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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

<b>Agency name</b>	Forensic Science Board
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 40-40
<b>Regulation title</b>	Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries
<b>Date</b>	May 30, 2017

This information is required pursuant to Executive Order 17 (2014).

### 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.*

Virginia Code § 19.2-310.2:1 mandates every person arrested for the commission or attempted commission of a violent felony (as defined in § 19.2-297.1) or certain burglary offenses to submit a DNA sample for inclusion in the DNA Data Bank maintained by the Department of Forensic Science. Code § 19.2-310.2:1 was enacted by the General Assembly in 2002, and the second enactment clause of the legislation required that "the Department of Criminal Justice Services, Division of Forensic Science, adopt regulations pursuant to the Administrative Process Act (§2.2-4000 et seq.) for the implementation of this Act." *Chapter 773 of the 2002 Acts of Assembly*. The "Division of Forensic Science" became the Department of Forensic Science by legislation enacted in 2005, and the Code was amended at that time to transfer all duties prescribed for the Division of Forensic Science to the Department of Forensic Science. Virginia Code § 9.1-1110 grants the Forensic Science Board the power and duty to adopt the regulations "for any provisions of the Code as they relate to the responsibilities of the Department."

### 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.*

6 VAC 40-40 establishes notification procedures for all warrants for qualifying offenses, DNA sample tracking and duplicate screening through the State Compensation Board’s Local Inmate Data System (LIDS), collection of samples utilizing buccal sample kits specified and distributed by the Department, and the notification of the Department by the court clerks of the final disposition of qualifying offenses via the Central Criminal Records Exchange (CCRE). The regulation is the least burdensome method of accomplishing the Department’s Code-mandated DNA sampling of those arrested for violent felonies and certain burglaries.

### 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
	None received.	

### Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

The regulation is necessary for the protection of public health, safety, and welfare. As required by the enacting legislation, the regulation provides the procedures for DNA sampling of those arrested for violent felonies and certain burglaries. The regulation is clearly written. No stakeholders have indicated difficulty in understanding the requirements of the regulation. The Department provides education for law enforcement entities on an ongoing basis on the required DNA sampling for certain arrestees.

### Result

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

Having reviewed 6 VAC 40-40 and received no public comment objecting to the regulation, the Forensic Science Board has recommended that the regulation be retained without any amendment.

### 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 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. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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This regulation has no significant economic impact on small businesses. Because it was mandated by the legislation, there is a continued need for the regulation. No complaints have been received concerning this regulation. The regulation meets Code requirements and user agencies' needs. Changes in technology, particularly the eventual move to rapid DNA technology, may eventually require amendment of this regulation, but those technological advancements have not been deployed at the time of this Review.