

Unified Regulatory Plan of the Department of Forensic Science for State Fiscal Year 2024

Prepared on June 27, 2023

The Department of Forensic Science, a nationally accredited laboratory system, is authorized to provide forensic laboratory services in criminal matters, provide advanced training to law-enforcement agencies in the location, collection and preservation of evidence, and maintain and test the accuracy of equipment used to test the blood alcohol content of breath. It is also authorized to establish and maintain a DNA testing program to receive DNA samples taken pursuant to Virginia Code § 19.2-310.2 et seq., determine identification characteristics specific to an individual, and to store and maintain the resulting identification profiles in a DNA Data Bank. Code of Virginia, Title 9.1, Chapter 11, Article 1; Title 19.2, Chapter 18, Article 1.1. The Department is also authorized to (i) prescribe the methods for obtaining information from the DNA Data Bank, (ii) approve field test kits for the detection of controlled substances and marijuana, (iii) license persons to administer breath tests, and (iv) prescribe methods and equipment for breath tests. Code of Virginia, Title 19.2, Chapter 18, Article 1.1; Title 19.2, Chapter 12; and Title 18.2, Chapter 7, Article 2.

The Forensic Science Board is authorized to adopt regulations for all provisions of the Code of Virginia as they relate to the responsibilities of the Department. Code of Virginia, Title 9.1, Chapter 11, Article 2.

The Department operates under the supervision of the Secretary of Public Safety and Homeland Security.

Action/Stage or Guidance Document Forum ID (if available)	
Title of Proposed Regulatory Action or Guidance Document	
Amendments to Permit the Approval of Alternative Field Tests and Mobile Instruments	
Brief Overview	
Proposed amendments to 6VAC40-50 are made to broaden the types of chemical field tests that may be considered and approved by the Department. Currently, the regulation only permits the Department to consider and approve Duquenois-Levine field tests. Amendments will also permit the Department to consider and approve mobile instruments as technology becomes available. Under the proposed amendments, approval of any field test, whether chemical test or mobile instrument, will require that the field test be able to identify cannabis sativa plant material and distinguish marijuana from industrial hemp.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input checked="" type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Discretionary action <input checked="" type="checkbox"/> Action required by state statute
Deregulatory Component	DFS is required under Virginia Code § 19.2-188.1(B) to promulgate regulations for the approval of field tests to be used by law enforcement officers in trials for a violation of Virginia Code § 4.1-1105.1. The regulations previously only permitted the approval of Duquenois-Levine field tests, which are not able to distinguish marijuana from industrial hemp. The amendments will permit the

	Department to consider a broader spectrum of both chemical field tests and mobile instruments that may be developed by manufacturers for this purpose.
Expected Date	July 2023

Action/Stage or Guidance Document Forum ID (if available)	
N/A	
Title of Proposed Regulatory Action or Guidance Document	
Amendments to Reduce Regulatory Requirements for DNA Data Bank Information Requests	
Brief Overview	
Proposed amendments to 6VAC40-60 would reduce the regulatory requirements and burden to law enforcement officers seeking DNA Data Bank information while still maintaining the appropriate security of such information and documentation of such requests as required under Virginia Code § 19.2-310.5.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed <input type="checkbox"/> Final <input type="checkbox"/> Emergency or Emergency/NOIRA <input type="checkbox"/> Revised Proposed <input checked="" type="checkbox"/> Fast-Track
Additional Description	<input type="checkbox"/> Expedited Review Requested <input type="checkbox"/> Exempt Action <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	The current regulations require that law enforcement officers submit a written request on official letterhead to obtain information regarding whether a particular individual's DNA profile is in the Data Bank. This formal request, which includes a significant number of required elements, must be transmitted to the Department's Data Bank via mail, email, or facsimile. The proposed amendments will eliminate these requirements for requestors. DFS will develop an online submission form on the DFS website. Utilizing this form, law enforcement officers can request the information utilizing their official email addresses and DFS Data Bank staff can respond, all via encrypted email. The elimination of the onerous requirements for written requests on official letterhead will save law enforcement time and resources.
Expected Date	October 2023