Economic Impact Analysis
Virginia Department of Planning and Budget

1 VAC 30-46 – Regulations Governing the Certification of Commercial Environmental Laboratories
Department of General Services
October 12, 2012

Summary of the Proposed Amendments to Regulation

The Department of General Services (DGS) proposes to replace the 2003 NELAC[1] Institute (TNI) standards used to accredit commercial environmental laboratories with the more up-to-date 2009 TNI standards. Additionally, the Department proposes to: 1) increase fees, 2) tie future fees to inflation, 3) no longer require that accredited laboratories reapply for accreditation by filling out an application for renewal of accreditation every other year, 4) eliminate obsolete language, and 5) amend other text for clarity.

Result of Analysis

The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact

Environmental laboratories are required by §2.2-1105 of the *Code of Virginia* to be accredited before submitting data to the Department of Environmental Quality (DEQ) under Virginia's air, water, and waste laws and regulations. This statutory requirement is carried out by DGS under the regulatory requirements of 1 VAC 30-45 (noncommercial laboratories) and 1 VAC 30-46 (commercial laboratories).

DGS accredits commercial laboratories (1VAC30-46) using the national environmental laboratory accreditation standards developed by TNI. The TNI program standards are the only

[1] NELAC: National Environmental Laboratory Accreditation Conference

national standards developed for the accreditation of environmental laboratories. TNI periodically revises their standards to improve them and to provide the most up-to-date information available for the accreditation of environmental laboratories. DGS currently accredits commercial environmental laboratories using the 2003 NELAC Standards. TNI replaced these standards with the 2009 and published the new standards in July 2010. To maintain its status as a TNI accreditation body and to continue to accredit commercial environmental laboratories under the TNI program, DGS must incorporate the 2009 TNI Standards into 1VAC30-46.

Accrediting commercial environmental laboratories to a single set of standards has several benefits. Accreditation promotes continuous quality improvement. Accreditation gives confidence that work is performed properly and to a known standard. Under the accreditation program, assurance is provided that all environmental laboratories meet the same proficiency testing and quality assurance and quality control standards. Meeting these standards ensures that the laboratories have the ability to produce environmental test data of known quality and defensibility for levels of pollutants in environmental samples. The limits set by DEQ for air, water, and waste pollutants help protect our environment and public health. Laboratory measurements of environmental samples determine compliance with Virginia's environmental laws and therefore are the key to providing protection of public health and welfare. Accrediting laboratories to one standard reduces the uncertainties associated with decisions made by the regulatory agencies that affect the protection of human health and the environment.

Failure to update the regulation to the TNI 2009 standard may jeopardize the Virginia commercial laboratories' accreditation status for work in other states. In order to maintain accreditation in TNI, laboratories must adhere to the current standard. TNI-accredited Virginia commercial laboratories can easily obtain secondary accreditation in other states that utilize the TNI program to accredit laboratories. Failure to update the regulation to the TNI 2009 standard will jeopardize this commercial option for these laboratories. Thus, DGS's proposal to update the regulation to the TNI 2009 standard should create a net benefit.

According to DGS, the current fees charged under the program are insufficient to support the program as required by §2.2-1105 C of the *Code of Virginia*. The current fees have been inadequate for three reasons. First the fees were set initially using an estimate of the number of

laboratories to be accredited that was too high. Second the program fees were established in 2004 and have not accounted for inflation in the intervening years. Third the fee structure does not take into account the variety and amount of testing done by the laboratories DGS accredits.

DGS states that the original estimate of laboratories that would be covered by the program was based on limited information provided by DEQ and other sources. Using this information, DGS estimated the number of in-house and commercial laboratories that were serving DEQ permit holders. This estimate proved to be too high and the resulting fees, based on these estimates, are too low. The proposed fees are based on the number of laboratories currently accredited under the program.

The current fee provisions do not include a factor for inflation. The fees were proposed in 2004 in regulations that did not become final until 2009. From calendar year 2004 to calendar 2011 the most commonly used measure of the cost of living (Consumer Price Index - All Urban Consumers**)** rose by 19.1 percent. Prices have continued to rise in 2012.

The current fee provisions do not take into account the range of testing and the variety of testing done by the accredited laboratories. This results in fees that do not mirror the scope of the laboratory testing. The work performed by DGS to accredit a laboratory is directly related to the number of test methods performed and the number of matrices tested by the laboratory. The revised fee structure accounts for these differences. The revised fees are adjusted in proportion to the number of test methods a laboratory performs and for the number of matrices tested.

DGS proposes to increase fees to account for the three sources of higher costs per lab mentioned above. Failing another source of funding for DGS' accreditation program, the higher fees do appear to be necessary. Looking for increased efficiency of operations which if found could potentially reduce the extent of the proposed fee increases is beyond the scope of this analysis.

The department projects the following range of fee increases for currently accredited laboratories: 1) Thirty-seven percent will see a fee increase of 7-59%. Most are Virginia labs. 2) Thirty-four percent will see a fee increase of 60-98%. All are located out-of-state with one exception. 3) Twenty-six percent will see a fee increase of 100-194%. All are located out-of-state with the exception of six Virginia labs. 4) Three percent will see a fee increase of over 200%. These are out-of-state labs.

DGS also proposes to have fees automatically adjust annually based on changes in the Consumer Price Index. When an agency just passes on whatever their costs increases are in the form of higher fees to the regulated community, the agency has limited incentive to spend dollars efficiently. On the other hand, when revenue is not tied to how they spend their dollars, i.e. with future fees based on CPI, then the agency has the incentive get more for the dollars they will have. For example, say it is moderately more convenient to get supplies from supplier X than from supplier Y, but it costs more. When whatever costs may be are passed on to the regulated community, then the agency will likely go for convenience. If the fees are not directly tied to costs, i.e. with the CPI fee change method, then the agency has more incentive to get the most for the dollars they spend since inefficient spending will not increase revenue.

Additionally, DGS proposes to eliminate the renewal procedure that requires laboratories to file an application for renewal every other year. Renewal can be efficiently done without an additional application process. The department estimates that this will save laboratory staff approximately half a day of effort. Eliminating unnecessary administrative work clearly creates a net benefit.

Businesses and Entities Affected

The proposed amendments affect 118 laboratories currently accredited under 1VAC30-46 (as of 6/23/12). Four are local government laboratories, one is a federal laboratory, three are laboratories owned by industrial companies, and 110 are commercial laboratories.

The three industrial labs are part of large industrial companies. Sixty-five of the 110 commercial labs (59%) can be classified as small businesses. Forty-five commercial labs (41%) are considerably larger and are representative of the largest environmental laboratories in the U.S, including 12 of the top 20 revenue producing commercial environmental labs in the U.S. DGS accredits multiple locations of these laboratories.

Eighty-one labs (69%) are located out-of-state. Of these, 32 are small businesses, one is an industrial lab, and the remaining 48 are large labs. Thirty-seven labs (31%) are located in Virginia. Of these, 25 are small businesses, five are government labs, two are industrial company labs, and the remaining five are large labs. Three of these are individual locations for large laboratory concerns.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property

Looked at in isolation, the proposed increased fees will have a slight negative impact on the value of commercial environmental labs. If we assume that the fee increases are necessary to maintain the accreditation program, then that would not likely be the case.

Small Businesses: Costs and Other Effects

The proposed increased fees will have a slight negative impact on the value of commercial environmental labs.

Small Businesses: Alternative Method that Minimizes Adverse Impact

If we assume that there is no alternative funding method for the accreditation program, then there is no apparent alternative method that will reduce the impact of the fee increases on the small commercial labs.

Real Estate Development Costs

The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such

economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.