CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Public Safety

RULE IDENTIFIER: 270-RICR-60-00-1

RULE TITLE: Rules and Regulations Establishing Statewide Policy for the Use and Operation of Body-Worn Cameras

REASON FOR RULEMAKING:
These rules and regulations are promulgated to set forth the statewide policy for the use and operation of body-worn cameras ("BWC" or "BWCs"). The policy is intended to govern Rhode Island law enforcement agencies using and operating body-worn cameras in connection with R.I. Gen. Laws Chapter 42-161, the Statewide Body-Worn Camera Program.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: n/a

TESTIMONY AND COMMENTS:
Pursuant to § 42-161-4, the Department of Public Safety and the Attorney General are jointly responsible for promulgating these rules and regulations. These rules must be reviewed annually, and the Department of Public Safety and the Attorney General strive, to the extent practicable, to conduct that review simultaneously. Consistent with this joint review structure, the Attorney General considered the comments received by the Department of Public Safety in connection with the proposed amendments to this Rule.

The Department of Public Safety received various comments on behalf of multiple organizations. As explained in this Statement, after careful consideration by the Department of Public Safety and the Attorney General, the following comments did not result in changes to the text of the Rule:

Policy language observations
Comments raise concerns about the Policy's use of certain terms, contending that the Policy could be more specific and narrowed, specifically as it relates to

the duties and authorities of supervisors. The terminology utilized in the regulations is necessary because the Policy governs the actions of thousands of Rhode Island law enforcement officers who, daily, find themselves in a wide range of different scenarios, many of which they have not previously encountered. Moreover, the Policy states that police departments will be able to add further specificity, provided they do not change the meaning of the Policy's provisions.

BWC recording inside law enforcement facilities with functioning camera systems
A comment contended that a BWC Officer should be required to continue recording inside facilities with functioning camera systems. The Policy reaches an appropriate balance by allowing a BWC Officer to discontinue recording when an arrestee is brought to a location within a police facility, but only if that facility has a functioning surveillance system.

Deactivating or muting a BWC in certain situations
Comments advocated for narrowing or eliminating the circumstances under which a BWC Officer could mute or deactivate their BWC. The Policy limits these circumstances, addresses them in detail, and strikes an appropriate balance between documenting a wide range of officer/citizen interactions for evidentiary and accountability purposes with enabling an officer to effectively perform their public safety duties while respecting Rhode Islanders privacy interests.

Privacy
A comment raises concern for "open-ended" authority in a BWC officer's ability to "weigh any reasonable expectation of privacy in determining whether to activate or discontinue recording." Further, it advocates for the blanket utilization of BWCs when recording victims and witnesses, with no alternative for privacy considerations. The Policy appropriately provides BWC Officers some discretion in determining when activating or discontinuing recordings of victims or witnesses.

Release of recording and public access
A comment advocates for the faster, or near-immediate, release of BWC footage involving a serious use-of-force incident. The Policy strikes an appropriate balance between the public's interest in viewing such a recording and law enforcement's interest, acting on behalf of the public, in substantially completing any investigation into the incident, so as to preserve and protect the Office's ability to prosecute criminal conduct where warranted. As the Policy notes, substantial completion is expected to occur within thirty days.

CHANGE TO TEXT OF THE RULE:
The only change made between the text of the proposed Rule and the Final Rule was to retain the existing language in § 2.5.12(C). The proposed amendment was originally intended to provide greater clarity to the language in Section C. Upon further review during the finalization process, however, it was determined that the existing language is sufficiently clear and is more consistent with, and better integrated into, the provisions that follow. Accordingly, the Final Rule retains the existing language in § 2.5.12(C). This change is consistent with, and a logical outgrowth of, the proposed Rule.

Additionally, several of the comments received by the Department of Public Safety during its public comment period further support and confirm the appropriateness of retaining the existing language in § 2.5.12(C). In particular, commenters noted that the existing regulatory framework has been working effectively and has provided a clear and consistent framework. The Department of Public Safety and the Attorney General agree that retaining the existing language in § 2.5.12(C) best preserves the clarity, consistency, and effectiveness of the existing regulatory framework.

REGULATORY ANALYSIS:
R.I. Gen. Laws § 42-161-4 requires the Department of Public Safety and the Office of the Attorney General to promulgate rules and regulations for the use and operation of the Statewide Body-Worn Camera Program. Pursuant to the promulgated policy, on an annual basis, Department of Public Safety and the Office of the Attorney General are required to review the policy.

The proposed amendments are the result of this annual review. The amendments are reflective of feedback received from multiple law enforcement agencies in the state. In the development of the proposed amendments, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. The Department of Public Safety and the Attorney General have determined that amending these regulations will not add any financial cost to the agency or the public at large and the societal benefits of updating rules and regulations far outweighs any concern to the contrary. The proposed amendments will continue to support the objectives of the authorizing legislation with greater net benefits than other regulatory alternatives. These amendments ensure that the goals set forth in the original regulations - including providing long-term health, safety, welfare and economic benefits to the State of Rhode Island - are being met.