

RULES AND REGULATIONS

Title 37—LAW MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CH. 241]

Law Enforcement Background Investigations; Temporary Regulations

The Municipal Police Officers' Education and Training Commission (Commission), under the authority in 44 Pa.C.S. § 7312 (relating to regulations) enacted by the act of July 14, 2020 (P.L. 613, No. 57), adds Subpart C (relating to law enforcement officer hiring and separation), Chapter 241 (relating to law enforcement background investigations) to read as set forth in Annex A. The Commission's temporary regulations will be added to Part IV (relating to Municipal Police Officers' Education and Training Commission).

Purpose of the Temporary Rulemaking

The purpose of this temporary rulemaking is to implement the provisions of 44 Pa.C.S. Chapter 73 (relating to law enforcement background investigations and employment information) as required under section 7312. The temporary regulations will expire 2 years from the date of publication. The Commission intends to use the 2-year period during which the temporary regulations are effective to test and refine the regulations to assure compliance in carrying out the purposes for which 44 Pa.C.S. Chapter 73 provides.

The provisions of 44 Pa.C.S. Chapter 73 require the Commission to promulgate regulations regarding the following topics:

1. Procedures to guarantee the confidentiality of employment information and separation records (section 7312(c)(1)).
2. Procedures to guarantee the security of the database (section 7312(c)(2)).
3. Reportable disciplinary actions and criminal conduct falling within the scope of section 7311 (relating to hiring report) (section 7312(c)(3)).
4. Any other procedures deemed necessary by the Commission for implementation of the chapter (section 7312(c)(4)).

Summary of Significant Provisions

Section 241.3 (relating to confidentiality) addresses the dissemination of information received by affected agencies and people.

Section 241.4 (relating to law enforcement agency enrollment) provides for the enrollment of agencies subject to the act in the database.

Section 241.5 (relating to background investigations) sets forth the minimum requirements for a background investigation on an applicant by a prospective employing law enforcement agency.

Section 241.6 (relating to request of separation record) specifies the procedure for a prospective employing law enforcement agency to obtain separation records from the Commission.

Section 241.7 (relating to hiring information) sets forth the procedure for a prospective employing law enforcement agency to notify the Commission of an applicant's final employment status and the submission of a hiring report, if required.

Section 241.8 (relating to submission of separation record) sets forth the procedure for a law enforcement agency to notify the Commission of a law enforcement officer's separation and the submission of a hiring report, if required.

Section 241.9 (relating to officer review) sets forth procedures for a law enforcement officer to review their separation record(s) maintained by the Commission. It also provides for a process to allow the law enforcement officer to lodge a disagreement on the contents of the separation record with the previously employing law enforcement agency.

Section 241.10 (relating to amending separation records) sets forth the procedure for a law enforcement agency to provide the Commission with a corrected or amended separation record.

Section 241.11 (relating to officer statement of disagreement) specifies the procedure for a law enforcement officer to provide the Commission with a written statement of disagreement which will accompany the dissemination of the law enforcement officer's separation record to a requesting law enforcement agency.

Section 241.12 (relating to record retention by law enforcement agency) directs a law enforcement agency to maintain identified records in accordance with established retention and disposition schedules.

Section 241.13 (relating to record security procedures) sets forth the minimum requirements for a law enforcement agency to maintain records identified in the act.

Affected Parties

This temporary rulemaking will affect State, county, municipal agencies as well as certain school districts that employ peace officers. Internal procedures during the hiring and separation processes will be minimally impacted.

Fiscal Impact

Commonwealth. The Commission expects this temporary rulemaking will have the most fiscal impact on the Commission as the administrator. Technological upgrades and staff workload increases will comprise the majority of the impact. Other Commonwealth agencies are expected to experience minimal, if any, fiscal impact due to the required reporting procedures.

Political subdivisions. This temporary rulemaking will have minimal fiscal impact on political subdivisions of this Commonwealth.

Private sector. This temporary rulemaking is not anticipated to have a fiscal impact on the private sector.

General public. This temporary rulemaking is not anticipated to have a fiscal impact on the general public.

Paperwork Requirements

Multiple forms are required for the processing of information, verification of identity and sharing of records. All forms will be available on the Commission's public web site at mpoetc.psp.pa.gov at the time the temporary regulations become effective.

Effective Date

This temporary rulemaking will become effective July 14, 2021, in accordance with section 7312(c)(4)(1).

Public Comments

The Commission is seeking comments from the public and affected parties as to how this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Sergeant Leslie Barr, Policy and Legislative Affairs Office, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110 or by e-mail at lesbarr@pa.gov. Reference “#17-87, Chapter 73” when submitting comments.

Contact Person

The contact person for questions about this rulemaking is Sergeant Leslie Barr, Policy and Legislative Affairs Office, Pennsylvania State Police, lesbarr@pa.gov.

Regulatory Review

Under section 7312, the Commission is authorized to promulgate temporary regulations which are not subject to section 612 of the Administrative Code of 1929 (71 P.S. § 232), sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law, sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)) and the Regulatory Review Act (71 P.S. §§ 745.1—745.14). These temporary regulations expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

In accordance with 44 Pa.C.S. Chapter 73 and with the approval of the Commission on February 4, 2021:

- (1) The temporary regulations of the Commission, 37 Pa. Code, are amended by adding §§ 241.1—241.13 to read as set forth in Annex A.
- (2) The temporary regulations are effective July 14, 2021.
- (3) The temporary regulations will be posted on the Commission’s public web site and published in the *Pennsylvania Bulletin*.
- (4) The temporary regulations are subject to amendment as deemed necessary by the Commission.

COLONEL ROBERT EVANCHICK,
Chairperson

Annex A

TITLE 37. LAW

**PART IV. MUNICIPAL POLICE OFFICERS’
EDUCATION AND TRAINING COMMISSION**

**Subpart C. LAW ENFORCEMENT OFFICER
HIRING AND SEPARATION**

**CHAPTER 241. LAW ENFORCEMENT
BACKGROUND INVESTIGATIONS—TEMPORARY
REGULATIONS**

(Editor’s Note: The following temporary regulations are added and printed in regular type to enhance readability.)

GENERAL PROVISIONS

Sec.	
241.1.	Scope.
241.2.	Definitions.
241.3.	Confidentiality.
241.4.	Law enforcement agency enrollment.

EMPLOYMENT INFORMATION

- 241.5. Background investigations.
- 241.6. Request for separation record.
- 241.7. Hiring information.

SEPARATION INFORMATION

- 241.8. Submission of separation record.
- 241.9. Officer review.
- 241.10. Amending separation records.
- 241.11. Officer statement of disagreement.

RECORD RETENTION

- 241.12. Record retention by law enforcement agency.

SECURITY OF RECORDS

- 241.13. Record security procedures.

GENERAL PROVISIONS

§ 241.1. Scope.

This chapter sets forth regulations for the hiring and separation of a law enforcement officer by a law enforcement agency. This chapter is applicable to law enforcement agencies within the Commonwealth that are required to report information, or that may request information or records in accordance with the act.

§ 241.2. Definitions.

In addition to the definitions contained in the act, the following words and terms, when used in this chapter, have the following meanings:

Act—44 Pa.C.S. Chapter 73 (relating to law enforcement background investigations and employment information).

Coercion of a false confession—A violation of 18 Pa.C.S. § 2906 or § 5301 (relating to criminal coercion; and official oppression); an equivalent offense in another jurisdiction or behavior in violation of applicable agency policies.

Criminal conviction—A finding, verdict of guilt or the entering of a plea of guilty or nolo contendere, whether or not judgement of sentence has been imposed, including, without limitation, comparable dispositions as provided in other State or Federal laws. The term does not include a conviction which has been overturned, expunged pursuant to 18 Pa.C.S. Chapter 91 (relating to criminal history record information) or comparable process in another jurisdiction, or for which a person has been pardoned.

Discrimination—A violation of 18 U.S.C.A. § 242, regarding deprivation of rights under color of law, or behavior in violation of applicable agency policies prohibiting different treatment based on, but not limited to: race; color; religion; sex, including pregnancy, transgender status and sexual orientation; national origin; age, consisting of those 40 years of age or older; disability or genetic information.

Domestic violence—Conduct which includes but is not limited to:

(1) Conduct which could form the basis for an arrest pursuant to 18 Pa.C.S. § 2711 (relating to probable cause arrests in domestic violence cases).

(2) An act that meets the definition of abuse in 23 Pa.C.S. § 6102 (relating to definitions).

(3) A violation of applicable agency policies prohibiting the use of physical, psychological or emotional abuse of a family or household member, sexual or intimate partner, or person who shares biological parenthood.

Employment status—Information indicating whether a law enforcement officer has been offered employment, is currently employed or was previously employed by the law enforcement agency.

Excessive force—A use of force by an individual within his or her scope of official law enforcement duties not otherwise permitted under 18 Pa.C.S. § 508 (relating to use of force in law enforcement), equivalent behavior in another jurisdiction or behavior in violation of applicable agency policies.

Filing a false report—Intentionally and knowingly submitting an official report or document the law enforcement officer knows to be false. This includes, but is not limited to, conduct which would be a violation of 18 Pa.C.S. §§ 4101, 4104(a), 4904, 4905, 4906.1, 4910, 4911 or behavior in violation of applicable agency policies.

Harassment—A violation of 18 Pa.C.S. § 2709 or § 2709.1 (relating to harassment; and stalking), an equivalent offense in another jurisdiction, or behavior in violation of applicable agency policies.

Judicial finding of dishonesty—A finding by a court or judicial body that a law enforcement officer has engaged in conduct constituting a crime that involves deceit or falsification.

Sexual abuse—Conduct or behavior which would constitute a violation of 18 Pa.C.S. Chapter 31, Subchapter B (relating to definition of offenses), also including, but not limited to, 18 Pa.C.S. §§ 2910, 3011(a)(1), 3011(a)(2), 5902(b), 5902(b.1), 5902(d), 6301(a)(1)(ii), 6312, 6318, 6320, or 7507.1, or an equivalent offense in another jurisdiction.

Sexual misconduct—Behavior of a sexual nature in violation of applicable agency policies.

Theft—A violation of 18 Pa.C.S. Chapter 39 (relating to theft and related offenses), an equivalent offense in another jurisdiction or a violation of applicable agency policies.

TACS—Training and Certification System—The secure web-based electronic database used to collect and retain information for programs managed by the Commission.

§ 241.3. Confidentiality.

Information furnished under this chapter by an applicant, law enforcement agency, or collected by the Commission under this chapter, is confidential and not subject to public disclosure, with the exception of information expressly identified within the act as eligible under the Right-to-Know Law (65 P.S. §§ 67.101—67.3104). Secondary dissemination of confidential information is strictly prohibited.

§ 241.4. Law enforcement agency enrollment.

(a) The Commission will publish information on the Commission's public web site regarding procedures for agencies to enroll in TACS.

(b) A law enforcement agency shall enroll in TACS as directed on the Commission's public web site within 30 days of a determination by the law enforcement agency that the law enforcement agency is subject to the act.

(c) A law enforcement officer who is employed with a law enforcement agency and whose information is contained in TACS will be eligible to participate in the Commission's annual in-service training program.

EMPLOYMENT INFORMATION

§ 241.5. Background investigations.

(a) *Request for disclosure of employment information.*

(1) A prospective employing law enforcement agency shall request employment information from an applicant's former employing law enforcement agencies. The request shall be on a form promulgated by the Commission and signed by the prospective employing law enforcement agency's chief of police or other authorized representative. The request shall include an authorization and release signed by the applicant.

(2) An applicant's former employing law enforcement agency shall:

(i) Maintain employment information and records specified in section 7308 of the act (relating to maintenance of records) in accordance with the applicable retention and disposition schedules established by law.

(ii) Provide the prospective employing law enforcement agency access to the requested records within 30 days of receipt of the request.

(b) *Request for background information.*

(1) All prospective employing law enforcement agencies shall conduct:

(i) A criminal history check, including the submission of fingerprints to the State Police Central Repository and the Federal Bureau of Investigation.

(ii) A check of the applicant's credit history.

(iii) Personal interviews with at least three people who have personal knowledge of the applicant but are not related to the applicant, nor are a member of the applicant's household.

(iv) Interviews of the applicant's employers, if any, for the past 5 years to determine the applicant's work history.

(v) A review of the applicant's employment information from each previous law enforcement employer to determine the applicant's law enforcement work history.

(vi) A check of the applicant's driving history that includes a review of all traffic violations and verification that the applicant has a valid driver's license.

(vii) A verification of the applicant's eligibility to lawfully possess a firearm.

(2) A prospective employing law enforcement agency may establish higher standards for background investigations of applicants if those standards are not contrary to State or Federal law.

(3) If an applicant is prohibited from possessing, using or controlling a firearm under State or Federal law, the applicant may not be employed as a law enforcement officer in a position which requires possession, use or access to a firearm, except as provided for under section 925 of the Gun Control Act of 1968 (18 U.S.C.A. § 925), regarding exceptions: relief from disabilities.

§ 241.6. Request of separation record.

A prospective employing law enforcement agency shall request an applicant's separation record from the Commission when a conditional offer of employment is made to an applicant.

(1) A request for a separation record shall be submitted in TACS and shall include a notarized waiver form signed by the applicant.

(2) The Commission will provide the separation record for the applicant or certification that a separation record does not exist. If an applicant is currently employed by a law enforcement agency within the Commonwealth, the Commission will provide a prospective employing law enforcement agency with the current employing law enforcement agency information.

§ 241.7. Hiring information.

(a) Within 7 days of completion of the selection or hiring process, a prospective employing law enforcement agency shall notify the Commission of the applicant's final employment status in TACS.

(b) A hiring report shall be submitted to the Commission by a prospective law enforcement agency when an applicant who is hired has a history of either final and binding disciplinary action or a criminal conviction, or both, for:

- (1) Excessive force.
- (2) Harassment.
- (3) Theft.
- (4) Discrimination.
- (5) Sexual abuse.
- (6) Sexual misconduct.
- (7) Domestic violence.
- (8) Coercion of a false confession.
- (9) Filing a false report.
- (10) Judicial finding of dishonesty.

(c) When a hiring report is required, the hiring report form shall:

- (1) Be on a form promulgated by the Commission, and which is available on its publicly available web site.
- (2) Contain a notarized signature of the prospective law enforcement agency's chief of police or designated representative.
- (3) Include the reasoning and rationale for hiring the applicant.
- (4) Be submitted to the Commission in TACS.
- (5) Be made part of the applicant's electronic record within TACS.

SEPARATION INFORMATION

§ 241.8. Submission of separation record.

(a) A law enforcement agency shall update the employment status of a law enforcement officer and submit a separation record in TACS no more than 15 days after the law enforcement officer's separation from employment.

(b) A separation record shall be on a form promulgated by the Commission and shall include a notation of final and binding disciplinary action or a criminal conviction.

(c) If a separation record form is incomplete, the Commission will notify the submitting law enforcement agency that the separation record form has been rejected. The submitting law enforcement agency shall submit a corrected separation record form to the Commission within 15 days of receiving the rejection notice.

§ 241.9. Officer review.

(a) A law enforcement officer may request their separation record form from the Commission.

(1) A request to review a separation record form shall be made on a notarized waiver form and submitted to the Commission in TACS.

(2) A request to review a separation record form shall include the employing law enforcement agency name and dates the law enforcement officer was employed by the law enforcement agency.

(3) The Commission will provide the law enforcement officer a copy of the requested separation record form upon receipt of the request.

(b) A law enforcement officer who disagrees with the contents of a separation record may submit to the previous employing law enforcement agency a request for correction or removal of the portion of the separation record believed to be incorrect.

(1) A request for correction or removal of a portion of a separation record shall be submitted directly to the previous employing law enforcement agency on the correction request form promulgated by the Commission.

(2) A law enforcement agency shall respond to a request for correction or removal of records by providing the requesting law enforcement officer with a written response on the correction request form within 15 days. The response shall include the reasons for the correction or removal of a portion of the record or the refusal to do so.

§ 241.10. Amending separation records.

A law enforcement agency may submit a corrected or amended separation record form to the Commission for a law enforcement officer who was previously employed by the agency, and for whom the agency has previously submitted a separation record form.

(1) A corrected or amended separation record form shall be submitted in TACS and shall be accompanied by the correction request form from the law enforcement officer requesting the change.

(2) If a law enforcement agency submits a corrected or amended separation record form that is not based on a request from a law enforcement officer, the law enforcement agency shall notify the affected law enforcement officer.

(i) The law enforcement agency shall notify the affected law enforcement officer by certified mail that a previously submitted separation record form will be changed and submitted to the Commission.

(ii) The law enforcement agency shall attach documentation of the notification to the affected law enforcement officer to the submission of the corrected or amended separation record form in TACS.

§ 241.11. Officer statement of disagreement.

A law enforcement officer who disagrees with a law enforcement agency determination regarding the correction or removal of a portion of a separation record, may submit a written statement of disagreement to the Commission and to the previously employing law enforcement agency.

(1) The written statement of disagreement shall be submitted to the Commission by the law enforcement officer in TACS and shall be accompanied by the correction request form that was submitted to and returned by the previously employing law enforcement agency.

(2) The law enforcement officer's written statement of disagreement will be provided by the Commission with any future requests for the law enforcement officer's separation record form.

(3) The previously employing law enforcement agency shall maintain the law enforcement officer's written statement of disagreement with, and as part of, the law enforcement officer's separation records maintained pursuant to the act.

RECORD RETENTION

§ 241.12. Record retention by law enforcement agency.

A law enforcement agency shall maintain employment information and records specified in section 7308 of the act (relating to maintenance of records) in accordance with the applicable retention and disposition schedules established by law.

SECURITY OF RECORDS

§ 241.13. Record security procedures.

(a) A law enforcement agency shall maintain employment information and records specified in section 7308 of the act (relating to maintenance of records) in accordance with security protocols to ensure the security of those records.

At a minimum, a law enforcement agency shall:

(1) Ensure only authorized personnel have access to employment information, including separation records.

(2) Maintain employment information, including separations records, in a manner and location that protects against loss, damage and unauthorized alteration, removal or destruction.

(3) Ensure employment information, including separation records, are accessible for dissemination to or review by a prospective law enforcement agency in accordance with section 7304 of the act (relating to disclosure of employment information).

(b) The Commission will ensure TACS is in compliance with the most current *Criminal Justice Information Service Security Policy* from the Federal Bureau of Investigation.

[Pa.B. Doc. No. 21-326. Filed for public inspection March 5, 2021, 9:00 a.m.]
