



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Forensic Science
Virginia Administrative Code (VAC) citation	6 VAC 40-60-10 et seq.
Regulation title	Regulations for Obtaining Information from the Data Bank and Procedures for Verification and Authorization of Persons Requesting Information from the Data Bank
Action title	New regulation that establishes the processes of obtaining information from the data bank, and of verification and authorization of persons requesting information from the data bank.
Date this document prepared	June 1, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Virginia Code §19.2-310.2 dictates that the Department shall maintain a data bank of those individuals required to provide a DNA sample pursuant to Code. These new regulations establish the process for the Department of Forensic Science to allow law enforcement to obtain information from the data bank and the procedures for verifying the requestor's identity and authority as outlined in Virginia Code §19.2-310.5. It also requires the Department to specify the positions which will require regular access to the data bank as a necessary function of their job.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Virginia Code § 19.2-310.5 states that the Department of Forensic Science “shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor.” (See 2005 Virginia Acts C. 868).

The proposed regulations are necessary to fulfill the General Assembly’s mandate.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

These regulations are necessary to show the Department of Forensic Science’s practice of providing information from the DNA data bank to law enforcement and to further explain who at the Department of Forensic Science has access to the DNA data bank, to assist the Commonwealth in its efforts to protect the health, safety, and welfare of its citizens.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

These regulations will establish the procedures for law enforcement to obtain information from the DNA data bank and will further establish who at the Department of Forensic Science has access to the data bank. These regulations will also detail the level of access for each DFS employee.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to these regulations.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The Department is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of the verification, 2) the costs and benefits of the access in addition to the information dissemination, and 3) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by submitting them to Michele Gowdy by mail at the Virginia Department of Forensic Science, 700 N. Fifth Street, Richmond, VA 23219, or via email to Michele.Gowdy@dfs.virginia.gov, or by fax at (804) 786-6857. For questions, Ms. Gowdy may be reached at (804) 786-6848. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public meeting will not be held, unless in compliance with the Department's Public Participation Guidelines, which state "if prior to the close of the 30-day comment period on the NOIRA, the Board receives a request for a public hearing on the proposed regulation from (i) the Governor or (ii) 25 or more persons, such a hearing shall be held."

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Department will use the participatory approach to develop a proposal if it receives at least ten written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach, and who are interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential impact of the proposed 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.

There is no family impact.