

Comments of the Independent Regulatory Review Commission



Municipal Police Officers' Education and Training Commission Regulation #17-80 (IRRC #3270)

Municipal Police Education and Training Act

December 16, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the October 17, 2020 *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.

Subchapter A. GENERAL

1. Section 203a.1. Definitions. – Clarity.

Certification

The definition of “certification” contains a substantive provision relating to the length of certification. Section 2.11(e) of the *Pennsylvania Code & Bulletin Style Manual (Style Manual)* states that substantive provisions may not be contained in a definition section. For clarity, we recommend moving the length of certification to the body of the regulations.

Further, this definition applies only to municipal police officers. This chapter includes certification requirements for schools and instructors. For clarity, we recommend revising this definition to address all certifications issued by the Commission.

Certified police firearms instructor

The definition of “certified police firearms instructor” states that this individual is “**approved** by the Commission.” [Emphasis added.] Under Section 203a.72 (relating to certification requirements), an instructor is certified. We ask the Commission to clarify the terminology used in this definition.

Change-of Status Notice

The definition of “Change-of Status Notice” describes in paragraph (1) a document used to report certain actions. This paragraph of the definition is not used in the regulations. Section

2.11(c) of the *Style Manual* directs that a definition not used in a chapter should not be included. To improve clarity, we suggest that the Commission delete paragraph (1) or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Military Police Officer

The definition of “Military Police Officer” includes the requirements to meet this classification. Do Military Occupational Specialty designations include officer designations? We ask the Commission to respond to this question in the Preamble to the final-form regulation and amend the definition as necessary.

Suspension

The definition of “suspension” contains a substantive provision relating to the length of suspension. Section 2.11(e) of the *Style Manual* states that substantive provisions may not be contained in a definition section. For clarity, we recommend moving the length of suspension to the body of the regulations.

Subchapter B. POLICE OFFICER CERTIFICATION REQUIREMENTS

2. Section 203a.11. Qualifications for attending basic training at Commission-certified schools. – Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors.

Paragraph (5)

Paragraph (5) requires an applicant for basic police training to take a Nelson-Denny Reading Test. This paragraph does not state who is responsible for administering the test or the manner in which results are recorded. We ask the Commission to add the testing entity and the form of results in the final-form regulation to improve clarity and to ensure proper implementation or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Further, the Preamble of the proposed regulation states that the regulation allows “the Commission to approve another test and publish the alternative standards in the *Pennsylvania Bulletin*.” This paragraph does not include this language. We ask the Commission to add the provision regarding testing and standards or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Paragraphs (6) and (7)

Paragraphs (6) and (7) require an applicant to be examined by a physician and a psychologist, respectively. Validity statements are provided for the tests in paragraphs (5) and (8) but are not included in paragraphs (6) and (7). We ask the Commission to explain in the Preamble to the final-form regulation the timetable for compliance with these examination requirements and consider revising the final-form regulation to include validity requirements.

Paragraph (8)

Paragraph (8) requires an applicant to be evaluated to determine physical fitness. This paragraph does not state who is responsible for assessing an applicant's physical fitness or the manner in which results are recorded. We ask the Commission to specify who conducts this evaluation and the form of results in the final-form regulation to improve clarity and ensure proper implementation or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Paragraph (10)

Paragraph (10) requires that a student "returning to a basic police training program after an absence of more than 30 days shall provide a notarized affidavit verifying that all criminal history contained in their initial application remains true and accurate." Why is the driving history check not included in the affidavit? The Commission should consider requiring an affidavit to include verification of driving history or explain in the Preamble to the final-form regulation why it is not necessary to do so.

3. Section 203a.12. Training requirements. – Clarity; Implementation procedures; Reasonableness; Protection of the public health, safety and welfare.

Subsections (c) – (e)

Subsection (c) provides for a waiver of basic police training for former State Police Troopers, Commission-certified officers and out-of-State officers who left employment in good standing within 10 years of applying for certification. Subsection (d) provides for a partial waiver of basic police training for former Federal law enforcement officers who left agencies in good standing in the previous 10 years and military police officers who were honorably discharged in the previous 10 years. Under subsection (e), the Commission reserves the right to "require an applicant to undergo any and all training which is required by law or similar statute, or which it deems essential training to fulfill the requirements of" Subchapter B (relating to police officer certification requirements).

We have four questions about these subsections. First, why is the 10-year timeframe in subsections (c) and (d) reasonable given the changes in basic police training course curriculum and physical, medical and psychological requirements for applicants? Second, how does the 10-year timeframe in subsections (c) and (d) protect the public health, safety and welfare? Third, why are requirements for firearms, first aid, cardiopulmonary resuscitation for the professional rescuer and automatic external defibrillation not included in subsection (d)? Fourth, how will the Commission implement subsection (e)?

We ask the Commission to explain in the Preamble to the final-form regulation the implementation procedures for granting waivers of training, how these waivers adequately protect the public health, safety and welfare, and the reasonableness of the 10-year timeframe.

Subsection (f)

Under subsection (f), a “determination of good standing . . . is the responsibility of the employing municipalities, jurisdictions, Federal agencies, or certified schools, and shall be certified **to** the Commission.” [Emphasis added.] The Preamble of the proposed regulation states that the determination “will be certified **by** the Commission.” [Emphasis added.] The final-form regulation should be clarified so that the entity making the determination is accurately stated.

4. Section 203a.13. Certification as a municipal police officer. – Clarity and lack of ambiguity; Implementation procedures; Protection of the public health, safety and welfare; Reasonableness.

Subsection (a)(1) requires applicants for certification to “meet the requirements of [Section] 203a.11(1) – (4), (6) and (7) (relating to qualifications for attending basic training at Commission-certified schools).” Section 203a.11(10) states that individuals applying to basic training shall “provide Federal Bureau of Investigation and Pennsylvania criminal history checks and a driving history check from all states in which they have been licensed in the past 10 years before entering a Commission-certified police academy.” Subsection (a)(2)(ii) requires the police department employing the applicant to conduct a background investigation including a “criminal history check.” Subsection (a)(2)(vi) requires the police department employing the applicant to do a “check of the applicant's driving record verifying that the applicant has a valid driver's license.” The background investigations listed in subsection (a) lack the clarity and specificity of the requirements in Section 203a.11(10). We ask the Commission to improve the clarity of Section 203a.13(a)(2)(ii) and (vi) by either cross-referencing Section 203a.11(10) or adding the level of detail included in that paragraph.

Subsection (a)(4) requires an applicant who fails to pass a certification examination “after three attempts within a 2-year period from the administration of an applicant's first certification examination, or within 10 years of the completion of the basic police training course” to take and pass the entire basic police training course to qualify for certification. We have two questions. First, are the 2-year and 10-year timeframes reasonable given the changes in basic police training course curriculum? Second, how do these allowances protect the public health, safety and welfare? We ask the Commission to explain in the Preamble to the final-form regulation why these timeframes are reasonable and how they adequately protect the public health, safety and welfare.

Subsection (a)(6) requires that “the certification document shall be returned to the Commission by the department” when a municipal police officer is suspended or terminated. Subsection (a)(5) states that “the Commission will supply a written or electronic document evidencing certification to the applicant's employing police department.” How does a police department return an electronic document to the Commission? The Preamble to the final-form regulation should explain the implementation procedures for this requirement.

Subsection (a)(7) states that when a “certification document has been lost or destroyed, the **officer** shall provide a notarized statement to the Commission concerning the certification

document.” [Emphasis added.] Subsection (a)(5) specifies that the certification document is provided to the employing police department. The Commission should explain in the Preamble to the final-form regulation why an officer is required to submit the statement.

5. Section 203a.14. Suspension or revocation of certification. – Clarity; Implementation procedures; Protection of the public health, safety and welfare.

Subsection (a)

Subsection (a)(4) provides that “[f]ailure to successfully complete annual mandatory in-service training courses as published in the *Pennsylvania Bulletin*” is a criterion for suspension or revocation of a municipal police officer’s certification. Section 203a.13(c), (c)(2) and (d)(1)(ii) (relating to certification as a municipal police officer) cross-references Section 203a.52 (relating to mandatory in-service training courses). For clarity and consistency, the Commission should consider replacing the publication with a cross-reference to the mandatory in-service training regulation.

Subsection (b)

Subsection (b) requires the chief of a police department to “provide written notification to the Commission when the applicant meets any of the conditions listed in subsection (a).” A timeframe for providing notification is not specified in this subsection. To ensure protection of the public health, safety and welfare, and efficient implementation, we ask the Commission to revise this subsection to require the chief of a police department to provide written notification within a specific timeframe.

6. Section 203a.15. Application packet submission. – Need; Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors.

Subsection (b)(7) requires applicants for certification to “certify whether they have had a physical or psychological evaluation conducted in conjunction with an application for police employment or admission to a Commission-certified school within the previous year and the outcome of the examination or evaluation.” Under subsection (b)(3)(ii) and (6)(i), physical and psychological examinations are valid for no more than two years and may be used in support of any police employment application during that period. We ask the Commission to explain in the Preamble to the final-form regulation why the requirement in subsection (b)(7) is reasonable, why it is needed and how applicants will comply with these timeframes.

7. Section 203a.16. Additional medical review. – Clarity; Implementation procedures.

Section 203a.16 includes a procedure to require an applicant for certification to “provide additional medical documentation or submit to an examination” if “reasonable cause exists to believe that the individual does not meet the medical, psychological, physical or other similar requirements” in Subchapter B. When the results of an examination determine that the applicant does not meet the standards in Subchapter B, “the individual shall be ineligible for certification

until such time as the individual can meet the requirements.” This section does not provide a timeframe for the applicant to meet the requirements for certification. We ask the Commission to explain in the Preamble to the final-form regulation how this section will be implemented with respect to the time periods for achieving certification as addressed throughout Subchapter B. The Commission should also consider revising this section to improve clarity.

Further, this section does not require the Commission to notify the applicant of the reasons for the ineligibility determination. This section also does not provide the applicant the opportunity to request a hearing under Subchapter G (relating to notice and hearings). We ask the Commission to explain in the Preamble to the final-form regulation how it will implement this regulation and consider revising this section to provide the opportunity to request a hearing under Subchapter G.

Subchapter C. SCHOOL REQUIREMENTS

8. Section 203a.32. School certification. – Clarity; Implementation procedures; Need.

Subsection (d)(2) requires the Executive Director to “notify the school by first class **and** certified mail, return receipt requested.” [Emphasis added.] Why is notice required to be given by both first class and certified mail? We ask the Commission to consider how it will implement this provision and clarify the final-form regulation as needed.

This comment also applies to Section 203a.52(e)(7) and Section 203a.53(e) (relating to nonmandatory in-service training courses).

9. Section 203a.33. Minimum school standards and requirements. – Implementation procedures; Need; Protection of the public health, safety and welfare; Reasonableness.

Subsection (a)

Subsection (a) lists school standards and requirements. Section 203a.31 (relating to eligibility for school certification) requires schools with multiple teaching sites to “appoint an onsite coordinator . . . to oversee the daily operation of the site in the absence of the school director.” The onsite coordinator requirement is not included in this subsection. The Commission should add this requirement in this subsection to ensure that it is implemented during the certification process or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Subsection (a)(14) and (15) provides for offsite physical conditioning facilities and firing ranges. Subsection (a)(23), regarding a facility used to conduct emergency vehicle operation training, states that “[t]ravel to and from this location shall not count towards the number of hours required by the curriculum.” This provision is not included in paragraphs (14) and (15). A statement regarding travel should be added to paragraphs (14) and (15) to ensure that hours of study are consistently calculated or the Commission should explain in the Preamble to the final-form regulation why it is not necessary to do so.

Subsection (a)(15)(ii) states that an “employing police department shall also qualify the student with his duty weapons prior to assuming duties as a police officer” when the student qualifies with a firearm not used by an employing police department. Does the Commission allow a police department to conduct firearms qualification? We ask the Commission to explain in Preamble to the final-form regulation how this subparagraph will be implemented.

Subsection (a)(15)(iii) states that a “school **may** refuse to allow the use of a weapon that the firearms instructor determines to be altered, modified, unsafe, inadequate or not appropriate for police training.” [Emphasis added.] Subsection (a)(15)(i) requires that a “school **shall** ensure that weapons utilized in this portion of training are safe.” [Emphasis added.] To protect the public health, safety and welfare, we ask the Commission to revise subsection (a)(15)(iii) so that the a school is obligated to refuse unsafe weapons or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Subsection (a)(21) requires a school to “conduct a check of the student's driving record and verify that the student has a valid driver's license.” Under Section 203a.11, a student is required to maintain a valid driver’s license in paragraph (9) and “at their expense, provide . . . a driving history check from all states in which they have been licensed in the past 10 years before entering a Commission-certified police academy” in paragraph (10). The provision in subsection (a)(21) appears to conflict with the requirements in Section 203a.11(9) and (10). The Commission should explain in the Preamble to the final-form regulation how a school will implement these provisions and the need for subsection (a)(21).

Subsection (b)

Subsection (b)(5) requires a school to maintain a records management system and specifies records to be included in the system. Subsection (b)(16) directs the school to maintain “for a minimum of 75 years” a set of records, including “other records deemed appropriate by the Commission.” We have two concerns. First, paragraphs (5) and (16) do not clearly list the records to be maintained. Second, the requirement to maintain records for 75 years may require significant resources. We ask the Commission to revise the list of records in these paragraphs to establish a standard that is predictable for the regulated community. Further, we ask the Commission to explain in the Preamble to the final-form regulation why a 75-year record retention requirement is needed and reasonable.

10. Section 203a.34. School inspections. – Clarity; Possible conflict with statutes.

Subsection (a)(2) states that Commission “inspectors will visit and inspect each approved school **at least biennially**.” [Emphasis added.] Under 53 Pa.C.S. § 2164(13) (relating to powers and duties of commission), the Commission shall “visit and inspect approved schools **at least once a year**.” [Emphasis added.] We ask the Commission to explain in the Preamble to the final-form regulation how this regulation is consistent with the statute. Further, the Commission should consider revising this paragraph to clarify the inspection requirements.

11. Section 203a.35. Emergency suspension of school certification. – Clarity; Implementation procedures.

Subsection (a)

Subsection (a)(3) states that a school director not meeting the criteria in Section 203a.33(a)(2) (relating to minimum school standards and requirements) is a condition for emergency suspension of a school’s certification. Section 203a.33(a)(2) also provides for an interim school director. For clarity and to ensure proper implementation, we suggest that the Commission include an interim school director in subsection (a)(3).

Subsection (b)

Subsection (b) requires the Executive Director to provide a school with the reason for emergency suspension and an opportunity to be heard. We suggest that the Commission add a cross-reference to Subchapter G to improve clarity and to ensure proper implementation of this regulation.

Subchapter D. COURSE REQUIREMENTS

12. Section 203a.52. Mandatory in-service training courses. – Clarity and lack of ambiguity; Implementation procedures.

Subsection (b)

Subsection (b)(1)(i) states that the “Commission will provide notice of the course descriptions and specific hours.” The method of notice is not provided. Throughout this chapter, information is either published on the Commission’s website or official notice is made in the *Pennsylvania Bulletin*. We suggest that the Commission revise this subparagraph to clarify how notice will be made to the regulated community.

This comment also applies to subsection (b)(1)(ii) and (2), (c) and (e)(6).

Subsection (e)

Subsection (e)(10)(ii) addresses the completion of mandatory in-service training by a municipal police officer who is deployed by the military. A chief of a police department is required to provide proof of deployment or activation. Subsection (e)(10)(i), regarding line-of-duty connected injury or disability, addresses a chief who fails to request an extension. We ask the Commission to clarify the implementation procedures for a waiver for military service by adding a provision addressing a chief who fails to request an extension or explain in the Preamble to the final-form regulation why it is not necessary to do so.

13. Section 203a.53. Nonmandatory in-service training courses. – Clarity.

Section 203a.53(b)(1)(ii) states that “[a]pproved courses will be published on the Commission's public web site.” Under Section 203a.72(2)(i)(A), approved courses for police training instructors are published in the *Pennsylvania Bulletin*. For clarity and consistency, we ask the Commission to consider publishing approved nonmandatory in-service training courses in the *Pennsylvania Bulletin* or explain in the Preamble to the final-form regulation why it is impractical to do so.

14. Section 203a.54. Commission cheating policy. – Clarity.

Subsection (b) requires that all “testing materials, including tests, answer sheets and any similar materials subject to this policy, shall be retained for all basic and in-service testing for a period of no less than 2 years.” As a follow-up to Comment # 9, we suggest that the Commission add these documents to Section 203a.33(b)(5) and (16) for clarity. Further, we ask the Commission to revise the record retention period in this subsection to be consistent with Section 203a.33(b)(16).

Subchapter E. INSTRUCTOR CERTIFICATIONS

15. Section 203a.72. Certification requirements. – Clarity; Reasonableness.

Paragraph (2)(i)(C) and (iv) requires instructors to “[a]cknowledge and abide by an Instructor Code of Conduct, as established by the Commission.” The Preamble of the proposed regulation states that the Instructor Code of Conduct “will be published in the *Pennsylvania Bulletin*.” These provisions do not include this language. The Commission should consider clarifying these provisions by stating where the Code will be published.

Under paragraph (2)(ii) and (iii), attorneys and instructors of certain instructional areas are not required to meet the requirements in subparagraph (i)(A) and (B). These clauses require instructors to meet teaching requirements and provide transcripts to verify degrees, respectively. We ask the Commission to explain in the Preamble to the final-form regulation why it is reasonable to certify instructors who have not received instructor training and why it is not necessary to review transcripts of degrees conferred.

16. Section 203a.73. Suspension or revocation of instructor certification. – Clarity and lack of ambiguity.

Subsection (a)(2) provides for the suspension or revocation of instructor certification for “[c]onduct which violates the Instructor Code of Conduct as required under [Section] 203a.72(2)(i)(C).” This paragraph is not applicable to special instructors. Accordingly, we ask the Commission to clarify this paragraph by cross-referencing Section 203a.72(2)(iv) so that special instructors are included or explain in the Preamble to the final-form regulation why it is not necessary to do so.

Subchapter F. REIMBURSEMENT OF EXPENSES

17. Section 203a.81. Basic training. – Clarity; Implementation procedures; Possible conflict with statutes.

Subsection (a) states that “[p]ayments made to municipalities under 53 Pa.C.S. § 2170 (relating to reimbursement of expenses) shall be limited to funds available, and shall be made on a pro rata basis.” Section 2170(a) of 53 Pa.C.S. requires that the “[C]ommission **shall** provide for reimbursement” of basic training expenses. [Emphasis added.] We ask the Commission to explain in the Preamble to the final-form regulation how this regulation is consistent with the statute. Further, the Commission should consider revising this subsection to clarify how it will implement the statute.

This comment also applies to Section 203a.53(b)(1) and Section 203a.82(b) (relating to mandatory in-service training).

18. Section 203a.83. Grants for nonmandatory in-service training programs. – Clarity; Implementation procedures.

Subsection (a)(1)(iv) provides for grants for developing and implementing a nonmandatory in-service training program. Reasonable expenditures for administration “will not exceed 5% of the total grant amount unless otherwise approved by the Commission or Budget Committee. This expenditure may not exceed 10% of the total grant amount.” Is the intent of this subparagraph to limit the discretion of the Commission or the Budget Commission? We ask the Commission to explain in the Preamble to the final-form regulation how limits for administrative expenses are implemented and to clarify the subparagraph accordingly.

Subchapter G. NOTICE AND HEARINGS

19. Section 203a.102. Notice. – Clarity.

This section does not state if any provisions in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) are superseded. We ask the Commission to carefully review this section and 1 Pa. Code Part II to determine any provisions that are superseded. Further, this section should be clarified as required under 1 Pa. Code § 13.38 (relating to special rules of administrative practice and procedure).

This comment also applies to Section 203a.103(a) (relating to hearing procedures).

20. Regulatory Analysis Form (RAF). – Economic or fiscal impact.

The response to RAF Question # 20 provides a cost savings and an estimate of costs for local governments that are not included in RAF Question # 23. The response to RAF Question # 22 states that costs for instructor training and certifications are not included in RAF Question # 23. We ask the Commission to update the RAF submitted with the final-form regulation to estimate costs and savings for local governments and the regulated community.

21. Miscellaneous clarity.

- Definitions in Section 203a.1 (relating to definitions) with internal subdivisions should be renumbered in accordance with Section 2.1 of the *Style Manual* (relating to arrangement of *Code*).
- Section 203a.32(c)(2) (relating to school certification) should be revised to refer to reports of Commission inspectors as specified in paragraph (1).
- Section 203a.33(a)(2)(v) should be revised to replace “the effective date of this regulation” with a date certain.
- Section 203a.72(2)(iv)(F) should be renumbered in accordance with Section 2.1 of the *Style Manual*.
- Section 203a.73(a)(2) (relating to suspension or revocation of instructor certification) should cross-reference Section 203a.72(2)(i)(C). [Emphasis added.]
- Section 203a.103(b) and (c) refers to a “hearing **examiner**” and a “hearing **officer**,” respectively. [Emphasis added.] Consistent terminology should be used in the final-form regulation.