

RULES AND REGULATIONS

Title 37—LAW

COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CH. 431]

Constables' Education and Training Board Amendments

The Constables Education and Training Board (Board) of the Commission on Crime and Delinquency (Commission) amends §§ 431.14, 431.15, 431.22, 431.25, 431.35, 431.42, 431.43, 431.47 and 431.48 and rescinds §§ 431.45 and 431.46 to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is authorized under 44 Pa.C.S. § 7144(10) (relating to program established).

Purpose

This final-form rulemaking amends regulations to coincide with current Board policy and practices regarding certification, training attendance policies and financial responsibility. This final-form rulemaking eliminates waiver of the firearms qualification course for law enforcement officers, adds the 21 years of age requirement for the firearm qualification and eliminates the 10mm caliber firearm.

Effective Date

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

Contact Person

For further information on this final-form rulemaking, contact John Pfau, Manager, Bureau of Training Services, Commission on Crime and Delinquency, P. O. Box 1167, Harrisburg, PA 17108-1167, (717) 265-8546.

Summary of Amendments

Section 431.14(d) (relating to lapse of certification) is amended to allow the Board to reactivate a constable's lapsed certification if the constable has successfully completed the basic training course.

Section 431.15 (relating to certification numbers) is amended to allow the Board to reactivate the original certification of a constable who has been reelected or reappointed after the constable has completed a basic training course. Former subsection (b) is deleted because it is not necessary.

Section 431.22 (relating to requirements) is amended to require that a constable who fails a first and second examination in basic training bear the financial responsibility for a second and third basic training. Additionally, language is amended for consistency.

Sections 431.25 and 431.35 (relating to attendance policies) are amended to discourage no shows, thereby saving the Board money for reserving a place in class. This final-form rulemaking also places financial responsibility for subsequent class enrollments on the constable. Additionally, § 431.35(a) will retain the phrase "prior to the start of classes" rather than the proposed amendment. This language is consistent with § 431.25 and § 431.47 (relating to attendance policies).

Section 431.42 (related to eligibility for firearms qualification) is amended to allow only certified constables who are 21 years of age or older to enroll in a firearms qualification course.

Section 431.43 (relating to firearm and ammunition) deletes 10mm caliber from the list of firearms in subsection (b).

Sections 431.45 and 431.46 are rescinded to eliminate waivers of firearms training for law enforcement officers to ensure that all constables have the same level of training as provided by the Board.

Section 431.47 is amended to discourage no shows and to place financial responsibility for subsequent enrollments on the constable. Additional subsections are added to reflect current Board policy.

Section 431.48 (relating to lapse of qualification) is amended to address language consistency and add subsection (b) to address reactivation of firearms qualification.

Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements. Paperwork will be decreased with the process of reactivating lapsed certifications rather than issuing new certifications.

Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. Constables who fail to achieve a passing score in a second examination following basic training will be adversely affected because they will be required to bear financial responsibility for a second training. Constables who fail the second training examination will bear the responsibility for a third basic training course.

Because waiver of firearms training is eliminated, additional costs will be incurred for training. However, the Constables' Education and Training Account is the only fund affected by this final-form rulemaking. This account is funded by the \$5 surcharge collected for services that constables perform for the minor judiciary. Presuming that 11 law enforcement officers apply for training in a given year (an average of past years), the cost would be \$516 per law enforcement officer or \$5,676. The on-going costs of retraining those 11 constables every year would be \$3,333. These costs can be supported by the Constables' Education and Training Account.

Comments and Responses

Public comments were not submitted. The Independent Regulatory Review Commission (IRRC) submitted the following comments which were considered by the Board in preparing the final-form rulemaking.

Comment

This final-form rulemaking contains various amendments regarding certification and attendance policies for training and continuing education of constables and deputy constables. In the Regulatory Analysis Form (RAF), the Board provided an estimate of savings and costs associated with the rulemaking for the current year and 5 subsequent years. The Board projected an increase in the savings and costs of 8% per year for the 5 subsequent fiscal years. The Board should explain how it derived the 8% increase.

Response

Upon further study, the Board determined that the savings and costs would remain level. The dollar amount of estimated savings is derived from the number of constables who enroll in class and fail to show, which is

not expected to change, and the permanent elimination of 10mm ammunition which will not change in the 5 subsequent years.

The dollar amount of estimated costs reflects additional costs for training law enforcement officers who could previously have waived firearms training and qualification. This amount is not expected to change because the number of law enforcement officers who are also constables is not expected to change in the 5 subsequent years.

Comment

The first paragraph of the preamble of the proposed rulemaking stated that the Board is amending “§§ 431.14, 431.15, 431.22, 431.32 and 431.42.” However, this citation does not reflect all of the sections in the annex, which also included §§ 431.25, 431.35, 431.43, 431.47 and 431.48. In addition, § 431.32 was not proposed to be amended. The Board should correct this citation in the preamble for the final-form rulemaking.

Response

The final-form preamble accurately reflects the sections that are amended in this final-form rulemaking.

Comment

In § 431.25, “all or part” is used inconsistently with respect to a school’s assessment for a failing grade in various types of courses. In subsection (a), the Board proposed to delete the phrase when referencing assessment of a failed basic training course. However, § 431.35(a) is amended to permit schools to assess “all or part” of a failing grade for a continuing education course. In § 431.47(a), this phrase remains as existing language which would result in an assessment of “all or part” of a failing grade for a firearms qualification course. IRRC recommended that this phrase be used consistently in the final-form rulemaking.

Response

Final-form § 431.25(a) references “all or part” of a failed basic training course.

Comment

Section 431.25(b) references a notice of a basic training course withdrawal that is “deemed untimely.” The final-form rulemaking should clarify how the Board establishes that notices are “deemed untimely.” Similar language is included for withdrawal notices for continuing education courses and firearms training courses in §§ 431.35(b) and 431.47(b).

Response

The following sentence has been added to §§ 431.25(a), 431.35(a) and 431.47(a) to adequately address the “deemed untimely” statement: “A notification shall be deemed untimely if the notice is not received by the director of the school or a designee within 7 calendar days prior to the start of classes.”

Comment

Section 431.25(c) prohibits constables from attending another basic training course in the same training year of a successful completion of the course. Section 431.47(c) includes similar language with respect to firearms qualification courses. However, proposed § 431.35(c) discussed a constable “or deputy constable” who successfully completes a continuing education course. IRRC asked if only constables are permitted to attend basic training and firearms qualification courses. The final-form rulemaking should clarify this issue.

Response

The phrase “or deputy constable” has been deleted from final-form § 431.25(c) because “constable” is defined in § 431.2 (relating to definitions) as “a person currently serving as constable or deputy constable.” Since the terms are interchangeable, the reference to “deputy constable” has been deleted from this final-form rulemaking.

Comment

Sections 431.25 and 431.35 permit demonstration of “good cause” as a proper method of withdrawal from basic training and continuing education courses. However, § 431.47(a) does not include “good cause” as a permissible manner of withdrawal. Nevertheless, § 431.47(b) states that constables will bear the cost of additional firearms qualification courses if “good cause” is not shown. The Board should add a reference to “good cause” in § 431.47(a) so that the attendance policies are consistent.

In addition, the heading for subsection (a) is “withdrawal” and the heading for subsection (b) is “financial responsibility.” Sections 431.25(a) and (b) and 431.35(a) and (b) contain similar language but do not have headings.

Response

The phrase “or to show good cause” has been added to § 431.47(a).

The Legislative Reference Bureau added headings to § 431.47(a) and (b). The Board added headings to §§ 431.25(a)—(c) and 431.35(a)—(c) to provide clarity to the attendance policies sections. The heading to § 431.47(c) been changed to “additional attendance” to reflect the actual intent of the subsection. The heading to subsection (d) is “new weapons,” subsection (e) is “advanced firearm failures” and subsection (e) is “weapons malfunctions.” These sections have been added to the final-form rulemaking to reflect current Board policy.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 5961 (November 5, 2011), to IRRC and 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 House and Senate 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 January 15, 2014, the 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 January 16, 2014, and approved the final-form rulemaking.

Findings

The Commission finds that:

(1) Public notice of the intention to adopt these regulations 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. Public comments were not received.

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

Order

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

(a) The regulations of the Board, 37 Pa. Code Chapter 431, are amended by deleting §§ 431.45 and 431.46 and amending §§ 431.14, 431.15, 431.22, 431.25, 431.35, 431.42, 431.43, 431.47 and 431.48 to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for Approval as required by law.

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

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

CONSTABLE FRED J. CONTINO, Jr.,
Chairperson
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 44 Pa.B. 751 (February 1, 2014).)

Fiscal Note: Fiscal Note 35-32 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 431. CONSTABLES' EDUCATION AND TRAINING BOARD

CERTIFICATION

§ 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 reactivate a certification 5 years or more after the lapse of a constable's certification upon the constable's successful completion of a basic training course.

§ 431.15. Certification numbers.

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

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

(c) 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.

(d) 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 reactivate the original certification upon the constable's successful completion of a basic training course.

BASIC TRAINING

§ 431.22. Requirements.

(a) A constable will be required to attain the following to complete a basic training course:

(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 who fails to achieve a passing score on a written examination may undergo a second written examination.

(c) A constable who fails to achieve a passing score on a second written examination may attend and complete a second basic training course in its entirety. The constable shall bear financial responsibility for the cost of the additional basic training course.

(d) A constable may attend a third basic training course upon failing to complete the second basic training course, but will not be given additional opportunities upon failing to complete the third course. The constable shall bear financial responsibility for the cost of the additional basic training course.

§ 431.25. Attendance policies.

(a) *Withdrawal.* A constable who enrolls in a basic training course may withdraw from the course without penalty upon timely notification to the school conducting the basic training course. A notification shall be deemed timely if it is delivered to the director of the school or a designee no later than 7 calendar days prior to the start of classes. The school may assess a failing grade for all or part of the basic training course, if the constable fails to provide timely notification or to show good cause. A notification shall be deemed untimely if the notice is not received by the director of the school or a designee within 7 calendar days prior to the start of classes.

(b) *Financial responsibility.* If notification to withdraw is not given or is deemed untimely and good cause is not shown, and the constable wants to attend another basic training course in the same training year or in the next

training year, the constable shall bear financial responsibility for the cost of the additional basic training course. Payment must be received by the Commission within 2 weeks of class start date in the form of a certified check or money order.

(c) *Additional attendance.* A constable who successfully completes a basic training course may not attend another basic training course in the same training year.

CONTINUING EDUCATION

§ 431.35. Attendance policies.

(a) *Withdrawal.* A constable who enrolls in a continuing education course may withdraw without penalty upon timely notification to the school conducting the continuing education course. A notification shall be deemed timely if it is delivered to the director of the school or a designee no later than 7 calendar days prior to the start of classes. The school may assess a failing grade for all or part of the continuing education course if the constable fails to provide timely notification or to show good cause. A notification shall be deemed untimely if the notice is not received by the director of the school or a designee within 7 calendar days prior to the start of classes.

(b) *Financial responsibility.* If notification to withdraw is not given or is deemed untimely and good cause is not shown, and the constable wishes to attend another continuing education course in the same training year or in the next training year, the constable shall bear financial responsibility for the cost of the additional continuing education course. Payment must be received by the Commission within 2 weeks of class start date in the form of a certified check or money order.

(c) *Additional attendance.* A constable who successfully completes a continuing education course may not attend another continuing education course in the same training year.

FIREARMS QUALIFICATION

§ 431.42. Eligibility for firearms qualification.

A constable holding certification who is 21 years of age or older and 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.

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

§ 431.45. (Reserved).

§ 431.46. (Reserved).

§ 431.47. Attendance policies.

(a) *Withdrawal.* A constable who enrolls in a firearms qualification course may withdraw from the course without penalty upon timely notification to the school conducting the firearms qualification course. A notification shall be deemed timely if it is delivered to the director of the school or a designee no later than 7 calendar 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 or to show good cause. A notification shall be deemed untimely if the notice is not received by the director of the school or a designee within 7 calendar days prior to the start of classes.

(b) *Financial responsibility.* If notification to withdraw is not given or is deemed untimely and good cause is not shown, and the constable wishes to attend another firearms qualification course in the same training year or in the next training year, the constable shall bear financial responsibility for the cost of the additional firearms qualification course. Payment must be received by the Commission within 2 weeks of class start date in the form of a certified check or money order.

(c) *Additional attendance.* A constable who successfully completes a firearms qualification course may not attend another firearms qualification course in the same training year.

(d) *New weapons.* If a constable obtains a new weapon after having successfully completed the annual firearms qualification, the constable may attend, without penalty, another firearms training class and complete the qualification course-of-fire using the new weapon. Attendance at another firearms course is subject to course availability.

(e) *Advanced firearms failures.* If a constable attends an advanced firearms qualification course and fails to successfully complete the qualification course-of-fire, the constable may attend, without penalty, a basic or annual firearms qualification course in its entirety.

(f) *Weapons malfunctions.* If a constable fails to successfully complete the qualification course-of-fire during a firearms qualification course because of a weapon malfunction, the constable may attend, without penalty, another firearms qualification course in its entirety, or may retake, without penalty, the portion of the firearms qualification course during and after which the malfunction occurred. Attendance at another firearms course is subject to course availability. A firearms instructor shall document weapons malfunctions.

§ 431.48. Lapse of qualification.

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

(b) The Board will reactivate a firearms certification that is lapsed for 3 years or more upon the constable's successful completion of a basic firearms qualification course.

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