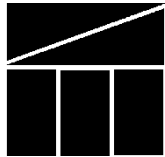


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

6 VAC 40-30 Regulations for the Approval of Field Tests for Detection of Drugs
Department of Forensic Science
Town Hall Action/Stage: 4996 / 8444
May 1, 2019

Summary of the Proposed Amendments to Regulation

The Forensic Science Board (Board) proposes to expand the definition of “field test” to include presumptive mobile instruments, in addition to presumptive chemical tests.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

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) pursuant to the *Regulations for the Approval of Field Tests for Detection of Drugs*. “Field test” is not defined in the statute. The regulation 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.”

As law enforcement began to encounter increasingly lethal opioids, the Drug Enforcement Administration advised law enforcement agencies of the dangers associated with presumptive chemical testing of suspected controlled substances. Consequently, according to the

¹ Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

Department of Forensic Science (DFS), most law enforcement agencies no longer use the presumptive chemical field tests currently authorized in the regulation. Specifically, in October 2017, a local Virginia law enforcement agency advised DFS that it had ceased to use the presumptive chemical field tests due to safety concerns for their officers. A representative of that agency requested that DFS consider approving a presumptive mobile instrument that the agency had obtained for use. Since the current language of the regulation is limited to presumptive chemical tests, DFS was unable to consider the approval of that presumptive mobile instrument.

Accordingly, the Board now proposes to expand the definition of “field test” to include presumptive mobile instruments, in addition to presumptive chemical tests. Manufacturers of presumptive mobile instruments would be able to submit their products to DFS for evaluation. In order to be approved, the presumptive mobile instrument must perform in accordance with the manufacturer’s instructions and advertised claims, and offer convenience and efficiency in operation as determined by the agency. The proposed amendments would be beneficial in that it would allow law enforcement to perform field tests at reduced risk to their health and safety. The proposal does not produce cost.

Businesses and Entities Affected

The proposed amendments potentially affect the Virginia State Police, other state law enforcement agencies, the Virginia Indigent Defense Commission, local law enforcement agencies, local Commonwealth’s Attorneys’ offices, and the Criminal Defense Bar.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments may increase demand for presumptive mobile instrument; this may lead to increased employment at their manufacturers.

Effects on the Use and Value of Private Property

The proposed amendments may increase the use of presumptive mobile instruments, and the value of their manufacturers.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:**Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

Costs and Other Effects

The proposed amendments are unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:**Businesses:**

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for

small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.