



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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July 2, 1998

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 (Commission) has enclosed comments on your proposed regulation #17-60. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact James M. Smith at 783-5439 or John Jewett at 783-5475. They have been assigned to review this regulation.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae

Enclosure

cc: Corporal Albert J. Picca
Trooper Rojean L. Reiderbaugh
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

PENNSYLVANIA STATE POLICE REGULATION NO. 17-60

**UNIFORM FIREARMS ACT; LICENSED RETAIL DEALERS; FIREARM
RECORD FORMS**

JULY 2, 1998

We have reviewed this proposed regulation from the Pennsylvania State Police (State Police) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to fiscal impact, need, reasonableness, feasibility, duplication and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 31.102. Definitions - Clarity

Act

The definition of the term "Act" is incomplete. Act 17 of 1995 gave the statute a new name: The Pennsylvania Uniform Firearms Act of 1995 (Act). The definition of "Act" in the regulation needs to be updated.

Steel mesh

The definition of "steel mesh" states that No. 6 gauge steel mesh may be used where high carbon manganese cannot be obtained. This definition lacks clarity for several reasons. First, it is not clear how it would be determined that high carbon manganese *cannot be obtained*. We are not aware of any restrictions in the Commonwealth that would absolutely prevent someone from obtaining high carbon manganese. Second, if both high carbon manganese and No. 6 gauge steel mesh are acceptable, it is not clear why there is a need to prioritize the type of steel mesh to be used. The State Police needs to clarify the definition of "steel mesh."

There is also a typographical error in the first sentence of the definition of "steel mesh" which requires "...steel at least than 15/100 inches..." This typographical error should be corrected in the final-form regulation.

2. Section 31.104. Responsibilities of designated employe - Clarity

Section 31.104 simply provides an addition to the provision for a "designated employe" in Section 31.103(c). The clarity of this regulation could be improved by deleting Section 31.104 and inserting its text as the opening sentence of Section 31.103(c). If the text is moved,

amending the title of Section 31.103 to a more general title such as “Responsibilities of licensed retail dealers and designated employees” would be appropriate.

3. Section 31.105. Storage requirements - Clarity

The requirements in Subsections 31.105(a) and (b) are vague. In Subsection (a) the phrase “constructed so that entrance *cannot be easily gained* from an adjoining building or room” needs clarification. In Subsection (b) the phrase “constructed to require *an excessive amount of force to gain illegal entry*” is also vague. These phrases could be widely interpreted. The State Police should state these requirements in clearer terms, which provide dealers with objective standards with which they can readily comply.

Subsection (c) states that a storage area may be equipped with other security devices. This is not a requirement; it is advisory in nature. As such, Subsection (c) is not needed in the regulation. The purpose of Subsections (a) and (b) is to notify dealers of the minimum requirements for storage of firearms. If these subsections use the word “minimum,” then dealers will know they can purchase additional security devices.

Finally, the storage requirements in Section 31.105 provide the detail needed to comply with Section 31.103(b)(1). It would add clarity to the regulation if all of the storage provisions were in one place. Therefore, it would be clearer if Section 31.105 was deleted and proposed Sections 31.105 (a) and (b) were inserted as subparagraphs under Section 31.103(b)(1).

4. Section 31.106. Commissioner’s notification - Feasibility and Clarity

Subsections (a) and (b) state that “the Commissioner will notify all licensed retail dealers through public announcements” when a clear and present danger to public safety exists and when it has ceased. However, there is no indication of how the Commissioner’s public announcement will be accomplished. It is unclear whether the announcement will be broadcast by radio, publicized, communicated, issued or delivered, and how dealers will be aware of an announcement, or know where to look for one.

In the existing regulation, Subsection 31.6(b) states that when the Commissioner determines that the clear and present danger to public safety has ceased, “he will notify all concerned through announcements issued through the news media.” Adding the words “through the news media” to the last sentence in Subsections 31.106(a) and (b) would give dealers better guidance.

5. Sections 33.101. Authority and 33.102. Policy - Need

Section 33.101 contains two subsections. The first one states this regulation was “promulgated under the authority of the Act.” The second indicates that the State Police promulgated this chapter, and “in the manner provided by law, has the responsibility to administer and enforce this chapter and the act....” Language similar to the text of these two subsections would be more appropriate in the narrative of the preamble of this proposed rulemaking. It is unnecessary to include this text in the regulation, and Section 33.101 should be deleted.

A similar situation occurs in Section 33.102. The language of both subsections appears to be redundant. Both state that it is not the policy of the Commonwealth to place undue or unnecessary restrictions or burdens on, or to discourage or restrict private ownership or use of firearms by law-abiding citizens. These are sound policy statements that reflect the principles of the Constitution of Pennsylvania. However, they are not specific rules applicable to the ownership, use, or buying and selling of firearms. Other agencies use a section entitled “scope” or “purpose” at the beginning of a regulatory chapter to summarize its purpose or scope. This section can be streamlined and clarified to perform a similar function.

6. Section 33.103. Confidentiality - Consistency, Reasonableness and Clarity

Delaware County Sheriff Chad Kenney submitted comments on this proposed regulation expressing concern with the fact that the list of criminal justice agencies in Subsection 33.103(c)(2) does not include county sheriffs. The subsection provides for the disclosure of confidential information to criminal justice agencies. The list of agencies in this subsection is consistent with the definition of “criminal justice agency” in Section 2 of the Criminal History Information Act (18 Pa.C.S.A. § 9102). However, the State Police needs to examine this concern, and develop a procedure that provides sheriffs with access to information they need to perform their duties and simultaneously prevents unnecessary disclosure of confidential information.

7. Section 33.104. Definitions - Consistency, Reasonableness, Duplication, and Clarity

To provide for the clear and consistent use and understanding of terms, the definitions section of a regulation should precede the substantive provisions of a regulation. Section 33.103 contains substantive requirements designed to maintain the confidentiality of information provided by an applicant, purchaser, transferee, or licensee, but it precedes the definitions. Since Section 33.103 uses terms that are later defined in Section 33.104, the order of these two sections should be switched.

Firearm as defined in Section 6102 of the act

The language of this definition is identical to the definition of “handgun.” Even though recent amendments to the Act have created some confusion concerning the use of the term “firearm,” we see no need for two identical definitions of two different terms in this regulation. To improve the regulation’s clarity, the term “firearm as defined in Section 6102 of the act” should be deleted and the definition of “handgun” retained in the definitions. Furthermore, the text of other sections that uses the term “firearm as defined in Section 6102 of the act” should be modified by substituting the term “handgun” for this phrase. If the reference to “Section 6102 of the act” is retained in the regulation, it should be moved to the text of the definition and not used as a part of the term being defined.

Firearm as defined in Section 6111.2 of the act

This definition is identical to the definition of “firearm” in Section 31.102. There is no need to repeat the definition in this section since Section 31.102 defines words and terms for the entire subpart. The definition of “firearm as defined in Section 6111.2 of the act” needs to be deleted or replaced with the definition of “firearm” in Section 31.102. If the reference to

“Section 6111.2 of the act” is retained in the regulation, it should be moved to the text of the definition and not used as a part of the term being defined.

8. Section 33.111. Retail sale/transfer of handgun or long gun - Need and Clarity

Subsections 33.111(c) and (d) state that their requirements apply to retail sales of “a handgun or if required by law, a long gun.” The phrase “or if required by law” is vague. Although we recognize that last month Act 70 of 1998 modified the provisions for long guns in the Act, specific exceptions or requirements for long guns need to be included in the regulation. Therefore, the phrase “if required by law” should be deleted and replaced with the exceptions and requirements for long guns, or a specific reference to the applicable statute.

9. Section 33.112. Surcharge remittance form - Need, Economic Impact and Clarity

Subsection (a) ends with the requirement that the form be on “white, 100% sulfite bond paper.” It is not clear why this provision needs to be so restrictive. In particular, the requirement that the paper be 100% sulfite may not be easy to determine. This requirement may exclude paper that would otherwise be acceptable. Similar requirements are found in Sections 33.113(a), 33.114(a), 33.115(a), 33.116(a), 33.117(a), and 33.120(a). The State Police either needs to explain the need to restrict the type of paper to 100% sulfite bond paper, or delete or modify these provisions.

10. Sections 33.112 and 33.113. Surcharge remittance forms - Need and Economic Impact

Both Sections 33.112(b) and 33.113(b) require the issuing authority to retain these forms for 20 years. We recognize that other forms are kept due to statutory requirements and to assist in tracing the possession of firearms. However, there is no specific identification record on the surcharge remittance forms for the weapon involved in each transaction.

We have two concerns with this requirement. First, the State Police needs to justify the need to require any record retention at all by the issuing authority, in light of the fact the State Police has copies. Second, the State Police needs to justify the need to retain surcharge remittance forms for 20 years. Without sufficient justification, the State Police should delete or modify the requirement.

11. Sections 33.114 and 33.115. Application and license to carry firearms - Consistency

These sections set forth the requirements and procedures for applying for and issuing a license to carry a firearm. These sections are designed to implement Section 6109 of the Act. Subsection 6109(a) reads:

Purpose of license. - A license to carry a firearm shall be for the purposes of carrying a firearm concealed on or about one’s person or in a vehicle within this Commonwealth.

The definition of the term “firearm” in this portion of the Act is virtually identical to the definition of “handgun” or “firearm as defined in Section 6102 of the act” in Section 33.104 of

this regulation. However, Sections 33.114 and 33.115 simply use the term “firearm” with no reference to Section 6102 of the Act. To be consistent with the Act and the definitions used in this regulation, the term “firearm” should be replaced with the term “handgun” in Sections 33.114 and 33.115. The text of these sections may also include a reference to the definition of “firearm” in Section 6102 of the Act. However, the terms “firearm” and “handgun” need to be consistent in this regulation.

12. Section 33.118. Pennsylvania sportsman’s firearm permit - Need and Reasonableness

Subsection (a) states that forms will be furnished in quantities of 500 per pack. The State Police needs to explain the need to limit furnishing the forms to quantities of 500 per pack. In some instances, this quantity may be excessive compared to the issuing authority’s need for more forms. Furthermore, since this is an administrative detail as opposed to a regulatory requirement, the State Police should consider deleting it.

13. Section 33.120. Notification of mental health commitment - Clarity

The reference in Subsection (a) to Section 6111.1(f)(3) of the Pennsylvania Uniform Firearms Act of 1995 (Act) appears to be in error. The correct citation is Section 6111.1(g)(3) of the Act.

Also the word “Note:” in the last sentence of Subsection (b) is unnecessary and should be deleted.

14. Section 33.131. Forms - Need and Clarity

The regulation contains unnecessary detail regarding the forms to be used. As long as the title of one form cannot be confused with the title of another form, it is sufficient to require the person affected to use forms prescribed by the State Police. For example, Section 33.111 provides that “...Form SP 4-113, is a prenumbered three-part form furnished through the State Police under section 6111 of the act (relating to sale or transfer of firearms)....” For Section 33.111, it would be sufficient to state “The application/record of sale form, as prescribed by the State Police, is used to record firearm transactions.” Similar unnecessary detail should be removed from all of the individual sections of the regulation relating to forms. Finally, Section 33.131 is also unnecessary since it duplicates the form name and address information found in the preceding sections.