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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of General Services, Division of Consolidated Laboratory Services
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC 30-41
VAC Chapter title(s)	Regulation for the Certification of Laboratories Analyzing Drinking Water
Date this document prepared	May 30, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"SWDA" is the federal Safe Drinking Water Act (42 USC 300f *et seq.*).

"EPA" is the U.S. Environmental Protection Agency.

"DCLS" is the Virginia Department of General Services, Division of Consolidated Laboratory Services.

"DOH-ODW" is the Virginia Department of Health, Office of Drinking Water.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Promulgating Entity

The promulgating entity for this regulation is the Department of General Services, Division of Consolidated Laboratory Services.

Federal Legal Authority

Under the federal SDWA (42 USC 300f *et seq.*), EPA sets national limits on contaminant levels in drinking water to ensure that the water is safe for human consumption. The federal regulations at 40 CFR 142.10 (b)(3)(i) require the establishment and maintenance of a State program for the certification of laboratories conducting analytical measurements of drinking water contaminants pursuant to the requirements of the State primary drinking water regulations. To determine compliance under the SDWA, EPA at 40 CFR 141.28 requires that the analysis of samples must be made by certified laboratories.

Virginia Legal Authority

Section 2.2-1102 A 1 of the *Code of Virginia* authorizes the Department of General Services to prescribe regulations necessary or incidental to the performance of the Department's duties or execution of powers conferred by the *Code*. The statutory authority to promulgate regulations is discretionary based on whether the proposed regulation is "necessary or incidental to the performance of the Department's duties or execution of powers conferred" by the *Code of Virginia*.

Section 2.2-1102 A 2 of the *Code of Virginia* authorizes the Department of General Services to establish fee schedules that may be collectible from users when general fund appropriations are not applicable to the services rendered.

Section 2.2-1104 A 4 of the *Code of Virginia* authorizes the Division of Consolidated Laboratory Services to establish and conduct programs of inspection and certification of other laboratories in the Commonwealth as mandated by the federal Safe Drinking Water Act and state requirements pursuant to the Act.

The Department of Health, Office of Drinking Water (DOH-ODW) is delegated authority from EPA to carry out federal drinking water requirements in the Commonwealth. In DOH-ODW's regulation governing drinking water standards (12 VAC 5-590, Waterworks Regulations at 12VAC5-590-340), analyses used to demonstrate compliance with the federal primary and secondary standards for drinking water must be carried out "by the Division of Consolidated Laboratory Services or in laboratories certified by the Division of Consolidated Laboratory Services for such purposes."

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Two alternatives were considered: repeal and amendment. The regulation is needed to protect public safety, health, and welfare and to meet the federal and state requirements under the SDWA and Virginia law and regulations. Repealing the regulation therefore is not a viable alternative. Amending the regulation is not a viable alternative. The regulation as currently written is clear. The regulation is the least burdensome alternative to meet federal and Virginia law and regulations.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

DCLS did not receive any comments.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

This regulation satisfies the provisions of the law and legally binding state and federal requirements, and is effective in meeting its goals. The regulation therefore is being retained without amendment.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This is the second periodic review of 1VAC30-41. 1VAC30-41 became effective on May 1, 2014. The regulation continues to be needed to meet the requirements of federal and state law and regulations concerning the certification of laboratories analyzing drinking water samples. Drinking water laboratories that analyze drinking water samples for compliance purposes under federal and state law must be certified to do so under federal law. No complaints or comments have been received concerning the content of the regulation or its complexity. The regulation is written clearly and sets out the federal and state requirements for certifying laboratories analyzing drinking water. The regulation does not overlap, duplicate, or conflict with federal or state laws or regulations.
