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

Agency name	Forensic Science Board
Virginia Administrative Code (VAC) citation	6 VAC 40-60
Regulation title	DNA Data Bank Regulations
Date	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 mandates every person convicted of a felony on or after July 1, 1990 or convicted of certain enumerated misdemeanors to submit a DNA sample for inclusion in the DNA Data Bank maintained by the Department of Forensic Science. Virginia Code § 19.2-310.5 requires the Department to maintain the DNA Data Bank and 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." Virginia Code § 9.1-1110 grants the Forensic Science Board the power and duty to adopt the regulations required pursuant to § 19.2-310.5 and "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 40-60 establishes how law enforcement agencies may request information regarding whether an individual's DNA profile is in the DNA Data Bank, how law enforcement officials and others may request the results of any DNA analysis, how out-of-state requests related to forensic laboratory examinations may be made, and how DNA Data Bank information is shared with the Department of Corrections, the Department of State Police and the Department of Juvenile Justice via secure electronic exchange of information. The regulation is the least burdensome method of accomplishing the Department's Code-mandated DNA sampling of convicted offenders.

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 Code, the regulation specifies the methods for obtaining information from the Data Bank. 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 convicted offenders.

Result

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

Having reviewed 6 VAC 40-60 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.

This regulation has no significant economic impact on small businesses. Because it is Code-mandated, 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 may eventually require amendment of this regulation, but those technological advancements have not been deployed at the time of this Review.