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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

<b>Agency name</b>	Forensic Science Board
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 40-30
<b>Regulation title</b>	Regulations for the Approval of Field Tests for Detection of Drugs
<b>Date</b>	May 30, 2017

This information is required pursuant to Executive Order 17 (2014).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.*

Virginia Code § 19.2-188.1(A) provides that the Department of Forensic Science shall approve field tests pursuant to regulations adopted in accordance with the Administrative Process Act for use by law enforcement officers to enable them to testify to the results obtained in any preliminary hearing "regarding whether or not any substance the identity of which is at issue in such hearing, is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247." Virginia Code § 9.1-1110 grants the Forensic Science Board the power and duty to adopt the regulations required pursuant to § 19.2-188.1 and "for any provisions of the Code as they relate to the responsibilities of the Department."

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

6 VAC 40-30 establishes how manufacturers may request the evaluation of a field test kit for use by law enforcement for the detection of drugs in accordance with Code § 19.2-188.1(A), the process and fees for such an evaluation, how a manufacturer would maintain approval status for such a field test kit, and the periodic publication of a list of approved field test kits in the Virginia Register of Regulations and on the Department’s website. The regulation is the least burdensome method of accomplishing the Department’s Code-mandated approval of field test kits for detection of drugs pursuant to Code § 19.2-188.1(A).

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

Commenter	Comment	Agency response
	None received.	

**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

The regulation is necessary for the protection of public health, safety, and welfare. As required by Code, the regulation specifies the procedures for the approval of field test kits for use in preliminary hearings by law enforcement officers in prosecution of drug offenses. The regulation is clearly written. No stakeholders have indicated difficulty in understanding the requirements of the regulation, and manufacturers routinely submit their field test kits for approval by the Department.

**Result**

*Please state that the reason why the agency is recommending that the regulation should stay in effect without change.*

Having reviewed 6 VAC 40-30 and received no public comment objecting to the regulation, the Forensic Science Board has recommended that the regulation be retained without any amendment.

**Small business impact**

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area*

*affected by the regulation. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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This regulation has no significant economic impact on small businesses. Small businesses are eligible to submit their product for evaluation and approval by the Department of Forensic Science. Fees for approval are *de minimis*--\$50 for each drug for which individual evaluation is requested and the actual cost of the street drug preparation (if any). Field test kits that are approved are periodically published in the Virginia Register of Regulations. Because it is Code-mandated, there is a continued need for the regulation. No complaints have been received concerning this regulation. The regulation meets Code requirements and user agencies' and manufacturers' needs.