

PROPOSED RULEMAKING

COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CH. 431]

Constables' Education and Training

The Commission on Crime and Delinquency (Commission) and its Constables' Education and Training Board (Board) are publishing this proposed rulemaking that would add Chapter 431 (relating to Constables' Education and Training Board). The proposal is made under 42 Pa.C.S. §§ 2944—2946 and 2948. The proposed chapter will establish training programs that constables and deputy constables must undergo to be paid for the work they do, and to be able to carry and use a firearm while conducting their occupation. These proposed regulations are set forth in Annex A.

A. *Effective Date*

The proposed regulations will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The regulations are proposed under 42 Pa.C.S. §§ 2941—2950 (relating to constables) (act).

C. *Background and Purpose*

Legislation enacted in 1994 established the Constables' Board as an advisory board to the Commission. See section 2943(a) of the act (relating to board established). Among other things, the act directed that a constable or deputy constable may perform judicial duties and receive a fee, surcharge or mileage provided by the act only if the officer is certified by the Board. See section 2942(a) of the act (relating to conduct and insurance).

As of September 1, 2000, a total of 1,651 constables and deputy constables held current certification issued by the Board. Constables and deputy constables are independent contractors who are engaged as needed, primarily by the district justices of this Commonwealth. They perform a variety of duties, including serving complaints, summons, subpoenas and other legal documents in civil matters, levying on goods and performing other duties related to execution proceedings, providing courtroom security and transporting prisoners, executing arrest warrants and performing other duties in criminal matters.

Section 2950(f) and (g) of the act (relating to fees), sets forth a list of duties for which constables and deputy constables may be compensated by a court, provided they are certified by the Board as having been trained in accordance with the act. The Administrative Office of State Courts reports that, in calendar 1998, the most recent year for which statistics are compiled, the following procedures or judicial events took place: nontraffic arrest warrants served, 68,806; traffic warrants served, 185,298; civil actions disposed, 144,944, including 18,269 executions; landlord-tenant matters disposed, 59,651, including 24,206 possessions; Protection from Abuse Orders, 4,795 new cases opened, 3,348 involving evictions. Although constables and deputy constables were by no means involved in all of these events, it is reasonable to assume that the Board's regulated community participated in a significant subset of them.

To carry out the certification function, the Board was authorized to certify candidates who successfully complete an initial 80-hour course of basic training, section 2945 of the act (relating to program contents), and to reissue certification annually to those constables and deputy constables who successfully complete continuing education of no more than 40 hours per year. See section 2946 of the act (relating to continuing education). The Board was directed to establish programs to accomplish this required training, section 2944(3) and (4) of the act (relating to program established), and to approve and revoke the approval of schools and to certify instructors in connection with such training. See section 2944(5) and (6) of the act. The Board also was directed by the act to establish standards for the qualification of constables and deputy constables who seek the capability of carrying and using firearms in the performance of their duties. See section 2948 of the act (relating to use of firearms).

Section 2949 of the act (relating to restricted account), provides that the various training programs shall be funded by a special restricted account within the General Fund known as the Constables' Education and Training Account. The fund accumulates through surcharges assessed as costs in criminal cases and in any civil case in which a constable or deputy constable performs a service. Using proceeds from the account, the Board is able to provide training that, for the most part, is free of charge to constables and deputy constables.

The act empowered the Board to "[m]ake rules and regulations and perform other duties as may be reasonably necessary or appropriate to administer the education and training program for constables and deputy constables." See section 2944(10) of the act. The Board was directed to determine the content of basic training by regulation, and to include in basic training "instruction in the interpretation and application of the fees...". See section 2945 of the act. The act was otherwise silent as to the required content of the programs.

In 1995-96, Commission staff conducted a series of curriculum development meetings with constables, deputy constables and other interested parties throughout this Commonwealth. A training program was designed, which the Board and Commission in 1996 approved for implementation, but no proposed rulemaking was published at the time. Due to the time urgency of the legislative mandate, the Board and Commission began the training programs in 1997. The Board and Commission at this time are publishing this proposed rulemaking to take official action to implement the authority of the act to establish training.

D. *Description of Proposed Regulations*

The proposed Chapter 431 would establish training programs to educate constables and deputy constables in applicable law and practical skills necessary for them to attain certification by the Board, thus allowing them to be compensated for performing judicial duties. The regulations also provide for the approval of schools, certification of instructors in the school, and firearms qualification for the constables and deputy constables who seek it. The regulations are divided into six general subheadings:

General provisions—This subheading sets forth the statutory authority and purpose for the rulemaking. It also lists definitions of key concepts, such as "basic training," "certification," "firearms qualification" and "waiver."

Certification—This subheading describes the mechanism by which a person may register with the Board to be considered for certification, a status to be attained in order for a constable or deputy constable to be compensated by a court for judicial duties performed. To attain initial certification, a constable or deputy constable must either complete the basic training course successfully or pass the Board's basic training waiver examination. The process of annual recertification is described, requiring successful completion of the Board's continuing education course. Finally, the subheading describes the mechanism for issuing or reissuing a certification number to a constable or deputy constable, or rendering the number inactive or reactivating it, depending on the training status of the individual.

Basic training—The substantive topics to be covered in the 80-hour basic training are listed. The same section proposes that future curriculum modifications may be made by publishing notice in the *Pennsylvania Bulletin* and in the *Constables' Training Bulletin*.

The subheading establishes the criteria for successful completion of basic training: (1) mandatory attendance at all classroom training; (2) passing score on written examinations as established by the Board, and (3) demonstrated proficiency in practical skills. The Board is not inserting a specific passing grade into the criteria. Although the Board currently intends that a score of 70% on written examinations will constitute a minimum passing grade, the Board wishes to maintain the flexibility of adjusting the minimum score as needed without having to revise the regulations.

The Board under this subheading proposes to allow constables and deputy constables to apply for a waiver of the classroom attendance and examination requirements for certification, based on the Board's determination that prior training undergone in other occupations is equivalent to the Board training. An individual granted a waiver by the Board must pass a specially-designed waiver examination in order to be certified. The individual must attend the basic training course in its entirety and successfully complete it upon failing the waiver examination.

The waiver mechanism is designed to accommodate the individuals who are currently working as municipal police officers or deputy sheriffs, or who have recently ended those jobs or that of officers in the State Police, and who desire to supplement their income by performing duties as constables and deputy constables. These individuals have already undergone training substantially similar to that of the Board and have been independently certified by other entities as being capable of performing their occupations. The implementation of such waiver mechanism carries out the mandate in the act to "[p]romote the most efficient and economical program for...training by utilizing existing facilities, programs and qualified State and local personnel." See section 2944(8) of the act.

Finally, this subheading establishes various attendance policies. Specifically, individuals who are not yet elected as constables or appointed as deputy constables may take basic training at their own cost. It also provides for penalties for individuals who register to attend a basic training course but who cancel without timely notification to the school. The latter provision is designed to address the problem of those who commit to limited training slots, thus displacing other potential attendees, but who ultimately do not appear for the training.

Continuing education—Under this subheading, the Board describes the criteria for successful completion of

the annual continuing education, which are similar to that for basic training. Regarding content, the proposal would allow the Board to adjust the curriculum periodically as it deems necessary. The flexibility will allow the Board to introduce new or varied topics as needed within the statutory requirement of no more than 40 hours every year.

A waiver option is proposed for constables and deputy constables who have recently undergone equivalent training in other occupations. The Board may allow an individual to forego Board training in only those specific topics successfully undergone in the training program of the other certification entity. The constable or deputy constable will be required to attend and successfully complete all other topics in the Board program that are not waived by the Board.

The Board also sets forth an attendance policy penalizing constables and deputy constables who register for continuing education but who do not appear for the training, or who give notice of cancellation too late for the school to refill the slot.

Firearms qualification—The Board under this subheading outlines the program for determining that a constable or deputy constable is qualified to carry and use a firearm in the performance of judicial duties. Most, but not all, constables and deputy constables seek to obtain firearms qualification by the Board.

The Board's firearms qualification program has similar criteria to basic training and continuing education in terms of attendance policies, what is needed to successfully complete the program and what topics may be waived. The Board recognizes additional categories of alternate occupations that may qualify for a waiver of Board firearms training in addition to that of municipal police officers and deputy sheriffs. The additional categories are officers of the Game Commission and of the Fish and Boat Commission.

Schools and instructors—The Board under this subheading establishes a mechanism for approval of schools to be selected and contracted with to deliver basic training, continuing education and firearms qualification. The Board also proposes a mechanism for certification of instructors to teach in the schools.

E. *Affected Persons.*

Those directly affected by the proposed rulemaking are the constables and deputy constables who are required to undergo mandated training. As of September 1, 2000, a total of 2,512 persons were registered with the Board. Of these, a total of 1,651 constables and deputy constables held current Board certification. (Only those registered constables and deputy constables who recently have successfully completed training may be certified.) In addition, a total of 1,239 currently certified constables or deputy constables held current Board firearms qualification.

Those indirectly affected are participants in the Commonwealth's judicial system, including judges or other employees, those charged with criminal offenses, litigants in civil matters or witnesses in any judicial matter. All will benefit from a constable cadre that is well-trained.

F. *Compliance with Executive Order 1996-1.*

In initially designing the training program, Commission staff on behalf of the Board conducted extensive public outreach to those likely to be affected by the regulations. Among other things, the staff in early 1996 conducted a series of six meetings throughout the State. One meeting

each was held in the South Central, Southeast, Southwest, Northeast, Northwest and North Central regions. Approximately 2 weeks before each meeting, staff mailed a letter to each constable and deputy constable in that region, inviting them to register for the meeting to provide input. At each site, staff conducted two 3-hour sessions, limited to 30 constables each. Also in attendance were district justices and municipal officials. At the sessions, constables and deputy constables completed job task inventory surveys designed to develop a cross-section of the frequency of judicial duties performed. Input also was provided as to preferences relating to scheduling of training and waiver examinations. After collecting this input, Commission staff and the Board designed a curriculum that in their view maximized basic training, continuing education and firearms qualification courses mandated by the act.

Subsequent to the initial development of the programs, the Board has communicated extensively with its regulated community. Constables' Training Bulletins are disseminated periodically to update constables, deputy constables, municipal officials, district justices and other court officials on any operational or curriculum changes. The Board conducts quarterly meetings, and it has been its custom to hold at least one meeting a year in a location removed from Harrisburg. For example, the meeting of September 1999 was held in Montgomery County, and the meeting of September 2000 was held in Scranton.

It should be noted that the composition of the seven-person Board as mandated by the act promotes effective development of public input and advocacy. Specifically, three members of the Board are required to be constables, one a district justice, one a court administrator and one a county commissioner. Each of these members is appointed by the Governor with the consent of a majority of the Senate. The seventh member is the State Police Commissioner or a designee.

G. Fiscal Impact and Paperwork Requirements

The proposed regulation will have minimal fiscal impact on this Commonwealth.

H. Sunset Date

The Board will review the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 2, 2000, the Commission submitted a copy of the proposed regulations to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Judiciary Committee and the Senate Judiciary Committee.

In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion.

The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by IRRC, the General Assembly and the Governor of objections raised.

J. Public Comment and Questions

Interested persons are invited to submit written questions or comments regarding the proposed rulemaking to Gerard M. Mackarevich, Chief Counsel, Commission on Crime and Delinquency, P. O. Box 1167, Harrisburg, PA 17108-1167, within 30 days of publication of this proposed rulemaking. Questions and comments may also be sent via electronic mail to gmackarevi@state.pa.us, or by facsimile machine to Mr. Mackarevich's attention at the Commission's Civil and Criminal Training Division (717) 783-7139.

THOMAS W. CORBETT, Jr., Esq.,
Chairperson
Commission on Crime and Delinquency
 HONORABLE JAMES E. RUSSO,
Chairperson
Constables' Education and Training Board

Fiscal Note: 35-26. (1) General Fund;

	<i>Costs</i>
(2) Implementing Year 2000-01 is	\$1,966,632;
(3) 1st Succeeding Year 2001-02 is	\$1,966,632;
2nd Succeeding Year 2002-03 is	\$1,966,632;
3rd Succeeding Year 2003-04 is	\$2,006,632;
4th Succeeding Year 2004-05 is	\$2,166,632;
5th Succeeding Year 2005-06 is	\$2,266,632;
(4) Fiscal Year 1999-00	\$1,435,000; Fiscal Year 1998-99
	\$1,297,000; Fiscal Year 1997-98 \$923,000; (7) Constable
	Education and Training Account; (8) recommends adop-
	tion. <i>Note:</i> Costs are offset by surcharges collected at the
	county level relating to initiation of civil matters or
	service of process. The surcharges are deposited into a
	restricted account in the General Fund known as the
	Constable Education and Training Account.

Annex A

TITLE 37. LAW

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 431. CONSTABLES' EDUCATION AND TRAINING BOARD

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GENERAL PROVISIONS

§ 431.1. Purpose.

This chapter sets forth standards and procedures relating to the certification of constables and deputy constables and their qualification to carry or use firearms in the performance of their duties.

§ 431.2. Definitions.

The following words and phrases, when used in this chapter, have the meanings as indicated:

Act—42 Pa.C.S. §§ 2941—2950 (relating to constables).

Basic training—A course of training administered by the Board that, when completed successfully, entitles a new constable or one who has been out of office for not less than 5 years to perform judicial duties and be compensated under the act.

Board—The Constables' Education and Training Board of the Commission.

Certification—The Board's official determination that a constable or deputy constable has completed successfully the training required by the act to perform judicial duties and be compensated.

Commission—The Commission on Crime and Delinquency.

Constable—A person currently serving as constable or deputy constable.

Continuing education—A course of annual training administered by the Board that, when completed successfully, entitles a constable to continue to perform judicial duties and be compensated under the act.

Firearms qualification—The Board's official determination under the act that a constable is qualified to carry or use firearms in the performance of duties.

School—A facility approved by the Board that enters a contract with the Commission to conduct training.

Waiver—The Board's grant of permission to a constable to reduce the hours of classroom attendance in a Board training course based on the Board's determination that, because of prior training and experience, the constable has acquired knowledge or skill equivalent to that provided by the Board's training.

CERTIFICATION

§ 431.11. Registration.

To be considered by the Board for certification, a person shall register with the Board by submitting the information requested by the Board. A registrant shall inform the Board of a change to information previously provided within 15 days of the change.

§ 431.12. Initial certification.

The Board will issue a certification to a constable who successfully completes basic training or attains a passing grade on the Board's basic training waiver examination.

§ 431.13. Annual recertification.

(a) If a constable successfully completes continuing education, the Board will recertify the constable for the next calendar year.

(b) To maintain continuous certification, a constable shall complete continuing education during the calendar year following the year in which the constable completed one of the following:

- (1) Basic training.
- (2) The basic training waiver examination.
- (3) A previous course of continuing education.

§ 431.14. Lapse of certification.

The certification of a constable who fails to complete continuing education successfully within the time allowed in § 431.13(b) (relating to annual recertification) shall lapse and be listed by the Board as inactive. Upon successful completion of continuing education by a constable, the Board will reactivate the lapsed certification.

§ 431.15. Certification numbers.

(a) The Board will issue a unique certification number to a constable whom the Board has certified for the first time.

(b) If a person has not been elected or appointed as constable, but has successfully completed basic training, the Board will issue a certification number upon the individual's election or appointment and the notification to the Board by the constable of the election or appointment.

(c) The Board will reissue the original certification number to a constable who successfully completes continuing education.

(d) If a person has vacated the office of constable or deputy constable, the person is required to notify the Board immediately. Upon the notification, the Board will place the applicable certification number into inactive status.

(e) Upon reelection or reappointment to office, the constable shall notify the Board immediately. Based upon the timing of reelection or reappointment, the Board will take one of the following steps:

(1) If the reelection or reappointment occurs within a year of the constable's initial certification or most recent recertification, the constable's certification number will be reactivated as soon as practicable.

(2) If the reelection or reappointment occurs a year or more but less than 5 years after the constable's initial certification or most recent recertification, the Board will reactivate the original certification upon the constable's successful completion of the next available continuing education.

(3) If the reelection or reappointment occurs not less than 5 years after the constable's initial certification or most recent recertification, the Board will issue a new certification number upon the constable's successful completion of the next available basic training.

BASIC TRAINING

§ 431.21. Curriculum.

(a) Basic training will consist of instruction in the following topics:

- (1) Role of the constable in the justice system.
- (2) Professional development.

- (3) Civil law and process.
- (4) Criminal law and process.
- (5) Use of force.
- (6) Mechanics of arrest.
- (7) Defensive tactics.
- (8) Prisoner transport and custody.
- (9) Court security.
- (10) Crisis intervention.

(b) The Board may add, delete or modify one or more topics upon publishing prior notice of the changes in the *Pennsylvania Bulletin* and in an edition of the *Constables' Training Bulletin* that is distributed to constables and other interested parties.

§ 431.22. Successful completion.

(a) A constable or other person will complete basic training successfully upon meeting the following criteria:

- (1) Attending all of the hours of basic training required by the act.
- (2) Attaining a passing score as established by the Board on the written examination for each topic.
- (3) Demonstrating to the Board's satisfaction proficiency in practical skills.

(b) A constable or other person who fails to achieve a passing score on a written examination may undergo a second examination.

(c) A constable or other person who fails to achieve a passing score in a second examination shall attend a second basic training in its entirety and complete it successfully to be issued a certification.

(d) A constable or other person may attend a third basic training upon failing to complete the second course successfully, but shall be given no additional opportunities upon failing to complete the third course successfully.

§ 431.23. Eligibility for waiver.

A constable who fits one of the following categories may apply to the Board for a waiver of the requirement to attend and successfully complete basic training:

- (1) Current employment as a municipal police officer or deputy sheriff in this Commonwealth who demonstrates to the satisfaction of the Board that training and certification required to perform the applicable occupation are current.
- (2) Employment within the past 2 years as a State Police officer, municipal police officer or deputy sheriff, who demonstrates to the satisfaction of the Board that training and certification required to perform the applicable occupation were current at the time the constable terminated the employment.

§ 431.24. Waiver examination.

(a) The Board will issue an initial certification to a constable to whom the Board grants a waiver of basic training and who attains a passing grade score on the Board's basic training waiver examination as established by the Board.

(b) A constable shall have one opportunity only to obtain a passing score on a basic training waiver examination. A constable who fails the basic training waiver examination shall attend the Board's basic training course in full and complete it successfully to obtain an initial certification.

§ 431.25. Attendance policies.

(a) A person who is not a constable but who indicates an intention to seek election or appointment as a constable may register and attend basic training if an opening is available and the person bears financial responsibility for the cost.

(b) A constable or other person who registers for basic training may withdraw from the course without penalty upon timely notification to the director of the school conducting basic training. A notification shall be deemed timely if it is delivered to the director of the school at least 7 days prior to the start of classes. The school may assess a failing grade for all or part of basic training if the constable or other person fails to provide timely notification and the Board finds that substantial mitigating circumstances do not exist.

CONTINUING EDUCATION

§ 431.31. Curriculum.

The Board may adjust periodically the content of continuing education it deems necessary to address new or varied topics or skills required to perform judicial duties in the act.

§ 431.32. Successful completion.

(a) A constable will complete continuing education successfully upon meeting the following criteria:

- (1) Attending all of the hours of continuing education required by the act, except for topics specifically waived by the Board under this chapter.
- (2) Attaining a passing score as established by the Board on each written examination taken.
- (3) Demonstrating proficiency in each examination of practical skills.

(b) A constable who fails to attain a passing score on any written examination may undergo a second examination for that topic.

(c) A constable who fails to attain a passing score in a second examination shall attend another course in the failed module and complete it successfully to be recertified. The constable shall bear financial responsibility for a second continuing education.

(d) A constable who fails two successive continuing education courses will not be afforded an opportunity to attend a third course.

§ 431.33. Eligibility for waiver.

(a) At the beginning of each calendar year, the Board will determine for which specific topics it will entertain waiver requests from constables in that year's continuing education curriculum.

(b) A constable seeking annual recertification who is currently employed as a municipal police officer or deputy sheriff may apply to the Board for a waiver of certain topics in that year's continuing education curriculum if the constable demonstrates that equivalent training and certification required to perform the applicable other occupation are current.

(c) A constable shall apply to the Board for each year's continuing education for which the constable is seeking waiver.

§ 431.34. Scope of waiver.

(a) The Board will grant a waiver of continuing education for those topics that also were covered in the certification training for the other occupation.

(b) A constable who is granted a waiver of continuing education will be recertified despite absence from classroom attendance for those topics specifically waived by the Board, if the constable attends and successfully completes all topics in continuing education for which a waiver is not granted.

§ 431.35. Attendance policies.

A constable who registers for continuing education may withdraw without penalty upon timely notification to the director of the school conducting the continuing education. A notification will be deemed timely if it is delivered to the director of the school at least 7 days prior to the start of classes. The school may assess a failing grade for the entire course or applicable topic if the constable fails to provide timely notification and the Board finds that substantial mitigating circumstances do not exist.

FIREARMS QUALIFICATION

§ 431.41. Qualification course.

(a) Unless granted a waiver by the Board as set forth in § 431.45 (relating to eligibility for waiver), a constable shall attend and successfully complete a basic firearms qualification course established by the Board to be qualified for the first time by the Board to carry and use a firearm in the performance of duties.

(b) After a constable attains firearms qualification for the first time, the constable shall attend and successfully complete the Board's annual firearms qualification course to maintain firearms qualification, except to the extent the Board grants a waiver as set forth in § 431.45.

§ 431.42. Eligibility for firearms qualification.

A constable holding current Board certification who is not precluded under State or Federal law from possessing or using a firearm is eligible to attend a firearms qualification course.

§ 431.43. Firearm and ammunition.

(a) A constable shall be responsible for providing a firearm, ammunition, magazines, speed loaders, safety accessories, cleaning equipment and other associated equipment as needed during the firearms qualification course.

(b) The firearm provided shall be of a design and caliber generally acceptable for law enforcement usage within this Commonwealth, and shall be in a condition for safe operation as designed and intended by the firearm manufacturer.

(c) The ammunition provided shall be of a type and design generally acceptable for law enforcement usage within this Commonwealth, and may not be remanufactured or reloaded.

§ 431.44. Successful completion.

(a) The Board will qualify a constable to carry and use a firearm in the performance of duties who meets the eligibility criteria of § 431.42 (relating to eligibility for firearms qualification) and who meets the following criteria:

(1) Attending all of the hours of training scheduled by the Board, except for topics specifically waived by the Board under this chapter.

(2) Attaining a passing score as established by the Board on each written examination.

(3) Demonstrating proficiency in each examination of practical skills, using the same firearm and the same or

comparable ammunition that the constable will carry in the performance of duties during the upcoming year.

(b) A constable who fails to attain a passing score on a written examination or course-of-fire may undergo one retest of the applicable written examination or practical skill proficiency examination.

(c) A constable who fails to attain a passing score in a retest of a written examination or practical skill proficiency examination shall attend a second firearms qualification course in its entirety and complete it successfully to obtain a firearms qualification. The constable shall bear financial responsibility for the second firearms qualification course.

(d) A constable who fails two successive firearms qualification courses will not be afforded an opportunity to attend a third course.

§ 431.45. Eligibility for waiver.

(a) A constable seeking firearms qualification who is currently employed as a municipal police officer, deputy sheriff or officer of the Game Commission or the Fish and Boat Commission may apply to the Board for a full or partial waiver of a Board firearms qualification course if the constable demonstrates to the satisfaction of the Board that training and certification required to carry and use a firearm in the applicable other occupation are current.

(b) A constable shall apply to the Board for each separate firearms qualification course for which the constable is seeking waiver.

§ 431.46. Scope of waiver.

(a) The Board will grant a waiver relating to a Board firearms qualification course for those topics that also were covered in the firearms training for the other occupation.

(b) A constable who is granted a waiver relating to a Board firearms qualification course will be qualified by the Board to carry and use firearms despite absence from classroom attendance for those topics specifically waived by the Board, if the constable attends and successfully completes all topics in the course for which a waiver is not granted.

§ 431.47. Attendance policies.

A constable who registers for a firearms qualification course may withdraw from the course without penalty upon timely notification to the school conducting the course. A notification will be deemed timely if it is delivered to the director of the school at least 7 days prior to the start of classes. The school may assess a failing grade for all or part of the course if the constable fails to provide timely notice and the Board finds that substantial mitigating circumstances do not exist.

§ 431.48. Lapse of qualification.

A firearms qualification will lapse immediately if a person who held the qualification no longer meets the eligibility criteria in § 431.42 (relating to eligibility for firearms qualification), or does not successfully complete a firearms qualification course in the calendar year following the person's most recent successful completion of such a course.

SCHOOLS AND INSTRUCTORS

§ 431.51. Board approval of school.

(a) The Board may select and approve one or more schools to conduct any of the various training programs that it administers under the act.

(b) The Board will select and approve schools to provide training from a list of candidates solicited by the Commission through a competitive process.

§ 431.52. Scope of approval.

Board approval of a school shall be effective only for the duration of the contract executed between Commission and the school.

§ 431.53. Board certification of instructors.

The Board will certify instructors for its training programs from one or more persons who shall apply to the Board through a school and submit information as requested. Information shall include a detailed description of the formal training and actual experience in the specific topics for which certification is being sought, and a description of the instructional experience of the applicant.

§ 431.54. Scope and limitations of instructor certification.

A person certified by the Board as an instructor shall use the certification only while teaching Board training in a school. Board certification of an instructor shall be effective only so long as the instructor is actively involved in teaching in a school the topics for which certification was granted.

[Pa.B. Doc. No. 00-1980. Filed for public inspection November 17, 2000, 9:00 a.m.]

OFFICE OF THE BUDGET

[4 PA. CODE CH. 7]

Fiscal Notes

The Office of the Budget (OB), under authority contained in section 612 of The Administrative Code of 1929 (71 P. S. § 232), proposes to amend Chapter 7, Subchapter R (relating to fiscal notes to read as set forth in Annex A.

Purpose of Proposed Amendments

This regulatory change will clarify the process that agencies must follow to ensure that fiscal notes accompany every regulatory action and administrative procedure published in the *Pennsylvania Bulletin*.

The OB is updating the regulations so that they conform with the present practice of writing fiscal notes.

Explanation of Regulatory Requirements

Administrative departments, boards, commissions and authorities receiving money from the State Treasury are required to provide fiscal notes with every regulatory action and administrative procedure published in the *Pennsylvania Bulletin*. The proposed regulatory change codifies the current practice of writing fiscal notes.

Agencies that are required to submit a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) shall submit to the OB one copy of the Regulatory Analysis Form and one copy of the regulatory action or administrative procedure, or changes thereto. Agencies that are not required to submit a Regulatory Analysis Form to IRRC for a regulatory action or administrative procedure shall submit the following information to the OB:

(i) One copy of each regulatory action or administrative procedure

(ii) The designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made and the line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds will occur as a result of the action or procedures.

(iii) The probable cost for the fiscal year the program is implemented and a projected cost estimate of the program for each of the 5 succeeding fiscal years.

(iv) The probable loss of revenue for the fiscal year of its implementation and a projected loss of revenue from the program for each of the 5 succeeding fiscal years.

(v) The 3 year fiscal history of the program for which expenditures are to be made.

The enumerated information is also required to be submitted for Executive Orders, Statements of Policy and notice of rule changes and notices related to Federally required changes and changes in fee structure.

The OB reviews the regulatory action or administrative procedure, or changes thereto, and writes a fiscal note explaining its economic impact. The OB sends the fiscal note to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

Fiscal Impact

The OB has determined that the proposed amendments will not have any additional fiscal impact on the Commonwealth.

Paperwork

The proposed amendments will not increase paperwork for the public or the Commonwealth.

Effective Date

The proposed amendments, if approved upon final rulemaking, will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to Pamela F. Cross, Office of the Budget, Legal Office, 7th Floor Bell Tower, 303 Walnut Street, Harrisburg, PA 17101-1808 within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the OB submitted a copy of the proposed amendments on November 8, 2000, to IRRC and the Chairpersons of the Senate and House Appropriations Committees. In addition to submitting the proposed amendments, the OB has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the OB. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the OB within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies

detailed procedures for review by the OB, the Governor and the General Assembly to review these objections before final publication of the regulations.

ROBERT BITTENBENDER,
Secretary

Fiscal Note: 9-1. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 4. ADMINISTRATION
PART I. GOVERNOR'S OFFICE
CHAPTER 7. MISCELLANEOUS PROVISIONS
Subchapter R. FISCAL NOTES**

§ 7.232. Definitions.

Regulatory actions and administrative procedures consist of the following:

* * * * *

(4) Notice of rule changes and notices related to Federally required changes and changes in fee structure.

§ 7.233. [Publishing of fiscal notes] (Reserved).

[(a) Except as noted in subsection (b), fiscal notes are to be published once for each regulatory action or administrative procedure, and changes thereto, appearing in the *Pennsylvania Bulletin*, as follows:

(1) When the initial text of a regulatory action or administrative procedure is published with notice of proposed rulemaking.

(2) When a regulatory action or administrative procedure is published in final text without notice of proposed rulemaking.

(b) When a proposed regulatory action or administrative procedure is modified to such a degree following notice of proposed rulemaking that the original fiscal note is no longer applicable, a new fiscal note shall be published with the final text of the regulatory action or administrative procedure.]

§ 7.234. Responsibilities

(a) Agencies required by § 7.231 (relating to policy) to publish fiscal notes are to establish procedures to insure that fiscal notes are included with regulatory actions and administrative procedures as follows:

[(1) *Proposed regulatory action or administrative procedure.* A fiscal note, in triplicate, and one copy of each proposed regulatory action or administrative procedure is to be delivered by the promulgating agency to the Office of the Budget at the time the proposed regulatory action or administrative procedure is deposited with the Legislative Reference Bureau or, if required, with the Department of Justice for review as to legality.

(2) *Final regulatory action or administrative procedure.* A fiscal note, in triplicate, and one copy of each final regulatory action or administrative procedure not subject to proposed rule making or a fiscal note, in triplicate, as required by § 7.233(b) (relating to publishing of fiscal notes) is to be delivered by the promulgating agency to the Office of the Budget at the time the final regulatory action or administrative procedure is deposited

with the Department of Justice for review as to legality or, if Department of Justice review is not required, with the Legislative Reference Bureau.]

(1) Agencies that are required to submit a Regulatory Analysis Form to the Independent Regulatory Review Commission under the Regulatory Review Act (71 P. S. §§ 745.1—745.14) shall submit one copy of a Regulatory Analysis Form and one copy of the regulatory action or administrative procedure, or changes thereto, to the Office of the Budget prior to the time that the regulatory action or administrative procedure, is deposited with the Legislative Reference Bureau.

(2) Agencies that are not required to submit a Regulatory Analysis Form to the Independent Regulatory Review Commission for a regulatory action or administrative procedure shall submit the following information to the Office of the Budget:

(i) One copy of each regulatory action or administrative procedure.

(ii) The designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made and the line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds will occur as a result of the action or procedures.

(iii) The probable cost for the fiscal year the program is implemented and a projected cost estimate of the program for each of the 5 succeeding fiscal years.

(iv) The probable loss of revenue for the fiscal year of its implementation and a projected loss of revenue from the program for each of the 5 succeeding fiscal years.

(v) The 3-year fiscal history of the program for which expenditures are to be made.

* * * * *

§ 7.235. [Format of fiscal notes] (Reserved).

[(a) Fiscal notes shall be prepared on Form OA-536.

(b) The following guidelines are furnished for preparation of Form OA-536:

(1) Agency identification number. Each agency should cross-identify fiscal notes with regulations and administrative procedures by use of an identification system that includes the agency, year, and sequential numbers for the year. For example: Exec Bd-78-1 or Agric-78-14.

(2) If all four NO blocks, relating to loss of revenue or increased costs, are checked, complete only the next two items (FUND and APPROPRIATION).

(3) If loss of revenue or increased costs are applicable to political subdivisions, identify the FUND(S) blocks the subdivisions or classes of subdivisions to which the loss or increase will apply.

(4) The 3-year history of program cost is for the current and two immediately preceding years.

(5) Do not enter remarks in the block for the Budget Secretary's recommendations.

(6) Remove the two copies marked for the Legislative Reference Bureau. Complete the remaining sections on the Budget Office and Agency copies and forward the first three copies as shown in § 7.234 (relating to responsibilities).]

[Pa.B. Doc. No. 00-1981. Filed for public inspection November 17, 2000, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]
Continuing Education

The State Board of Veterinary Medicine (Board) proposes to amend § 31.15 (relating to continuing education) to read as set forth in Annex A. The proposed amendment would restrict the number of continuing education hours taken in individual study programs to 25% of the total hours required by statute and regulation.

Effective Date

The limitation would be effective on final publication in the *Pennsylvania Bulletin* and would apply to continuing education credits earned during the December 1, 2000, to December 1, 2002, biennial renewal period.

Statutory Authority

Section 18 of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.18), requires the Board to set the standards for continuing education programs to ensure that the programs meet the educational and professional requirements of the profession.

Background and Need for Amendment

The Board's current regulation regarding continuing education was adopted at 26 Pa.B. 2785 (June 15, 1996). The current regulation mirrors the statutory requirements for biennial continuing education.

Under the current system of approving continuing education programs for credit, a number of providers, such as the American Veterinary Medical Association and veterinary colleges, are preapproved and do not have to submit their proposed courses for approval of the Board. Other continuing education providers must submit a course description to the Board's continuing education committee for approval prior to the course being offered. For these courses, the committee reviews the proposed program and makes a recommendation to the entire Board. The Board then determines whether or not to approve the course for continuing education credit. If the course is approved for credit, the Board determines how many credits will be granted for completion of the course.

Over the past year, an increasing number of continuing education providers whose courses are not preapproved have sought approval for individual study programs. The Board has granted credit for some of these individual study programs. The Board wishes to limit the number of

individual study course credits a licensee may apply to meet the continuing education requirements for two reasons.

First, the act mandates that all licensees complete a minimum of 8 hours of continuing education each biennial period. The Board is charged with enforcing this requirement. Because it is impossible for the Board to independently verify a licensee's completion of an individual study course, the Board believes that the number of individual study courses a licensee may use to fulfill the biennial continuing education requirement should be limited.

Second, individual study courses do not provide licensees with an opportunity to interact with their professional colleagues, which is an integral component of traditional continuing education courses. Because the Board believes that interaction with professional peers is an important part of a licensee's participation in traditional continuing education courses, the Board believes that the number of individual study courses a licensee may use to fulfill the biennial continuing education requirement should be limited.

Description of Proposed Amendments

The Board proposes to amend its continuing education regulation in § 31.15 to require that six of the eight credits required in each biennial period be earned from traditional continuing education programs. The remaining two credits may be earned from individual study programs.

Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board sent the text of the proposed amendment to interested parties, including State and regional veterinary medical associations, associations of animal health technicians and veterinary schools. Only one predraft comment was received regarding the proposed amendment: the Bucks/Montgomery Counties Veterinary Medical Association endorsed the proposed amendment. In addition, the Board considered the amendment as required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

Fiscal Impact

The proposed amendment should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions.

Paperwork Requirements

The proposed amendment should not create additional paperwork for the Board or the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 8, 2000, the Board submitted a copy of this proposed amendment to IRRC and the Chairpersons of the House Professional Licensure Committee and Senate Consumer Protection and Professional

Licensure Committee for review and comment. In addition to submitting the proposed amendment, the Board has provided IRRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRRC has objections to any portion of the proposed amendment, it will notify the Board within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Robert Kline, Administrator, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BRIAN V. HARPSTER, V.M.D.,
Chairperson

Fiscal Note: 16A-5711. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

LICENSURE

§ 31.15. Continuing education.

As a condition of licensure renewal under § 31.13 (relating to licensure renewal), a veterinarian shall attend **[eight] 8** clock hours of continuing education courses approved by the Board during the 24 months preceding the renewal date. Continuing education credit will not be given for a course in office management or practice building. **A maximum of 2 clock hours may be earned by taking individual study or correspondence courses for which third-party verification of satisfactory completion is provided. The courses shall meet the requirements of § 31.16 (relating to continuing education provider approval).**

[Pa.B. Doc. No. 00-1982. Filed for public inspection November 17, 2000, 9:00 a.m.]