



## Proposed 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>	Regulations for Obtaining Information from the Virginia DNA Databank and Procedures for Verification and Authorization of Persons Requesting Information from the Virginia DNA Databank
<b>Action title</b>	Regulations for Obtaining Information from the Virginia DNA Databank and Procedures for Verification and Authorization of Persons Requesting Information from the Virginia DNA Databank
<b>Date this document prepared</b>	September 6, 2007

### Brief summary

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

Pursuant to Virginia Code Section 19.2-310.5, these new regulations describe the process for obtaining information from the DNA Databank and for verifying the authority of persons requesting the release of information from the DNA Databank. Specification of the Department of Forensic Science (the Department) personnel with access to the DNA Databank along with samples is also contained in the regulation.

### 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 “shall adopt regulations governing (i) the methods of obtaining information from the DNA Databank 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 establish the process for the Department of Forensic Science to allow law enforcement to obtain information from the DNA Databank and the procedures for verifying the requestor’s identity and authority as outlined in Virginia Code §19.2-310.5. In Virginia 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 are consistent with objectives that promote the health, safety, environmental and economic welfare of the Commonwealth.

### 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 will verify the requestor’s identity and authority. The regulations also state that the Department shall periodically publish lists of the Department personnel who have access to the DNA Databank, and will enumerate the type of access for each.

### 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.*

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 process of the requestor’s law enforcement status and involvement in an ongoing criminal investigation, 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 so by submitting them to Michele Gowdy by mail at the Virginia Department of Forensic Science, 700 N. Fifth Street, Richmond, VA 23219, or via email to [Michele.Gowdy@dfs.virginia.gov](mailto: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.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including</b>	There is no projected cost to the state to implement and enforce the proposed regulation.
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<b>(a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	
<b>Projected cost of the regulation on localities</b>	There is no projected cost of the regulation to localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Federal, state or local law enforcement officers whose request is made in furtherance of an official investigation of any criminal offense.
<b>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.</b> 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.	The Department receives approximately 200-300 requests for DNA Databank information yearly. These requests would have to follow the procedures outlined in the regulations.
<b>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.</b>	There are no projected costs for affected individuals. The regulations merely put in writing the procedure that they must follow when making requests for data bank information.

**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 no alternatives to these regulations.

**Public comment**

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

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No public comments have been received.

### 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.*

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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.*

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The substantive provisions of the new regulation are as follows:

- 6 VAC 40-60-10. Definitions.
- 6 VAC 40-60-20. Persons authorized to obtain information.
- 6 VAC 40-60-30. Person(s) to whom a request may be addressed.
- 6 VAC 40-60-40. Contents of a request for information
- 6 VAC 40-60-50. Form of the request.
- 6 VAC 40-60-60. Where to make request.
- 6 VAC 40-60-70. Security of the DNA Databank.
- 6 VAC 40-60-80 Publishing Department personnel access levels to the DNA Databank.