

N.Y. Comp. Codes R. & Regs. tit. 9, Subt. U, Ch. VIII, Pt. 6190, Refs & Annos

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Title 9. Executive Department

Subtitle U. Division of Criminal Justice Services

Chapter VIII. Forensic Services

[Part 6190](#). New York State Accreditation Program for Forensic Laboratories

(Statutory authority: Executive Law, art. 49-B, §§ 837[13], 995-b, 995-c[1], [4], [7]; [L. 1994, ch. 737](#))

#### **HISTORICAL NOTE**

Part (§§ 6190.1—6190.5) filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; amd. filed June 9, 1997 eff. June 25, 1997. § 6190.1 amd. eff. Nov. 18, 2009; §§ 6190.1 and 6190.3—6190.6 amd. filed Sept. 10, 2013 eff. Sept. 25, 2013.

NYCRR T. 9, Subt. U, Ch. VIII, Pt. 6190, Refs & Annos, NY ADC T. 9, Subt. U, Ch. VIII, Pt. 6190, Refs & Annos

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Chapter VIII. Forensic Services

[Part 6190](#). New York State Accreditation Program for Forensic Laboratories ([Refs & Annos](#))

→→ **Section 6190.1. Definitions**

(a) When used in this Part:

- (1) The term **forensic laboratory** shall have the same meaning as set forth in [Executive Law \(EL\) section 995\(1\)](#) and shall include a forensic DNA laboratory which shall have the same meaning as set forth in EL [section 995\(2\)](#).
- (2) The term **forensic DNA testing** shall have the same meaning as set forth in EL [section 995\(2\)](#).
- (3) The term **DNA** means deoxyribonucleic acid.
- (4) The term **DNA subcommittee** refers to the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to EL section 955-b(13).
- (5) The term **commission** refers to the Commission on Forensic Science established pursuant to EL section 995-a.
- (6) The term **division** refers to the NYS Division of Criminal Justice Services.
- (7) The term **ASCLD/LAB** refers to the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. Current ASCLD/LAB accreditation guidelines are contained in the 2008 edition of the ASCLD/LAB manual, which may be obtained from the ASCLD/[LAB. 139](#) Technology Drive, Garner, NC 27529. Current ASCLD/LAB International accreditation guidelines are contained in the ISO/IEC 17025-2005 "General Requirements for the competence and testing of calibration laboratories," which can be obtained from ISO at [www.iso.org](http://www.iso.org) or from the American National Standards Institute (ANSI) at [www.ansi.org](http://www.ansi.org), and the 2006 ASCLD/LAB International Supplemental Requirements, which may be obtained from ASCLD/[LAB. 139](#) Technology Drive, Garner, NC 27529. These guidelines may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

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(8) The phrase **Quality Assurance Standards for Forensic DNA Testing Laboratories** refers to standards recommended by the Federal DNA Advisory Board, and approved by the Director of the Federal Bureau of Investigation, which took effect July 1, 2009. These standards may be obtained from the Federal Bureau of Investigation, Laboratory Division, 2501 Investigation Parkway, Quantico, VA. 22135. These standards may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

(9) The term **laboratory director** refers to the director of the forensic laboratory.

(10) The term **ABFT** refers to the American Board of Forensic Toxicology, Inc. The current ABFT laboratory accreditation program is found in the 2006 Forensic Toxicology Laboratory Accreditation Manual, which may be obtained from ABFT, 410 North 21st Street, Colorado Springs, CO 80904. This program may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

(11) The terms **disciplines, sub-disciplines, or categories of testing** refer to the type of forensic examination being conducted by the forensic laboratory.

(12) The term **scope of accreditation** refers to the disciplines, subdisciplines, or categories of testing for which the forensic laboratory has been granted accreditation.

Note: ASCLD/LAB offers accreditation in disciplines, sub-disciplines (ASCLD/LAB - Legacy), and categories of testing (ASCLD/LAB - International). ABFT offers accreditation only in the discipline of forensic toxicology.

(13) The term **mock cases** means simulated cases instead of actual or real cases.

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[Part 6190](#). New York State Accreditation Program for Forensic Laboratories ([Refs & Annos](#))

**→→ Section 6190.2. Statement of purpose**

(a) EL section 995-b(13)(c) requires the DNA subcommittee to make binding recommendations for adoption by the commission with regard to a NYS accreditation program for a laboratory performing forensic DNA testing.

(b) [Executive Law § 995-b\(1\)](#) requires the commission to develop minimum standards and a program of accreditation for all forensic laboratories in New York State.

(c) It is the policy of the commission and DNA subcommittee that to ensure reliable forensic testing and analysis, a forensic laboratory should adhere to high standards in all aspects of its operation. Further, the laboratory director, as well as the individual specifically responsible for oversight of DNA testing and other personnel as determined by the commission (upon the binding recommendation of the DNA subcommittee) to be necessary and appropriate, should satisfy appropriate educational and training requirements.

Sec. filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; amds. filed: June 9, 1997; June 13, 2000 eff. June 28, 2000. Amended (a)-(b).

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[Part 6190](#). New York State Accreditation Program for Forensic Laboratories ([Refs & Annos](#))

**→→ Section 6190.3. NYS accreditation standards**

(a) The commission has determined that all forensic laboratories must meet the following standards to receive NYS accreditation in disciplines other than forensic DNA testing: (1) the laboratory must be accredited by ASCLD/LAB; or (2) if the laboratory is performing only toxicology analysis, it must be accredited by either ASCLD/LAB or ABFT.

(b) The commission has further determined, upon the binding recommendation of the DNA subcommittee, that any forensic laboratory performing forensic DNA testing must be accredited by ASCLD/LAB to include forensic DNA testing, and must comply with all conditions of the FBI's Quality Assurance Standards.

(c) Once a forensic laboratory has been accredited by ASCLD/LAB or ABFT using mock cases, the commission may receive and review the results of the mock cases.

Sec. filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; renum. 6190.4, new filed June 9, 1997; amds. filed: Nov. 24, 1997; Dec. 14, 1998 as emergency measure; Feb. 17, 1999; June 13, 2000; Nov. 19, 2002 eff. Dec. 4, 2002; amd. filed Sept. 10, 2013 eff. Sept. 25, 2013.

9 NYCRR 6190.3, 9 NY ADC 6190.3

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**→→ Section 6190.4. NYS accreditation procedures**

(a) A forensic laboratory seeking NYS accreditation must apply to the division in a form prescribed by the division. A forensic laboratory seeking accreditation shall provide the following supporting documentation, access thereto or authorization for ASCLD/LAB or ABFT, as appropriate, to release:

(1) documentation or accreditation by ASCLD/LAB or ABFT, if obtained;

(2) all documentation submitted to ASCLD/LAB or ABFT, as part of such accreditation application process, the continuing compliance requirements, if any, and any other related matters; and

(3) all documentation received by the laboratory from ASCLD/LAB or ABFT, which may include, but not be limited to any of the following, if appropriate: information pertaining to the application process; the accreditation inspection; the summation conference; the final inspection report; and disciplinary actions or proceedings.

(b) Upon receipt of such materials, the division shall conduct an initial review to ensure that all necessary documents have been submitted. Thereafter, the division shall forward the documents to the DNA subcommittee for its review and binding recommendation regarding NYS accreditation to perform DNA testing. The DNA subcommittee shall forward its binding recommendation to the commission, which shall make a final determination as to whether NYS accreditation in forensic DNA testing should be granted. For a forensic laboratory seeking accreditation in disciplines other than DNA testing, the division shall forward the documentation directly to the commission for its determination.

(c) Upon the determination to grant NYS accreditation to a forensic laboratory, the division shall forward a certificate of NYS accreditation to such laboratory. The certificate and/or accompanying correspondence shall indicate the forensic disciplines in which the laboratory is accredited.

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9 NYCRR 6190.4, 9 NY ADC 6190.4

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**→→ Section 6190.5. Duration of NYS accreditation**

(a) A forensic laboratory that is accredited will retain its NYS accreditation for the same period as its ASCLD/LAB or ABFT accreditation, unless such NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, such laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by the commission or, with respect to forensic DNA laboratories, the DNA subcommittee. Such laboratory must submit to the division a copy of any documentation submitted to ASCLD/LAB or ABFT or received from it as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB or ABFT against such laboratory. Such documentation shall be reviewed by the commission, or with respect to forensic DNA laboratories, the DNA subcommittee, and appropriate action may be taken against such laboratory, if necessary.

(b) A forensic laboratory that has received NYS accreditation shall notify the division, in writing, no later than three business days after any significant change in the management or management structure of such laboratory.

Sec. filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; renum. 6190.6, new added by renum. and amd. 6190.4, filed June 9, 1997; amds. filed: Nov. 24, 1997; Dec. 14, 1998 as emergency measure; Feb. 17, 1999; June 13, 2000; Aug. 6, 2004; May 20, 2005 eff. June 8, 2005; amd. filed Sept. 10, 2013 eff. Sept. 25, 2013.

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**→→ Section 6190.6. Sanctions for noncompliance; appeals**

(a) In accordance with [Executive Law, section 995-b\(3\)\(e\)](#), the commission (and with respect to forensic DNA laboratories, upon the binding recommendation of the DNA subcommittee to the commission) may revoke, suspend or otherwise limit the NYS accreditation of a forensic laboratory, if the commission, or where appropriate, the DNA subcommittee determines that a forensic laboratory or one or more persons in its employ:

- (1) is guilty of misrepresentation in obtaining a forensic laboratory NYS accreditation;
- (2) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;
- (3) showed unacceptable error or errors in the performance of forensic laboratory examination procedures;
- (4) failed to file any report required to be submitted pursuant to EL article 49-B or violated in a material respect any provision of that article;
- (5) violated in a material respect any provision of this Part, including the continuing compliance requirements of ASCLD/LAB or ABFT;
- (6) failed to participate in or to meet the standards of any proficiency test required by the DNA subcommittee and/or the commission; or
- (7) failed to notify the division, in writing, of any significant change in the management or management structure of such laboratory within the time period provided for in subdivision (b) of section 6190.5 of this Part.

A forensic laboratory found to be in violation of this paragraph shall be subject to a warning for the first violation.

(b) A forensic laboratory found to be in violation of the provisions of subdivision (a) of this section shall be subject to

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the following sanctions:

(1) Notice of Violation: On its own initiative or, with respect to forensic DNA laboratories, at the request of the chair of the DNA subcommittee, the commission, by its chair, shall serve written notice of the alleged violation, which notice shall be mailed by certified mail to the holder of the NYS accreditation at the address of such holder. Within five days of receipt of such notice, a NYS accredited laboratory must file a written answer to the charges with the commission and, where appropriate, the DNA subcommittee.

(2) Probation: NYS accreditation becomes probationary for a limited, specified time. Analytical work can continue uninterrupted provided the laboratory adheres to specified requirements and/or conditions.

(3) Suspension: NYS accreditation is suspended pending demonstration within a specified time frame that the laboratory has remedied the problem.

(4) Revocation: NYS accreditation is revoked for a minimum specified time after which the laboratory may submit a new application for NYS accreditation. The laboratory shall cease performing casework analysis until reaccredited.

(c) No forensic laboratory NYS accreditation shall be revoked, suspended, or otherwise limited without a hearing. On its own initiative or, with respect to forensic DNA laboratories, at the request of the chair of the DNA subcommittee, the chair of the commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the NYS accreditation at the address of such holder at least 21 days prior to the date fixed for such hearing. A NYS accredited laboratory may file a written answer to the charges with the commission and, where appropriate, the DNA subcommittee, not less than five days prior to the hearing. The hearing shall be conducted by the commission or where appropriate, the DNA subcommittee. The laboratory director shall be allowed to appear in person and present relevant testimony. If the DNA subcommittee conducts such hearing, it shall make a binding recommendation to the commission with respect to the appropriate sanction, if any.

(d) NYS accreditation shall be reinstated when the forensic laboratory demonstrates to the satisfaction of the commission, and, where appropriate, upon the binding recommendation of the DNA subcommittee, that the deficiencies which resulted in the sanctions have been corrected.

(e) The outcome of any disciplinary proceeding conducted by ASCLD/LAB or ABFT with respect to ASCLD/LAB or ABFT accreditation shall not bind the DNA subcommittee or commission with respect to the imposition of sanctions as set forth in this Part.

Sec. added by renum. and amd. 6190.5, filed June 9, 1997; amds. filed: Dec. 14, 1998 as emergency measure; Feb. 17, 1999; June 13, 2000 eff. June 28, 2000; amd. filed Sept. 10, 2013 eff. Sept. 25, 2013.

9 NYCRR 6190.6, 9 NY ADC 6190.6

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[Part 6191](#). Notification to Designated Offenders

(Statutory authority: [Executive Law, §§ 837\(13\), 995-b\(1\)](#) and [995-c](#))

#### **HISTORICAL NOTE**

Part (§§ 6191.1—6191.3) filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996 eff. Feb. 14, 1996; § 6191.3 amds. filed Aug. 31, 2010 eff. Sept. 15, 2010.

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Chapter VIII. Forensic Services

[Part 6191](#). Notification to Designated Offenders ([Refs & Annos](#))

→→ **Section 6191.1. Definitions**

(a) When used in this Part:

(1) The term **designated offender** shall have the same meaning as set forth in [section 995\(7\) of the Executive Law](#).

(2) The term **State DNA identification index** shall have the same meaning as set forth in [section 995\(6\) of the Executive Law](#).

(3) The term **department** refers to the NYS Department of Correctional Services.

(4) The term **OCFS** refers to the NYS Office of Children and Family Services.

(5) The term **parole** refers to the NYS Division of Parole.

Sec. filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; amd. filed June 20, 2000 eff. July 5, 2000.

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[Part 6191](#). Notification to Designated Offenders ([Refs & Annos](#))

**→→ Section 6191.2. Statement of purpose**

[Executive Law, section 995-c](#) authorizes the commissioner of the Division of Criminal Justice Services to establish a computerized State DNA identification index. Designated offenders must provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and for inclusion in such index. This Part shall set forth procedures for notifying such offenders of these requirements.

Sec. filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; amd. filed Oct. 28, 2002 eff. Nov. 13, 2002.

9 NYCRR 6191.2, 9 NY ADC 6191.2

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[Part 6191](#). Notification to Designated Offenders ([Refs & Annos](#))

### →→ Section 6191.3. Notification procedures

- (a) Any designated offender sentenced to the department shall be notified by the department of his or her obligation to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.
- (b) Any designated offender sentenced to a term of probation shall be notified by the local probation department of his or her obligation to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.
- (c) Any designated offender sentenced to a definite sentence in a local correctional facility shall be notified by such facility of his or her obligation to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.
- (d) Any designated offender committed to the custody of OCFS shall be notified by OCFS of his or her obligation to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.
- (e) Upon notification to parole by the department or the Division of Criminal Justice Services, any designated offender who did not provide a DNA sample while in the custody of the department or OCFS and is released or conditionally released to parole supervision or released to post-release supervision shall be notified by parole of his or her obligation to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.
- (f) Any designated offender who is not subject to incarceration or probation supervision as a result of a conviction for a designated offense, as well as any other designated offender who currently owes a sample but is not under sentence, may be notified by any court official, police officer, peace officer, or other public servant that he or she is required to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.

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(g) The notification to a designated offender provided for in this section that such designated offender is required to provide a DNA sample may be communicated to such designated offender verbally and need not be in writing.

Sec. filed: Nov. 21, 1995 as emergency measure; Jan. 25, 1996; amd. filed June 20, 2000 eff. July 5, 2000. Amended (a)-(c); added (d)-(e); amds. filed Aug. 31, 2010 eff. Sept. 15, 2010.

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[Part 6192](#). Policy for Establishment and Operation of a DNA Identification Index

(Statutory authority: [Executive Law, §§ 837\(13\), 995-b\(1\) and 995-c](#))

#### **HISTORICAL NOTE**

Part (§§ 6192.1—6192.13) filed: June 30, 1998 as emergency measure; Sept. 1, 1998 eff. Sept. 16, 1998. § 6192.1 and §§ 6192.3-6192.4 amd. eff. Nov. 18, 2009; §§ 6192.1, 6192.3, 6192.9 and 6192.10 amds. filed Sept. 22, 2010 eff. Oct. 13, 2010; § 6192.3 amd. filed Sept. 10, 2013 eff. Sept. 25, 2013.

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[Part 6192](#). Policy for Establishment and Operation of a DNA Identification Index [\(Refs & Annos\)](#)

### →→ Section 6192.1. Definitions

- (a) The term **allele** refers to one of the alternate forms of the DNA at a particular genetic locus.
- (b) The phrase **casework evidence DNA profile** refers to a DNA profile that is derived from biological evidence originating from and associated with the commission of a crime.
- (c) The term **CODIS** refers to the Federal Combined DNA Index System.
- (d) The term **commission** refers to the Commission on Forensic Science established pursuant to [Executive Law section 995-a](#).
- (e) The term **commissioner** refers to the commissioner of the New York State Division of Criminal Justice Services, or his or her designee.
- (f) The phrase **convicted offender DNA profile** refers to that DNA profile generated by testing of a biological sample collected from a designated offender as defined in [Executive Law section 995\(7\)](#).
- (g) The phrase **convicted offender index** refers to the electronic database containing DNA profiles generated from designated offenders as defined in [Executive Law section 995\(7\)](#) and stored in CODIS.
- (h) The term **division** refers to the NYS Division of Criminal Justice Services.
- (i) The term **DNA** means deoxyribonucleic acid.
- (j) The phrase **DNA databank** refers to the computerized State DNA Identification Index authorized pursuant to [Executive Law section 995-c](#), and known as the State DNA Index System (SDIS).
- (k) The phrase **DNA profile** refers to a set of DNA identification characteristics which may permit the DNA of one

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person to be distinguished from that of another person. For STR DNA profiles it refers to the list of alleles carries by a particular individual at a specific set of genetic loci.

(l) The phrase **DNA profile of a missing person** refers to the results of a forensic analysis of the DNA of a person reported missing or whose whereabouts are unknown.

(m) The term **DNA subcommittee** refers to the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to [Executive Law section 995-b\(13\)](#).

(n) The term **FBI** refers to the Federal Bureau of Investigation.

(o) The phrase **forensic DNA laboratory** shall have the same meaning as set forth in [Executive Law section 995\(2\)](#).

(p) The term **forensic DNA testing** shall have the same meaning as set forth in [Executive Law section 995\(2\)](#), shall mean any test that employs techniques to examine DNA derived from the human body for the purpose of providing information to resolve issues of identification.

(q) The phrase **forensic DNA index** refers to the electronic database in CODIS containing DNA profiles generated from casework evidence by forensic DNA laboratories.

(r) The phrase **forensic DNA profile** refers to a DNA profile that is derived from biological evidence originating from and associated with the commission of a crime.

(s) The phrase **indirect association** refers to the determination during the CODIS candidate match confirmation process that a forensic index DNA profile is similar to a DNA profile in the convicted offender index or subject index and a comparison reveals that the offender or subject may be a relative of the source of the forensic index profile.

(t) The term **LDIS** refers to that level of the CODIS program in which a public DNA laboratory maintains its DNA records for searching and uploading to higher level indices such as SDIS and NDIS.

(u) The term **loci** refers to specific chromosomal locations of genes or other DNA elements such as STRs.

(v) The term **mitochondrial DNA testing** or **mtDNA testing** refers to analysis of genetic polymorphisms that occur in the DNA of mitochondria.

(w) The term **NDIS** refers to the National DNA Index System.

(x) The phrase **NDIS DNA Data Acceptance Standards** refers to the document specifying the requirements for DNA data to be accepted for searching and storage in CODIS. It is authored by the FBI, Laboratory Division, 2501 Investigation Parkway, Quantico, VA 22135, on January 11, 2000 and revised May 4, 2005. This document may be reviewed at the Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, and the Department of

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State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

(y) The term **STR** refers to Short Tandem Repeat; STR analysis is a form of testing which provides DNA profiles for loci which contain simple DNA unit repeats. STR loci on the Y-chromosome are referred to as Y-STRs.

(z) The phrase **subject DNA profile** refers to that DNA profile generated by analysis of a biological sample collected from a subject convicted of a crime whose specimen was collected: pursuant to a plea agreement; as a condition for participation in a temporary release, Comprehensive Alcohol and Substance Abuse Treatment (CASAT), or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision.

(aa) The phrase **subject index** refers to the electronic database containing DNA profiles generated from subjects convicted of a crime whose DNA specimen was collected: pursuant to a plea agreement; as a condition for participation in a temporary release, CASAT, or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision.

(ab) The phrase **unidentified human remains index** refers to the electronic database in CODIS containing DNA profiles generated from human remains of unknown origin.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; ams. filed: March 28, 2000; Oct. 28, 2002; Jan. 3, 2006 as emergency measure; March 7, 2006 eff. March 22, 2006. Added (w), (x); amd. filed Nov. 25, 2008, eff. Dec. 10, 2008; amd. filed: Nov. 3, 2009 eff. Nov. 18, 2009; ams. filed Sept. 22, 2010 eff. Oct. 13, 2010.

9 NYCRR 6192.1, 9 NY ADC 6192.1

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→→ **Section 6192.2. Statement of purpose**

[Executive Law, section 995-b\(9\)](#) states that “After reviewing recommendations from the Division of Criminal Justice Services, the commission, in consultation with the DNA subcommittee, shall promulgate a policy for the establishment and operation of a DNA identification index consistent with the operational requirements and capabilities of the Division of Criminal Justice Services.” This policy ensures that procedures related to all legal and programmatic obligations of [Executive Law, section 995-b](#) have been set forth in order to properly govern the establishment and operation of the DNA databank. This policy was adopted by the commission based on the recommendations of the division and in consultation with the DNA subcommittee.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998 eff. Sept. 16, 1998.

9 NYCRR 6192.2, 9 NY ADC 6192.2

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N.Y. Comp. Codes R. & Regs. tit. 9, § 6192.3



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**→→ Section 6192.3. Forensic DNA methodology**

(a) DNA databank shall be comprised of data generated from DNA testing methods approved in the NDIS DNA Data Acceptance Standards. Loci required for the upload of authorized DNA profiles to the national system shall be in accordance with the NDIS DNA Data Acceptance Standards.

(b) Casework evidence DNA profiles to be maintained in the DNA databank shall be comprised of information for at least six of the STR loci or other combinations of loci using alternative technologies approved for use in the NDIS DNA Data Acceptance Standards. This requirement for a minimum number of loci applies only to those casework evidence DNA profiles which an authorized laboratory desires to have maintained in the forensic index of the DNA databank.

(c) For purposes of searches of the DNA databank, a minimum of four loci shall be provided by a laboratory requesting a forensic DNA profile search against the DNA databank. Generally, all available loci associated with a forensic DNA profile shall be searched in the DNA databank. Notwithstanding this requirement, the laboratory may, at its discretion, request that a search be performed using fewer loci if there is an investigative need and sufficient scientific reasons which support using fewer than four loci in a particular case. The scientific reasons shall include, but not be limited to, the apparent presence of mixtures, sample degradation or limited sample availability. The basis of the scientific reason(s) must be summarized on the search request form whenever fewer than four loci are provided with a search request.

(d) DNA profiles that may be added to the DNA database by forensic DNA laboratories include casework evidence, DNA profiles, convicted offender DNA profiles, subject DNA profiles, DNA profiles of missing persons, relatives of individuals reported missing, unidentified humans or human remains.

(e) In the event of a potential indirect association, laboratories should use Y-STR and/or mtDNA testing to help determine if the indirect association should be pursued further.

(f) Upon notification by the NDIS Custodian that all applicable NDIS requirements have been satisfied, the division may release the name of an offender whose DNA profile has been indirectly associated through a national CODIS

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search with a DNA profile in another state's forensic index. Testing of additional loci of the offender sample may be required and may include Y-STR and/or mtDNA analysis.

(g) The division may release the name of an offender whose DNA profile has been indirectly associated through a State CODIS search with a forensic DNA profile when it has been determined that the information may lead to the identification of an individual related to the offender. For associations obtained from a State CODIS search, the following conditions must be met:

(1) The laboratory submitting the crime scene DNA profile to the CODIS program shall complete an application to the division requesting the name of the offender and, as part of the application, confirm that:

(i) an LDIS search has been performed using the profile in the Forensic Index;

(ii) the forensic DNA profile derives from a single source and contains at least 10 of the CODIS core loci;

(iii) the submitting agency and the appropriate prosecutor have committed to pursue further investigation of the case if the name is released. Such entities also agree to provide follow-up information to the division regarding the outcome of the case, which the division will provide to the DNA Subcommittee at six month intervals; and

(iv) the submitting laboratory has confirmed that release of the name will be followed by a report to the investigating agency.

(2) The report from the submitting laboratory to the investigating agency shall indicate that:

(i) the match is indirect;

(ii) the information provided is an investigative lead;

(iii) the available data suggests that the source of the evidentiary DNA pattern is potentially a relative of the convicted offender but is not conclusive evidence of the same.

(3) The division will provide the match information to the State DNA databank which, in turn, will calculate and report whether the appropriate statistical threshold approved by the DNA Subcommittee has been met.

(4) Upon receiving a completed application from the local participating CODIS laboratory and confirmation from the databank that the appropriate statistical threshold has been met, the division will release the name of the offender and supporting statistical data to the submitting laboratory. If the appropriate statistical threshold value is not supported by the available data, then additional testing may be required. If the subsequent testing does not meet the appropriate threshold, the databank will notify the division and the offender's name will not be released.

N.Y. Comp. Codes R. & Regs. tit. 9, § 6192.3

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002; Jan. 3, 2006 as emergency measure; March 7, 2006 eff. March 22, 2006; amd. filed: Nov. 3, 2009 eff. Nov. 18, 2009; amds. filed Sept. 22, 2010 eff. Oct. 13, 2010; amd. filed Sept. 10, 2013 eff. Sept. 25, 2013.

9 NYCRR 6192.3, 9 NY ADC 6192.3

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**→→ Section 6192.4. Accuracy and completeness of DNA records**

The accuracy and completeness of all DNA records maintained as part of the DNA databank will be assured through compliance with laboratory accreditation standards as promulgated by the commission in Part 6190 of this Title. In addition, accuracy and completeness of all DNA records maintained as part of the DNA databank will be assured through compliance by all forensic DNA laboratories with the requirements of the NDIS DNA Data Acceptance Standards. Each DNA profile (for either convicted offender or forensic samples) submitted must be certified by the submitting laboratory as being associated with the appropriate controls and blanks. Copies of all official correspondence between the DNA databank and participating laboratories will be maintained in the appropriate division file.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002 eff. Nov. 13, 2002; amd. filed: Nov. 3, 2009 eff. Nov. 18, 2009.

9 NYCRR 6192.4, 9 NY ADC 6192.4

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→→ **Section 6192.5. Security features preventing unauthorized access**

The server on which the DNA databank resides shall be located in a secure area to prevent unauthorized physical access in accordance with CODIS requirements. All forensic DNA laboratories which use or contribute data to the DNA databank shall choose CODIS compatible software and hardware designs which prevent unauthorized access to DNA records. Each participating laboratory must have a written information systems plan which specifies the architecture of the laboratory's computer hardware and the structure of security comprising the access control component of the computer software employed. The information systems plan must demonstrate that an electronic audit trail is maintained for activities related to the entering or editing of DNA records. In addition, the information systems plan shall conform with all applicable information security rules, regulations, and policies. The division, in consultation with forensic DNA laboratory directors, shall develop model documents to assist forensic DNA laboratories in complying with the requirements of this Part. A final information systems plan shall be submitted by the laboratory for review and approval by the division prior to the laboratory gaining access as a participant in the DNA databank. The division shall determine the acceptability of each laboratory information systems plan. The NYS standards must be designed and applied in such a way as to allow compliant participating forensic DNA laboratories to participate in the Federal CODIS program.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002 eff. Nov. 13, 2002; amd. filed Nov. 25, 2008, eff. Dec. 10, 2008.

9 NYCRR 6192.5, 9 NY ADC 6192.5

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**→→ Section 6192.6. Prevention of illegal disclosures**

At least once per year, audits will be conducted by the division of all forensic DNA laboratories to assure that no illegal disclosures of DNA records have taken place. This audit will verify that all necessary documents required for accessing and controlling DNA records and their associated information have been appropriately completed, and compliance with the laboratory's approved information systems plan. These documents include, but are not limited to, the use and dissemination agreements between the laboratory and user agencies or the division; search request forms and search result forms; and case disposition query forms. In addition, the audit will review the participant laboratory's standard operating procedure (SOP) related to these procedures to insure that the SOP is complete and up-to-date. The division may develop a standardized audit checklist to assist in completion of the required audits. The division may provide the audit report to the laboratory for remediation of any findings, if necessary. Within 90 days of the completion of the audit, the division shall submit a summary audit report to the chair of the DNA subcommittee, reporting the findings of the audit as well as any response from the laboratory and/or recommendations for changes. The DNA subcommittee shall review the audit report, and forward binding recommendations to the commission for action. Once DNA subcommittee and commission action on the audits are completed, the audit report shall be maintained by the division for three years from the date of the commission's final action related to the audit report, after which the audit report may be disposed. A record of disposition shall be maintained in the permanent files of the division for each forensic DNA laboratory.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002 eff. Nov. 13, 2002.

9 NYCRR 6192.6, 9 NY ADC 6192.6

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**→→ Section 6192.7. Restriction of access to information systems**

Access to record information system facilities, systems operating environments and data file contents (whether while in use or when stored in a media library) shall be restricted to authorized personnel only. These restrictions shall be assured through compliance by the laboratory with the accreditation standards promulgated by the commission in Part 6190 of this Title.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002 eff. Nov. 13, 2002.

9 NYCRR 6192.7, 9 NY ADC 6192.7

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**→→ Section 6192.8. Inquiry, update or destruction of records**

Inquiries, updates, or destruction of DNA records in the DNA databank shall only be made by authorized sources of inquiry, update, or destruction. Inquiries related to DNA records in the DNA databank may be accepted only from a participating, accredited forensic DNA laboratory; a subject of the DNA databank (see Part 6193 of this Title); an agency authorized to make such inquiry pursuant to a properly executed use and dissemination agreement (see Part 6193 of this Title); other authorized CODIS laboratories outside of New York State; or the FBI (see section 6192.10 of this Part). Update or destruction of records shall only be made by an authorized agent of the division or its designee. Any update to, or destruction of, a DNA record in the DNA databank shall be recorded in a log following an electronic or hardcopy form prescribed by the division.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002 eff. Nov. 13, 2002.

9 NYCRR 6192.8, 9 NY ADC 6192.8

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**→→ Section 6192.9. Unauthorized attempts to penetrate the databank**

As noted in [Executive Law section 995-b\(9\)\(vi\)](#), “Operational programs shall be used to detect and store for the output of the division or its designee all unauthorized attempts to penetrate the DNA databank.” The division shall certify to the DNA subcommittee and commission that the DNA databank hardware and software architecture has been appropriately designed, implemented and safeguarded to eliminate the realistic chance that such unauthorized attempts to penetrate the DNA databank could go undetected. This certification shall be made based on conformance of the DNA databank with all applicable information security rules, regulations, and policies. The division shall maintain this certification in a file with the written Information System Plans from participant laboratories (see section 6192.5 of this Part). A current certification must be on file at the division at all times.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998 eff. Sept. 16, 1998; amds. filed Sept. 22, 2010 eff. Oct. 13, 2010.

9 NYCRR 6192.9, 9 NY ADC 6192.9

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→→ **Section 6192.10. Mutual exchange, use and storage of DNA records**

Mutual exchange, use and storage of DNA records within the DNA databank with the system of DNA identification by the FBI shall be allowed, provided that:

- (a) the commission determines that such exchange, use and storage are consistent with the provision of article 49-B of the Executive Law and applicable provisions of NYS law;
- (b) applicable requirements enumerated within sections 6192.3 through 6192.9 of this Part have been met; and
- (c) a memorandum of understanding has been executed between the appropriate New York State agencies and the FBI.

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; renum. 6193.3, new added by renum. and amd. 6192.12, filed March 28, 2000 eff. April 12, 2000; amds. filed Sept. 22, 2010 eff. Oct. 13, 2010.

9 NYCRR 6192.10, 9 NY ADC 6192.10

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**→→ Section 6192.11. Renumbered**

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; renum. 6193.2, filed March 28, 2000 eff. April 12, 2000.

9 NYCRR 6192.11, 9 NY ADC 6192.11

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**→→ Section 6192.12. Renumbered**

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; renum. 6192.10, filed March 28, 2000 eff. April 12, 2000.

9 NYCRR 6192.12, 9 NY ADC 6192.12

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**→→ Section 6192.13. Renumbered**

Sec. filed: June 20, 1998 as emergency measure; Sept. 1, 1998; renum. 6193.4, filed March 28, 2000 eff. April 12, 2000.

9 NYCRR 6192.13, 9 NY ADC 6192.13

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(Statutory authority: Executive Law, art. 49-B, §§ 837[13], 995-b[9], 995-c[7], [9])

#### **HISTORICAL NOTE**

Part (§§ 6193.1—6193.4) filed March 28, 2000 eff. April 12, 2000.

NYCRR T. 9, Subt. U, Ch. VIII, Pt. 6193, Refs & Annos, NY ADC T. 9, Subt. U, Ch. VIII, Pt. 6193, Refs & Annos

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→→ **Section 6193.1. Definitions**

(a) The term **commissioner** refers to the Commissioner of the New York State Division of Criminal Justice Services, or his or her designee.

(b) The term **division** refers to the New York State Division of Criminal Justice Services.

Sec. filed March 28, 2000 eff. April 12, 2000.

9 NYCRR 6193.1, 9 NY ADC 6193.1

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**→→ Section 6193.2. Use and dissemination agreements**

Access to the DNA databank shall be granted to an agency authorized by article 49-B of the Executive Law, to have such access, pursuant only to a written use and dissemination agreement. A copy of each current use and dissemination agreement shall be filed with the commission and maintained in a division file for each participant laboratory at all times. The form of the agreements shall be determined by the division. The use and dissemination agreement shall specify:

- (a) duties of the division to provide the requested access and information to authorized parties;
- (b) duties of the user agency to receive, store and use all information covered by the agreement in compliance with all applicable State and Federal laws and regulations;
- (c) duties of the user agency to familiarize all personnel and adhere to all regulations governing the receipt, storage and use of all information covered in the agreement;
- (d) duties of the user agency to maintain records that support and justify inquiries and requests for DNA databank searches, and make these records available to the division during periodic audits performed by the division;
- (e) prohibitions on the redisclosure by the user agency of any information obtained from the DNA databank to any unauthorized agency or person;
- (f) specific policy for suspension of access, cancellation of access and/or fines for any violations of the terms and conditions of the use and dissemination agreement by a user agency, its employees or agents, and a policy for reinstating access or service by the division only after the division is satisfied that the causes of all violations have been eliminated;
- (g) specific instructions allowing termination by either party of the agreement for any reason, with 30 days' notice.

Sec. added by renum. and amd. 6192.11, filed March 28, 2000 eff. April 12, 2000.

N.Y. Comp. Codes R. & Regs. tit. 9, § 6193.2

9 NYCRR 6193.2, 9 NY ADC 6193.2

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**→→ Section 6193.3. Right of subjects to access and review records**

All requests for access to and review of records relating to a subject of the DNA databank, by such subject, will be reviewed on a case-by-case basis by the division. In reviewing and responding to the request, the following steps shall be followed:

(a) The subject must:

(1) provide in writing his/her name; any aliases used; date of birth; NYSID (if known); sex; race; date of sentence for the index offense (if known); the jurisdiction of the court which sentenced the subject (if known); imprints of the right and left fingerprints having sufficient clarity to allow for SAFIS processing; current address; and current phone number (if available). This information must be submitted under the subject's signature and seal of a registered notary with the following authentication statement: "False statements made herein are punishable as a class A misdemeanor pursuant to [section 210.45 of the New York State Penal Law](#);" or

(2) provide another alternative method of identification deemed satisfactory by the commissioner.

(b) The division will verify whether a DNA sample was ever collected from an individual corresponding to such information provided in subdivision (a) of this section. If needed, the division shall use other computerized databases within the authority of the division to assist in fulfilling the subject's request.

(c) If no record is found using this information, or if there is any discrepancy discovered in the information submitted by the subject in the request, no information related to the DNA databank will be provided to the subject. The subject will be notified of this decision by the Director of Forensic Services in writing within 30 days, by certified or registered mail, return receipt requested.

(d) If a record is found for the identified subject in the DNA databank and no discrepancies are identified in the submitted information, a photocopy of the DNA databank submission form and the results of the DNA analysis for the subject will be made in a form prescribed by the division. The Director of Forensic Services will forward these copies with a written letter of authentication within 30 days, by certified or registered mail, return receipt requested.

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(e) If, due to discrepancies in the information submitted by the subject in the request, DNA records and related information are not provided to the subject by the Director of Forensic Services, the subject is allowed to appeal the decision. In order to appeal the director's decision, the subject must provide, in writing and under signature and the seal of a registered notary, the nature of the subject's disagreement with the director's decision. This appeal document shall be submitted to the commissioner within 30 days of the date of the determination by the Director of Forensic Services.

(f) Upon receipt of the appeal, the Director of Forensic Services shall promptly transmit to the commissioner copies of all records concerning the individual along with all papers and documents filed by the individual in support of the appeal. The appeal shall be determined upon the records, papers and documents submitted, except that the commissioner may request the Director of Forensic Services, or the individual, to furnish such further data as he or she deems necessary for the determination of the appeal. A written notice of appeal to the commissioner shall be acted upon within a reasonable time after receipt of the written notice of appeal. The commissioner shall notify both the individual and the Director of Forensic Services of his or her decision in writing and in the event such decision reverses or modifies that of the Director of Forensic Services, shall require that appropriate action be taken with respect to the individual's record.

Sec. added by renum. and amd. 6192.10, filed March 28, 2000; amd. filed Sept. 7, 2001 eff. Sept. 26, 2001. Amended (a).

9 NYCRR 6193.3, 9 NY ADC 6193.3

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### →→ Section 6193.4. Expungement of DNA records

(a) An individual whose DNA record has been included in the convicted offender index of the DNA databank or an individual whose DNA record has been included in the subject index of the DNA databank pursuant to a plea agreement may request expungement on the grounds that the conviction which formed the basis for such inclusion in the DNA databank was reversed or vacated or a pardon was granted. An individual shall provide the request in writing to the division along with a certified copy of the final court order reversing or vacating the conviction or a certified copy of the pardon. Upon receipt of such request for expungement:

(1) the division shall verify whether a DNA sample was ever collected from an individual with personal identifying data which corresponds with information provided in this subdivision. If needed, the division shall use other computerized databases within the authority of the division to assist in fulfilling the subject's request;

(2) if no record is found using this information, or if there is any discrepancy discovered in the information submitted by the subject or his or her representative in the request, the division shall notify the subject in writing within 30 business days, setting forth reasons why documents were not returned and requesting additional information, if appropriate, by certified or registered mail return receipt requested. For purposes of this section, *DNA record* shall refer to the DNA record relating to the subject's conviction which has been reversed or vacated or which a pardon has been granted and for which expungement has been requested. Only the DNA records relating to the conviction that has been reversed or for which a pardon was granted shall be subject to these expungement procedures;

(3) if a record is found for the identified subject in the DNA databank and no discrepancies are identified in the submitted information, the division shall determine the location and extent of all documents related to the subject's DNA record. The list of documents identified in this search will be communicated by the division to the subject in writing within 30 days of the notification of need for expungement, by return receipt requested mail. In this same letter, the division shall define for the subject the expected time needed to obtain all copies of all documents to be returned to the subject. The time to obtain and return these records to the subject shall not exceed 120 days from the date of notification of the need for expungement;

N.Y. Comp. Codes R. & Regs. tit. 9, § 6193.4

(4) the division shall thereafter obtain all documents related to the subject's DNA databank record. After insuring that all documents, and all copies thereof, have been obtained, these records shall be catalogued and any DNA sample(s) obtained in connection with the subject conviction shall be destroyed. These documents, including a certification of destruction of the subject's DNA sample, if applicable, shall be forwarded to the subject of the expungement using return receipt requested mail;

(5) the catalogue of the documents returned to the subject or the subject's representative shall be maintained, with documentation of notification of the need for expungement and all related correspondence between the division and the subject, in a file at the division. After completion of all activities by the division related to this expungement, this file shall be sealed and maintained by the division for a period of three years and shall not be opened except pursuant to an order of a court of competent jurisdiction; and

(6) at the end of this three-year period, the sealed file shall be disposed in accordance with the requirements of the State Archives and Records Administration (SARA) procedures.

(b) An individual whose DNA record has been included in the subject index of the DNA databank as a condition for participation in a temporary release, CASAT, or shock incarceration program; or as a condition of release on parole, post-release, supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision may request expungement on the grounds that he or she no longer participates in a temporary release, CASAT, or shock incarceration program; or is no longer under the jurisdiction of the Division of Parole; or under probation supervision. An individual shall provide the request in writing to the division along with documentation sufficient to substantiate the request for expungement. Upon receipt of such request for expungement:

(1) the division shall verify that the subject is no longer participating in a temporary release program, CASAT, or shock incarceration program; is no longer under the jurisdiction of the Division of Parole; or no longer under probation supervision, as applicable. If needed, the division shall use computerized databases within the authority of the division to assist in fulfilling the subject's request. If the division verifies that the subject is no longer participating in a temporary release, CASAT, or shock incarceration program; under the jurisdiction of the Division of Parole; or under probation supervision, it shall obtain all documents related to the subject's DNA databank record. After insuring that all documents, and all copies thereof, have been obtained, these records shall be catalogued and any DNA sample obtained in connection with the subject conviction shall be destroyed. These documents, including a certification of destruction of the subject's DNA sample shall be forwarded to the subject of the expungement using return receipt requested mail; and

(2) the catalogue of the documents returned to the subject or the subject's representative shall be maintained, with documentation of notification of the need for expungement and all related correspondence between the division and the subject, in a file at the division. After completion of all activities by the division related to this expungement, this file shall be sealed and maintained by the division for a period of three years and shall not be opened except pursuant to an order of a court of competent jurisdiction; and

N.Y. Comp. Codes R. & Regs. tit. 9, § 6193.4

(3) at the end of this three-year period, the sealed file shall be disposed in accordance with the requirements of the State Archives and Records Administration (SARA) procedures.

Sec. added by renum. and amd. 6192.13, filed March 28, 2000; amds. filed: Jan. 3, 2006 as emergency measure; March 7, 2006 eff. March 22, 2006.

9 NYCRR 6193.4, 9 NY ADC 6193.4

Current with amendments included in the New York State Registers, Volume XXXV, Issue 45, dated November 6, 2013.

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