



## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Forensic Science
<b>Virginia Administrative Code (VAC) citation</b>	__6__ VAC __40__ - __60__
<b>Regulation title</b>	DNA Data Bank Regulations
<b>Action title</b>	Regulations for obtaining information from the Virginia DNA data bank and procedures for verifying the identity and authority of persons requesting information from the Virginia DNA data bank.
<b>Date this document prepared</b>	January 24, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The regulation will establish the methods for obtaining information from the Virginia DNA data bank and procedures for verifying the identity and authority of persons requesting information from the Virginia DNA data bank pursuant to the requirements of Virginia Code § 19.1-310.5.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

On January 4, 2012, the Forensic Science Board considered communications between the Registrar of Regulations and agency staff regarding the text of the DNA Data Bank Regulations published at the

proposed stage and approved minor changes to the language offered in the final stage of the regulatory process.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Pursuant to Virginia Code § 19.2-310.5, 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.” The regulation is necessary to fulfill the statutory mandate.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The regulation will establish the methods for obtaining information from the Virginia DNA data bank and procedures for verifying the identity and authority of persons requesting information from the Virginia DNA data bank pursuant to the requirements of Virginia Code § 19.2-310.5. In fulfilling this statutory mandate, the regulation also achieves the important goal of fully informing stakeholders, meaning law enforcement agencies charged with, among other things, protecting the health, safety or welfare of the public, of processes related to the Virginia DNA data bank.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.*

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The regulation details the process by which a law enforcement officer may:

- a) inquire whether an individual's DNA profile is in the DNA data bank; and
- b) obtain information relating to specific Virginia forensic laboratory examinations involving the analysis and comparison of two or more DNA samples; and
- c) request DNA data bank information relating to out-of-state forensic laboratory examination.

Additionally, the regulation directs that the provision of data bank information to the Department of Corrections and the Department of Juvenile Justice shall be by a secure electronic exchange of data and directs the Department of Forensic Science to maintain a list of employee positions requiring regular data bank access on its website.

**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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulation poses no known disadvantages to the public or the Commonwealth. In fulfilling this statutory mandate, the proposal also provides the advantage of fully informing stakeholders, meaning law enforcement agencies charged with, among other things, protecting the health, safety or welfare of the public, of processes related to the Virginia DNA data bank. By informing law enforcement agencies of these processes, the regulation benefits the public and the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
40-60-10	RFLE defined as the Request for Laboratory Examination published by the Department.	The definition of RFLE has been deleted.	This change seeks to eliminate the RFLE as a “document incorporated by reference.” Because the RFLE changes from time to time, incorporating this document by reference would place the Department in a constant regulatory process, which would be impractical and interfere with the Department’s business needs.
40-60-20	The written request for information could be hand delivered, mailed or faxed.	Electronic transmission has been added as a suitable means of delivery.	This change recognizes that a requestor may scan and email the written request.
40-60-30	Required a request for laboratory examination to be submitted on the RFLE pursuant to the procedures established in the Department’s Evidence Handling & Laboratory Capabilities Guide.	The request for laboratory examination shall be submitted on a form supplied by the Department.	This change seeks to eliminate the RFLE and Evidence Handling and Laboratory Capabilities Guide as documents incorporated by reference. Because the RFLE and Evidence Handling Guide change

			<p>from time to time, incorporating these documents by reference would place the Department in a constant regulatory process, which would be impractical and interfere with the Department's business needs. In practice, evidence is submitted to DFS with an RFLE, consistent with Department evidence handling procedures. Thus, DFS expects this edit will have no impact.</p>
40-60-40	<p>Out-of-state requests for information must be submitted pursuant to CODIS Operating Policies and Procedures Manual.</p>	<p>Out-of-state requests for information must be made in writing to the Virginia CODIS administrator by the out-of-state CODIS administrator or their designee.</p>	<p>This change seeks to eliminate the CODIS Operating Policies and Procedures Manual as a "document incorporated by reference." Because the CODIS Operating Policies and Procedures Manual, which is published by the federal government, changes from time to time, incorporating this document by reference would place the Department in a constant regulatory process, which is impractical and would interfere with the Department's business needs. In practice, FBI-approved CODIS administrators follow the CODIS Manual by agreement with the FBI as a condition of each state's CODIS access. Thus, requests by CODIS administrators or their designees will, de facto, follow the appropriate procedure.</p>

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response

The Department did not receive any public comments following the publication of the proposed stage.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

The regulation details the process by which a law enforcement officer may:

- a) inquire whether or not an individual's DNA profile is in the DNA data bank; and
- b) obtain information relating to specific Virginia forensic laboratory examinations involving the analysis and comparison of two or more DNA samples; and
- c) request DNA data bank information relating to out-of-state forensic laboratory examination.

Additionally, the regulation directs that the provision of data bank information to the Department of Corrections and the Department of Juvenile Justice shall be by a secure electronic exchange of data and directs the Department of Forensic Science to maintain a list of employee positions requiring regular data bank access on its website.

The procedures detailed in the regulation are consistent with the existing practices of the Department of Forensic Science.