

Office of Regulatory Management
Economic Review Form

Agency name	Department of Forensic Science
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC 40-50
VAC Chapter title(s)	Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material
Action title	Amendments to Permit the Approval of Alternative Field Tests and Mobile Instruments
Date this document prepared	July 27, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: Describe the direct costs of the proposed change.</p> <ul style="list-style-type: none"> • There will be costs incurred by the Department during the approval process that will be borne by the manufacturers' submitting their chemical tests or mobile instruments for approval. No manufacturer is required to submit their chemical test or mobile instrument for approval, although law enforcement agencies do look to the Department to determine suitability of these presumptive tests for use by their officers. <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <ul style="list-style-type: none"> • The manufacturers would have a loss of potential revenue but losing the ability to have their chemical test or mobile instrument approved for use by the Department for this purpose. Manufacturers would still be able to sell their tests or instruments, but the approval by the Department may give a larger market share for law enforcement purchases. <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <ul style="list-style-type: none"> • Currently, the regulations only permit the Department to consider for approval Duquenois-Levine field tests. Since the legalization of industrial hemp, it has been determined that Duquenois-Levine field tests cannot distinguish marijuana from industrial hemp. Accordingly, no field tests are currently approved under this regulation for use under Virginia Code § 19.2-188.1(B). • The Forensic Science Board wishes to expand those field tests that can be considered for approval by the Department. The regulatory action expands the definition of marijuana field test to include any developed chemical field tests or mobile instruments that may be to presumptively distinguish marijuana from industrial hemp. • The Department is required under Virginia Code § 19.2-188.1(B) to approve these tests, so these regulations must be amended to adjust to changes in state law affecting the efficacy of these field tests.
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	<p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p> <ul style="list-style-type: none"> Manufacturers who have their chemical test or mobile instrument approved by the Department will be able to note the Department’s approval when seeking to sell them to law enforcement agencies. 	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$2,800	(b) \$3,400,000
(3) Net Monetized Benefit	\$2,984,477	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	Manufacturers’ websites for costs of tests and instruments. DFS fee structure and knowledge regarding costs of reference samples of marijuana and industrial hemp.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <ul style="list-style-type: none"> Currently, DFS is only able to approve Duquenois-Levine field tests for use under Virginia Code § 19.2-188.1(B). The Department has indicated that it will no longer approve Duquenois-Levine field tests for use for this purpose because they cannot distinguish marijuana from industrial hemp. With no amendments to the regulation, there will be no field tests approved by the Department. Manufacturers may lose revenue if unable to obtain approval for their tests or devices. <p>Indirect Costs: Describe the indirect costs of the proposed change. None.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here. None.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change. None.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$2,987,277	(b) \$2,800

(3) Net Monetized Benefit	-\$2,984,477
(4) Other Costs & Benefits (Non-Monetized)	Delayed trials and increased backlogs of marijuana cases for DFS.
(5) Information Sources	Manufacturers' websites for costs of tests and instruments. DFS fee structure and knowledge regarding costs of reference samples of marijuana and industrial hemp.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Net Monetized Benefit		
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources		

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. <ul style="list-style-type: none"> • Law enforcement partners are not required to purchase any chemical tests or instruments simply because they are
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	<p>approved by DFS. Therefore, we do not anticipate any imposed impact on local partners.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Other Costs & Benefits (Non-Monetized)		
(4) Assistance		
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here. None.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)

(3) Other Costs & Benefits (Non-Monetized)	
(4) Information Sources	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <ul style="list-style-type: none"> DFS is not aware of whether any of the manufacturers of these chemical tests or instruments would qualify as small businesses. If so, the cost/benefit analysis above would be applicable. <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Other Costs & Benefits (Non-Monetized)		
(4) Alternatives		
(5) Information Sources		

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change
6VAC40-50-10	Statutory:	0	0	0	0
	Discretionary:	0	0	0	0
6VAC40-50-20	Statutory:	1	0	0	0
	Discretionary:	0	0	0	0
6VAC40-50-30	Statutory:	0	0	0	0
	Discretionary:	12	25	0	+13
6VAC40-50-40	Statutory:	0	0	0	0
	Discretionary:	3	0	0	0
6VAC40-50-70	Statutory:	0	0	0	0
	Discretionary:	0	0	0	0
6VAC40-50-80	Statutory:	0	0	0	0
	Discretionary:	7	2	0	+2

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
6VAC40-50-80	Fees	\$50	\$100/\$500	\$2800

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length

