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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Forensic Science Board
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC 40-30
VAC Chapter title(s)	Regulations for the Approval of Field Tests for Detection of Drugs
Date this document prepared	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 § 19.2-188.1(A) provides that "any law-enforcement officer shall be permitted to testify as to the results of field tests that have been approved by the Department of Forensic Science pursuant to

regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any substance the identity of which is at issue in such hearing is a controlled substance....” Virginia Code § 9.1-1110 grants the Forensic Science Board the power and duty to adopt the regulations required pursuant to § 19.2-188.1 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 40-30 establishes how manufacturers may request the evaluation of a field test, which can include either a presumptive chemical test or a presumptive mobile instrument, for use by law enforcement, the process and fees for such an evaluation, how a manufacturer would maintain approval status for such a field test, and the periodic publication of a list of approved field tests in the Virginia Register of Regulations and on the Department’s website. The regulation is the least burdensome method of accomplishing the Department’s Code-mandated approval of field tests pursuant to Code § 19.2-188.1(A).

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 the Department’s approval of field tests under Virginia Code § 19.2-188.1(A). The regulation is clearly written. No stakeholders have indicated difficulty in understanding the requirements of the regulation.

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 40-30 and having received no public comment objecting to the regulation, the intent of the Forensic Science Board was to retain the regulation as is. However, upon further review of the legislative changes made by Chapters 550 and 551 of the Virginia Acts of Assembly -- 2021 Reconvened Special Session I, the statutory cite contained in 6 VAC 40-30-20 will need to be amended.

The Forensic Science Board will consider this amendment as a legislative mandate at its July 2021 meeting.

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. Small businesses are eligible to submit their product for evaluation and approval by the Department of Forensic Science. Current fees for approval are \$50 for each presumptive chemical test and \$2,500 for each presumptive mobile instrument for which individual evaluation is requested, in addition to the costs of any street drug preparation required for the approval process. These fees are reflective of the staff time required for the evaluation and approval of these field tests. Field tests that are approved are periodically published in the Virginia Register of Regulations. Because it is still Code-mandated, there is a continued need for the regulation. No complaints have been received concerning this regulation. No comments or complaints were received concerning this regulation. The regulation provides necessary guidelines for the approval process of any field test. It does not overlap, duplicate, or conflict with any other federal or state law or regulation. The regulation meets Code requirements and user agencies' and manufacturers' needs. This regulation was amended in October 2020 to reflect new technological advances for presumptive mobile instruments and to permit the approval of any new instruments that may become available for law enforcement use. No other factors have change in this area since October 2020.