



Virginia Department of Planning and Budget **Economic Impact Analysis**

6 VAC 40-60 DNA Data Bank Regulations
Department of Forensic Science
Town Hall Action/Stage: 6306 / 10107
January 5, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

In response to Governor Youngkin's Executive Order No. 19 (2022),² the Forensic Science Board (Board) proposes to 1) facilitate DNA Data Bank information requests from law enforcement agencies through a secure online form rather than a written request on the official letterhead of the requesting law enforcement agency, 2) allow the Department of Forensic Science (DFS) to make available a list of employee positions that require regular access to the Data Bank as a regular function of their job upon request, rather than posting a list on the website, and 3) repeal duplicative language setting out the procedures to receive and/or request a copy of the Certificates of Analysis for DNA examinations.

Background

Under the current regulation, law enforcement agencies are required to submit a written request on the official letterhead of their agency in order to inquire from DFS whether a DNA

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>

sample is in the DNA Data Bank. The public is not given access to the DNA Data Bank information. In response to Executive Order 19 (2022), which encouraged the review of regulations with the focus on streamlining and reducing regulatory requirements and burdens, the Board proposes to facilitate the DNA data bank requests from law enforcement agencies through a secure online form rather than a written request on the requesting agency's official letterhead.

In addition, the Board proposes to amend the requirement to make available a list of DFS employee positions that require regular access to the Data Bank as a regular function of their job on its website. Instead of making the list available online, the Board proposes to provide the list upon request.

Finally, the Board proposes to delete language setting out the procedures to receive and/or request a copy of the Certificates of Analysis for DNA examinations because these procedures are either duplicative of processes already in place for requesting the results of analyses under DFS's current procedures or under Virginia Code § 9.1-1104.

Estimated Benefits and Costs

DFS estimates that handling DNA Data Bank check requests from law enforcement agencies through a secure online form would entail approximately \$5,000 in one-time information technology costs to upgrade its website. This cost would be offset by ongoing savings in staff time as the process would be more efficient. These savings include \$246 per year in wages for DFS Data Bank analysts in responding to requests, \$86 per year in wages of Virginia State Police based on five such requests, and \$378 per year in wages of local law enforcement agencies based on twenty such requests. Moreover, the proposed online platform would likely improve the speed of the requested checks as it would eliminate the time that would have been lost in the regular mail.

The proposed switch from maintaining an online list of DFS employees with regular access to DNA Data Bank to providing the list upon request would eliminate the need for DFS to change its website any time the list is updated. As a number of website changes would not be necessary under the proposed changes, a small administrative savings is expected. As the list would be made available upon request, there does not seem to be a discernible cost or loss of access to the list.

Finally, the repeal of duplicative information regarding the procedures to receive and/or request a copy of the Certificates of Analysis for DNA examinations would reduce the amount of regulatory text and make the regulation more readable.

Businesses and Other Entities Affected

The proposed changes primarily affect law enforcement agencies that can request a DNA Data Bank check. Based on historical data, the Virginia State Police is expected to make five such requests and the local law enforcement agencies are expected to make twenty such requests per year.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposal is expected to provide savings to law enforcement agencies in terms of staff time when making a request for a DNA Data Bank check. There is a one-time information technology cost for DFS to upgrade its website, but over time that cost would be offset by savings in DFS staff time. Thus, an adverse impact is not indicated.

Small Businesses⁴ Affected:⁵

The proposed amendments do not appear to adversely affect small businesses.

³ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁵ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Localities⁶ Affected⁷

The proposed changes apply to all local law enforcement agencies throughout the Commonwealth and are expected to provide some savings in terms of staff time when making a request for a DNA Data Bank check. Thus, the proposal would not introduce costs nor would it have a disproportionate impact on localities.

Projected Impact on Employment

The proposed changes are estimated to increase efficiency of DFS and law enforcement staff involved in about 25 DNA Data Bank check requests by 18.75 hours per year. Since the efficiency gains are rather small, it is unlikely that the proposed changes would have an impact on total employment.

Effects on the Use and Value of Private Property

No effects on the use and value of private property nor the real estate development costs are expected because the proposed changes mainly pertain to governmental entities.

⁶ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.