

# RULES AND REGULATIONS

## Title 37—LAW

### MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CH. 203]

#### Administration of the Training Program

The Municipal Police Officers' Education and Training Commission (Commission) amends Chapter 203 (relating to administration of the program) to read as set forth in Annex A.

The Commission amends § 203.11(a)(8) and (11)(ii)(D) (relating to qualifications) to delete the sit and reach test from the physical fitness requirements and to charge applicants who are not employed by, or have a conditional offer of employment from, a police department an examination fee equal to the actual cost of administering the test.

The Commission amends § 203.12(2)(iv) (relating to waiver of training) to allow training waivers for out-of-State police officers only if they have been certified based on an approved basic police course comparable to the one required by 53 Pa.C.S. Chapter 21, Subchapter D (relating to municipal police officers education and training).

The Commission amends § 203.33(a) (relating to minimum school standards and requirements) to require certified schools to have a school director who meets certain standards. The Commission adds § 203.37 (relating to minimum standards for school directors) to set forth these standards.

The Commission also amends § 203.35 (relating to emergency suspension of school certification) to allow the Commission's Executive Director to suspend a school's certification if a condition exists at the school that presents a clear and present danger to the public, students or school staff; would cause the students not to receive training required by 53 Pa.C.S. Chapter 21, Subchapter D or Chapter 203; the school director does not meet the standards in § 203.37; or an instructor is subject to revocation under § 203.73 (relating to revocation of instructor certification).

Finally, the Commission amends § 203.102 (relating to notice) to allow Commission staff, rather than the Commission, to provide individuals and schools with notice of an adverse action.

#### *Statutory Authority*

This rulemaking is adopted under 53 Pa.C.S. § 2164 (1), (8) and (14) (relating to powers and duties of commission).

#### *Effect*

The final-form rulemaking affects recruits, out-of-State police officers seeking training waivers and certified schools.

#### *Effective Date/Sunset Date*

The final-form rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*. The regulations are continually monitored and updated as needed. Therefore, no sunset date has been set.

#### *Comments and Responses*

The Commission received no comments from the House Judiciary Committee or the Senate Law and Justice Committee.

The Pennsylvania Sheriffs Association contends the Commission should amend its regulations to allow deputy sheriffs to obtain a training waiver if they have completed training required by section 7 of the Deputy Sheriffs' Education and Training Act (71 P.S. § 2107). The Commission has rejected that suggestion because the deputy sheriffs' training course is not the equivalent of the training required by 53 Pa.C.S. Chapter 21, Subchapter D. More importantly, the training waiver in § 203.12(2)(iv) is for individuals who have already been employed as full-time police officers. As the Supreme Court of Pennsylvania recently acknowledged in *Kopko v. Miller*, No. 38 MAP 2004 (filed February 28, 2006), deputy sheriffs are not police officers and do not have general police powers.

The Commission also received comments from the Independent Regulatory Review Commission (IRRC). First, IRRC noted that the Commission is deleting provisions in § 203.35 that allowed schools to correct conditions leading to an emergency suspension. IRRC suggested the final-form rulemaking should specify the procedures for a school to undertake to correct violations as well as reinspection procedures. The Commission has considered and rejected this suggestion. The Commission will not impose an emergency suspension absent a serious violation likely to result in a major penalty or decertification of the school. For that reason, the suspension will remain in place until a hearing has been held.

Next, IRRC suggested that § 203.37 include a grandfathering provision or establish a time frame for school directors to demonstrate compliance. The Commission has added grandfathering language. IRRC also found the requirement in § 203.37(4) vague. The Commission has replaced that provision with a requirement of 2 years experience as a police or adult education instructor.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 3, 2005, the Commission submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 5690 (October 15, 2005), to IRRC and the Chairpersons of the House Judiciary Committee and Senate Law and Justice Committee 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 the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 9, 2006, the final-form rulemaking was approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, the final-form rulemaking was approved by IRRC August 10, 2006.

*Contact Person*

For further information on the final-form rulemaking, contact Syndi L. Guido, Policy Director, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Persons with a disability who require an alternative format of this final-form rulemaking (that is, large print, audio tape or Braille), may contact Syndi L. Guido to make the necessary arrangements.

*Fiscal Impact*

In the past, the certification examination was only administered to individuals who had already been hired as police officers. Under this final-form rulemaking, everyone who completes training is eligible to take the certification examination. However, individuals who have not been hired as police officers must pay to take the examination. The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

*Paperwork Requirements*

The final-form rulemaking will create no new paperwork requirements but will require the processing of more certification examinations.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt these amendments has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC, the House and Senate Committees.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 37 Pa. Code Chapter 23, are amended by amending §§ 203.1, 203.11, 203.12, 203.33, 203.35 and 203.102 to read as set forth at 35 Pa.B. 5690 and by adding § 203.37 to read as set forth in Annex A.

(b) The Commission will submit this order, 35 Pa.B. 5690 and Annex A to the Office of General Counsel and Office of Attorney General as required by law for approval as to form and legality.

(c) The Commission shall certify this order, 35 Pa.B. 5690 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

COL. JEFFREY B. MILLER,  
*Chairperson*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 4801 (August 26, 2006).)

**Fiscal Note:** Fiscal Note 17-68 remains valid for the final adoption of the subject regulations.

**Annex A****TITLE 37. LAW****PART IV. MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION****Subpart A. MUNICIPAL POLICE OFFICERS' TRAINING PROGRAM****CHAPTER 203. ADMINISTRATION OF THE TRAINING PROGRAM****Subchapter C. SCHOOL REQUIREMENTS****§ 203.37. Minimum standards for school directors.**

(a) After September 23, 2006, school directors shall meet the minimum standards set forth in this section.

(b) School directors approved by the Commission shall demonstrate compliance with at least one standard set forth in paragraph (1) and at least one standard set forth in paragraph (2).

(1) School directors shall satisfy one of the following requirements:

(i) Possess an associate's or higher degree in criminal justice, public administration, education or related field.

(ii) Be a graduate of one of the following:

(A) The Federal Bureau of Investigation National Academy.

(B) The Southern Police Institute Administrative Officers Course.

(C) The Law Enforcement Instructor Training Course of the Federal Law Enforcement Training Center.

(D) The Northwestern University Staff and Command School.

(E) Other law enforcement training program approved by the Commission.

(2) School directors shall satisfy one of the following minimum professional experience requirements:

(i) Ten years in law enforcement, including 5 years at an administrative level.

(ii) Fifteen years increasingly responsible full-time experience as a Federal, State or municipal police officer with general police powers.

(c) School directors shall be free of convictions for a disqualifying criminal offense.

(d) School directors shall possess at least 2 years experience as a police or adult education instructor.

[Pa.B. Doc. No. 06-1863. Filed for public inspection September 22, 2006, 9:00 a.m.]

**Title 58—RECREATION****FISH AND BOAT COMMISSION****[58 PA. CODE CHS. 61, 63, 65 AND 69]****Fishing**

The Fish and Boat Commission (Commission) amends Chapters 61, 63, 65 and 69. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2007.

#### B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The amendments to §§ 61.1, 61.2, 63.3, 65.26, 69.12 and 69.12a are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish). The amendments to §§ 65.4a, 65.7, 65.9, 65.12 and 65.24 are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

#### D. *Purpose and Background*

The final-form rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

#### E. *Summary of Changes*

(1) *Sections 61.1 and 65.26.* Recently, a question arose as to which waters the extended season applies. Section 61.1 (relating to Commonwealth inland waters) states that the extended season applies to "streams listed as approved trout waters and all waters downstream of streams listed as approved trout waters, plus lakes and ponds." Section 65.26 (relating to extended trout seasons), on the other hand, states that the extended season is in effect on "approved trout waters and downstream areas, plus lakes and ponds." The wording of these sections does not reflect that lakes and ponds themselves can be approved trout waters or that lakes and ponds can be waters downstream of approved trout waters. Therefore, the Commission proposed that these sections be amended to provide that the extended season applies to approved trout waters and all waters downstream of approved trout waters. The Commission adopted the proposed amendments to read as set forth in the proposed rulemaking.

(2) *Section 63.20.* Under § 63.20(e), a trout/salmon permit is required when a person fishes in streams or rivers that are approved trout waters or their tributaries during the 2-week period that begins on the first Saturday after April 11. However, this 2-week period does not cover the period when the Commission is actively stocking trout. Therefore, the Commission proposed that § 63.20 be amended to provide that a trout/salmon permit is required when a person fishes in streams and rivers that are approved trout waters or their tributaries from March 1 through May 31. This period more accurately reflects the period during which the majority of the Commission's stocking occurs. In addition, the requirement is consistent with the Commission's thinking that trout are the primary species being targeted by anglers during that time period. The Commission adopted the proposed amendment to this section to read as set forth in the proposed rulemaking.

(3) *Sections 65.12 and 61.1, 61.2, 63.3, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a.* Under the current regulations for Commonwealth inland waters, the opening day of the regular trout season occurs on the first Saturday

after April 11. Considering the fact that differences exist in climate across this Commonwealth, the time frame for providing optimum conditions for trout angling during the spring is earlier in portions of southern Pennsylvania, particularly in southeastern Pennsylvania. For example, in southeastern Pennsylvania, air temperatures tend to be warmer earlier in the spring as compared with other regions of this Commonwealth. These warmer temperatures also provide conditions better suited for trout angling at an earlier time in the spring in this region of this Commonwealth. However, these same warming conditions also can limit trout angling opportunities by mid-spring on many southeastern Pennsylvania waters. The combination of a mid-April opening day and the potential for these waters to become too warm for trout angling by mid-May constricts the amount of time that trout angling can be provided. The Commission therefore proposed the establishment of an earlier opening day in this region of this Commonwealth to address this problem.

Another issue that an earlier opening day in southeastern Pennsylvania will address is the growing concerns with the movement of stocked trout prior to opening day as well as the fact that some fish die between the time of stocking and opening day. A southeast regional opening day will provide the opportunity to stock trout in southeastern Pennsylvania earlier for the earlier opening day and shift the stocking to the other regions for the later opening day. This will effectively help to shorten the times between stocking and opening day throughout this Commonwealth.

The Commission reviewed several alternative boundaries for the southeast regional opening day and proposed to utilize the alternative that covers the following 18 counties: Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill and York. To provide for an earlier opening day in southeastern Pennsylvania, the Commission proposed a new special regulations program entitled the Regional Opening Day of Trout Season Program (program) in § 65.12 (relating to Regional Opening Day of Trout Season Program). This program will allow the Executive Director, with the approval of the Commission, to designate waters in certain regions as waters subject to the Regional Opening Day of Trout Season regulations. The opening day of trout season for these waters will be the first Saturday after March 28, 2 weeks earlier than the current opening day. The Commission adopted proposed § 65.12 to read as set forth in the proposed rulemaking.

With the creation of a regional opening day, the Commission also amended § 61.1 and § 63.3 (relating to fishing in approved trout waters) to read as set forth in the proposed rulemaking to reflect that it is unlawful to fish in approved trout waters regulated under the program from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after March 28. This prohibition is in addition to the current prohibition against fishing in approved trout waters regulated under § 61.1 from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after April 11. The creation of a regional opening day also required minor amendments to §§ 61.1, 61.2, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a to clarify that the opening day that is referred to in those sections is the opening day of the regular trout season (that is, the first Saturday after April 11). The Commission amended these sections to read as set forth in the proposed rulemaking.

*F. Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The final-form rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions. However, the Commission will incur relatively nominal costs to print and post new signs for waters included in the program. The final-form rulemaking will impose no new costs on the private sector or the general public.

*H. Public Involvement*

The proposed rulemaking was published at 36 Pa.B. 2708 (June 3, 2006). The Commission received a total of ten public comments concerning the proposed program—eight prior to the official comment period, one during and one after. Four of the comments supported the proposed rulemaking and six opposed it. Copies of all public comments were provided to the Commissioners.

Anglers also were recently interviewed as part of the Lehigh River survey. When interviewed, anglers were advised that the Commission was considering a change that would create two different opening days of trout season in regions of this Commonwealth and that under this option, the current opening day would continue to apply over much of this Commonwealth, but for waters in southeastern Pennsylvania, the season would open approximately 2 weeks earlier than the present opening day. The survey included 454 anglers; 346 or 76% responded that they “agreed.”

The Commission did not receive any public comments concerning the other proposals in the proposed rulemaking.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201, 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 61, 63, 65 and 69, are amended by amending §§ 61.1, 61.2, 63.3, 63.20, 65.4a, 65.7, 65.9, 65.24, 65.26, 69.12 and 69.12a and by adding § 65.12 to read as set forth at 36 Pa.B. 2708.

(b) The Executive Director shall submit this order and 36 Pa.B. 2708 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 36 Pa.B. 2708 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2007.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-183 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-1864. Filed for public inspection September 22, 2006, 9:00 a.m.]