

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	Department of Forensic Science
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	6 VAC 40-50
<b>VAC Chapter title(s)</b>	Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material
<b>Action title</b>	Amendments to Permit the Approval of Alternative Field Tests and Mobile Instruments
<b>Date this document prepared</b>	November 1, 2022

**Cost Benefit Analysis**

Table 1a must be completed for all actions. Tables 1b and 1c must be completed for actions (or portions thereof) where the agency is exercising discretion, including those where some of the changes are mandated by state or federal law or regulation. Tables 1b and 1c are not needed if **all** changes are mandated, and the agency is not exercising any discretion. In that case, enter a statement to that effect.

- (1) Direct Costs & Benefits: Identify all specific, direct economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (A direct impact is one that affects entities regulated by the agency and which directly results from the regulatory change itself, without any intervening steps or effects. For example, the direct impact of a regulatory fee change is the change in costs for these regulated entities.) When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo. One bullet has been provided, add additional bullets as needed.
- (2) Quantitative Factors:
  - (a) Enter estimated dollar value of total (overall) direct costs described above.
  - (b) Enter estimated dollar value of total (overall) direct benefits described above.
  - (c) Enter the present value of the direct costs based on the worksheet.
  - (d) Enter the present value of the direct benefits based on the worksheet.
- (3) Benefits-Costs Ratio: Calculate d divided by c OR enter it from the worksheet.
- (4) Net Benefit: Calculate d minus c OR enter it from the worksheet.
- (5) Indirect Costs & Benefits: Identify all specific, indirect economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (An indirect impact is one that results from responses to the regulatory change, but which are not directly required by the regulation. Indirect impacts of a regulatory fee change on regulated entities could include a change in the prices they charge, changes in their operating procedures or employment levels, or decisions to enter or exit the regulated profession or market. Indirect impacts also include responses by other entities that have close economic ties to the regulated

entities, such as suppliers or partners.) If there are no indirect costs or benefits, include a specific statement to that effect.

(6) Information Sources: Describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.

(7) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

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

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> <li>• 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).</li> <li>• The Forensic Science Board wishes to expand those field tests that can be considered for approval by the Department. The regulatory actions 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.</li> <li>• 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. 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.</li> <li>• 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.</li> </ul>	
(2) Quantitative Factors	Estimated Dollar Amount	Present Value
Direct Costs	(a) \$ 2800	(c) \$2,800
Direct Benefits	(b) 3,400,000	(d) \$2,987,277

(3) Benefits-Costs Ratio	1066.88	(4) Net Benefit	\$2,984,477
(5) Indirect Costs & Benefits	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.		
(6) 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.		
(7) Optional			

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

*This table addresses current requirements and the implications of not making any changes. In other words, describe the costs and benefits of maintaining the current regulatory requirements as is.*

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> <li>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.</li> </ul>		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a) \$3,400,000	(c) \$2,987,277	
Direct Benefits	(b) \$2,800	(d) \$2,800	
(3) Benefits-Costs Ratio	0.000937308	(4) Net Benefit	-\$2,984,477
(5) Indirect Costs & Benefits	Trials may be delayed if field tests are not approved that could be utilized at trial under Virginia Code § 19.2-188.1(B), as the parties wait on DFS laboratory analysis. DFS may avoid having to conduct analyses on underage possession of marijuana cases if a field test has indicated that the		

	substance is marijuana and the defendant does not wish to have confirmation by the laboratory.
(6) Information Sources	Same as above.
(7) Optional	

**Table 1c: Costs and Benefits under an Alternative Approach**

*This table addresses an alternative approach to accomplishing the objectives with different requirements. These alternative approaches may include the use of reasonably available alternatives in lieu of regulation, or information disclosure requirements or performance standards instead of regulatory mandates.*

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> <li>The Virginia Code mandates that the Department approve marijuana field tests for this purpose. There is no an alternative approach.</li> </ul>	
(2) Quantitative Factors	Estimated Dollar Amount	Present Value
Direct Costs	(a)	(c)
Direct Benefits	(b)	(d)
(3) Benefits-Costs Ratio		(4) Net Benefit
(5) Indirect Costs & Benefits		
(6) Information Sources		
(7) Optional		

**Impact on Local Partners**

- (1) Describe the direct costs and benefits (as defined on page 1) for local partners in terms of real monetary costs and FTEs. Local partners include local or tribal governments, school

divisions, or other local or regional authorities, boards, or commissions. If local partners are not affected, include a specific statement to that effect and a brief explanation of the rationale.

- (2) Quantitative Factors:
  - (a) Enter estimated dollar value of total (overall) direct costs described above.
  - (b) Enter estimated dollar value of total (overall) direct benefits described above.
- (3) Indirect Costs & Benefits: Describe any indirect benefits and costs (as defined on page 1) for local partners that are associated with all significant changes. If there are no indirect costs or benefits, include a specific statement to that effect.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.
- (5) Assistance: Identify the amount and source of assistance provided for compliance in both funding and training or other technical implementation assistance.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

**Table 2: Impact on Local Partners**

(1) Direct Costs & Benefits	Law enforcement partners are not required to purchase any chemical tests or instruments simply because they are approved by DFS. Therefore, we do not anticipate any imposed impact on local partners.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a)
Direct Benefits	(b)
(3) Indirect Costs & Benefits	
(4) Information Sources	
(5) Assistance	
(6) Optional	

**Economic Impacts on Families**

- (1) Describe the direct costs and benefits (as defined on page 1) to a typical family of three (average family size in Virginia according to the U. S. Census) arising from any proposed regulatory changes that would affect the costs of food, energy, housing, transportation, healthcare, and education. If families are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
  - (a) Enter estimated dollar value of direct costs.
  - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe any indirect costs and benefits (as defined on page 1) to a typical family of three that are most likely to result from the proposed changes.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (5) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

**Table 3: Impact on Families**

(1) Direct Costs & Benefits	None.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a)
Direct Benefits	(b)
(3) Indirect Costs & Benefits	
(4) Information Sources	
(5) Optional	

**Impacts on Small Businesses**

- (1) Describe the direct costs and benefits (as defined on page 1) for small businesses. For purposes of this analysis, “small business” means the same as that term is defined in § 2.2-4007.1. If small businesses are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
  - (a) Enter estimated dollar value of direct costs.
  - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe the indirect benefits and costs (as defined on page 1) for small businesses that are most likely to result from the proposed changes.
- (4) Alternatives: Add a qualitative discussion of any equally effective alternatives that would make the regulatory burden on small business more equitable compared to other affected business sectors, and how those alternatives were identified.
- (5) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

**Table 4: Impact on Small Businesses**

(1) Direct Costs & Benefits	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.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a)
Direct Benefits	(b)
(3) Indirect Costs & Benefits	
(4) Alternatives	
(5) Information Sources	
(6) Optional	

**Changes to Number of Regulatory Requirements**

*For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed.*

**Table 5: Total Number of Requirements**

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
6VAC40-50-10	0	0	0	0
6VAC40-50-20	0	0	0	0
6VAC40-50-30	0	0	0	0
6VAC40-50-70	0	0	0	0
6VAC40-50-80	1	0	0	0