



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: Francine C. Ecker, Director
Department of Criminal Justice Services

FROM: Michael A. Jagels
Senior Assistant Attorney General

DATE: February 14, 2017

SUBJECT: Regulations Relating to the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases – 6VAC20-130

In response to a request from the Department of Criminal Justice Services ("Department"), I have reviewed the proposed regulation, 6VAC20-130, relating to Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases. Pursuant to the provisions of § 18.2-308.2:2 of the Code of Virginia, criminal history record information checks are required prior to the sale, rental, trade or transfer of certain firearms. The Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases (6VAC20-130) identifies the process for conducting a background check. This regulatory action is intended to update the regulation to address the current VCheck technology used by the Virginia State Police (VSP). The current regulation references the use of telephone calls and the mail to obtain criminal history checks and while these are still options for firearms dealers the telephone and the mail are rarely used. This regulatory action is also intended to clarify existing regulatory language, remove unnecessary language, remove language that conflicts with the requirements set forth in the Code of Virginia, and eliminate duplication of work by DCJS and VSP. Virginia Code § 18.2-308.2:2.H. requires the Department to promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police. Upon review of the aforesaid regulation, I find the proposed regulation to be constitutional, consistent with the statutory authority granted by Virginia Code § 18.2-308.2:2 of the Code of Virginia, and in conformity with existing statutory provisions.

Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that a certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.