

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Pennsylvania State Police

(2) Agency Number: 17

Identification Number: 17-85

(3) PA Code Cite: 37 Pa. Code, Chapter 33, § 33.103(e)

(4) Short Title: Procedures and Specifications for Firearm Record Forms Under the Uniform Firearms Act

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Sergeant Robert L. Bailey, Regulatory Coordinator, Legislative Affairs Office, 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110, PH 717-705-1749, robailey@pa.gov

Secondary Contact: John J. Herman, Assistant Counsel, Governor's Office of General Counsel, 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110, PH 717-705-0161, johnherman@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The procedures and specifications for this regulation provide guidelines for law enforcement in the area of crime prevention and control. Currently, under authority provided by the Pennsylvania Uniform Firearms Act (UFA), and Pennsylvania Mental Health Procedures Act (MHPA), the Pennsylvania State Police (PSP) receive notification of the identity of any individual who is adjudicated incompetent or involuntarily committed for inpatient treatment. These notifications come from the courts and county mental health agencies, for the purpose of PSP being able to enforce 18 Pa. C.S. § 6105(c)(4), which prohibits individuals who have been adjudicated incompetent, or involuntarily committed for inpatient treatment from, in essence, possessing firearms.

The particular use of this sensitive information is controlled by both statute (50 P.S. § 7111(b)) and regulations passed under the UFA, particularly 37 Pa. Code § 33.103. The current regulation (§ 33.103) is arguably more restrictive in its permitted uses of the information than the statute (§ 7111(b)); this proposed amendment is designed to ensure that the regulation, while still protecting the information, clearly provides for the same use of the information as does the MHPA.

INDEPENDENT REGULATORY
REVIEW COMMISSION

RECEIVED
IRRC
2018 JAN - 3 P 12: 10

IRRC Number: 3187

(8) State the statutory authority for the regulation. Include specific statutory citation.

These regulations are authorized under Section 6111.5 of the Pennsylvania Uniform Firearms Act of 1995 (UFA), 18 Pa. C.S. §§ 6101-6127. See 18 Pa. C.S. § 6111.5. Section 111(b) of the Mental Health Procedures Act (MHPA), 50 P.S. §§ 7101-7503, authorizes disclosure of mental health records information by the PSP. See 50 P.S. § 7111(b).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case, or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Currently, the PSP maintains as part of its computerized firearms background check system, a database ("Mental Health Database") of information related to individuals who have been reported to it by judges, mental health review officers, and county mental health administrators, as being individuals who have been adjudicated incompetent or involuntarily committed. This notice is a one-page form consisting of biographic information (not a copy of actual record of commitment or adjudication) and is used to create the PSP Mental Health Database for purposes of administering the firearm prohibition in Section 6105(c)(4) of the UFA.

Currently, pursuant to the plain language of 37 Pa. Code. § 33.103(e), this information is non-public and is accessible under two limited circumstances: (1) whenever an individual is undergoing a background check during an attempted firearms purchase/transfer, and (2) whenever an individual is undergoing a background check as part of an application for a Pennsylvania License to Carry a Firearm (i.e., a concealed carry permit).

This regulation can be interpreted to be at odds with the broader statutory language of 50 P.S. § 7111(b), which allows PSP to access an individual's involuntary treatment record for purposes of determining if he or she is prohibited from possessing firearms. PSP is also statutorily authorized under 50 P.S. § 7111(b) to disseminate that information to any third party to enforce 18 Pa. C.S. § 6105(c)(4). By directly tying the regulation to the MHPA, any prior ambiguity caused by the interplay of the regulation and the statute as to the PSP's ability to use the Mental Health Database consistent with the MHPA is removed. This will ensure the applicable laws clearly allow PSP to fully utilize this information for transferring firearms and issuing licenses to carry, as well as for screening police officers, and police officer candidates, to ensure they are not prohibited from possessing firearms, and to allow PSP to assist investigations by other law enforcement agencies, to enforce 18 Pa. C.S. § 6105(c)(4).

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Other state laws vary in this area, but dissemination of basic identifying information regarding mental health prohibitions is often received by PSP from the FBI/NICS (National Instant Check System, run by the FBI) and other states when PSP is processing and reviewing firearms purchase denials for accuracy. Moreover, the amendment to the aforementioned regulation will not put Pennsylvania at a competitive disadvantage with reference to other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations are known to be impacted or affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The following agencies/organizations were informed of a change to the proposed regulation, its purpose, and given the opportunity to comment:

- **Firearms Owners Against Crime (requested information)**
- **National Rifle Association (no feedback)**
- **Pennsylvania Chiefs of Police Association (support)**
- **Pennsylvania District Attorney's Association (no feedback)**
- **Pennsylvania Department of Health (no feedback)**
- **Pennsylvania State Troopers Association (no feedback)**

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Individuals and businesses will generally not be affected. Law Enforcement will be able to more effectively access the information in background checking police officers and for use in criminal investigations under 18 Pa. C.S. § 6105(c)(4), likely leading to more arrests and prosecutions of prohibited persons.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are no perceived businesses, people, or groups that would be required to comply with this regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed amendment will have no significant financial or economic impact on any entity. Likewise, the proposed amendment will have no societal impact on any small business, business, labor community or private organization.

The proposed amendment however, will have impact on (and benefit) police agencies (arguably public organizations), which would, post-amendment, be able to more efficiently determine if an individual is prohibited from possessing a firearm by state and federal law, prior to accepting them into employment. Additionally, the proposed amendment will allow law enforcement to directly contact the PSP to determine, as part of a criminal investigation, if an individual is prohibited from possessing firearms under 18 Pa C.S. § 6105(c)(4).

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no significant costs associated with this regulation. The major benefits of this regulation, is that it will permit law enforcement to access this type of record information, both for hiring purposes and investigative needs, in a secure, efficient manner that will enhance public safety.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

It is not anticipated that this rulemaking will have a fiscal impact on the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with this regulation.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with compliance with this regulation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This proposed rulemaking would not require any legal, accounting or consulting procedures or any additional record keeping or other paperwork.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Not applicable.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Savings	"	"	"	"	"	"
COSTS:	"	"	"	"	"	"
Regulated Community	"	"	"	"	"	"
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Costs	"	"	"	"	"	"
REVENUE LOSSES:	"	"	"	"	"	"
Regulated Community	"	"	"	"	"	"
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Revenue Losses	"	"	"	"	"	"

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"

“	“	“	“	“
---	---	---	---	---

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The amendment does not impose any additional reporting, recordkeeping or other administrative costs or requirements on businesses large or small; it will not have an adverse impact on small businesses.

There is not a less intrusive or less costly way to achieve the purpose of the proposed amendment.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Special provisions were not added.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Alternative regulatory schemes were not considered, as this change is a technical amendment to ensure the uniformity of the regulation with an existing statute. It is also therefore the least burdensome.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The amendments to the regulation do not impose any additional reporting, recordkeeping or other administrative costs or requirements on business large or small; it will not have an adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This rulemaking was not based upon scientific data, but on the specific request of the Pennsylvania State Police.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The date by which the agency must receive public comments: | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held: | No public meetings or hearings are expected to be held. |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Spring 2018 |
| D. The expected effective date of the final-form regulation: | Upon Publication final form rulemaking. |
| E. The date by which compliance with the final-form regulation will be required: | Upon Publication as final form rulemaking. |
| F. The date by which required permits, licenses or other approvals must be obtained: | Not applicable. |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Pennsylvania State Police Regulations are reviewed continuously for clarity, effectiveness and whether they are serving the greater interests of the citizens of the Commonwealth.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

RECEIVED
IRRC

2018 JAN -3 P 12:10

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: *Amy J. Elliott*
(DEPUTY ATTORNEY GENERAL)

DEC 12 2017

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania State Police

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 17-85

DATE OF ADOPTION: _____

BY: *Col. Tyree C. Blocker*

Colonel Tyree C. Blocker
Commissioner

TITLE _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: *Marissa J. Ziel*

NOV 27 2017

DATE OF APPROVAL

Deputy General Counsel
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 33

PROCEDURES AND SPECIFICATIONS FOR FIREARM RECORD FORMS UNDER THE UNIFORM ACT

Procedures and Specifications for Firearm Record Forms Under the Uniform Firearms Act

The Pennsylvania State Police (PSP) proposes to amend 37 Pa. Code § 33.103(e) (relating to confidentiality) to read as set forth in Annex A.

Effective date

The proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 6111.5 of the Pennsylvania Uniform Firearms Act of 1995 (UFA), 18 Pa. C.S. §§ 6101-6127, authorizes the proposed rulemaking. *See* 18 Pa. C.S. § 6111.5. Section 111(b) of the Mental Health Procedures Act (MHPA), 50 P.S. §§ 7101-7503, authorizes disclosure of mental health records information by the PSP. *See* 50 P.S. § 7111(b).

Background and Need for the Amendment

The PSP is charged with the responsibility to administer the provisions of the UFA. 18 Pa. C.S. § 6111.1(a). This charge has been described as “broad authority” for the purpose of “ensur[ing] public safety and welfare by keeping firearms out of the hands of dangerous individuals.” *In re Expungements*, 938 A.2d 1075, 1080-82 (Pa. Super. Ct. 2007). The UFA prohibits an individual who has been adjudicated as an incompetent or who has been involuntary committed to a mental health institution for inpatient care and treatment under the MHPA from possessing, using, controlling, selling or manufacturing a firearm or obtaining a license to possess, use, control, sell, transfer or maintain a firearm in this Commonwealth. *See* 18 Pa. C.S. §§ 6105(a)(1), (c)(4). Furthermore, the possession of a firearm by the mentally ill is regulated by federal law, 18 U.S.C. § 922(g)(4), and essentially every state in the country.

Records regarding mental health commitments pursuant to the MHPA are confidential and are generally not subject to disclosure except as provided by law. Section 111(a) of the MHPA provides that all documents regarding persons in treatment shall be kept confidential and may not be released or their contents disclosed without that individual’s written consent. 50 P.S. § 7111(a). The MHPA provides an exception to this general rule that enables the PSP to obtain mental health records information, and disclose such information to any person to administer 18 Pa. C.S. § 6105(c)(4), which prohibits an individual who has been adjudicated as an incompetent or who has been involuntary committed under the MHPA from, among other things, possessing a firearm. *See* 50 P.S. § 7111(b); *see also Commonwealth v. Emmil*, 866 A.2d 420, 422 (Pa. Super. Ct. 2005) (“The MHPA permits the State Police to obtain specific mental health records in order to ensure that Section 6105 is not violated.”). This exception allows the PSP to keep firearms out of the

hands of individuals who have been adjudicated incompetent or involuntarily committed pursuant to MHPA, by allowing direct access to the mental health records information that evidence the prohibiting event.

The PSP obtains mental health records information because the MHPA and the UFA require judges and certain mental health officers and administrators to notify the PSP regarding an individual's involuntary commitment or incompetency adjudication within 7 days of its occurrence. *See* 50 P.S. § 7109(d); 18 Pa. C.S. § 6111.1(f). This notice is a one-page form consisting of biographic information (not a copy of actual record of commitment or adjudication) and is used to create the PSP Mental Health Database for purposes of administering the firearm prohibition in Section 6105(c)(4) of the UFA.

The PSP's regulations do not clearly provide for the permitted use of the confidential information consistent with the authorized use in Section 111(b) of the MHPA. Section 33.103(e), which concerns the confidentiality of mental health records information, only authorizes the mental health records information to be used by the PSP for the purpose of determining whether a person applying to obtain a firearm or license to carry a firearm is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm. 37 Pa. Code § 33.103(e). Section 111(b) of the MHPA, however, provides for a broader permissible use of such information and authorizes the PSP to disclose the information to any person to ensure compliance with Section 6105(c)(4) of the UFA. *See* 50 P.S. § 7111(b). This lack of symmetry between the regulation (Section 33.103(e)) and the statute (Section 7111(b)) may be interpreted to prevent PSP from using mental health record information for other purposes that are consistent with the UFA and MHPA, but which are not seeking to obtain a firearm from a dealer or the issuance of a license to carry via the county sheriff.

The following are two examples for which the PSP would be using the information in the PSP Mental Health Database consistent with the authorization in Section 111(b) of the MHPA, but which are not currently within the permitted use of such information under Section 33.103(e) of the current regulation. First, it is consistent with Section 111(b) for PSP to query the PSP Mental Health Database in conducting a background check to determine whether local law enforcement officers, or candidates for those positions are prohibited from possessing a firearm under Section 6105(c)(4) of the UFA. This is particularly important for a department prior to hiring an officer and issuing the officer a department-owned firearm. Allowing a police officer to possess a firearm when the officer has been adjudicated as incompetent, or involuntarily committed to a mental institution, has the potential to place Pennsylvanians at risk, not to mention allowing an individual to violate state and/or federal firearms laws.

Additionally, it is consistent with Section 111(b) of the MHPA for the PSP to query the PSP Mental Health Database to assist police officers who identify a specific investigative need, in the course of an investigation under the UFA, to determine if a person is prohibited from possessing a firearm due to being adjudicated as an incompetent or having been involuntarily

committed under the MHPA. In many cases, officers are unable to conclusively determine if person has subject to a disqualifying adjudication or commitment, without checking the person against the PSP Mental Health Database, to find whether such a mental health prohibition exists. Over the past two decades, there have been many highly publicized incidents where individuals possessed firearms, even though they had a mental health history that would have otherwise prohibited such possession. Without information confirming that a person is prohibited under the UFA from possessing firearms for mental health reasons, officers may be unable to take the necessary steps to seize firearms and/or make an arrest.

In sum, this amendment to 37 Pa. Code § 33.103(e) provides clarity and allows the PSP to clearly and fully utilize its lawful authority under the MHPA to protect the public from individuals who are prohibited from possessing a firearm due to an adjudication of incompetency or an involuntary commitment to a mental health institution.

Description of the Proposed Rulemaking

This proposed rulemaking amends Section 33.103(e) to bring the regulation in line with the permitted use of mental health record information by the PSP under Section 111(b) of the MHPA. As discussed above, Section 33.103(e) currently authorizes the mental health records information to be use by the PSP “only” for the purpose of determining whether a person applying to obtain a firearm or license to carry a firearm is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm. 37 Pa. Code § 33.103(e). Section 111(b) of the MHPA, however, provides for a broader permissible use of such information and authorizes the PSP to disclose the information to any person to ensure compliance with Section 6105(c)(4) of the UFA. *See* 50 P.S. § 7111(b).

Accordingly, the PSP is proposing to amend Section 33.103(e) by creating two new subsections—(e)(1) and (e)(2)—that provide for the permitted exceptions to the general rule of confidentiality for mental health records information maintained by the PSP under the MHPA and UFA. Subsection (e)(1) contains the current regulatory language concerning the permitted use for a person applying to obtain a firearm or license to carry a firearm, but the word “only” is removed because these two uses are not the only exceptions provided by law. Subsection (e)(2), which provides that the PSP may disclose the information in accordance with Section 111(b) of the MHPA, is added to create consistency and align the regulation with the permitted use of mental health record information by the PSP under the MHPA. By directly tying the regulation to the MHPA, any prior ambiguity caused by the interplay of the regulation and the statute as to the PSP’s ability to use the Mental Health Database consistent with the MHPA is removed.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions, or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a), on JAN. 3, 2018, the Pennsylvania State police submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Law and Justice Committee and the House Judiciary Committee. A copy of this material is available on request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations, or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Pennsylvania State Police, the General Assembly and the Governor for comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rulemaking to Regulatory Coordinator, Legislative Affairs Office, Pennsylvania State Police, by mail at 1800 Elmerton Avenue, Harrisburg, PA 17110 or by email at robailey@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference 17-85, Procedures and Specifications for Firearm Record Forms Under the Uniform Firearms Act, when submitting comments.

Annex A
TITLE 37. LAW
PART I. STATE POLICE
CHAPTER 33. PROCEDURES AND SPECIFICATIONS FOR FIREARM RECORD
FORMS UNDER THE UNIFORM FIREARMS ACT

GENERAL

§ 33.103. Confidentiality.

(a) Information furnished under this chapter by an applicant, purchaser, transferee or licensee, or collected by the designated issuing authority under this chapter, is confidential and not subject to public disclosure.

(b) Information collected or maintained under this chapter by the State Police is confidential and not subject to public disclosure.

(c) Nonpublic disclosure by the State Police of information collected, furnished or maintained under this chapter is restricted to:

(1) Disclosure upon request of the applicant, licensee, purchaser or transferee, as described in sections 6109 and 6111 of the act (relating to licenses; and sale or transfer of firearms), upon documentary certification that the requestor is in fact the applicant, licensee, purchaser or transferee.

(2) Disclosure upon request of a county sheriff or a criminal justice agency, defined as any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to this function. Criminal justice agencies include: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions, or both.

(d) No disclosure of information forwarded, collected or maintained under this chapter will be made to requests of noncriminal justice agencies, or individuals other than the applicant, licensee, purchaser or transferee as described in sections 6109 and 6111 of the act.

(e) Mental health records information received or maintained by the State Police under section 6111.1(b) and (f) of the act (relating to Pennsylvania State Police) and section 109(d) of the

Mental Health Procedures Act (50 P.S. § 7109(d)) shall be confidential and not subject to [public] disclosure, **except:**

(1) The information shall be available [only] to the State Police for the purposes of determining, under sections 6109(d) and 6111.1(b) of the act, if the potential applicant is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm, or obtaining a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth, as defined under Federal or State law, and for the purpose of informing the licensee/sheriff making inquiry under sections 6109(d) and 6111.1(b)(iii) of the act.

(2) **The State Police may disclose the information in accordance with section 111(b) of the Mental Health Procedures Act (50 P.S. § 7111(b)).**



PENNSYLVANIA STATE POLICE
DEPARTMENT HEADQUARTERS
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110

January 3, 2018

The Honorable George D. Bedwick
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Chairman Bedwick:

On behalf of the Pennsylvania State Police (PSP), I respectfully submit the attached packet for Proposed Regulation, ID Number 17-85, relating to Procedures and Specifications for Firearm Record Forms Under the Uniform Firearms Act. Specifically, the proposed regulation would allow the PSP to access mental health records for the purposes of hiring police officers and for investigative needs to determine if a person is prohibited from possessing a firearm. This regulation will enhance public safety and close a current loophole.

Should you have any questions or concerns regarding this proposed regulatory change, I may be reached by telephone, at 717-705-1749 or by email, at robailey@pa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sgt. R. L. Bailey".

Sergeant Robert L. Bailey
Policy & Legislative Affairs Office
Pennsylvania State Police

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

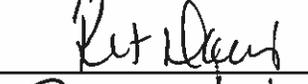
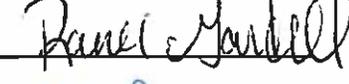
I.D. NUMBER: 17-85
SUBJECT: PROCEDURES AND SPECIFICATIONS FOR FIREARM RECORD FORMS UNDER THE UNIFORM ACT
AGENCY: Pennsylvania State Police

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
IRRC
2018 JAN -3 P 12:10

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON JUDICIARY</i>
1/3/18		MAJORITY CHAIR <u>REP. MARSICO</u>
1/3/18		MINORITY CHAIR <u>REP. PETRARCA</u>
		<i>SENATE COMMITTEE ON LAW AND JUSTICE</i>
1/3/18		MAJORITY CHAIR <u>SEN. MCILHINNEY</u>
1/3/18		MINORITY CHAIR <u>SEN. BREWSTER</u>
1/3/18		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
1/3/18		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>