsico’s concern that there is an inherent conflict between § 221.31(2)(ii), which acknowledges that a retired officer can carry an “automatic weapon” and § 221.21(2)(ix), which excludes “machine guns” from the definition of firearms. The two subsections do not conflict because there are fully

automatic pistols that are not machine guns. IRRC questioned the need to permit a retired officer to carry an automatic weapon. Regardless of necessity, federal law permits retired officers to carry automatic weapons.

IRRC pointed out that § 221.33(c) requires retired officers to meet firearms training and qualification standards without specifying what those standards are. IRRC believes the specific standards should be set forth in the regulation. The Commission declined this suggestion because current regulations for active law enforcement officers require officers to meet standards established by the Commission without setting forth the specific standards in the regulations itself. IRRC questioned how long sheriffs and firearms instructors must maintain records and in what form they should be retained. IRRC also asked the Commission to specify the acceptable format for instructors and sheriffs to submit certain records to the Commission. The regulation has been revised accordingly.

Finally, IRRC asked the Commission to make certain revisions in §§ 221.21(5), 221.21(6), 221.31(2)(xiv) and 221.31(2)(xv). The Commission made the appropriate amendments.

The Commission received comments from the Pennsylvania State Association of Township Supervisors. First the Association asked whether public agencies must reissue identification cards periodically or simply replace lost, stolen, or illegible cards. The regulations state the circumstances under which a public agency must reissue cards; otherwise, reissuance of the cards is at the discretion of the public agency, provided all cards meet the required standards. The Association also questioned whether a public agency has an obligation to notify the Commission when it issues an identification card. The regulations do not require public agencies to notify the Commission of the issuance of identification cards.

The Commission received the following comments from the Pennsylvania Board of Probation and Parole, the County Chief Adult Probation and Parole Officers Association of Pennsylvania, and the County Probation and Parole Officers Firearm Education and Training Commission (hereinafter “parole officials”):

First, parole officials asked if a retiree can qualify on the weapon on which an agency’s active employees qualify or any weapon. The regulations do not limit qualification to any specific weapon. If a public agency chooses to qualify its retirees based on the agency’s standards, the public agency is free to specify what weapon must be used in the course of fire. However, a public agency has no obligation to qualify its retirees.

Next, parole officials questioned whether a retiree must qualify with the agency from which he or she retired. A public agency elects to qualify its retired employees by the agency standards, a retiree can choose to qualify with that agency or can choose to qualify with any other certified firearms instructor. The qualification card will be issued by the agency or instructor that actually qualified the retiree.

Parole officials asked whether a public agency can charge a fee to qualify retirees. Again, public agencies have no obligation to qualify their retirees. If an agency chooses to do so, the agency would have to decide whether to charge a fee for its services.

Parole officials felt § 221.23(a) seemed to contradict § 221.23(c). Section 221.23(a) and (b) have been revised to clarify that a public agency does not have to issue a retired identification card until after the officer has paid the requisite fee.

Parole officials complained that the definition of “certified firearm instructor” does not include firearms instructors from the Board of Probation and Parole’s Firearms Instructor Course. Parole officials are under no obligation to certify any retirees. Should they choose to do so, the Commission has the authority to recognize their instructors as certified law enforcement firearms instructors.

Parole officials asked whether firearms instructors must issue a separate qualification card for each weapon the retiree qualifies with. A qualification card is issued when an instructor determines a person has qualified under the applicable standards. The card is not connected to a specific weapon.

Parole officials asked about the type of ammunition required for qualification and whether a retiree must qualify with the public agency’s ammunition or bring their own ammunition. Parole officials also asked whether there is a standardized course of fire available to retirees or whether that will be determined on a case-by-case basis. The statute and regulations define the Commonwealth’s standards for training and qualification as *either* the standards established by the public agency from which the officer retired or by the Commission. Again, parole officials have no duty to qualify any retirees. If they choose to do so, the individual public agency determines its own standards and course of fire for training and qualification.

Parole officials questioned whether the regulations apply to all former retirees. They posed the hypothetical of someone who retired ten years ago and asked whether the agency would first be required to put the retiree through its active employee qualification course of fire. They also asked what is meant by the “state’s standards” in § 221.21(5). Public agencies are under no obligation to qualify their retirees. If they choose to do so, a public agency could use its own standards for training and qualification or those approved by the Commission. Section 221.25(5) has been removed from the final rulemaking.

Finally, parole officials asked who bears the responsibility for ensuring a retiree has met all of the eligibility requirements of § 221.31. As explained above, a retiree is responsible for certifying, under penalty of 18 Pa. C.S. § 4904, that he or she meets the enumerated criteria.

The Commission received the following comments from Representative Ronald S. Marsico, Republican Chair of the House Judiciary Committee:

Representative Marsico pointed out several typographical errors in the proposed regulation, all have been corrected. He also perceived an inherent conflict between § 221.21(5) and 221.31(2)(iii). Section 221.21(5) of the proposed regulation has been removed. Representative Marsico noted an inconsistency between terminology in §§ 221.21(6) and 221.31(2)(viii), which has been corrected.

Representative Marsico raised a question about whether an individual needed to meet all 16 requirements in § 221.31. The Commission clarified that all 16 requirements must be met by correcting a typographical error in the proposed regulations.

Representative Marsico pointed out the need to recognize that officers who retired from a federal or out-of-state public agency would need to obtain an identification card from that agency. This clarification has been made in the final rulemaking.

Finally, Representative asked several questions about the need to record the type of ammunition used in the firearms qualification process. This requirement conforms to routine firearms qualification practices.

The Commission received no comments from Senate Law and Justice Committee or any other member of the House Judiciary Committee.

Regulatory Review

March 14, 2008, copies of the proposed rulemaking were delivered to the Independent Regulatory Review Commission and the Majority and Minority Chairs of the House Judiciary Committee and the Senate Law and Justice Committee. Notice of proposed rulemaking was published at 38 Pa. B. 1486 (March 29, 2008) and provided for a 30-day public comment period. In compliance with section 5(c) of the Regulatory Review Act, the Pennsylvania State Police provided IRRC and the Committees with copies of all comments received during the public comment period, as well as other documents if requested. In preparing the final-form rulemaking, the Pennsylvania State Police has considered all comments received from IRRC, the House and Senate Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act, these final form regulations were deemed approved by the House and Senate Committees. Under section 5.1(g) of the Regulatory Review Act, the final-form regulations were deemed approved by IRRC on _____.

Contact Person/Public Comment

For further information on the final-form rulemaking, contact Syndi L. Guido, Policy Director, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. If you are a person with a disability and require an alternative

format of this document (i.e. large print, audio tape, Braille) please contact Ms. Guido so that she may make the necessary arrangements.

Findings

The Commission finds that:

(1) Public notice of intention to adopt these amendments has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.2003.

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC, the Senate Committee on Law and Justice, and the House Judiciary Committee.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 37 Pa. Code, Chapter 23, Administration of the Training Program, are amended as set forth in Annex A.

(b) The Commission will submit this order and Annex A to the Office of General Counsel and Office of Attorney General as required by law for approval as to form and legality.

(c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

COLONEL FRANK E. PAWLOWSKI
Chairperson

Annex A

TITLE 37. LAW

**PART IV. MUNICIPAL POLICE OFFICERS' EDUCATION AND
TRAINING COMMISSION**

**Subpart B. RETIRED LAW ENFORCEMENT IDENTIFICATION AND
QUALIFICATION**

**CHAPTER 221. RETIRED LAW ENFORCEMENT OFFICERS
IDENTIFICATION AND QUALIFICATION CARDS**

Subch.

A. GENERAL PROVISIONS

B. RETIRED LAW ENFORCEMENT IDENTIFICATION CARDS

C. QUALIFICATION CARD

Subchapter A. GENERAL PROVISIONS

Sec.

221.1. Purpose.

221.2. Definitions.

§ 221.1. Purpose.

This chapter provides for the issuance of identification and qualification cards for retired law enforcement officers as provided under section 7 of the act (53 P. S. § 753.7), regarding rules and regulations.

§ 221.2. Definitions.

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

Act--The Retired Law Enforcement Identification Act (53 P. S. §§ 753.1--753.9).

Certified law enforcement firearm instructor--An individual who possesses a current police firearms instructor rating from the National Rifle Association, the Pennsylvania State Police, the Municipal Police Officers' Education and Training Commission, the Deputy Sheriffs' Education and Training Board, the Federal Bureau of Investigation, the Smith & Wesson Academy, the Philadelphia Police Academy or the United States Secret Service or other certification approved by the Municipal Police Officers' Education and Training Commission.

Commission--The Municipal Police Officers' Education and Training Commission.

Commonwealth's standards for training and qualification for active law enforcement officers to carry a firearm--The standards established by the [law enforcement] PUBLIC agency from which a law enforcement officer retired or by the Commission for training and qualification to carry a firearm of the same type as the concealed firearm, provided

that the Commission does not charge a fee to certified law enforcement firearm instructors and officers for the standards, whether access to the standards is given through the Internet or some other form for publication.

Confirmation number--A unique approval number provided by the Pennsylvania State Police to the sheriff after a check of the applicant's criminal history record, juvenile delinquency record and mental health record.

Identification card--A retired law enforcement officer identification card authorized under section 4 of the act (53 P. S. § 753.4), regarding retired law enforcement identification card.

Qualification card--A valid firearm training and qualification card authorized under section 5 of the act (53 P. S. § 753.5), regarding firearm training and qualification card. When carried with an identification card, a qualification card constitutes a Pennsylvania license to carry a firearm.

Retired law enforcement officer or officer--A qualified retired law enforcement officer as defined in 18 U.S.C. § 926C(c) (relating to carrying of concealed firearms by qualified retired law enforcement officers).

Subchapter B. RETIRED LAW ENFORCEMENT IDENTIFICATION

CARDS

Sec.

221.21. Eligibility.

211.22. Identification card contents.

221.23. Identification card issuance.

221.24. Replacement; change in material information.

221.25. Challenge to issuance of identification card.

§ 221.21. Eligibility.

An identification card shall only be issued to an individual who meets the following conditions:

(1) Retired in good standing, for reasons other than mental instability, from service with a public agency as a law enforcement officer AS DETERMINED BY THE CURRENT HEAD OF THAT PUBLIC AGENCY.

(2) Before retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest.

(3) Before retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more or retired from service with [the] A public agency, after

completing any applicable probationary period of service, due to a service-connected disability, as determined by the PUBLIC agency.

(4) Has a nonforfeitable right to benefits under the retirement plan of the public agency.

[(5) Has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms during the most recent 12-month period.]

[(6)] (5) Is not prohibited by Federal law from receiving OR POSSESSING a firearm.

§ 221.22. Identification card contents.

(a) Identification cards must be uniform throughout this Commonwealth and on a form prescribed by the Commission.

(b) The identification card must contain the following:

(1) The caption "Retired Law Enforcement Identification Card."

(2) The photograph of the retired law enforcement officer.

(3) The name, address, date of birth, race, sex, height, weight, color of hair, color of eyes, and signature of the retired law enforcement officer.

(4) The signature of the law enforcement officer issuing the identification card.

(5) The name, telephone number and address of the [law enforcement] PUBLIC agency issuing the identification card.

(6) The date the identification card was issued.

(7) The statement that "this card does not give the retired law enforcement officer any police powers, including any authority to arrest."

(8) The statement that "the retired law enforcement officer must carry both the identification card and qualification card in order to carry a concealed firearm."

~~(9) Other information designated by the Commission.~~

§ 221.23. Identification card issuance.

(a) A [law enforcement] PUBLIC agency shall provide each retired law enforcement officer with an identification card, within 60 days of the officer's retirement, PROVIDED THE OFFICER HAS PAID THE REQUISITE FEE.

(b) If a[n] LAW ENFORCEMENT officer has retired prior to *(Editor's Note:*
The blank refers to the effective date of adoption of these regulations.), upon request of the retired law enforcement officer, a [law enforcement] PUBLIC agency shall provide the LAW ENFORCEMENT officer with an identification card, within 60 days of the officer's request, PROVIDED THE OFFICER HAS PAID THE REQUIRED FEE.

(c) A [law enforcement] PUBLIC agency may charge a reasonable fee, not to exceed \$15, for each identification card, or replacement card. The identification card may not be issued until the retired law enforcement officer has paid the fee.

§ 221.24. Replacement; ERROR OR change in material information.

(a) Replacement. If an identification card is lost, stolen, destroyed, mutilated or becomes illegible, the retired law enforcement officer may obtain a replacement identification card upon request to the [issuing] PUBLIC agency and payment of the required fee.

(b) Error or change in information. If any information on an identification card has changed, or is in error, from the information originally set forth, the retired law enforcement officer shall [obtain from] APPLY TO the [issuing] PUBLIC agency, AND SUBMIT THE REQUIRED FEE, FOR A NEW IDENTIFICATION CARD within 15 days of the change or discovery of the error[, a new identification card]. NO FEE WILL BE CHARGED IF THE PUBLIC AGENCY CAUSED THE ERROR TO OCCUR.

§ 221.25. Challenge to issuance of identification card.

The Commission will have standing to contest issuance of any identification card subject to the provisions of §§ 203.101--203.103 (relating to notice and hearings).

Subchapter C. QUALIFICATION CARD

Sec.

221.31 Eligibility.

221.32 Qualification card contents.

221.33 Qualification card issuance.

221.34 Replacement; change in material information.

221.35 Challenge to issuance of identification card.

§ 221.31. Eligibility.

A retired law enforcement officer shall be eligible for a qualification card if the retired law enforcement officer meets [one] ALL of the following conditions:

(1) Resides in this Commonwealth.

(2) Is [retired from a law enforcement agency from this Commonwealth or any political subdivision thereof] A RETIRED LAW ENFORCEMENT OFFICER and prior to each annual qualification, completes a Pennsylvania Retired Officer Concealed Carry Acknowledgement, on a form prescribed by the Commission, attesting to all of the following, subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(i) Prior to retirement, the applicant was employed as a law enforcement officer for an aggregate of 15 years or more or retired from service with [that] A PUBLIC agency after

completing any applicable probationary period of service, due to a service-connected disability, as determined by the [law enforcement] PUBLIC agency.

(ii) Whether the person intends to fire and carry a revolver, semi-automatic or automatic weapon.

(iii) The [law enforcement agency from which the applicant retired has issued the applicant an identification card under § 221.23 (relating to identification card issuance)]

THE APPLICANT IS A RETIRED LAW ENFORCEMENT OFFICER.

(iv) The applicant retired in good standing, specifying the PUBLIC agency, city and state from which the applicant retired.

(v) [Whether] The applicant DID NOT retire[d] for reasons of mental instability.

(vi) The applicant is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(vii) The applicant will not carry a firearm while under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(viii) The applicant is not prohibited by Federal or State law from receiving or possessing a firearm.

(ix) The applicant understands and acknowledges that the definition of a firearm does not include any machine gun, firearms silencer, destructive device or prohibited offensive weapon.

(x) The applicant understands and acknowledges that he shall meet [Pennsylvania's] THE COMMONWEALTH'S standards [of requalification] for TRAINING AND QUALIFICATION FOR active law enforcement officers to carry a firearm of the same type as the applicant's concealed weapon.

(xi) The applicant understands and acknowledges that WHEN CARRYING THE CONCEALED WEAPON, he shall carry Pennsylvania's qualification card, along with the identification card ISSUED PURSUANT TO § 221.23 OR IDENTIFICATION ISSUED BY ANOTHER PUBLIC AGENCY SATISFYING THE REQUIREMENTS OF 18 U.S.C. § 926C(d) [issued by the retiring agency, when carrying the concealed weapon].

(xii) The applicant understands and acknowledges that the [certification] QUALIFICATION CARD expires 12 months from the date of issue and it is the applicant's responsibility to reapply if the applicant wants to continue to carry the weapon under this law.

(xiii) The applicant understands and acknowledges that this authorization applies only to the type of weapon with which the applicant qualified.

(xiv) The applicant understands and acknowledges that [the] Pennsylvania's certification does not give him any right whatsoever to exercise law enforcement authority or take police action under any circumstances.

(xv) The applicant understands and acknowledges that [that] a background investigation is required and authorizes one to be conducted to determine if the applicant

has been convicted of any criminal offenses or has any mental health issues that would disqualify the applicant from possessing a concealed weapon.

(xvi) The applicant has not been charged with nor convicted of any felony or misdemeanor [or similar offenses] in this Commonwealth or ANY SIMILAR OFFENSES UNDER any other State or Federal law that would prohibit the applicant from possessing a firearm.

§ 221.32. Qualification card contents.

(a) A qualification card shall be issued to indicate compliance with the Commonwealth's standards for training and qualification for active law enforcement officers to carry a firearm. The qualification cards must be uniform throughout this Commonwealth and on a form issued by the Commission.

(b) The qualification card must contain the following:

- (1) The caption "Retired Law Enforcement Officer Qualification Card."
- (2) The name, address, date of birth, race, sex, height, weight, color of hair, color of eyes and signature of the retired law enforcement officer.
- (3) The date of completion of the most recent firearms training and qualification by the retired law enforcement officer.
- (4) An expiration date 12 months later than the date of completion of the most recent firearms training and qualification by the retired law enforcement officer.

(5) The name and signature of the certified law enforcement firearms instructor issuing the qualification card.

(6) The name and signature of a sheriff.

(7) A confirmation number provided by the sheriff who signed the qualification card.

(8) A statement that the retired law enforcement officer has a duty to surrender the qualification card when the officer becomes legally ineligible either under Federal or State law to receive, possess, use, manufacture, control, sell or transfer a firearm.

~~(9) Other information designated by the Commission.~~

§ 221.33. Qualification card issuance.

(a) A retired law enforcement officer shall produce the identification card ISSUED PURSUANT TO § 221.23 OR IDENTIFICATION ISSUED BY ANOTHER PUBLIC AGENCY SATISFYING THE REQUIREMENTS OF 18 U.S.C. § 926C(d) ALONG WITH [and] another form of official/governmental identification, which includes a photograph of the officer, to the certified law enforcement firearm instructor prior to participating in firearms training and qualification.

(b) A retired law enforcement officer may not participate in firearms training and qualification if the certified law enforcement firearm instructor determines that the officer presents a safety hazard to himself or others on the range or if the officer is not able to produce the two forms of identification required in subsection (a).

(c) A retired law enforcement officer shall meet the firearms standards established by the [law enforcement] PUBLIC agency from which the LAW ENFORCEMENT officer retired or the guidelines established by the Commission to carry a firearm of the same type as the concealed firearm that the officer intends to carry. As part of firearms training, the certified law enforcement firearm instructor shall provide instruction on the use of force by a civilian under 18 Pa.C.S. Chapter 5 (relating to general principles of justification).

(d) The certified law enforcement firearms instructor may issue a qualification card to a retired law enforcement officer who has met the Commonwealth's standards for training and qualification for active law enforcement officers to carry a firearm.

(e) The certified law enforcement firearm instructor shall obtain the qualification cards, for a fee of \$2 for each card, from the Commission.

(f) FOR A PERIOD OF ONE YEAR, the certified law enforcement firearms instructor shall keep a record of each qualification card issued, including the following:

(1) The name of the retired law enforcement officer to whom the qualification card was issued.

(2) The make and model of the weapon(s) the retired law enforcement officer qualified on.

(3) The type of ammunition utilized by the retired law enforcement officer.

(4) The course of fire completed by the retired law enforcement officer.

(5) The date of qualification.

(g) Within 30 days of a retired law enforcement officer being issued a qualification card, the certified law enforcement firearm instructor shall provide the Commission with a copy of the record maintained under subsection (f) ON A FORM PRESCRIBED BY THE COMMISSION.

(h) The following apply to sheriffs:

(1) Prior to signing the qualification card, in addition to other requirements contained in section 5 of the act (53 P. S. § 753.5), the sheriff shall require the retired law enforcement officer to display the identification card and another form of official/governmental identification, which includes a photo of the retired law enforcement officer. The sheriff shall make a photocopy of both forms of identification.

(2) FOR A PERIOD OF ONE YEAR, the sheriff shall keep a record of the following:

(i) Each qualification card signed.

(ii) The name and address of the retired law enforcement officer appearing on the card.

(iii) The date the sheriff signed the card.

(3) The sheriff shall confiscate the qualification card from any retired law enforcement officer who is not issued a unique approval number. Confiscated qualification cards shall be returned to the Commission.

(4) The sheriff shall collect the expired qualification card from the retired law enforcement officer and return the card to the Commission.

(5) Within 30 days of signing a qualification card, the sheriff shall provide the Commission with a copy of the record maintained under paragraph (2) ON A FORM PRESCRIBED BY THE COMMISSION.

(i) NO PUBLIC AGENCY SHALL HAVE ANY DUTY TO PROVIDE FIREARMS TRAINING AND QUALIFICATION TO RETIRED LAW ENFORCEMENT OFFICERS OR TO ISSUE QUALIFICATION CARDS.

§ 221.34. Replacement; ERROR OR change in material information.

(a) Replacement. If a qualification card is lost, stolen, destroyed, mutilated or becomes illegible, the retired law enforcement officer may obtain a replacement qualification card upon request to the certified law enforcement firearm instructor and payment of the required fee.

(b) Error or change in information. If any information on a qualification card has changed, or is in error, from the information originally set forth, the retired law enforcement officer shall [obtain from] APPLY TO the [issuing] PUBLIC agency, AND SUBMIT THE REQUIRED FEE, FOR A NEW QUALIFICATION CARD within 15 days of the change or discovery of the error[, a new identification card]. NO FEE WILL BE CHARGED IF THE PUBLIC AGENCY CAUSED THE ERROR TO OCCUR.

§ 221.35. Challenge to issuance of qualification card.

The Commission will have standing to contest issuance of any identification card subject to §§ 203.101--203.103 (relating to notice and hearings).



COMMONWEALTH OF PENNSYLVANIA
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July 1, 2009

The Honorable Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Final Rulemaking, Identification Number 17-75
Title 37. Law, Part IV. Municipal Police Officers'
Education and Training Commission
Subpart B. Retired Law Enforcement Identification and Qualification
Chapter 221. Retired Law Enforcement Officers Identification and
Qualification Cards

Dear Mr. Kaufman:

Pursuant to the Regulatory Review Act, enclosed is a copy of a final-form rulemaking adding 37 Pa. Code, Chapter 221, relating to Retired Law Enforcement Identification and Qualification Cards. The proposed rulemaking was delivered to your commission on March 14, 2008, and published at 38 Pa. B. 1486 (March 29, 2008). If I can be of further assistance, please let me know.

Sincerely,

Syndi L. Guido
Policy Director

Enclosure

cc: Colonel Frank K. Pawlowski
Major John Gallaher
Barbara Christie, Chief Counsel
Andrew C. Clark, Deputy General Counsel
Donna Cooper, Secretary of Planning and Policy
Danielle Guyer, Office of the Budget

Final Rulemaking, Identification Number 17-75
Municipal Police Officers' Education and Training Commission

List of Commentators

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

I.D. NUMBER: 17-75
 SUBJECT: RETIRED LAW ENFORCEMENT OFFICERS' IDENTIFICATION AND QUALIFICATION CARDS
 AGENCY: PA STATE POLICE

TYPE OF REGULATION

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

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 INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/1/09	<i>Muhlestein</i>	HOUSE COMMITTEE ON JUDICIARY
7/1/09	<i>Patricia Tameyo</i>	MAJORITY CHAIRMAN <u><i>Caltagirone</i></u>
7/1/09	<i>Cecilia Boyz</i>	SENATE COMMITTEE ON LAW AND JUSTICE
7/1/09	<i>Paul J. Rafferty</i>	MAJORITY CHAIRMAN <u><i>Rafferty</i></u>
7/1/09	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)