



## Proposed Regulation Agency Background Document

|  |  |
|--|--|
| <b>Agency name</b>                                 | The Library of Virginia (The Library Board)  |
| <b>Virginia Administrative Code (VAC) citation</b> | 17 VAC 15 -120-10 et seq   |
| <b>Regulation title</b>                            | Regulations Governing the Destruction of Public Records Containing Social Security Numbers       |
| <b>Action title</b>                                | Adopt Regulations Governing the Destruction of Public Records Containing Social Security Numbers |
| <b>Date this document prepared</b>                 | January 3, 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 21 (2002) 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.*

The purpose of the proposed action is to protect individuals from identity theft by eliminating unauthorized access to social security numbers in public records whose retention periods have expired. The regulation addresses best methods for destruction of public records containing social security numbers so that the social security numbers in these records cannot be used for identity theft.

Any public records, regardless of media, that contain social security numbers are to be destroyed at the end of their retention period in a manner that protects the confidentiality of the information. These records are to be destroyed, made electronically inaccessible, or erased so as to make social security numbers unreadable by any means.

## 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.*

The statutory authority to promulgate this regulation can be found in section 42.1-82 of the Code of Virginia (1950) as amended. The Code grants the Library Board the authority to issue regulations establishing procedures for the disposal, physical destruction or disposition of public records containing social security numbers. These regulations shall include all reasonable steps to destroy documents by (i) shredding, (ii) erasing, (iii) pulping, (iv) disintegration, (v) incineration or (vi) otherwise modifying social security numbers in those records to make them unreadable or undecipherable by any means.

## 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 regulations, mandated by the Code of Virginia, are designed to prevent identity theft based on social security numbers found in public records whose detention periods have expired. These regulations offer specific direction on the destruction of public records containing social security numbers.

## 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.)*

Enter statement here

## 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.*

---

The proposed regulation outlines steps that custodians of public records containing social security numbers must follow when destroying those records whose retention periods have expired whether these records are in analog or digital format. Adoption of the regulation will ensure that public records containing social security numbers will be destroyed.

**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.*

---

**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.*

---

All localities will be affected by the proposed regulations. The cost to localities will depend on whether the affected localities already have cross-cut and commercial software for electronic destruction of records.

**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.*

---

In addition to any other comments, the Library is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Conley Edwards, State Archivist, Library of Virginia, 800 East Broad St, Richmond, VA 23219-8000, 804-692-3554, fax 804-692-3603, cedwards@lva.lib.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

**Economic impact**

Please identify the anticipated economic impact of the proposed regulation.

|  |  |
|--|--|
| <p><b>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</b></p>  | <p>This regulation will have a negligible fiscal impact on the Library of Virginia.</p>  |
| <p><b>Projected cost of the regulation on localities</b></p>   | <p>It is difficult to estimate the projected cost to localities and agencies. Many already have shredders and the appropriate commercial software. The cost of this regulation to localities will depend on whether cross-cut shredders and commercial software for electronic destruction of records are already owned by localities or must be purchased and whether the decision is to use an offsite shredder.</p> |
| <p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>   | <p>Records managers in state and local agencies</p>  |
| <p><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.</p> | <p>All localities and state agencies in the Commonwealth<br/><br/>Impact on small businesses limited to those providing shredding services or selling applicable software</p>  |
| <p><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></p>  | <p>Unknown</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 is no alternative to the action.

**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.*

The Library reviewed best regulatory practices and standards in the area of destruction of public records containing social security numbers and ascertained that the proposed regulations were in line with existing standards, necessary and not onerous on the affected community.

**Public comment**

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

| <b>Commenter</b> | <b>Comment</b>  | <b>Agency response</b>  |
|------------------|---|---|
| N/a              | Make sure regulation emphasizes that it is for records whose retention periods have expired | Language to that affect was added to the proposed regulations |

**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.*

The agency is unaware of any impact on the family other than to provide greater protection from identity theft.

**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.*

For changes to existing regulations, use this chart:

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

Enter any other statement here