



Periodic Review / Retain Regulation Agency Background Document

Agency name	The Library of Virginia
Virginia Administrative Code (VAC) citation	17 VAC 15-120
Regulation title	Elimination of Social Security Numbers in public records
Document preparation date	June 20, 2012

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Section 42.1-8 of the Code of Virginia gives the Library Board the authority to make rules and regulations, not inconsistent with law, for the government and use of The Library of Virginia, and may by general or special regulation determine what books and other possessions of the Library may not be removed therefrom.

Section 42-1-82 states that the Library Board shall issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The Library of Virginia has determined that retention of this regulation is the least burdensome alternative for curbing the growing problem of identity theft. There currently is no acceptable method for preventing the theft of social security numbers other than the removal or redaction of social security numbers from public records.

Based on public input and scrutiny by staff, the Library has determined that there is no need to modify the regulation at this time.

Repeal of the regulation is not a viable option based on the legal mandate set forth in the Code of Virginia and because the regulation is effective in meeting its goals and satisfies those mandates.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Resident in VA	Eliminating Social Security Numbers on Public Documents (4/17/12): I am certainly in agreement that no SS # should be posted on any public document. Sadly, with identity theft being a real threat in today's environment, we all have to be careful to protect our private information and SS #. If SS # were not allowed to be on public documents that would help the citizen to protect himself/herself. If there is so legitimate need to have the SS #, I would suggest only using the last 4 digits which would offer some protection. Thank you for your consideration of my comments.	"Resident's" concerns about minimizing or eliminating the use of social security numbers (SSN) on public documents are relevant and valid. The use of SSNs on public documents has diminished dramatically in recent years due to the fact that they are relatively easy to obtain and use for illegal purposes. The primary purpose of the regulation addresses those public documents that were created before misuse became a serious issue. As a result, this regulation protects individuals from identity theft by eliminating unauthorized access to SSNs on those documents where they were originally included.
Erik Nelson, City of Fredericksburg	Eliminating SS#s in public records (5/25/12): I fully support eliminating Social Security numbers from public records if they are not needed for Social Security purposes. Security procedures	This regulation provides the minimum requirements to comply with the mandate of Code of Virginia per Section 42-1-82 and

	<p>for handling privacy-protected information are not as well defined as they could be (some departments believe themselves exempt) and security breaches are all too common through electronic media. Since the potential for mishandling privacy protected information is so high, it would make sense for the State to exert leadership in this regard and adopt provisions to protect citizens of the Commonwealth.</p>	<p>should remain in effect as currently written. The regulation has been effective in protecting social numbers in public records from theft. The agency is recommending that the regulation stay in effect without change.</p>
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Existing archival and records analysis section staff at the Library of Virginia assisted in the periodic review of regulation 17 VAC 15-120 given their knowledge of professional records management standards as well as state and federal privacy laws.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation meets the criteria set out in Executive Order 14 (2010) and is necessary for the protection of public health, safety and welfare. The regulation is clearly written and easily understood. This regulation protects individuals from identity theft by eliminating unauthorized access to social security numbers in public records. The regulation addresses best methods for destruction of public records containing social security numbers so that the social security numbers cannot be found and used for identity theft. It is clearly written and easily understandable to the regulated community. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

This regulation provides the minimum requirements to comply with the mandate of Code of Virginia per Section 42-1-82 and should remain in effect as currently written. The regulation has been effective in protecting social numbers in public records from theft. The agency is recommending that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or

conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. (6) Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

(1) There is a continued need for this regulation. It establishes procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. It applies only to those records whose retention periods have expired.

(2) No complaints were received concerning the regulation from the public during the comment period. In fact, the two commentators clearly argued for the need to prevent the use of and/or eliminate social security numbers from public documents.

(3) Virginia is one of 45 states in the country with laws or regulations detailing the proper handling and destruction of public documents containing social security numbers. The regulation is clear and simple to follow. Specifically, regulation 17VAC15-120-10 directs that any record containing social security numbers must be destroyed within six months of the expiration of the records retention period. Documents can be shredded so long as the records are pulped or incinerated, or baled to be pulped or incinerated, which renders the identifying information "...unreadable or undecipherable by any means." Hard drives may be either overwritten or degaussed. An overwritten hard drive can be used again to store data but a degaussed hard drive is exposed to a strong magnetic field, leaving the hard drive permanently unusable.

(4) While there are federal laws like the Health Insurance Portability Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA), as well as state regulations like the Government Data Collection and Dissemination Practices Act (COV 2.2-3800 et seq), that govern the collection, maintenance, use and sharing of personal information, Virginia regulation 17 VAC 15-120 is the only one that details the destruction of documents with social security numbers once the retention period for the record has expired.

(5) Only three years have passed since the regulation governing the elimination of social security numbers from public documents have been in effect (December 23, 2008), and it remains relevant to the paper and electronic documents it was written to address.

(6) The Library, through examination of the regulation and relevant public comments, has determined that the regulatory requirements minimize the economic impact of these regulations on small businesses since the regulations affect only public records and thereby have only a minimal impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

This regulation has a positive impact on the institution of the family and family stability by protecting social numbers in public records from theft.