



COMMONWEALTH of VIRGINIA
Office of the Attorney General
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MEMORANDUM

TO: Linda Jackson, Director
Department of Criminal Justice Services

FROM: Michael A. Jagels
Senior Assistant Attorney General

DATE: August 10, 2021

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. As of July 1, 2021, there are currently two definitions of marijuana for the purposes of criminal code violations in the Code of Virginia. Chapters 550 and 551 of the 2021 Acts of Assembly maintained the definition of marijuana located in Virginia Code § 18.2-247 for distribution of marijuana offenses. It also added a definition of marijuana in Virginia Code § 4.1-600 that would be controlling for offenses under the new Cannabis Control Act (Virginia Code §§ 4.1-600 et seq.). While the scientific definition of marijuana remains the same under both definitions in the Code, this technical amendment adds both citations to the regulatory definition section (6VAC40-30-10) and the Authority for approval section (6VAC40-30-20). Chapters 550 and 551 of the Acts of Assembly therefore prompted this exempt action final regulation because it added another definition of marijuana in Virginia Code § 4.1-600, in addition to the definition of marijuana found in Virginia Code § 18.2-247. This change is necessary to conform the regulation to current state law.

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. This changes to the regulation is exempted from the Administrative Process Act, pursuant to § 2.2-4006(A)(4)(a), as they are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.

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.