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

Agency name	Forensic Science Board
Virginia Administrative Code (VAC) citation	6 VAC 40-50
Regulation title	Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material
Date	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(B) provides that "any law enforcement officer shall be permitted to testify as to the results of any marijuana field test approved as accurate and reliable by the Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative Procedures Act (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity of which is at issue, is marijuana...." 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 40-50 establishes how manufacturers may request the evaluation of a marijuana field test or marijuana field test kit for use by law enforcement, the process and fees for such an evaluation, how a manufacturer would maintain approval status for such a marijuana field test, and the periodic publication of a list of approved marijuana field tests in the Virginia Register of Regulations and the Department’s website. The regulation is the least burdensome method of accomplishing the Department’s Code-mandated approval of marijuana field tests pursuant to Code § 19.2-188.1(B).

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 specified by Code, the regulation specifies the procedures for the approval of marijuana field tests for use at trial by law enforcement officers in prosecution of marijuana offenses. The regulation is clearly written. No stakeholders have indicated difficulty in understanding the requirements of the regulation, and manufacturers routinely submit their marijuana field tests 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 40-50 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.

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 marijuana field test for which individual evaluation is requested. Marijuana field tests 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.