

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
NANCY SABOL FRANTZ, ESQ.
JOHN F. MIZNER, ESQ.
KAREN A. MILLER
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 28, 2008

Honorable Jeffrey B. Miller, Commissioner
Municipal Police Officers' Education and Training Commission
1800 Elmerton Avenue
3rd Floor, Department Headquarters
Harrisburg, PA 17112

Re: Regulation #17-75 (IRRC #2661)
Municipal Police Officers' Education and Training Commission
Retired Law Enforcement Officers Identification and Qualification Cards

Dear Commissioner Miller:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

wbg

Enclosure

cc: Honorable John C. Rafferty, Jr., Chairman, Senate Law and Justice Committee
Honorable Sean F. Logan, Minority Chairman, Senate Law and Justice Committee
Honorable Thomas R. Caltagirone, Majority Chairman, House Judiciary Committee
Honorable Ronald S. Marsico, Minority Chairman, House Judiciary Committee

Comments of the Independent Regulatory Review Commission



Municipal Police Officers' Education and Training Commission #17-75 (IRRC #2661)

Retired Law Enforcement Officers Identification and Qualification Cards

May 28, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the March 29, 2008 *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 Municipal Police Officers' Education and Training Commission (Commission) to respond to all comments received from us or any other source.

1. General. – Reasonableness; Clarity.

Qualification cards

Commentators have expressed concern that they will not be eligible for qualification cards because they did not retire from a law enforcement agency in the Commonwealth. If the retired officer lives in Pennsylvania and has obtained an identification card from a federal agency or an agency outside of the state, would that officer be eligible to attempt to meet the requirements for a qualification card under these proposed regulations? The final-form regulation should clearly state the Commission's intent with regard to officers in this situation.

Consistent term

The terms "agency," "public agency," "law enforcement agency," "issuing agency," "law enforcement agency from which the applicant retired" and "retiring agency" seem to be used interchangeably throughout the regulation. For clarity, one consistent term should be defined and used throughout the regulation.

Requests

Sections 221.23(b), 221.24(a) and 221.34(a) of this regulation either require or permit the retired officer to make certain requests relating to identification and qualification cards. Some of these requests will be made to the "agency" and others will be made to the firearms instructor. However, it is not clear in what format these requests are required to be made. Are oral requests acceptable or

must they be in writing? The final-form regulation should specify the required form of these requests.

2. Section 221.2. Definitions. – Clarity.

The definition of “Certified law enforcement firearm instructor” contains the phrase “or other certification approved by the...Commission.” What other certifications are acceptable and how is approval obtained? The methods for obtaining “other certification” should be set forth in an appropriate section of the final-form regulation or this phrase should be deleted from the definition.

3. Section 221.21. Eligibility. – Consistency with existing legislation; Reasonableness.

Pennsylvania Pension Forfeiture Act

Subsection (4) of this proposed regulation requires that eligible retired officers have “a nonforfeitable right to benefits under the retirement plan of the agency.” We note that this provision echoes language in the federal statute (18 USC 926C) that inspired the Retired Law Enforcement Identification Act (Act). However, a commentator notes that because the Pennsylvania Pension Forfeiture Act (43 P.S. §§ 1311 et seq.) requires forfeiture of retirement benefits when a public official or public employee pleads guilty to or is convicted of certain criminal offenses, no retired officer has a truly nonforfeitable right to benefits. In the final-form regulation, the Department should explain the interface between 18 USC 926C, the Act and the Pension Forfeiture Act, and how a retired officer’s eligibility for a retired law enforcement identification card will be affected as a result.

Commonwealth’s standards

Subsection (5) contains the phrase “...State’s standards for training and qualification for active law enforcement officers to carry firearms....” However, the Commission has defined the phrase “Commonwealth’s standards for training and qualification for active law enforcement officers to carry a firearm” in this proposed regulation. Do these terms reference the same training? If so, the Commission should use the defined term. If not, the Commission should add a citation to the specific standards intended to be used in the undefined phrase. A similar concern applies to Section 221.31(2)(x).

4. Section 221.22. Identification card contents. – Reasonableness; Clarity.

Subsection (b)(9) requires the identification card to contain “other information designated by the Commission.” How will one know what else to put on the card? To ensure that the requirements are clear, information required to be put on the card should be set forth in this regulation.

Further, this subsection seems to conflict with Subsection (a), which requires all identification cards to be uniform. How can identification cards be uniform if some include “other information”? The Commission has indicated that, if new information is required for cards in the future, it may grandfather cards

issued prior to the language addition or require the issuance of new cards. A provision clarifying these issues should be added to the final-form version of this regulation. Also, would the new cards be subject to a fee? A similar concern also applies to Section 221.32(b)(9).

5. Sections 221.24 and 221.34. Replacement; change in material information. – Reasonableness; Clarity.

Optional vs. Required

Why is it an option for a retired officer to obtain a replacement card under Sections 221.24(a) and 221.34(a), but it is a requirement to do so under Sections 221.24(b) and 221.34(b)?

Fees

Why do Sections 221.24(a) and 221.34(a) reference the payment of a fee for a replacement card and Sections 221.24(b) and 221.34(b) do not?

Also, what is the “required fee” for a replacement identification card under Section 221.24(a)? We note that an agency is permitted to charge a fee of up to \$15.00 for the issuance of a new identification card in Section 221.23(c). Is the fee for a replacement identification card the same? This fee should be set forth in the final-form regulation.

Further, Section 221.34(a) refers to the payment of the “required fee” for a replacement qualification card. However, there is no specific fee for the issuance of a new or replacement qualification card contained in this regulation. If fees are required, they should be established in the final-form regulation.

Replacement cards

Sections 221.24(b) and 221.34(b) require a retired law enforcement officer to “obtain” a new identification or qualification card within 15 days when there is a change of information or an error is discovered. It is unclear if the officer must apply for a new card within the 15-day period, or if the agency must issue a new card within 15 days of the officer’s application. This should be clarified in the final-form regulation.

Additionally, we note that while Section 221.23 specifies time frames within which law enforcement agencies must issue initial identification cards, Section 221.33 does not include any time frames for initial issuance of qualification cards. The final-form regulation should set forth the time frames within which initial qualification cards and replacement identification and qualification cards must be issued.

6. Subsection 221.31. Eligibility. – Reasonableness; Need; Clarity.

Eligibility criteria verification

Commentators have questioned what entity will be responsible for verifying that the retired officer meets the 16 criteria under Subsection (2). The

Commission should set forth the verification process in the final-form regulation.

Automatic weapons

Representative Marsico, Minority Chairman, House Judiciary Committee, asserted that Subsections (2)(ii) and (2)(ix) could conflict. One permits the retired officer to carry an automatic weapon and the other prohibits machine guns. What other types of automatic weapons can be carried that are not considered machine guns? Further, what is the need to permit a retired officer to carry an automatic weapon?

7. Section 221.33. Qualification card issuance. – Reasonableness; Clarity.

Commission guidelines

Subsection (c) states that the retired officer shall meet the standards established by the agency from which the officer retired from or “the guidelines established by the Commission....” However, we note that provisions found in guidelines are not enforceable as binding norms. Therefore, if the Commission intends to require that a retired officer meet certain standards, those standards should be set forth in regulation. Because Commission staff has indicated that these guidelines are already developed and available, this phrase should be deleted and those provisions should be put into regulation.

Record Retention

Subsections (f) and (h)(1) require the firearm instructor or the sheriff to maintain certain records. How long must the instructor or sheriff maintain those records? In what format should they be kept? These requirements should be clearly stated in the final-form regulation.

Provision of records

Subsections (g) and (h)(5) require the firearms instructor or the sheriff to provide a copy of certain records to the Commission. The final-form regulation should specify the acceptable format for submitting the records.

8. Miscellaneous clarity issues.

Section 221.21(5)

- The word “offers” should be “officers.”

Section 221.21(6)

- To be consistent with Section 221.31(2)(viii), this subsection should include the phrase “or possessing” after the word “receiving.”

Section 221.31(2)(xiv)

- The word “the” before “Pennsylvania’s” in this subsection should be deleted.

Section 221.31(2)(xv)

- The word “that” appears twice in succession.

RECEIVED

2008 MAY 28 AM 9:55

INDEPENDENT REGULATORY
REVIEW COMMISSION

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Major John M. Gallaher, Executive Director
Agency: Municipal Police Officers' Education & Training Program
Phone: 346-7749
Fax: 346-7782
Date: May 28, 2008
Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Municipal Police Officers' Education & Training Program's regulation #17-75 (IRRC #2661). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Major John M. Gallaher* Date: 5/28/08