

# RULES AND REGULATIONS

## Title 37—LAW

### COMMISSION ON CRIME AND DELINQUENCY

#### [37 PA. CODE CH. 431]

#### Constables' Education and Training

The Constables' Education and Training Board (Board), an advisory board within the Commission on Crime and Delinquency (Commission), adopts Chapter 431 (relating to Constables' Education and Training Board) to read as set forth in Annex A.

##### A. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

##### B. *Statutory Authority*

The final-form rulemaking is authorized under the authority of 42 Pa.C.S. §§ 2941—2950 (relating to constables) (act).

##### C. *Background and Purpose*

In this final-form rulemaking, the Board establishes basic training and continuing education programs required by the act for constables and deputy constables to attain or retain Board certification, which is a prerequisite for them to be paid for the duties that they perform. This final-form rulemaking also sets standards for those constables and deputy constables who seek Board qualification to carry and use a firearm while conducting their occupation.

The Board, created in 1994 as an advisory board to the Commission, initiated its training programs in 1997. As of November 4, 2002, 1,298 constables and deputy constables held current certification in this Commonwealth.

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, summonses, subpoenas and other legal documents in civil matters, levying on goods and performing other duties relating to execution proceedings, providing courtroom security and transporting prisoners, executing arrest warrants and performing other duties in criminal proceedings.

##### D. *Summary of Comments and Responses on Proposed Rulemaking*

The proposed rulemaking was published at 30 Pa.B. 5961 (November 18, 2000). Publication was followed by a 30-day public comment period during which the Board received no public comments. Neither the House Judiciary Committee nor the Senate Judiciary Committee provided comment. The Board received comments from the Independent Regulatory Review Commission (IRRC), which the Board considered in making revisions to the rulemaking.

The Board approved a final-form rulemaking at its May 2001 meeting. The Commission reviewed and approved it at its June 2001 meeting. The Board submitted a final-form rulemaking to IRRC and to the House Judiciary Committee and Senate Judiciary Committee on August 3, 2001, but withdrew it soon thereafter. The Board took this opportunity to address a language concern of IRRC's and to make additional changes for style and clarity

purposes. Responses to IRRC's comments are as follows, along with descriptions of additional changes that the Board is making.

##### *Section 431.2. Definitions.*

IRRC suggested the deletion of introductory language in the definition section. IRRC suggested that the definition of "waiver" be amended to shorten it and eliminate substantive provisions. The Board adopts both suggestions in the final-form rulemaking. Additionally, the Board shortens the definitions of "basic training," "certification" and "continuing education" to remove substantive provisions.

##### *Section 431.11. Registration.*

IRRC had two comments in this section, both pertaining to the information requested by the Board when a person registers for certification. IRRC suggested that the Board list examples of information to be provided and that it reference a registration form if one exists. The Board implements both suggestions. Additionally, the Board divides the section into two subsections and makes other style changes.

##### *Section 431.12. Initial certification.*

No comments were made pertaining to this section. However, the Board adds the second sentence, which provides that an initial certification is valid through December 31 of the calendar year following its issuance. This addition is consistent with § 431.13(b)(1) (relating to annual certification), which requires a constable to complete continuing education during a calendar year following the constable's completion of basic training to maintain continuous certification.

##### *Section 431.13. Annual certification.*

No comments were made pertaining to this section. However, the Board replaces references to the term "recertification" and similar terms because the word is used in a different context in the act. The Board replaces it with the term "certification."

##### *Section 431.14. Lapse of certification.*

IRRC had no comments on this section of the proposed rulemaking, which discussed what the Board does to a certification when a constable fails to fulfill the requirement for annual training and when the constable subsequently completes that training. The Board on its own decided that this section needed greater specificity to set forth differing approaches to restoring certification depending on the reasons why the constable failed to take the training in a timely manner and how long it took for the constable to make up the training. IRRC provided input in the Board's redrafting of this section.

With this new language, the Board establishes rules for certifying constables following lapse for failure to complete continuing education. Except for lapses of 5 years or more, the Board will reactivate a certification for the calendar year following the year in which the constable completes a continuing education course. For good cause shown, the Board may reactivate the certification in the same year in which the constable completes the course. For lapses of 5 years or more, a certification may not be reactivated and the constable must complete basic training in order for the Board to issue a new certification.

For the reasons discussed in reference to § 431.13, the Board has changed "recertification" to "certification."

*Section 431.15(d) and (e). Certification numbers.*

IRRC had several comments regarding these two subsections. The Board, in response to the comments, has reworked language and substantially revamped the subsections. The section deals with the Board's administrative procedures in issuing, deactivating and reactivating certification numbers of constables and deputy constables. Subsection (d) requires the constable or deputy constable to notify the Board when elective or appointed office is vacated, so that the Board may deactivate the applicable certification number in its database. IRRC commented that the Board's proposed requirement for notification to be accomplished "immediately" was vague, and should be replaced with a specific time frame. The Board implements this suggestion. Additionally, the Board on its own sets forth specific modes of notification. The subsection now provides for notification by telephone, facsimile transmission or e-mail within 48 hours after the vacating action.

Similarly, in subsection (e), the Board now will require a constable or deputy constable who is reelected or reappointed to the office that he once held to notify the Board by one of the same modes now listed in subsection (d), or by United States mail. However, the Board sees no need to require notification within a particular time frame, as suggested by IRRC. The fact that the act precludes a constable or deputy constable from receiving compensation for performing statutory duties without Board certification provides a strong incentive for timely reporting without the need for a deadline. Hence, the word "immediately" has been deleted, with no substitute language being provided.

Primarily in response to IRRC's comments, the Board is rewording the material in § 431.15(e)(1)—(3) (relating to certification numbers). The Board sets up three categories of persons whose certifications are restored after returning to elective or appointed office after a hiatus. The three categories are based on the duration of the hiatus and the constable's previous certification status. It is the Board's intent to require those who had been away from the job for an extended period to complete suitable training prior to obtaining reactivation. One who returns to office less than 1 year after leaving would not need to attend further training. One who returns to office 1 year or more but less than 5 years after leaving would need to complete continuing education to have certification reactivated. Those with 5 years or more of inactivity would need to attend basic training. In response to IRRC's comments, the Board makes the time frame more specific, by beginning the applicable time period at the point when the constable or deputy constable vacates office.

The Board deletes the phrase "as soon as practicable" in § 431.15(e)(1), which states that the Board will reactivate the original certification number if reelection or reappointment occurs within the same calendar year as the constable or deputy constable vacated the office. IRRC had suggested that the term be replaced with a more specific time frame, but upon further reflection the Board believes that a time reference is unnecessary.

At IRRC's suggestion, the Board adds the word "course" at the end of § 431.15(e)(2), and replaces "not less than 5 years" with "5 years or more."

*Section 431.21(a) and (b). Curriculum.*

At IRRC's suggestion, the Board is adding language to make clear that one of the basic training topics listed includes statutorily-mandated instruction in the interpretation and application of the fees provided for in the act.

IRRC questioned the Board proposal that would allow topics to be added to or deleted from the curriculum or modified by simply publishing a notice and without having to undergo the formal rulemaking process. The Board deletes the questioned provision.

*Section 431.22. Requirements.*

The Board adopts IRRC's suggestion to set forth the actual number of hours of basic training currently required by the act. For style purposes, the Board changes the heading of this section, and makes the same change for parallel sections pertaining to continuing education and firearms qualification.

IRRC had three comments regarding subsection (a)(3). The Board concurs with two. First, it adds language to clarify that the Board will require basic training participants to undergo proficiency examinations in practical skills. Second, it sets forth examples of the practical skills to be tested. The Board declines to implement IRRC's suggestion to set forth specific criteria by which candidates are to be judged as proficient in practical skills. The proficiency examinations by their nature are "hands-on" and defy precise quantification of achievement. The Board chooses to use language that allows for the subjective impressions of the instructor administering the proficiency examination. However, the Board deletes the phrase "demonstrate to the Board's satisfaction," which suggests a higher level of precision in proficiency testing than may actually exist.

*Section 431.24(a). Waiver examination.*

The Board adopts language changes suggested by IRRC. Additionally, the Board makes several stylistic changes.

*Section 431.31. Curriculum.*

IRRC suggested replacing the word "periodically" with "annually" in describing how frequently the Board may adjust the continuing education curriculum. The Board makes this change.

IRRC also had concerns about how a constable or deputy constable will receive notice of a curriculum change, and how the Board will implement changes so that a course already completed at the time of the change is not later disallowed. The Board believes that these concerns are unwarranted. Unlike continuing education in many other professions, in which the regulated party chooses courses from the offerings of various independent training providers, the Board provides one standard program every year to all constables and deputy constables. Therefore, there is no way that a constable or deputy constable can take a course that is later disallowed.

*Section 431.32(a)(1) and (c). Requirements.*

IRRC commented that the Board regulation on the criteria for successful completion of continuing education should include a specific reference to the number of hours of training as required by the act. However, unlike the precise number of hours required by the act for basic training (80 hours), a maximum number of "no more than 40 hours per year" is set for continuing education. Because of the evolving need for training in various topics that cannot be foreseen very far in advance, the Board sees a need to maintain flexibility as to number of continuing education hours. Consequently, the Board declines to specify the number of hours of continuing education. However, the Board has added language in the final-from rulemaking by which it will disseminate information annually about the hours requirement for that year.

No comments were made pertaining to subsection (c). However, for the reasons discussed in reference to § 431.13, the Board has changed “recertified” to “certified.” Additionally, the Board changes the heading of this section and makes various stylistic changes.

*Section 431.33. Eligibility for waiver.*

*Section 431.34. Scope of waiver.*

No comments were made on these sections. However, to add clarity the Board substantially restructures the sections. Language pertaining to the Board’s annual determination of waivable topics is moved from one section to the other and superfluous language is excised in both sections.

*Section 431.41. Qualification course.*

No comments were made pertaining to this section. However, the Board makes various language changes to add clarity.

*Section 431.43. Firearm and ammunition.*

IRRC had several comments on this section. The Board adopts the suggestion to make clear that a constable or deputy constable seeking to attend a firearm qualification course must, as a prerequisite, provide a personal weapon and enumerated equipment. IRRC also suggested that the proposed language lacked specificity with regard to the type of weapon and ammunition that the Board requires to be “generally acceptable for law enforcement usage.” The Board declines to adopt a suggestion to allow an attendee to obtain a predetermination that the weapon and ammunition chosen are acceptable. Instead, the Board enumerates a list of acceptable calibers, which it believes will provide sufficient guidance to any attendee who is unclear what kind of weapon would be “generally acceptable for law enforcement usage.” With respect to ancillary equipment, the Board adds the descriptive phrase “specific to the weapon,” which it believes will provide sufficient guidance to the attendee.

*Section 431.51. Board approval of school.*

The Board incorporated IRRC’s suggestion to substitute the word “will” for “may” in discussing the Board’s process for selecting and approving schools to conduct the training programs. The Board agrees that, because it is required under section 2944(a) of the act (relating to program established) to establish, implement and administer training programs, the word “will” is appropriate.

**E. Fiscal Impact and Paperwork Requirements**

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Board pays for the training entirely out of surcharges collected at the county level for initiation of civil matters or service of process. The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

**F. Sunset Date**

The Board will continually monitor the effectiveness of its regulations through communications with the regulated population. Therefore, no sunset date has been set.

**G. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 2, 2000, the Board submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 5961, to IRRC and to the Chairpersons of the House and Senate Judiciary Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on February 14, 2003, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 27, 2003, and approved the final-form rulemaking.

**H. Contact Person**

Further information may be obtained by contacting Steve Spangenberg, Director, Commission on Crime and Delinquency, Bureau of Training Services, P. O. Box 1167, Harrisburg, PA 17108-1167, (717) 705-3693, Ext. 3040.

**I. Findings**

The Board finds that:

(1) Public notice of proposed rulemaking was 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.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 30 Pa.B. 5961.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the Board’s authorizing statute.

**J. Order**

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 37 Pa. Code Chapter 431, are amended by adding §§ 431.1, 431.2, 431.11—431.15, 431.21—431.25, 431.31—431.35, 431.41—431.48 and 431.51—431.54 to read as set forth in Annex A.

(b) The Board will submit this order and Annex A to the Office of General Counsel and to the Office of the Attorney General as required by law.

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

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

JAMES J. EISENHOWER, Esq.,

*Chair*

*Commission on Crime and Delinquency*

HONORABLE JAMES E. RUSSO,

*Chair*

*Constables’ Education and Training Board*

*(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 1423 (March 15, 2003).)*

**Fiscal Note:** 35-26. (1) General Fund; (2) Implementing Year 2002-03 is \$1,866,632; (3) 1st Succeeding Year 2003-04 is \$1,966,632; 2nd Succeeding Year 2004-05 is \$2,066,632; 3rd Succeeding Year 2005-06 is \$2,166,632; 4th Succeeding Year 2006-07 is \$2,266,632; 5th Succeed-

ing Year 2007-08 is \$2,366,632; (4) 2001-02 Program—\$1,778,807; 2000-01 Program—\$1,371,099; 1999-00—\$1,434,848; (7) Constables Education and Training Account; (8) recommends adoption. 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 terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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

*Basic training*—A course of training administered by the Board under section 2945 of the act (relating to program contents).

*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.

*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 under section 2946 of the act (relating to continuing education).

*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.

##### CERTIFICATION

#### § 431.11. Registration.

(a) A person shall register with the Board for certification by completing and submitting a form provided by the Board. The person will be required to provide information such as mailing address and telephone number, Social Security number, date of birth and office held or sought. A constable shall set forth the beginning date and expiration date of the term of office held, and provide documentary evidence of election or appointment.

(b) A registrant shall inform the Board of a change to registration information 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. An initial certification will be valid through December 31 of the year following initial certification.

#### § 431.13. Annual certification.

(a) If a constable successfully completes continuing education, the Board will certify 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.

(a) The certification of a constable who fails to complete continuing education successfully within the time allowed in § 431.13(b) (relating to annual certification) shall lapse and the Board will list the constable as inactive.

(b) The Board will reactivate a certification that is lapsed if the constable completes continuing education within 5 years of the lapse. The reactivated certification will be effective for the calendar year following completion of continuing education.

(c) For good cause shown, the Board may reactivate the certification in the same calendar year in which the constable completes continuing education. Examples of

good cause are a medical problem, family crisis or obligation, or conflict with other employment.

(d) The Board will not reactivate a certification 5 years or more after the lapse of a constable's certification. The Board will issue a new certification upon the constable's successful completion of basic training.

**§ 431.15. Certification numbers.**

(a) The Board will issue a unique certification number to a constable who obtains initial certification.

(b) If a person who successfully completes basic training has not been elected or appointed as constable, 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) A person is required to notify the Board by telephone, facsimile transmission or electronic mail within 48 hours after the person has vacated the office of constable or deputy constable. The Board will place the person's certification number into inactive status upon notification.

(e) A person who is reelected or reappointed to the office of constable after vacating it shall notify the Board. Based upon the timing of reelection or reappointment, the Board will do one of the following:

(1) If the reelection or reappointment occurs less than a year from the date on which the office was vacated, the Board will reactivate the constable's certification number upon notification.

(2) If the reelection or reappointment occurs a year or more but less than 5 years after the date on which the office was vacated, the Board will reactivate the original certification upon the constable's successful completion of a continuing education course.

(3) If the reelection or reappointment occurs 5 years or more after the date on which the office was vacated, the Board will issue a new certification number upon the constable's successful completion of a basic training course.

**BASIC TRAINING**

**§ 431.21. Curriculum.**

Basic training will consist of instruction in the following topics:

- (1) Role of the constable in the justice system.
- (2) Professional development, including instruction in the interpretation and application of the fees provided for in section 2950 of the act (relating to fees).
- (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.

**§ 431.22. Requirements.**

(a) A constable or other person shall be required to attain the following to complete basic training:

- (1) Attend 80 hours of basic training.
- (2) Attain a passing score as established by the Board on the written examination for each topic.
- (3) Demonstrate proficiency in each examination of practical skills, such as defensive tactics and mechanics of arrest.

(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 may attend and complete a second basic training in its entirety.

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

**§ 431.23. Eligibility for waiver.**

A constable who has the following qualifications may apply to the Board for a waiver of the requirement to complete basic training:

(1) Current employment as a municipal police officer or deputy sheriff in this Commonwealth with current training and certification required to perform the occupation.

(2) Employment within the past 2 years as a State Police officer, municipal police officer or deputy sheriff with current training and certification required to perform the occupation at the time the constable terminated the employment.

**§ 431.24. Waiver examination.**

(a) A constable who has been granted a waiver of basic training shall attain a passing score as established by the Board on the Board's basic training waiver examination.

(b) A constable shall have one opportunity to obtain a passing score on a basic training waiver examination. A constable who fails the basic training waiver examination shall complete basic training to obtain an initial certification.

**§ 431.25. Attendance policies.**

(a) A person who is not a constable but who intends 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 no later than 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 annually the content of continuing education as it deems necessary to address new or varied topics or skills required to perform judicial duties set forth in the act.

**§ 431.32. Requirements.**

(a) A constable shall attain the following to complete continuing education:

(1) Attend the hours of continuing education per year as determined annually by the Board and published in a Board training bulletin.

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

(3) Demonstrate 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 may attend and complete another course in the failed module to be certified. The constable shall bear financial responsibility for a second continuing education course.

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

**§ 431.33. Eligibility for waiver.**

A constable who is currently employed as a municipal police officer or deputy sheriff may apply annually to the Board for a waiver of topics in that year's continuing education curriculum if the constable demonstrates that the equivalent training and certification are current.

**§ 431.34. Scope of waiver.**

(a) At the beginning of each calendar year, the Board will publish a list of specific topics available for waiver consideration.

(b) The Board will grant a waiver of continuing education for those topics that also were covered in the certification training for municipal police officers or deputy sheriffs.

**§ 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 no later than 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) A constable shall complete a basic firearms qualification course established by the Board to attain initial firearms qualification.

(b) After a constable attains initial firearms qualification, the constable shall complete the Board's annual firearms qualification course to maintain firearms qualification.

**§ 431.42. Eligibility for firearms qualification.**

A constable holding certification who is not precluded under State or Federal law from possessing or using a firearm may enroll in a firearms qualification course.

**§ 431.43. Firearm and ammunition.**

(a) As a prerequisite for attending a firearms qualification course, a constable shall provide at all times during

the course a firearm and ammunition, magazines, speed loaders, safety accessories and cleaning equipment specific to the firearm. The Board will provide ammunition to the constable for use during instruction. The constable shall provide ammunition for use during the qualification test.

(b) The firearm provided shall be of a design generally acceptable for law enforcement usage, and shall be in a condition for safe operation as designed and intended by the firearm manufacturer. The firearm provided shall be one of the following calibers:

- (1) .380.
- (2) .38 special.
- (3) .357.
- (4) .40.
- (5) .45.
- (6) 9MM.
- (7) 10MM.

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

**§ 431.44. Requirements.**

(a) A constable who meets the eligibility criteria of § 431.42 (relating to eligibility for firearms qualification) shall attain the following to obtain firearms qualification:

(1) Attend training scheduled by the Board, except for topics specifically waived by the Board under this chapter.

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

(3) Demonstrate 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 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 that training and certification required to carry and use a firearm in the 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.**

The Board may 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.

**§ 431.47. Attendance policies.**

A constable who enrolls in 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 no longer meets all of the eligibility criteria of § 431.42 (relating to eligibility for firearms qualification), or does not complete a firearms qualification course in the calendar year following the person's most recent completion of such a course.

**SCHOOLS AND INSTRUCTORS**

**§ 431.51. Board approval of school.**

(a) The Board will approve one or more schools to conduct training under the act.

(b) Selections will be made from a list of schools 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 a contract executed between the Commission and the school.

**§ 431.53. Board certification of instructors.**

The Board will certify training instructors from persons who 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 instructional experience.

**§ 431.54. Scope and limitations of instructor certification.**

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

[Pa.B. Doc. No. 03-563. Filed for public inspection March 28, 2003, 9:00 a.m.]

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