

PROPOSED RULEMAKING

MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CH. 221]

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.

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’s 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)? 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.

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.(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