

FINAL REGULATIONS

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Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Title of Regulation: **6 VAC 40-30. Regulations for the Approval of Field Tests for Detection of Drugs (formerly 6 VAC 20-220-20 through 6 VAC 20-220-80) (adding 6 VAC 40-30-10 through 6 VAC 40-30-80).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: February 22, 2006.

Agency Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

Summary:

These regulations outline the process the department follows for the approval of field tests for detection of drugs. The amendments reflect the agency's new status as a department in two ways. First the amendments change the citation for these regulations from 6 VAC 20-220 to 6 VAC 40-30 to reflect the new agency number assigned to the Department of Forensic Science. Second, the amendments change any reference in the regulations to the agency from the "Division of Forensic Science" to the "Department of Forensic Science."

CHAPTER ~~220~~ 30.

REGULATIONS FOR THE APPROVAL OF FIELD TESTS FOR DETECTION OF DRUGS.

PART I. DEFINITIONS.

~~6 VAC 20-220-10.~~ **6 VAC 40-30-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the ~~Division~~ Department of Forensic Science or designee.

"~~Division~~ Department" means the ~~Division~~ Department of Forensic Science, ~~Department of Criminal Justice Services~~.

"Drug" means any controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test unit used outside of a chemical laboratory environment to detect the presence of a drug.

"Field test kit" means a combination of individual field tests units.

"List of approved field tests" means a list of field tests or field test kits approved by the ~~division~~ department for use by law-enforcement agencies in the Commonwealth and periodically published by the ~~division~~ department in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity which makes or assembles field test units or field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions which are published by the manufacturer and supplied with the field tests or field test kits.

"Street drug preparations" means any drug or combination of drugs and any other substance which has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

PART II.

PROCESS FOR APPROVAL OF FIELD TESTS.

~~6 VAC 20-220-20.~~ **6 VAC 40-30-20. Authority for approval.**

Section 19.2-188.1 of the Code of Virginia provides that the ~~Division~~ Department of Forensic Science shall approve field tests for use by law-enforcement officers to enable them to testify to the results obtained in any preliminary hearing regarding whether any substance, the identify of which is at issue in such hearing, is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

~~6 VAC 20-220-30.~~ **6 VAC 40-30-30. Request for approval.**

A. Any manufacturer who wishes to have field tests or field test kits approved shall submit a written request for approval to the ~~division~~ department director at the following address:

Director
~~Division~~ Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219.

B. Materials sufficient for at least 10 field tests shall be supplied for each drug for which the manufacturer requests approval. The materials shall include all instructions, precautions, color charts, flow charts and the like which are provided with the field test or field test kit and which describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material

Final Regulations

Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.

D. This approval will require at least 120 days from the receipt of the written request and all needed materials from the manufacturer.

E. The ~~division~~ *department* will use commonly encountered "street drug preparations" to examine those field tests for approval. In order to be approved, the field test must correctly react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturers' instructions and claims.

~~6 VAC 20-220-40.~~ **6 VAC 40-30-40. Notice of approval.**

The ~~division~~ *department* will notify each manufacturer in writing of the approval or disapproval of each test for which approval was requested. Should any test not be approved, the manufacturer may resubmit their request for approval of that field test according to the previously outlined procedures at any time.

~~6 VAC 20-220-50.~~ **6 VAC 40-30-50. Maintenance of approved status.**

The ~~division~~ *department* may require that this approval be done as often as annually for routine purposes. If any modifications are made to an approved field test by the manufacturer, the ~~division~~ *department* shall be notified in writing of the changes. If unreported modifications are discovered by the ~~division~~ *department*, the ~~division~~ *department* may require that all testing and approval be repeated for the particular manufacturers' approved field tests at any time. The ~~division~~ *department* shall notify the manufacturer in writing of this requirement. Any modified field test must be approved before it can be used in accordance with § 19.2-188.1 of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the field test.

~~6 VAC 20-220-60.~~ **6 VAC 40-30-60. Publication.**

Upon completion of such testing and in concurrence with the approval authority, the ~~division~~ *department* will periodically publish a list of approved field tests in the General Notices section of the Virginia Register of Regulations. The ~~division~~ *department* will also periodically publish the list on its website. The ~~division~~ *department* may, in addition, provide copies of its approval list to any agency subject to this chapter. The ~~division~~ *department* may share any information or data developed from this testing with these agencies.

~~6 VAC 20-220-70.~~ **6 VAC 40-30-70. Liability.**

A. The ~~division~~ *department* assumes no liability as to the safety of these field tests or field test kits, any chemicals contained therein or the procedures and instructions by which they are used.

B. The ~~division~~ *department* further assumes no responsibility for any incorrect results or interpretations obtained from these inherently tentative presumptive chemical tests.

PART III.
FEES.

~~6 VAC 20-220-80.~~ **6 VAC 40-30-80. Fees.**

Manufacturers will be charged a fee of \$50 for each drug or type of drug for which individual approval is requested. The ~~division~~ *department* will evaluate the manufacturers' request and notify them in writing of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the ~~division~~ *department* in writing. The ~~division's~~ *department's* assessment of the amount of payment required will be based upon a detailed evaluation of the manufacturer's request and that amount will be final. Approval will not be granted before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R06-165; Filed January 4, 2006, 11:39 a.m.