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## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Criminal Justice Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	6VAC20-130
<b>Regulation title(s)</b>	Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases
<b>Action title</b>	Comprehensive Review of the Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases
<b>Date this document prepared</b>	December 8, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

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.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

CJSB – Criminal Justice Services Board  
DCJS – Department of Criminal Justice Services  
VSP – Virginia State Police

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

The Department of Criminal Justice Services' Criminal Justice Services Board approved moving 6VAC20-130 Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases from the Proposed Stage to the Final Stage on September 14, 2017.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Department of Criminal Justice Services Criminal Justice Services Board

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction. ...

... H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section. ...

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The regulation protects the health, safety and welfare of citizens by ensuring criminal history record information checks are conducted in a manner which protects the integrity of criminal history record information, guarantees individual rights to privacy, and supports the needs of the VSP and firearms dealers, while facilitating the sales of firearms to the law abiding public.

This regulatory action is intended to update the regulation to address the current VCheck technology used by 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.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

DCJS worked with VSP to identify necessary revisions to this regulation. The following substantive revisions have been proposed:

- Removing the purpose statement.
- Removing definitions of terms that are defined in the *Code of Virginia* and providing the Code citation to the definition. Revising the definition of law-enforcement officer to match *the Code of Virginia*. Adding a definition for the term VCheck.
- Adding language referencing the use of VCheck or other authorized communication response systems throughout the regulation in all sections referring to obtaining criminal history checks by telephone and mail. It is rare that VSP receives a request for a criminal history check by telephone or mail. Adding the reference to VCheck codifies the technology currently used and including the language "or other authorized communication response system" allows VSP to use alternate systems as technology capabilities advance.
- Modifying language to match the language in the *Code of Virginia* related to identification and residency requirements for individuals using documents issued by the United States Department

of Defense. The current regulatory language conflicts with the language in the *Code of Virginia* and cites outdated sections of the *Code of Federal Regulations*.

- Adding language referencing the *Code of Virginia* requirement that dealers not sell, rent, trade or transfer any assault firearm to any person who is not a citizen of the United States or not lawfully admitted for permanent residence.
- Removing language requiring an after sale check. Per VSP this language is no longer necessary as the background checks are instantaneous.
- Removing language requiring DCJS to audit dealers who use the criminal history check system improperly in a manner that jeopardizes the confidentiality and security of the system. Dealers do not receive specific criminal history record information related to criminal convictions. When a criminal history record check is conducted the dealer receives one of the following responses: 1) "Yes, approved" and the accompanying approval number is given or 2) "This transaction is not approved at this time". There is no need for DCJS to conduct audits of dealers. This is a duplication of the work conducted by VSP. VSP monitors criminal history record information transactions and if there is suspicion or evidence a dealer is inappropriately requesting criminal history records information a criminal investigation is initiated. The possibility of a criminal investigation by VSP is a far greater penalty than any administrative investigation and action that can be taken by DCJS. Additionally, language requiring DCJS to audit VSP records has been removed. The requirements for maintaining records and logs related to the firearms transactions are addressed in the Library of Virginia's *State Police Schedule Number 156-050*. VSP has an Internal Audit Section that reviews agency compliance with the laws, regulations, policies and procedures and audits information technology systems and related security o

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantages of the amendments to this regulation to the public and the Commonwealth includes removing unnecessary language, correcting language that conflicts with the Code of Virginia, and identifying the VCheck system as the system used by firearms dealers and VSP to determine if there are any barriers to an individual purchasing a firearm. The current regulatory language only identifies the use of calling a toll-free number and the mail to request criminal history record information. There are no disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements that exceed federal requirements.

**Localities particularly affected**

There are no localities particularly affected by the amendments to this regulation.

**Family impact**

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The regulation has no impact on the institution of the family or family stability.

**Changes made since the proposed stage**

*Please list all changes that made to the text since the proposed regulation was published in the Virginia Register of Regulations and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

No changes were made to the text since the proposed stage was published in the Virginia Register of Regulations.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

No public comments were received during the Proposed Stage.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes.*

Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6VAC20-130-10		States the purpose of the regulation.	This section will be repealed. RIS staff has stated that purpose statements are no longer necessary.
6VAC20-130-20		Provides the definitions of the following terms: antique firearm, criminal history record information, criminal history record information check, dealer, dealer identification number, firearm, handgun, law-enforcement officer, prospective purchaser, resident of Virginia, Virginia Firearms Transaction Record Form	<p>The following terms were amended to refer an individual to the definition in the <i>Code of Virginia</i>: antique firearm, firearm, and handgun. This ensures that if the language in the <i>Code of Virginia</i> is modified the definition in the regulation will remain accurate.</p> <p>The following terms were amended: criminal history record information and law-enforcement officer.</p> <p>The term and definition for VCheck was added to this section.</p>
6VAC20-130-30		4. Transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than § 18.2-308.2:2 of the Code of Virginia	<p>The language in (B) (4) has been deleted. This language is no longer accurate based on a revision to the <i>Code of Virginia</i>.</p> <p>Technical changes have been made to 6VAC20-130-30.</p>
6VAC20-130-40		This language identifies the responsibilities of dealers.	<p>Language was added to address the use of the VCheck system and the internet and to require the dealer to notify VSP if there is a change in registration information or the business is closing.</p> <p>Technical changes have been made to 6VAC20-130-40.</p>
6VAC20-130-50		This language identifies the responsibilities of VSP.	<p>Language was added to address the use of the VCheck system.</p> <p>Technical changes have been made to 6VAC20-130-50.</p>
6VAC20-130-60		This language instructs the firearms dealer on obtaining the necessary information from the	The current language is in conflict with the language in the <i>Code of Virginia</i> as it relates to identification and residency requirements for individuals working for the Department of

		<p>purchaser prior to requesting a criminal history record check.</p>	<p>Defense and the armed forces. This section has been modified to mirror the language in the <i>Code of Virginia</i> to eliminate the confusion that has been caused by the conflicting language. Language was removed that referenced Part 178.124 of Title 27, of the Code of Federal Regulations and ATF Ruling 79-7. Title 27 has been re-organized and part 178.124 no longer exists. While the Code of Federal Regulations does still address residency for purchasing a firearm the language defines “identification document” but no longer specifically identifies examples of documents to meet the residency requirement. The language in the ATF ruling is no longer accurate. Additionally, language was added to identify the requirement to establish United States citizenship if an individual wants to purchase an assault firearm as required by the Code of Virginia.</p> <p>Technical changes have been made to 6VAC20-130-60.</p>
6VAC20-130-70		<p>This language identifies the procedure for requesting a criminal history record check by telephone and the procedures for an after sale check.</p>	<p>Language has been added to address the use of the VCheck system. Additionally language addressing the after sale checks has been removed. Per State Police the VCheck system is instantaneous and the language requiring an after sale check is no longer necessary.</p>
6VAC20-130-80		<p>This language identifies the procedure for requesting a criminal history record check by mail.</p> <p>A. At the request of a Virginia resident or a non-Virginia resident, a dealer may request a record check by mail for a firearm transfer. In either case, the dealer shall follow the procedures as set forth below. In addition, the dealer shall follow the provisions for establishing identity and residency as set forth in 6VAC20-130-60 C 1 a and b of this chapter.</p>	<p>A reference to section D of 6VAC20-130-60 which addresses citizenship for individuals purchasing an assault firearm has been added.</p> <p>A. At the request of a Virginia resident or a non-Virginia resident, a dealer may request a record check by mail for a firearm transfer. In either case, the dealer shall follow the procedures as set forth below. In addition, the dealer shall follow the provisions for establishing identity and residency as set forth in 6VAC20-130-60 C 1 a and b <u>and if applicable, D</u> of this chapter.</p> <p>Technical changes have been made to 6VAC20-130-80.</p>
6VAC20-130-90		<p>This language addresses the forms and records that must be maintained by the dealer and the VSP.</p>	<p>Language has been added to address the use of the VCheck system in the section title and in the body of the section.</p> <p>Technical changes have been made to</p>

			6VAC20-130-90.
6VAC20-130-100		This language addresses audits by VSP and the Department of Criminal Justice Services.	<p>Language has been removed that requires DCJS to audit dealers who use the criminal history check system improperly in a manner that jeopardizes the confidentiality and security of the system.</p> <p>Dealers do not receive specific criminal history record information related to criminal convictions and therefore dealers are unable to use a criminal history check in a manner that would jeopardize the confidentiality and security of the system. When a criminal history record check is conducted the dealer receives one of the following responses "Yes, approved" and the accompanying approval number is given or "This transaction is not approved at this time".</p> <p>There is no need for DCJS to conduct audits of dealers. This is a duplication of the work conducted by VSP. VSP monitors criminal history record information transactions and if there is suspicion or evidence a dealer is inappropriately requesting criminal history records information a criminal investigation is initiated. The possibility of a criminal investigation by VSP is a far greater penalty than any administrative investigation and action that can be taken by DCJS.</p> <p>Additionally, language requiring DCJS to audit VSP records has been removed. The requirements for maintaining records and logs related to the firearms transactions are addressed in the Library of Virginia's <i>State Police Schedule Number 156-050</i>. VSP has an Internal Audit Section that reviews compliance with the laws, regulations, policies and procedures and audits information technology systems and related security of data. Results of all internal audits are reported to management and the VSP Superintendent.</p>