



Proposed Regulation Agency Background Document

Agency name	Department of Forensic Science
Virginia Administrative Code (VAC) citation	6 VAC 40-60
Regulation title	Regulations for Obtaining Information from the DNA data bank and Procedures for Verification and Authorization of Persons Requesting Information from the DNA data bank.
Action title	Regulations for Obtaining Information from the DNA data bank and Procedures for Verification and Authorization of Persons Requesting Information from the DNA data bank.
Date this document prepared	October 31, 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*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

These new 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 DNA data bank. These regulations will also detail the level of access for each Department of Forensic Science employee.

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., the 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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

These new regulations to 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. In Va. Code §19.2-310.5, these regulations shall be promulgated by the Department of Forensic Science. These regulations fulfill the General Assembly’s mandate, and help promote the health, safety and general welfare of the public.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

These new regulations will establish the procedures for law enforcement to obtain information from the DNA data bank, as well as the process by which the Department of Forensic Science shall publish lists periodically of the Department employees who have access to the data bank in addition to the level of access each employee has.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

These regulations will provide the public with delineated guidelines on access to the DNA data bank. The advantage to the public and the Commonwealth is that the DNA data bank provides published lists of Department employees who have access to the data bank and their level of access. This provides a level of security that is necessary and exists currently, but is not in a published forum. There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be disproportionately affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The agency/board 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 by submitting them to Michele Gowdy by mail at the Virginia Department of Forensic Science, 700 N. Fifth Street, Richmond, VA 23219, or via e-mail 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.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>There is no projected cost to the state to implement and enforce the proposed regulation.</p>
<p>Projected cost of the regulation on localities</p>	<p>There is no projected cost of the regulation to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Federal, state or local law enforcement officers whose request is made in furtherance of an official investigation of any criminal offense.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.</p>	<p>The Department receives approximately 200-300 requests for DNA data bank information yearly. These requests would have to follow procedures outlined in the regulation.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no projected costs for affected individuals. The regulations merely put in writing the procedure that they must follow when making requests for DNA data bank information.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are not alternatives to this regulation.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No public comments have been received.

Commenter	Comment	Agency response

Family impact

Please assess the 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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

There were numerous grammatical changes made, but no substantive changes. They were:

In the title “Virginia DNA” and “DNA” were added to describe the data bank.

Old language: “...from the Data Bank....” New = “...from the Virginia DNA Data...”

And “.....requesting information from the Data Bank” New = “.....from the DNA Data Bank.”

6 VAC 40-60-10.

In the definition of Data Bank, changed “Data Bank” to “DNA Data Bank” and “Department’s” to “Department of Forensic Science”

Changed in the Definition of Subject, “sample” to “profile” because it is a better description.

6 VAC 40-60-20

In the title changed “individual’ to “...individual’s DNA profile is in the DNA...”

6 VAC 40-60-30

Added “DNA” before the word “data bank” in both the title and substantive language

6 VAC 40-60-40

Added “DNA” before the word “data bank” in both the title and substantive language in addition to adding “...any criminal offense” instead of “a criminal offense”

6 VAC 40-60-50

Under B – changed “DFS” to Department
Under B (3) – changed “ID” to Identification
Under B (4) – changed DFS to Department

6 VAC 40-60-70

Added “DNA” before the word “data bank” in both the title and substantive language

6 VAC 40-60-80

“F” in function was capitalized and it is no longer capitalized.