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Exempt Action Proposed Regulation Agency Background Document

Agency name	Department of General Services, Division of Consolidated Laboratory Services
Virginia Administrative Code (VAC) citation(s)	1VAC30-45-130 and 1VAC30-46-150
Regulation title(s)	Certification for Noncommercial Environmental Laboratories (1VAC30-45) and Accreditation for Commercial Environmental Laboratories (1VAC30-46)
Action title	Revision to VELAP Fees
Date this document prepared	June 18, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Division of Consolidated Laboratory Services (DCLS) is seeking comment on the revision to fees charged for certifying laboratories under 1VAC30-45 and accrediting environmental laboratories under 1VAC30-46.

Section 2.2-1105 C of the *Code of Virginia*, the law authorizing this program, requires DCLS to establish a fee system to offset the costs of the program. The current fees are inadequate to offset the costs of the program and must be revised.

The revised fees are exempt from the requirements of the Administrative Process Act (APA). The Budget of the Commonwealth of Virginia (Chapter 854, effective July 1, 2019) in Item 74, at C 3a provides that revised fees are exempt from the requirements of the APA as long as DCLS provides notice and an opportunity to submit written comments on the revised fees.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This is only the second update to the fees since the regulations first became effective in 2009. It has been six years since the current fees were developed based on an analysis in mid-2013 of the financial costs of the program. These fees were proposed in August 2013 for 1VAC30-46 and in September 2015 for 1VAC30-45 after being reviewed by the Department of Planning and Budget and the Governor's Office. The requirements of the APA review take time and so by the effective date of these two rules, the fees were already somewhat inadequate in offsetting the program costs. The current fees became effective for 1VAC30-46 on November 1, 2015, and for 1VAC30-45 on September 1, 2016.

During the intervening six years since the current fees were developed, the cost of living has increased. As an indication of how costs have changed, the Consumer Price Index Inflation Calculator indicates the cost of living has increased ten percent since January 2013. This is reflected in the increased cost of both labor and non-labor items for the program's operation.

The program's current staffing needs and the current number of laboratories accredited by the program are reflected in the revised fees. The revised fees also include the statewide salary adjustments for FY2020.

DCLS will consider comments received on the revised fees and then publish the final revised fees in the *Virginia Register of Regulations*.

Public comment period: July 8 – August 8, 2019.

How to comment: DCLS accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DCLS by the last day of the comment period. All materials received are part of the public record. Email comments should be sent to rhonda.bishton@dgs.virginia.gov. The number for faxed comments is (804) 371-8305. Written comments should be sent to Rhonda Bishton, Regulatory Coordinator, Department of General Services, Attn: DCLS VELAP Fee Comments, 1100 Bank Street, Richmond, VA, 23219. Agency contact: Rhonda Bishton, (804) 786-3311.