



Economic Impact Analysis Virginia Department of Planning and Budget

1 VAC 30-45 – Certification for Noncommercial Environmental Laboratories
Department of General Services
May 5, 2013

Summary of the Proposed Amendments to Regulation

The Division of Consolidated Laboratory Services (DCLS) proposes to amend its regulations that govern certification of noncommercial environmental laboratories. Current regulations were initially proposed in 2004 and fully promulgated in 2009. Now that DCLS has had several years of experience in certifying noncommercial laboratories, they are proposing to amend these regulations to remove obsolete language, make many clarifying changes to regulatory text and also to make several substantive changes to these regulations. The substantive changes that DCLS proposes will:

1. Add two types of tests that do not qualify under the regulatory definition of “environmental analysis”,
2. Remove the requirement that certified noncommercial labs fill out a renewal application,
3. Add new rules that will govern suspension of non-compliant laboratories and revise the rules that govern denial and withdrawal of certification,
4. Make changes to quality control rules in these regulations so that they are harmonized with DCLS’s regulations that govern commercial environmental laboratories,
5. Reduce the number of successful proficiency tests that labs must complete each year from two to one for each field of certification and
6. Increase fees and add language that will adjust fees upwards or downwards once a year for changes in the inflation rate as determined by the Consumer Price Index – Urban (CPI-U).

Result of Analysis

Benefits likely outweigh costs for most proposed regulatory changes. For some proposed changes, there is insufficient information to ascertain whether benefits outweigh costs.

Estimated Economic Impact

Current regulations define “environmental analysis” and list several types of testing that are excluded from this definition. Laboratories are not required to be certified under these regulations (for the purposes of complying with the Virginia Air Pollution Control Act, the Virginia Waste Management Act and the State Water Control Act) in order to perform tests that are on the excluded list. DCLS now proposes to add two tests, geochemical and permeability testing for solid waste compliance and materials specification for air quality compliance when product certifications specify the data required by an air permit such as fuel type, BTU content, sulfur content or VOC content, to the excluded list. DCLS staff reports that these tests are currently exempted in DCLS guidance. No entity is likely to incur any costs on account of this regulatory change. Regulated entities will likely gain some benefit from this change as language in regulation is legally enforceable and regulated entities are entitled to notice of any changes to such language and are also entitled to participate in the process that any proposed changes must go through.

Current regulations require certified labs to fill out a renewal application at least 90 days before the expiration date of their current certification. DCLS proposes to drop this requirement as they believe that renewal of certification can be accomplished without a formal application (by the lab attesting to compliance with applicable regulation, reporting acceptable proficiency test results and by paying the required renewal fees). No entity is likely to incur any costs on account of this proposed change as labs will still have to remain in compliance with these regulations. Affected labs will save some time and may also save some money (if they were not submitting their renewal application electronically) on account of this change.

Current regulations allow DCLS to decertify labs that are not in compliance with regulations or that have been found to have falsified any data or have provided false information to support certification. Labs that are decertified currently would have to reapply for certification. DCLS proposes to amend regulatory language for decertification to increase clarity and also proposes to add rules for suspension of certification. Under these new rules, DCLS will

be able to notify labs of deficiencies and, in most cases, give them up to 60 days to remediate those deficiencies. Under proposed regulations, if a lab has deficiencies, has been notified of those deficiencies and does not remediate within the allowed time, DCLS will be able to suspend certification for 6 months or the remainder of the year certification period (whichever is longer). Adding language that allows suspension of certification will benefit both the department and affected labs. The department will have a remedy short of decertification for the labs under their purview. Labs will benefit from these changes as they will allow labs time to address identified problems without going through the time and expense of reapplying for certification after they have fixed their issues. No entity is likely to incur any additional expense under these proposed changes.

Current regulations are not identical to regulations for the certification of commercial environmental laboratories. DCLS proposes to delete or relax several quality control requirements in current regulations so that these regulations are no more stringent than those for commercial environmental labs. DCLS, for instance, proposes to delete language that requires a copy of certification statements be retained in analysts' personnel files. No entity is likely to incur additional costs on account of changes like these. Noncommercial environmental labs are likely to accrue some time and money savings on account of these changes that harmonize rules for noncommercial and commercial environmental labs.

Current regulations require certified labs to complete proficiency testing for each field of certification approximately every 6 months. DCLS proposes to only require one successful test per certification field each year in order to maintain certification. DCLS estimates that this change will save labs that only perform simple test procedures (STP labs) between \$149 and \$245 per year. General labs will save between \$198 and \$296 per year. This regulatory change will benefit labs while still requiring labs to prove proficiency in testing for which they are certified.

Current regulations require renewal of certification biennially and include a fee schedule that was written in 2004 (and only fully promulgated since 2009) when this certification program became required by legislation. When current fees were set, DCLS had limited information from DEQ and other sources and over-estimated how many labs would need to be certified (and, therefore, underestimated the approximate portion of the cost of the certification program each

lab would have to bear). As a consequence of both an initial underestimation of sufficient fees and because fees have not been adjusted as the cost of this certification program has risen, DCLS now proposes to require certification to be renewed every year and to increase fees as well as adjusting fees each year by a factor equal to the annual CPI-U average.¹ DCLS proposes to publish new fees on their website each year starting 13 months after the effective date of these proposed regulations.

Current renewal fees for the 56 certified STP labs are between \$475 and \$600 every two years. Fees for the 53 certified general labs currently range between \$2,825 and \$5,200 every two years. DCLS proposes to set the annual renewal fee for STP labs at \$600. DCLS also proposes to increase fees for renewal of certification for general labs. DCLS staff estimates that fees for 47 STP labs will increase by 100%; fees for the remaining 9 STP labs will increase 153%. DCLS staff estimates that fees for general labs will increase between 2% and 56%; fees for two labs will increase between 2% and 6%, fees for 22 labs will increase by between 19% and 28%, fees for 27 labs will increase between 31% and 48% and fees for two labs will increase between 50% and 56%.

DCLS will benefit from these fee increases as they will likely allow this regulatory program to be more fully self-funded. To the extent that this program provides a benefit to the public, proposed fees increases will allow that benefit to continue. Labs will bear the costs of these increased fees.

DCLS also proposes to adjust fees annually using the CPI-U average. While this change will allow DCLS to more easily increase fees when their costs increase, there will likely be a loss of agency efficiency also. Because fee increases will be automatic and annual, DCLS will be under less pressure to economize on their expenses (to choose the least costly office supplies, for instance) than they now are. Additionally, regulated entities will likely have fewer chances to comment on, and argue against, future fee increases as those fee increases will be automatic and will not go through the regulatory process that they have to now. There is insufficient information to ascertain whether the benefits of increasing fees now and adding an annual inflation adjustment to future fees will outweigh the costs of doing so.

¹ The CPI-U increased 21.6% between 2004 and 2012. If fees had been subject to DCLS's proposed CPI-U

Businesses and Entities Affected

DCLS reports that they certify 109 noncommercial labs under the provisions of these regulations. Of these 109 labs certified, 80 belong to local governments, 13 are owned by industrial companies, one is owned by a private water utility, eight belong to the Commonwealth of Virginia and seven are run by agencies of the federal government. None of these laboratories qualify as small businesses.

Localities Particularly Affected

Localities with certified labs will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property

For affected privately owned noncommercial labs, increasing fees will likely cause a small decrease in company profits and in the value of companies that own these labs.

Small Businesses: Costs and Other Effects

No small businesses will be affected by these proposed regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact

No small businesses will be affected by these proposed regulatory changes.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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, a determination of the public benefit, the projected

adjustment during these years, current fees would be 21.6% higher than they now are.

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 an 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.