

**CHAPTER 21. ADMINISTRATION OF THE LETHAL WEAPONS
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Authority

The provisions of this Chapter 21 issued under the Lethal Weapons Training Act (22 P. S. §§ 41—50), unless otherwise noted.

Source

The provisions of this Chapter 21 adopted September 12, 1975, 5 Pa.B. 2362; amended through November 2, 1984, effective April 1, 1985, 14 Pa. B. 3962, unless otherwise noted. Immediately preceding text appears at serial pages (90147), (46833) to (46838), (49214) to (49215), (46841) to (46842), (49216), (28687) to (28688) and (23337) to (23338).

GENERAL PROVISIONS**§ 21.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Lethal Weapons Training Act (22 P. S. §§ 41—50).

Certification—The Commissioner's written authorization under the act and this chapter.

Certification card—A laminated wallet or billfold size, written authorization issued by the Commissioner which identifies the bearer as being a certified agent.

Certified agent—A privately employed agent who possesses a current and valid certification issued by the Commissioner.

Commissioner—The Commissioner of the Pennsylvania State Police.

Conviction—Includes being found guilty, or entering a plea of guilty or *nolo contendere* to a crime in a court of competent jurisdiction in this Commonwealth or elsewhere.

Crime of violence—Any of the following crimes, or an attempt, solicitation or conspiracy to commit any of the same in this Commonwealth or elsewhere, namely: murder, rape, aggravated assault, robbery, burglary, entering a building with intent to commit a crime therein, kidnapping, voluntary manslaughter, involuntary deviate sexual intercourse, arson, recklessly endangering another person or terroristic threats.

Department—The Pennsylvania State Police.

Disqualifying criminal offense—

(i) A conviction for a crime of violence shall be a disqualifying criminal offense; or

(ii) A conviction for any other crime may be a disqualifying criminal offense. Note: Conviction of a criminal offense which is equivalent to subparagraphs (i) and (ii) may constitute a disqualifying criminal offense.

Firearm—A pistol, revolver, rifle or shotgun.

Full-time police officer—A person who is employed by a city, borough, town, township or county police department (including sheriffs, deputy sheriffs and county detectives) assigned to law enforcement duties, and who works a minimum of 200 calendar days per year. The term does not include persons employed to check parking meters or to perform only administrative duties, nor does it include auxiliary and fire police. For the purposes of § 21.16 (relating to exemption for retired police officers), the term includes a person employed by the Pennsylvania State Police.

Instructional hour—At least 50 minutes of a clock hour.

Law enforcement officer—A sheriff, deputy sheriff, constable, deputy constable, detective, police officer of this Commonwealth, or any political subdivision, school district, or municipal authority thereof.

Lethal weapons—Include, but are not limited to, firearms and other weapons calculated to produce death or serious bodily harm. A concealed billy club is a lethal weapon. The chemical mace or any similar substance shall not be considered as a lethal weapon for the purposes of the act. For purposes of this chapter, a nonconcealed billy club shall also be considered a lethal weapon.

Privately employed agent—Any person who is employed for the purpose of providing watchguard, protective patrol, detective or criminal investigative services either for another for a fee or for his employer. Privately employed agents

do not include local, State or Federal government employees or those police officers commissioned by the Governor under 22 Pa.C.S. §§ 3301—3305 (relating to railroad and street railway police), while performing their public/railroad employment duties. The term shall include a police officer of a municipal authority.

Program—The education and training program established, administered or approved by the Commissioner under the act.

Revocation—The permanent invalidation of certificate/ approval issued by the Commissioner.

Suspension—The temporary invalidating of a certificate/approval issued by the Commissioner.

Cross References

This section cited in 37 Pa. Code § 21.15 (relating to exemption for active full-time police officers).

§ 21.2. Mandatory certification.

Privately employed agents, regardless of their place of residence or employers' location who, as an incidence to their employment, carry a lethal weapon within this Commonwealth. Training schools or instructors shall be certified by the Commissioner prior to engaging in any activity which is regulated by the act.

§ 21.3. Law enforcement officers.

A law enforcement officer or other peace officer of this Commonwealth who performs activities which are regulated by the act and receives a form of compensation, gift, donation, or gratuity for these services, from a private person, association, or corporation, shall be deemed to be a privately employed agent.

§ 21.4. Employer responsibilities.

A person, association, corporation, or other entity who employs a privately employed agent under the act shall first ensure that the agent possesses a current and valid certification card from the Commissioner. Whenever an employer of a certified agent discharges him for cause which would have prohibited certification, the employer shall forward written notification of the discharge to the Commissioner within 5 days. Failure of an employer to ensure that a privately employed agent is currently and validly certified by the Commissioner may constitute a violation of 18 Pa.C.S. §§ 306 and 903 (relating to liability for conduct of another and complicity and criminal conspiracy).

§ 21.5. Certified agent/applicant responsibilities.

When a certified agent or applicant has a change in physical, psychological, or criminal history circumstances which would have prohibited certification, he shall immediately forward written notification of the change to the Department. When

a certified agent or applicant changes his address, he shall forward written notification of the change to the Department within 5 days.

§ 21.6. Program administration.

Correspondence, inquiries, and the like shall be directed to the State Police, Bureau of Training and Education, Post Office Box AA, Hershey, Pennsylvania 17033.

CERTIFIED AGENTS

§ 21.11. Applicant qualification requirements.

A person who desires to be certified by the Commissioner under the act must satisfy the following requirements:

(1) *Age.* The applicant must be at least 18 years of age.

(2) *Documents and fees.* The applicant must properly complete all necessary application documents and tender appropriate fees.

(3) *Physical standard.* The applicant must be personally examined by a doctor of medicine licensed by the Pennsylvania Board of Medical Education and Licensure or a doctor of osteopathy licensed by the Pennsylvania Board of Osteopathic Examiners and found to be physically fit to handle a lethal weapon. The examination shall include the following elements:

(i) *Neurological condition.* The applicant must be free from a debilitating condition, such as tremor, uncoordination, convulsion, fainting episodes, and the like.

(ii) *Cardiovascular condition.* The applicant's physical condition must be such that he could reasonably be expected to withstand significant cardiovascular stress.

(iii) *Intoxicants.* The applicant must be free from the addictive or excessive use of either alcohol or drugs.

(iv) *Visual acuity.* The applicant must have a visual acuity of at least 20/70, uncorrected in the stronger eye, correctable to at least 20/20; and 20/200, uncorrected in the weaker eye, correctable to at least 20/40, and must be free of any significant visual abnormality.

(v) *Audio acuity.* The applicant must be able to distinguish a normal whisper at a distance of 15 feet. The test shall be independently conducted for each ear while the tested ear is facing away from the speaker and the other ear is firmly covered with the palm of the hand.

(vi) *Other conditions.* The applicant must be free from any other significant physical defect or disorder which would, in the physician's opinion, impair the applicant's ability to handle a lethal weapon.

(vii) *Submission.* The examining physician must forward the physical examination form to the Department within 15 days, even if the applicant is found to be unfit. The Commissioner may utilize the results of the physical

examination for up to 6 months from the date of the examination after which the applicant must be reexamined.

(4) *Psychological standard.* The applicant shall be personally examined by a psychologist who is licensed by the Pennsylvania Board of Psychologist Examiners and found to be psychologically capable to exercise appropriate judgment or restraint to handle a lethal weapon at the time of the examination. The examination shall include the following elements:

(i) *Interview and history.* The psychologist must personally interview the applicant, which interview shall include a summary of the applicant's personal, educational, employment, and criminal history, if any.

(ii) *Required personality test.* The applicant must be administered any current standard form of the Minnesota Multiphasic Personality Inventory (MMPI) which shall be administered by the licensed psychologist or a paraprofessional employed by and under the direct control and supervision of the licensed psychologist.

(iii) *Other testing methods.* If the licensed psychologist is unable to certify the applicant's psychological capability or risk to exercise appropriate judgment and restraint in the handling of a lethal weapon at this time, after conducting the test, the psychologist must personally employ whatever other psychological measuring instruments and techniques are deemed necessary to form his professional opinion. The use of these instruments and techniques requires a full and complete written explanation to the Department.

(iv) *Submission.* The examining psychologist must forward the psychological examination form to the Department within 15 days of the examination, even if the applicant is found to be psychologically at risk. The Commissioner may utilize the results of the psychological examination for up to 6 months from the date of the examination after which the applicant must be reexamined. No person who has been found psychologically at risk in the exercise of appropriate judgment and restraint in the handling of a lethal weapon may reapply for certification until after 1 year from the date of being found psychologically at risk.

(5) *Criminal conviction standard.* A review must be made of the applicant's criminal history record, if any, to determine qualification for certification. The criminal history review shall be based upon the record of conviction, if any, generated by the classification and subsequent examination of the applicant's fingerprints or another valid method. A person whose criminal history record evidences a conviction for a disqualifying criminal offense may be barred from certification under the act.

(6) *Training.* The applicant must successfully complete the training program prescribed by the Commissioner.

Notes of Decisions*Visual Acuity*

Federal regulations regarding visual acuity standards for persons to carry lethal weapons at atomic facilities do not preempt the State's standards. *Demmy v. State Police*, 611 A.2d 782 (Pa. Cmwlth. 1992).

Cross References

This section cited in 37 Pa. Code § 21.21 (relating to conditions of certification).

§ 21.12. Classes of agent certification.

An applicant may apply for either of the following classifications:

(1) *Firearms*. This classification will be granted upon the successful completion of both the academic and firearms training modules. This classification entitles the certified agent to be armed with a lethal weapon.

(2) *Nonfirearms*. This classification will be granted upon the successful completion of the academic training module. This classification entitles the certified agent to be armed with a lethal weapon, except a firearm. No certified agent holding this type of classification may be armed with a firearm while on duty.

§ 21.13. Initial application procedure.

A person who desires to apply to the Commissioner for certification under the act shall complete the following initial application procedure:

(1) Complete an application for agent certification which is available at any State Police station, except a Turnpike or Interstate station. Statements on the application must be reviewed for accuracy and truthfulness. A material falsification must constitute the basis for denying/revoking an approval/certification, and may result in criminal prosecution.

(2) Submit the following items with the completed application:

(i) Two recent unmounted color photographs, which are approximately 1-1/4 inch by 1-1/4 inch in size; full faced and measure 1 inch from the top of the head to the point of the chin, without hat.

(ii) A certified check, cashier's check or money order in the amount of \$45, made payable to the "Pennsylvania State Police." Personal checks will not be accepted. This fee is not refundable.

(3) Upon presentation of a satisfactorily completed application form, together with the items listed in paragraphs (1) and (2), at a State Police station, except a Turnpike or Interstate station, undergo fingerprinting by the receiving State Police Officer. The applicant must provide identification as required by the receiving State Police Officer.

(4) Undergo a physical examination which is sufficient to permit a licensed physician to complete the physical examination form which is furnished with the application for agent certification.

(5) Undergo the psychological examination and interview which is sufficient to permit a licensed psychologist to complete the psychological examination form which is furnished with the application for agent certification.

(6) Ensure that the appropriate part of the application for agent certification is completed in accordance with § 21.14 (relating to waiver of training), if an applicant desires to request a waiver of the training requirements.

(7) Ensure that the police officer exemption application is completed in accordance with § 21.15 (relating to exemption for active full-time police officers), if the applicant is a full-time police officer and requests an exemption of the application fee, physical testing requirement or psychological testing requirement.

(8) Ensure that the police officer exemption application is completed in accordance with § 21.16 (relating to exemption for retired police officers), if the applicant is a retired police officer and requests an exemption of the application fee, training and qualification standards, physical qualification and psychological qualification.

Cross References

This section cited in 37 Pa. Code § 21.19 (relating to training enrollment); 37 Pa. Code § 21.22 (relating to lost or damaged certification cards); and 37 Pa. Code § 21.24 (relating to renewal procedure).

§ 21.14. Waiver of training.

A person who has completed a course of instruction in a training program approved by the Commissioner may request a waiver of the academic or firearms training provisions in accordance with the following:

(1) *Academic waiver.* The applicant must have successfully completed a formal course of instruction comparable to the academic course prescribed by the Commissioner, within 5 years prior to receipt of the application by the Department. The applicant must have the verified waiver certificate on the application form completed by the certifying official.

(2) *Firearms waiver.* The applicant must have successfully completed a formal combat firearms course of instruction comparable to the firearms course prescribed by the Commissioner, within 1 year prior to receipt of the application by the Department. The applicant must have the verified waiver certificate on the application form completed by the certifying official.

Cross References

This section cited in 37 Pa. Code § 21.13 (relating to initial application procedure).

§ 21.15. Exemption for active full-time police officers.

(a) An applicant who is employed as a full-time police officer, as defined in § 21.1 (relating to definitions), shall be granted an exemption from the application fee.

(b) An applicant who was employed as a full-time police officer, as defined in § 21.1, before June 19, 1974, and who has continuously maintained full-time police officer employment since that date, shall be granted an exemption from the following application requirements:

- (1) Physical testing.
- (2) Psychological testing.

(c) An applicant who is employed as a full-time police officer, as defined in § 21.1, and who, either as a prerequisite to his police employment, or as a requirement for continued police employment, successfully completed a physical or psychological examination or both shall be granted an exemption from the physical or psychological requirements or both of the act, as the case may be.

(d) The granting of an exemption is conditioned upon the applicant providing documentary proof of eligibility by completing and forwarding a police officer exemption application which is available, upon request, at a State Police station, except a Turnpike or Interstate station.

Cross References

This section cited in 37 Pa. Code § 21.13 (relating to initial application procedure).

§ 21.16. Exemption for retired police officers.

(a) An applicant who is a nondisability retired police officer of a Commonwealth municipality or the State Police shall be initially certified under the act, and need not meet the training and qualification standards or physical and psychological qualifications, if he was a full-time police officer for at least 20 years, retired in good standing and has assumed the duties of a privately employed agent on or before 3 years from the date of his retirement. If a retired police officer commences his duties as a privately employed agent after 3 years from the date of his retirement he must meet the physical and psychological requirements of the act for certification.

(b) A retired police officer who is initially certified shall not be required to pay the application fee, but he shall be required to pay the appropriate certification fee.

(c) The granting of the exemptions and certification is conditioned upon the applicant providing documentary proof of eligibility by completing and forwarding a police officer exemption application which is available, upon request, at a State Police station, except a Turnpike or Interstate station.

Cross References

This section cited in 37 Pa. Code § 21.1 (relating to definitions); and 37 Pa. Code § 21.13 (relating to initial application procedure).

§ 21.17. Approval of application.

Upon receipt of the required application documents, a review will be made to determine if the applicant is qualified for training or waiver, as the case may be.

(1) *Training approval.* If the applicant qualifies for training, an approval to attend a certified training program will be issued to the applicant.

(2) *Waiver approval.* If it is determined that the applicant qualifies for a full or partial waiver of the training requirements, one of the following approvals will be issued to the applicant:

(i) *Full waiver.* The applicant will receive written notification of his full waiver status with instructions for further processing.

(ii) *Partial waiver.* The applicant will receive written notification of the type of partial waiver which is granted with written training approval for the remaining required training.

§ 21.18. Denial of application.

If it is determined that an applicant is not qualified for training, waiver or exemption, as the case may be, a written adverse determination notification will be issued. The applicant may have the right to appeal the determination under § 21.51 (relating to adverse determination).

§ 21.19. Training enrollment.

An approved applicant shall be subject to the following provisions:

(1) *School selection.* The applicant shall select a certified training school from a list provided by the Commissioner.

(2) *Length of approval eligibility.* The Commissioner's written approval to attend a certified training program will be valid for 6 months from date of issue.

(3) *Training program.* Upon completion of the required training program, the applicant shall proceed as follows.

(i) *Successful completion.* To successfully complete the required training program, an applicant must attain a minimum score of 70% in the academic module and, if applicable, 75% in the firearms module. Upon notification of successful completion of the required training program, the applicant shall immediately tender to the certified training school, a certified check, cashier's check or money order, in the amount of \$25, made payable to the "Pennsylvania State Police." Personal checks will not be accepted. This fee is not refundable.

(ii) *Unsuccessful training.* An applicant who does not successfully complete either or both of the training modules shall be permitted to re-enroll in that training module which he failed, if the re-enrollment occurs prior to the

expiration of the Commissioner's approval to attend training. The applicant must repeat the entire training module which he previously failed and attain a successful score.

(4) *Expired approval.* An applicant who fails to successfully complete the required training program prior to the expiration of the Commissioner's written approval to attend training, must initiate a new application, including requirements prescribed by § 21.13 (relating to initial application procedure), to be eligible for approval to attend training.

§ 21.20. Agent certification.

Upon receipt of notification of successful completion of the required training program, or the granting of a waiver of the required training program, together with the appropriate fee, the Commissioner will issue a certification card. This certification card must be in the form of a laminated, wallet or billfold size card containing identifying information, type of certification, and a color photograph of the applicant. The certification card is issued to the agent but will remain the property of the Department and must be surrendered upon demand. The certification card must be valid for 5 years.

§ 21.21. Conditions of certification.

When there is reasonable cause to believe that a certified agent has had a change in physical or psychological circumstances which would render the agent ineligible for original certification, the following action must be taken:

(1) *Physical reexamination.* A written notice will be issued informing the agent that he must undergo a physical examination conducted by a physician at the agent's expense. The examination must be identical to the original physical examination which is required for initial certification. The examining physician must submit the physical examination form as prescribed by § 21.11 (relating to applicant qualification requirements).

(2) *Psychological reexamination.* A written notice will be issued informing the agent that he must undergo a psychological examination conducted by a psychologist at the agent's expense. The examination must be identical to the original psychological examination which is required for initial certification. The examining psychologist must submit the psychological examination form as prescribed by § 21.11.

(3) *Mandatory provisions.* A certified agent who is directed to undergo either, or both, of the reexaminations must cooperatively participate in the examinations. Failure to comply with this section shall result in the immediate suspension of the agent's certification.

§ 21.22. Lost or damaged certification cards.

When a certified agent's wallet or billfold size certification card is lost or damaged, it will be replaced by the Commissioner if the certified agent supplies:

- (1) An affidavit describing the circumstances under which the original card was damaged or lost.
- (2) Two color photographs as described in § 21.13 (relating to initial application procedure).

§ 21.23. Certification status change.

When a certified agent desires to change his certification from nonfirearm to firearm status, he shall satisfy the following requirements:

- (1) He shall make a written request for approval to attend a certified firearms training module. The certified agent must include two recent unmounted color photographs, which are approximately 1-1/4 by 1-1/4 inch in size; full faced and measure 1 inch from the top of the head to the point of the chin, without hat.
- (2) Upon receipt of the Commissioner's written approval to attend a certified firearms training module, he shall be subject to the following:
 - (i) *School selection.* The applicant shall select a certified training school from a list provided by the Commissioner.
 - (ii) *Length of approval eligibility.* The Commissioner's written approval to attend a certified firearms training module will be valid for 6 months from date of issue.
 - (iii) *Training program.* Upon completion of the required firearms training module the applicant shall proceed as follows:
 - (A) *Successful completion.* Upon notification of successful completion of the required firearms training module, the applicant shall immediately tender to the certified training school, a certified check, cashier's check or money order, in the amount of \$25 made payable to the "Pennsylvania State Police." Personal checks will not be accepted. This fee is not refundable.
 - (B) *Unsuccessful training.* An applicant who does not successfully complete the firearms training module shall be permitted to re-enroll in that training module, if the re-enrollment occurs prior to the expiration of the Commissioner's approval to attend training. The applicant must repeat the entire firearms training module and attain a successful score.
 - (iv) *Expired approval.* An applicant who fails to successfully complete the required firearms training module prior to the expiration of the Commissioner's written approval to attend training, must initiate a new request for approval to attend training as outlined in paragraph (1).
 - (v) *Agent certification (reissued).* Upon receipt of notification of successful completion of the required firearms training module, with the appropriate fee, the Commissioner will reissue his written certification with the appropriate change of status. Reissued certification shall be valid for the remainder of the term of the original certification. The certified agent, within 5 days of receipt of the reissued certification card must return the original

certification card to the Department. Failure to strictly comply with this return provision shall result in the immediate suspension of the agent's certification.

§ 21.24. Renewal procedure.

(a) A certified agent may renew his initial certification for an additional 5 year period on a form supplied by the Commissioner. A completed application for renewal of agent certification must be accompanied by two recent color photographs and a renewal fee. Renewal application must be made within 6 months prior to the expiration of the current certification. The necessary application form will be forwarded by first class mail to the renewal applicant's last known address at least 8 months prior to the expiration of the current certification. Certified agents who fail to apply for a renewal of their certification prior to the expiration thereof, must make application under § 21.13 (relating to initial application procedure). Expired certification cards are void.

(b) Certified agents who desire to have their certifications renewed shall be required to attend a renewal training program at a certified school.

(1) Agents who are certified with a firearm shall have both classroom instruction and firearms range training totaling 8 hours. Agents who are certified to carry a lethal weapon other than a firearm shall attend a 3 hour program.

(2) Either certified training program may only be taught by a certified instructor at a certified school.

(c) Agents who are seeking renewal of their firearms certification shall be required to successfully complete the full renewal course with a minimum grade of 70% in the academic renewal module and 75% in the firearms renewal module. The minimum renewal course training standards consist of those required hours of instruction as prescribed by the Commissioner.

(d) Agents who are seeking renewal of their nonfirearms certification shall be required to successfully complete the academic renewal module with a minimum classroom examination grade of 70%.

§ 21.25. Approval of renewal application.

(a) An agent applying for renewal of certification shall submit a completed application for renewal of agent certification with:

(1) A certified check, cashier's check or money order made payable to the "Pennsylvania State Police," in the amount of \$25. Personal checks will not be accepted. This fee is not refundable.

(2) Two recent unmounted color photographs, which are approximately 1¼ inch x 1¼ inch in size; full faced and measure 1 inch from the top of the head to the point of the chin, without hat.

(b) If the renewal applicant meets the requirements of the act and this chapter, an approval—with a list of certified schools attached—to attend training will

be issued to the applicant. If the renewal applicant does not meet the requirements of the act and this chapter, a written adverse determination will be issued.

(c) Upon receipt of approval, the renewal applicant shall immediately apply for admission to a certified school of his choice. The required renewal training shall be completed within 6 months from the date of approval.

(d) Upon completion of each renewal training course, the certified school must furnish the Commissioner with a completed grade report sheet for each enrolled student.

(e) Upon notification of the successful completion of the renewal certification course by a certified school, the Commissioner will renew the applicant's certification. The renewal will be issued approximately 1 month prior to the expiration of the current certification. The renewed certification will be valid for a 5 year period unless the certification is suspended/revoked or otherwise invalidated for cause.

§ 21.26. Certified agent prohibitions/restrictions.

(a) *Unauthorized use.* No certified agent shall permit any other person to possess or otherwise physically control his certification card.

(b) *Identification.* Every certified agent shall carry his certification card on his person while armed with a lethal weapon on duty or going to or from duty while armed.

(c) *Display of certification.* A certified agent shall exhibit his certification card for inspection by a law enforcement officer on demand.

(d) *Carrying firearms.* The issuance of a certification card to a privately employed agent does not grant the agent the right or privilege to carry, possess, own, or have under his control a firearm contrary to 18 Pa.C.S. §§ 6101—6120 (relating to Uniform Firearms Act).

§ 21.27. [Reserved].

§ 21.28. [Reserved].

§ 21.29. [Reserved].

§ 21.30. [Reserved].

CERTIFIED SCHOOLS

§ 21.31. Administrative responsibilities.

Each certified school, including its school director, assistant school director, administrators, owners or corporate officers, as the case may be, must be responsible for the proper administration and operation of the school in conformance with the act and this chapter.

§ 21.32. Applicant qualification requirements.

A person or entity desiring certification to operate a lethal weapons training school shall satisfy the following requirements:

(1) *Geographic location.* Schools must be located within this Commonwealth. No school may conduct training at a location other than that specified on the application for school certification submitted to the Department.

(2) *Administrative structure standard.* An individual, partnership, corporation, vocational/technical school, private trade school, college, university, or similar entity may apply for certification to operate a lethal weapons training school. An individual, partnership, corporation, or similar entity must comply with the requirements of the Fictitious Names Act, 54 Pa.C. S. §§ 301—332, if the school is to be operated under an assumed or fictitious name. Each school applicant must furnish the Department with a copy of the Fictitious Name Certificate or Articles of Incorporation or both, as the case may be, by attaching same to the application for school certification.

(3) *School director standard.* Each school applicant must designate a person as school director. A school director is the individual who bears primary responsibility and authority to administer and operate a certified school. No certified school may continue to operate without an approved school director. A designated school director shall comply with the following criteria to be approved by the Commissioner:

- (i) Not have been convicted of a disqualifying criminal offense.
- (ii) Complete the school director portion of the application for school certification or an application for approval of school director, as the case may be.
- (iii) Undergo fingerprinting by the receiving State Police Officer upon presentation of a satisfactorily completed application for school certification or application for approval of school director at a State Police station, except a Turnpike or Interstate station.

(4) *Physical and environmental facilities standard.* Schools must satisfy the following minimal physical and environmental facilities standards:

- (i) Buildings or other facilities must be approved from a standpoint of public safety by either State or local fire marshals, or inspectors of the Department of Labor and Industry in accordance with the statutes of the Commonwealth and any local ordinances relating to building regulations for the protection from fire and panic.
- (ii) Sufficient facilities and space shall be available for both classroom and practical training.
- (iii) The furniture, equipment, and supplies of the school must be of sufficient type, quality, and amount to adequately accomplish the required training.

(iv) Every firing range facility must comply with the minimum range safety standards of the National Rifle Association, and the school applicant must provide documentary proof thereof. Additionally, every indoor firing range must comply with minimum air quality standards.

(5) *Curriculum standard.* The course prescribed by the Commissioner must constitute the following minimum basic and renewal education and training programs for certified agents:

(i) *Lesson plans.* A comprehensive set of lesson plans for the entire established program must be maintained and utilized by each certified school in its presentation of the required course.

(ii) *Course materials.* Each school must maintain a complete listing of books, handouts, training aids, or other course materials.

(iii) *Copies of the act.* Each student must be provided with a copy of the act and this chapter as a part of the regular school tuition.

(iv) *Final examinations.* Each school must maintain, for 5 years, a copy of final examinations with correct answers indicated.

§ 21.33. Application procedure.

(a) An applying school must complete an application for school certification, which is available from the Director, Bureau of Training and Education, State Police, Post Office Box AA, Hershey, Pennsylvania 17033.

(b) An applying school must submit the following documents, where applicable, with the completed application:

(1) A copy of the approval document for the range facility, issued by the National Rifle Association.

(2) A copy of the lease or other appropriate document which was executed between the school applicant and the owner/operator of the range facility, if applicable.

(3) A copy of the applying school's Articles of Incorporation, if applicable, or a copy of the applying school's Certificate of Fictitious Name registration or both.

(c) After review of the completed school application and required documents, a comprehensive on-site school inspection will be conducted by a Department representative. The Commissioner's approval to operate a certified training school will not be issued until the applying school has satisfied the inspection requirements. The inspection will include but is not limited to an examination of the physical facilities, instructional equipment, records, files, lesson plans, course materials and final examinations.

§ 21.34. Approval for school and course certification.

(a) If the Commissioner determines that the application for certification meets the requirements of the act and this chapter, he will issue his written

approval. If the Commissioner determines that the applicant does not meet the requirements of the act and this chapter, he will issue his written adverse determination.

(b) The approval will be valid unless suspended, revoked or withdrawn.

§ 21.35. School inspections.

(a) *Annual inspections.* Each certified school must be completely inspected by a Department representative at least once during each calendar year. The school director shall be responsible for providing the Department inspector with the following:

- (1) Comprehensive rules and regulations for student trainees.
- (2) Complete student application procedures.
- (3) Schedules of training courses.
- (4) Complete schedules of tuition charges, and other training related charges.
- (5) Complete current rosters of certified instructors, including designation of authorized instructional areas.
- (6) Copies of lesson plans for the entire established course.
- (7) Testing and grading systems, including copies of final examinations.
- (8) Course materials, including books, handouts, and training aids.
- (9) Records of class rosters, attendance lists, grades, firearms scores, and the like.
- (10) Access to physical facilities used for training purposes.

(b) *Written notice.* The Department inspector will provide the school director with a written notice indicating whether or not the certified school passed inspection. In the event that the certified school does not pass inspection, the school director will be provided a written statement indicating the specific inspection deficiencies and required corrective action. The certified school may be subject to a follow-up inspection if the Department deems such to be appropriate.

(c) *Other inspections.* The Department reserves the right to inspect a certified school at any time. Each certified school must make its facilities, records, and classes available for inspection at any time during business hours, upon the demand of a Department representative.

§ 21.36. Operating provisions.

Each certified school must adhere to the following operating provisions:

(1) *Testing and grading.* Each certified school must ensure that the integrity of the testing and grading of student performance, under the course requirements established by the Commissioner, is constantly maintained as follows:

- (i) Each student shall be administered a final examination for the basic academic module. The examination must consist of 50 multiple choice questions, with not less than two nor more than four valid distractors per question. Each question must count as two points.

(ii) Each certified school must develop not less than three complete final examinations for the academic module. No final examination shall be administered to a student class on a consecutive basis. The final basic examination must be of a 2 hour duration.

(iii) A student must attain a minimum score of 70% in the academic module and, if applicable, 75% in the firearms module to be eligible for certification.

(2) *Course attendance.* Each student must attend all instructional hours in order to be eligible for certification. No excused or unexcused absences from full course attendance are permitted. A student who is absent, shall be required to attend the instructional hours which he missed, at a subsequent date, prior to certification.

(3) *Class size.* A certified school must not conduct a training course with more than 40 students.

(4) *Final grades and fees.* Each certified school, within 5 working days of the close of a training course, must forward the following items to the Department:

(i) A fully executed original grade report sheet for each student in the course, regardless of whether or not the student successfully completes such course. The grade report sheet must contain the original signature of the school director. Grade report sheets are available from the Director, Bureau of Training and Education, State Police, Post Office Box AA, Hershey, Pennsylvania 17033.

(ii) An individual certified check, cashier's check or money order in the amount of \$25, payable to the "Pennsylvania State Police," for each student who has successfully completed the required course. Personal checks will not be accepted.

(5) *Instructional personnel.* Each certified school must employ sufficient instructional personnel to ensure that the school can meet its course requirement obligations under the course schedule established for each course. Each certified school must have a copy of each instructor's current instructor certification in its files, prior to the person performing instructional services.

(6) *School certificate.* Each certified school must prominently display the certification to operate a lethal weapons training school issued by the Commissioner on the school premises. A certified school must immediately surrender certificate to a Department representative upon service of a notice of suspension/revocation issued by the Commissioner.

§ 21.37. School prohibitions.

(a) *Testing.* No school director, instructor, or other person associated with a certified school shall aid or counsel an applicant or other person in regard to the required final examination, physical examination and psychological examination.

(b) *Violation/penalty.* A violation of subsection (a) may result in a suspension/revocation of school certification.

CERTIFIED INSTRUCTOR

§ 21.41. Applicant qualification requirements.

A person who desires to be certified by the Commissioner to instruct a portion of a lethal weapons training course, must satisfy the following requirements:

- (1) *Age.* The applicant must be at least 18 years of age.
- (2) *Documents and fees.* The applicant must not have been convicted of a disqualifying criminal offense.
- (3) *Education and experience.* The applicant must meet the minimum education and experience standards.
 - (i) *Academic instructor rating.* An instructor receiving this certification shall be authorized to teach one or more of the following course elements: Legal Authority, Constitutional Restrictions, Principles of Justification, Pennsylvania Crimes Code, Limited Authority, Incident Investigation and Reporting, Testifying in Court. An applicant for the Academic Instructor Rating must have, in addition to a course of study in 18 Pa.C.S. §§ 101—9183 (relating to the Crimes Code) and 234 Pa. Code (relating to Rules of Criminal Procedure), at least one of the following:
 - (A) An Associate Degree from a college or university located within this Commonwealth in which the course major was Police Science, Police Administration, Law, Criminology, or a similar Criminal Justice/Law Enforcement curriculum.
 - (B) An Associate Degree from a college or university located outside of this Commonwealth in which the course major was Police Science, Police Administration, Law, Criminology, or a similar Criminal Justice/Law Enforcement curriculum.
 - (C) A combination of education, which in the opinion of the Commissioner is equivalent to the educational standards in clause (A) or (B), and a minimum of 2 years experience as an instructor in a police or security academy teaching similar course material.
 - (ii) *Skills instructor rating.* An instructor receiving this certification shall be authorized to teach the armed and unarmed defense course element. An applicant for the skills rating must have at least one of the following:
 - (A) An undergraduate degree in Physical Education and 1 year of experience in law enforcement, criminal justice, or the security industry.
 - (B) A high school diploma, or GED equivalent, and 3 years of full-time experience as a physical education or martial arts instructor.
 - (C) A combination of education/training, which in the opinion of the Commissioner is equivalent to the standard in clause (A) or (B).

(iii) *Firearms instructor rating.* An instructor receiving this certification shall be authorized to teach the firearms module. An applicant for the firearms instructor rating must be certified as a police firearms instructor, or an equivalent thereto, by one of the following recognized organizations:

- (A) National Rifle Association.
- (B) Smith & Wesson Academy.
- (C) Federal Bureau of Investigation.
- (D) State Police.

§ 21.42. Application procedure.

(a) An applying instructor must complete an application for instructor certification, which is available from the Director, Bureau of Training and Education, Pennsylvania State Police, Post Office Box AA, Hershey, Pennsylvania 17033.

(b) An applying instructor must submit the following items, where applicable, with the completed application:

- (1) A certified copy of the college/university transcript which evidences compliance with the education standard.
- (2) Documentary evidence of employment experience.
- (3) Documentary evidence of instructor experience.
- (4) A copy of the firearms instructor certification issued by a recognized organization.

(c) Upon presentation of a satisfactorily completed application for instructor certification with all applicable attachments, at a State Police station, except a Turnpike or Interstate station, except a Turnpike or Interstate station, the receiving State Police Officer shall fingerprint the instructor applicant and further process the form.

§ 21.43. Approval of instructor certification.

If the Commissioner determines that the applicant meets the requirements of the act and this chapter, he will issue his written approval. If the Commissioner determines that the applicant does not meet the requirements of the act and this chapter, he will issue his written adverse determination.

ADMINISTRATIVE ADJUDICATIONS

§ 21.51. Adverse determination.

When it is determined that a person or entity who has applied for certification/approval/exemption under the act is unqualified for the certification/approval/exemption, a written notice of adverse determination which must contain specific information regarding the applicant's right to a hearing will be issued.

Cross References

This section cited in 37 Pa. Code § 21.18 (relating to denial of application).

§ 21.52. Suspension/revocation.

(a) *Proposed suspension/revocation.* A notice of proposed suspension/revocation to a certified/approved person or entity may be issued. The notice will contain an explanation of the basis for his proposed suspension/revocation, with specific information regarding the individual's or entity's right to a hearing. If the notified party timely requests a hearing, the request shall serve to stay the proposed suspension/revocation pending the outcome of the hearing and the Commissioner's final determination. The notice may be issued whenever:

(1) False fraudulent or misstated information is found to appear on any application or other document associated with the person or entity.

(2) A change of circumstances occurs that would render the person or entity ineligible, unqualified or otherwise unfit for certification/approval.

(3) A substantial violation of the act or this chapter is committed by the certified/approved person or entity.

(b) *Summary suspension/revocation.* In the event that the Commissioner determines that a certified/approved person or entity has a significant change of circumstances or has committed a serious violation of the act or this chapter which he determines to constitute a clear and present danger to the interests of the citizens of this Commonwealth, he will issue a notice of summary suspension/revocation. In these cases, the person or entity will have the right to a hearing within 15 days of the suspension/revocation.

§ 21.53. Hearings.

If a hearing is requested as a result of an adverse determination, proposed suspension/revocation or summary suspension/revocation, an administrative hearing will be scheduled and a notice of hearing will be sent to all parties to the proceedings. Hearings will be held at a location as determined by the Commissioner.

§ 21.54. Hearing examiner.

(a) A hearing examiner will be appointed by the Commissioner to conduct requested hearings.

(b) Subsection (a) supplements 1 Pa. Code § 35.185 (relating to designation of presiding officers).

§ 21.55. Evidence.

(a) Parties have the right of presentation of evidence, cross-examination, objection, motion, and argument. The hearing examiner will not be bound by technical rules of evidence, but all relevant and material evidence of reasonable probative value shall be admissible. The hearing examiner may limit the number of witnesses upon an issue and may require a party to present additional evidence on an issue. Witnesses shall be sworn or shall affirm.

(b) Applications, certifications, orders, and formal notices relating to the proceedings may be considered by the hearing examiner in deciding the case even though they have not been made a part of the record or referred to therein. The hearing examiner may also take official notice of an official or public document not relating to the proceeding and of a matter subject to judicial notice.

(c) Subsections (a) and (b) supplement 1 Pa. Code §§ 35.161—35.169 and 35.173 (relating to evidence and official notice).

§ 21.56. Briefs.

(a) The parties may, and upon request shall, submit briefs within such time as the hearing examiner will prescribe and will serve a copy of the brief on the other parties.

(b) Subsection (a) supersedes 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed).

§ 21.57. Transcript.

(a) Hearings must be stenographically reported and a transcript of the report must be a part of the record.

(b) Parties desiring copies of the transcript may obtain copies from the official reporter. Parties will also have the opportunity to review a copy of the transcript on file with the Department.

(c) Subsections (a) and (b) supplement 1 Pa. Code §§ 35.131—35.133 (relating to transcript).

§ 21.58. Witness fees.

(a) Witnesses subpoenaed by the State Police shall be paid the same fees and mileage as are paid for like services in the Courts of Common Pleas.

(b) Subsection (a) supersedes 1 Pa. Code § 35.139 (relating to fees of witnesses).

§ 21.59. Continuances.

Hearings will only be continued for compelling reasons. Requests for continuances shall be submitted to the hearing examiner, in writing, with a copy served upon other parties to the proceedings.

§ 21.60. Subpoenas.

(a) Upon request of a principal to the Director, Bureau of Training and Education, State Police, Post Office Box AA, Hershey, Pennsylvania 17033, the hearing examiner will, for cause, issue subpoenas under the signature of the Commissioner and Seal of the Department. The subpoenas must be for the attendance of witnesses or production of documentary evidence, and shall be served in person or by certified mail, return receipt.

(b) Compliance with a subpoena may be excused by the Hearing Examiner when he determines that the testimony or documents are not relevant or material to the issues in hearing, or for other just causes.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

§ 21.61. Hearing examiner's recommendation.

(a) At the conclusion of the proceedings, the hearing examiner will submit a written report to the Commissioner. His report will contain findings of fact, conclusions of law and recommendations.

(b) The recommendations will be reviewed and considered by the Commissioner in his disposition of the matter.

(c) The Commissioner will serve a copy of his decision on the principals to the proceedings or their representatives.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.201—35.207 (relating to proposed reports generally).

- APPENDIX I [Reserved]
- APPENDIX I-A [Reserved]
- APPENDIX II [Reserved]
- APPENDIX III [Reserved]
- APPENDIX IV [Reserved]
- APPENDIX V [Reserved]
- APPENDIX VI [Reserved]
- APPENDIX VI-A [Reserved]
- APPENDIX VII [Reserved]
- APPENDIX VIII [Reserved]
- APPENDIX IX [Reserved]
- APPENDIX X [Reserved]
- APPENDIX XI [Reserved]
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- APPENDIX XIII [Reserved]
- APPENDIX XIV [Reserved]
- APPENDIX XV [Reserved]
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