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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Forensic Science Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	6 VAC 40-60
<b>VAC Chapter title(s)</b>	DNA Data Bank Regulations
<b>Date this document prepared</b>	May 24, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

There are no acronyms or technical terms utilized in this Report that are not also defined in the "Definitions" section of the regulation.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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 to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

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**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

Commenter	Comment	Agency response
	None received.	

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) 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.

**Decision**

*Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

Having reviewed 6 VAC 40-40 and having received no public comment objecting to the regulation, the regulation will be retained as is without making any changes.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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 comments or complaints have been received concerning this regulation. The regulations provides necessary guidance regarding the DNA Data Bank, and no stakeholders have indicated difficulty in understanding the regulation. The regulation meets Code requirements and user agencies' needs. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2017, and there have been no changes in technology, economic conditions, or other factors in the area affected by the regulation.