



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: Linda Jackson, Director
Department of Criminal Justice Services

FROM: Michael A. Jagels
Senior Assistant Attorney General

DATE: March 20, 2019

SUBJECT: Regulations Relating to the Approval of Field Tests for Detection of Drugs – 6VAC40-30

In response to a request from the Department of Forensic Science, I have reviewed the proposed regulations, 6VAC40-30, relating to the approval of field tests for detection of drugs. This regulatory change involves proposed amendments to 6VAC40-30, the Regulations for the Approval of Field Tests for Detection of Drugs. Virginia Code § 19.2-188.1(A) permits any law enforcement officer to testify in any preliminary hearing as to the results of any field tests that have been approved by the Department of Forensic Science (DFS or the Department) pursuant to 6VAC40-30. “Field test” is not defined in the statute. 6VAC40-30-10 currently defines “field test” to include “any presumptive chemical test unit used outside of a chemical laboratory environment to detect the presence of a drug.” The purpose of the proposed amendments is to expand the definition of “field test” to include presumptive mobile instruments, in addition to presumptive chemical tests. As a result of the expanded definition, the regulations will need to be amended to set forth a process for the evaluation, approval, and reevaluation of presumptive mobile instruments, as well as a fee schedule.

The regulation provides for the public’s participation in the regulatory process before the Forensic Science Board. The regulations set forth in 6VAC40-30 have been promulgated pursuant to Virginia Code § 2.2-4007.02. This code section mandates that each agency develop, adopt, and use Public Participation Guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Forensic Science Board is the promulgating entity, having been granted the regulatory power under Virginia Code § 9.1-1110. Accordingly, upon review of the aforesaid regulations, I find the proposed regulations to be constitutional, consistent with the authority granted by Virginia Code § 2.2-4007.02, and in conformity with existing statutory provisions.

Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether

to take such action remains a policy decision with the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.