



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

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### **6 VAC 40-50 – Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**

**Department of Forensic Science**

January 5, 2007

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### **Summary of the Proposed Regulation**

Pursuant to legislation passed during the 2006 General Assembly session, the Department of Forensic Science (DFS) proposes regulations that set procedures for approving marijuana field tests.

### **Result of Analysis**

The benefits likely exceed the costs for this proposed regulatory change.

### **Estimated Economic Impact**

Prior to promulgation of emergency regulations in June 2006, law enforcement officers who needed to know if seized plant material was marijuana would have to send that material to an approved lab where it would be tested. During its 2006 session, the General Assembly passed legislation which allows police officers to perform marijuana field tests using tests DFS approved as accurate. This legislation also allows law enforcement officers to testify about the results of these tests in court, both in preliminary hearings and at trial, so long as the tests used have been deemed accurate by DFS. To facilitate implementation of this legislation, and because they are the authority tasked with approving marijuana field test kits, DFS implemented emergency regulations, and is now proposing permanent regulations, that set out procedures for the approval process.

These regulations require that manufacturers who are seeking approval for their tests submit at least 10 field kits that include all material needed for testing as well as any “instructions, precautions, color charts, flow charts and the like” so that DFS can assess the kit’s

ease of use and accuracy. Per the proposed regulation, the fee charged by DFS for this assessment is \$50. Manufacturers will also need to submit specifications for the chemicals and reagents used in the tests. DFS will have up to 90 days to approve or disapprove a manufacturer's test and will be required to provide written notice of their decision. DFS may require manufacturers to seek annual re-approval for tests and any modifications made to tests by manufacturers must also be approved by DFS. Once approved, DFS will, at the request of law enforcement agencies, dispense field test kits. The number of field test kits dispensed to any given law enforcement agency will depend on the number of marijuana convictions in that locality in prior years. Law enforcement agencies will also be able to purchase approved test kits if they want to use more kits than are provided to them.

The proposed regulations, and their authorizing legislation, will prove beneficial for law enforcement officers, individuals who are in possession of suspect material and for the public at large. Law enforcement officers will waste less of their time and resources on arrests and evidence processing for plant material that turns out to not be marijuana. Officers will also be able to assure chain of evidence since plant materials will not leave their custody until after testing. Individuals who would have previously been arrested for and/or charged with marijuana possession, only to be proven innocent by delayed lab tests, will benefit from on the spot testing. These individuals will also benefit because a truncated chain of evidence will likely help protect against evidence mishandling which may lead to faulty convictions. The public will likely benefit both financially and because justice will be swifter and likely more accurate. Field testing (at \$0.88 to \$2.00 per test) is much cheaper than lab testing; other things being equal, taxpayers will likely save money as the use of field tests increases. This effect may be somewhat offset because the ease-of-use for these tests may encourage law enforcement officers to test more material than they previously would have. If marijuana testing increases, localities and the state may incur extra imprisonment costs for any individuals who are convicted for possession (or other drug related crimes) when they previously would not have been.

## **Businesses and Entities Affected**

These proposed regulations will affect all state and local law enforcement agencies as well as test manufacturers and the general public. DFS reports that there are in excess of 200 law enforcement agencies in the Commonwealth and that there are currently three manufacturers

who have tests approved. One of these manufacturers is located in McLean, Virginia. The other two manufacturers are located out-of-state.

### **Localities Particularly Affected**

The proposed regulation will affect all local law enforcement agencies in the Commonwealth. Individuals who live in Fairfax County may enjoy greater employment opportunities if the test manufacturer located there needs to increase the number of people it employs in order to meet increased demand for marijuana field test kits.

### **Projected Impact on Employment**

Manufacturers of approved test kits, whether located in Virginia or elsewhere, will likely experience an increase in the demand for their product and may, as a consequence, increase the number of people they employ.

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

Manufacturers of approved test kits, whether located in Virginia or elsewhere, will likely experience an increase in the demand for their product. This increase in demand will lead to increased sales. Assuming the cost of manufacturing these kits does not exceed or equal the revenue generated by their sale, manufacturers will see increased profits.

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

Manufacturers who choose to seek DFS approval for their marijuana test kits will be required to pay a \$50 assessment fee.

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

There is likely no alternative method of accomplishing the aims of these proposed regulations that would further minimize 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.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, 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 adverse effect on small businesses, Section 2.2-4007.H 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.