



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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**6 VAC 40-30– Regulations for the Approval of Field Tests for Detection of Drugs**  
**Department of Forensic Science**  
August 11, 2013

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### **Summary of the Proposed Amendments to Regulation**

The Forensic Science Board (board) proposes to: 1) require manufacturers submitting field test kits for evaluation to pay the actual costs of the “street drug preparations” used in the evaluation process, and 2) add clarifying language.

### **Result of Analysis**

The benefits likely exceed the costs for all proposed changes.

### **Estimated Economic Impact**

The Regulations for the Approval of Field Tests for Detection of Drugs assist law enforcement and the criminal justice system by providing information critical to the probable cause determination necessary at the time of the arrest and subsequent preliminary hearing. This process positively impacts judicial economy and Constitutional due process. Ultimately, therefore, the ability of law enforcement and the courts to rely on the results of drug field tests protects the health, safety and welfare of the citizens of the Commonwealth.

Under the current regulations, manufacturers submitting field test kits for evaluation/approval are charged \$50 for each drug for which individual evaluation/approval is requested. The existing \$50 fee was originally intended to cover the manpower costs associated with this testing and has not changed since the regulation’s 2006 effective date. This fee does not address the cost of the “street drug preparations” used in the evaluation process. The “street drug preparations, or the known substances needed to actually test the efficacy of a particular field test, are also called “standards” in the scientific community. The standards for controlled drugs, particularly standards for newly emerging drugs such as research chemicals (e.g., bath salts), are

difficult to obtain and more expensive than other scheduled substances such as heroin or cocaine. For example, the 10mg sample necessary for a single evaluation of a 25C-NBOMe field test cost the Department of Forensic Science (Department) \$448.<sup>1</sup> In a recent request for evaluation, the fees to be paid by the kit manufacturer totaled \$1000, but the actual cost to the Department for materials alone would be \$1700.<sup>2</sup> Effectively, the costs of the “street drug preparations” are paid for by Virginia taxpayers.

The Department is aware of eight field test kit manufacturers likely to be affected by the proposal to charge the actual costs of the “street drug preparations” used in the evaluation process. All eight are located outside of Virginia. The firm that has most frequently submitted field test kits for evaluation is located in Europe. So under the status quo, Virginia taxpayers are subsidizing services for firms that are located out of state, and in particular a firm located out of country.

There is no compelling reason to provide this subsidy. There is no current concern that there would be a lack of reliable field tests for the detection drugs without it. The tax dollars currently being used for this subsidy would likely provide greater benefit for the Commonwealth by either being used for a more productive purpose or by not being collected from the public. Thus, the proposal to charge the actual costs of the “street drug preparations” used in the evaluation process will most likely produce a net benefit for the Commonwealth.

## **Businesses and Entities Affected**

The proposed amendments affect the eight manufacturers of field test kits for drug detection who have or have indicated an interest in submitting field test kits for evaluation/approval. All eight firms are located outside of the Commonwealth.

## **Localities Particularly Affected**

The proposed amendments do not disproportionately affect particular localities.

## **Projected Impact on Employment**

The proposal amendments are unlikely to significantly affect employment.

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<sup>1</sup> Source: Department of Forensic Science

<sup>2</sup> Ibid

## **Effects on the Use and Value of Private Property**

The proposed amendments are unlikely to significantly affect the use and value of private property within the Commonwealth.

## **Small Businesses: Costs and Other Effects**

The proposed amendments are unlikely to significantly affect small businesses within the Commonwealth.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The proposed amendments are unlikely to significantly affect small businesses in the Commonwealth.

## **Real Estate Development Costs**

The proposed amendments are unlikely to significantly affect real estate development costs.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of

achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.