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JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 22, 2000

Honorable Colonel Paul J. Evanko, Commissioner
Pennsylvania State Police
3rd Floor, Department Headquarters
1800 Elmerton Avenue
Harrisburg, PA 17110

Re: IRRC Regulation #17-60 (#1941)
Pennsylvania State Police
Uniform Firearms Act; Licensed Retail Dealers; Firearm Record Forms

Dear Commissioner Evanko:

The Independent Regulatory Review Commission disapproved the subject regulation at its public meeting on June 22, 2000. Our Order is enclosed and is available on our website at <http://www.irrc.state.pa.us>.

Section 7(a) of the Regulatory Review Act requires you to notify us within seven days from receipt of this letter if you will: (1) withdraw the regulation; (2) proceed with promulgation under Section 7(b); or (3) proceed with promulgation under Section 7(c).

Sincerely,

Handwritten signature of Alvin C. Bush in cursive.

Alvin C. Bush
Vice Chairman

kms
Enclosure
cc: Ronald E. Plesco, Jr., Esq.
Corporal Albert J. Picca

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held June 22, 2000

John R. McGinley, Jr., Chairman – by Proxy
Alvin C. Bush, Vice Chairman
Arthur Coccodrilli
Robert J. Harbison, III
John F. Mizner

Regulation No. 17-60
Pennsylvania State Police
Uniform Firearms Act; Licensed Retail
Dealers; Firearm Record Forms

On April 15, 1998, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania State Police (State Police). This rulemaking amends 37 Pa. Code Chapters 31 and 33. The proposed regulation was published in the May 2, 1998 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 1, 2000.

This regulation implements the Pennsylvania Uniform Firearms Act of 1995 (Act) including firearms storage requirements for dealers, the Pennsylvania Instant Check System, confidentiality requirements, license revocation procedures and forms to carry out these requirements.

The State Police made amendments in response to many of our comments, or explained why amendments were not made. However, there continue to be four areas where the final regulation does not meet our criteria.

First, the use of the term “firearm” in Sections 33.114 and 33.115 of this regulation creates a clarity problem (71 P.S. § 745.5a(i)(3)(ii)). The Act contains two distinct definitions of this term in Sections 6102 and in 6111.2. To remove any potential confusion, the term “firearm” in Sections 33.114 and 33.115 should be replaced with the term “firearm as defined in section 6102 of the Act.”

Second, Section 31.104 lacks clarity (71 P.S. § 745.5a(i)(3)(ii)). We commented that the phrases “entrance cannot easily be gained” and “constructed to require an excessive amount of force to gain illegal entry” in Section 31.104 (formerly Section 31.105) are vague. Although the Preamble states the regulation was amended in response to our comments, this section is unaltered from the proposed version, except for the deletion of the term “steel mesh.” Therefore, further clarification is needed.

Third, the record keeping requirements in Sections 33.112 and 33.113 still raise questions as to the economic impact of and need for these requirements (71 P.S. § 745.5a(i)(1)(iii) and (3)(iii)). We questioned the need to retain record forms required in Sections 33.112 and 33.113 for 20 years. In response, the State Police deleted the 20-year record retention requirement.

However, Subsection (c) in both of these sections still requires the transfer of records when a licensed business is discontinued. Subsection (c) in Sections 33.112 and 33.113 is no longer necessary and should be deleted.

Finally, Subsections 33.120(a) and (b) are also inconsistent with the statutory requirements and lack clarity (71 P.S. § 745.5a(i)(3)(i) and (ii)). These subsections require examining physicians to report “when they determine a lack of severe mental disability following the initial examination under Section 302(b) of the Mental Health Procedures Act...” The Pennsylvania Psychiatric Society commented that Subsections 33.120(a) and (b) are inconsistent with Section 6105(c)(4) of the Act as amended by Act 70 of 1998. It is our understanding that the State Police agree that reporting a lack of mental disability is not necessary. The State Police should delete this reporting requirement in Subsections 33.120(a) and (b).

We have determined this regulation is consistent with the statutory authority of the State Police (18 Pa.C.S. §§ 6101 to 6126) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.



A handwritten signature in cursive script, appearing to read "Alvin C. Bush".

Alvin C. Bush, Vice Chairman