



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of General Services, Division of Consolidated Laboratory Services
<b>Virginia Administrative Code (VAC) citation</b>	1VAC30-45
<b>Regulation title</b>	Certification for Noncommercial Environmental Laboratories
<b>Action title</b>	Revise regulation to update procedural and fee requirements
<b>Date this document prepared</b>	June 15, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

1VAC30-45 sets out the requirements to certify noncommercial laboratories that analyze environmental samples used to determine compliance with the State Water Control Law, Virginia Waste Management Act, and the Virginia Air Pollution Control Law.

The proposed action will eliminate all the requirements related to the initial certification period. These changes mainly affect the application procedures. The process to renew certification will be streamlined, reducing the cost for both the agency and the accredited laboratories.

The proposed action will revise the fees charged to laboratories under the program. The current fees are insufficient to support the program because fewer laboratories applied for certification than originally anticipated.

DCLS, in a separate action, will revise 1VAC30-46 to meet the 2009 standards now being implemented by TNI accreditation bodies. The 2009 standards provide in some cases more flexibility for laboratories to meet the standards for accreditation. DCLS intends to revise

1VAC30-45 to include the proposed changes that provide more flexibility so that the noncommercial laboratories will also benefit.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

Virginia Legal Authority

Section 2.2-1102 A 1 of the *Code of Virginia* authorizes the Department of General Services (DGS) to prescribe regulations necessary or incidental to the performance of the Department's duties or execution of powers conferred by the *Code*.

Section 2.2-1105 A of the *Code of Virginia* authorizes the Division of Consolidated Laboratory Services (DCLS) to establish and conduct a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to Chapter 13 (§ [10.1-1300](#) et seq.) of Title 10.1 [Air Pollution Control Law], the Virginia Waste Management Act (§ [10.1-1400](#) et seq.), or the State Water Control Law (§ [62.1-44.2](#) et seq.). Section 2.2-1105 C of the *Code of Virginia* authorizes DCLS establish a fee system to pay for the costs of the certification program.

Promulgating Entity

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

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

Environmental laboratories are required by §2.2-1105 of the *Code of Virginia* to be certified 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 DCLS under the regulatory requirements of 1VAC30-45 (noncommercial laboratories) and 1VAC30-46 (commercial laboratories).

Certifying noncommercial environmental laboratories to a single set of standards has several benefits. Environmental laboratories test environmental samples to determine whether the samples meet the air and water pollutant and waste limits set by DEQ. Under the certification program, all noncommercial 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 determine accurately and precisely the levels of pollutants in environmental samples. The limits set by DEQ on air, water and waste pollutants protect public

health and welfare. 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.

Revising 1VAC30-45 to streamline the application and certification renewal process reduces the administrative requirements for laboratories and for DCLS.

The certification fees that DCLS charges under the program are too low to fund the program and need to be adjusted. Three factors have contributed to inadequate fees. First when DCLS developed the certification program under §2.2-1105, the number of laboratories requiring certification was estimated using the number of active environmental permits issued in the Commonwealth. Although these numbers had been adjusted to be conservative, this estimate still proved to be inaccurate because fewer permittees had laboratories than initially estimated. Second the program eliminated field testing from certification. This led to the elimination of some laboratories where only field testing was performed. Third a number of the 1VAC30-45 eligible laboratories decided to contract their laboratory work with commercial environmental laboratories instead of becoming certified under the program. Fees ultimately were spread over fewer laboratories resulting in insufficient revenue to fund the program. DCLS therefore needs to adjust the fees to cover the cost of the program as required by §2.2-1105 C. The more test methods a laboratory performs the more time is required to assess and monitor laboratory performance. Fees will be adjusted in proportion to the number of test methods a laboratory maintains.

**Substance**

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The following revisions to 1VAC30-45 are being considered:

1. Revise Part I of 1VAC30-45 to eliminate the requirements for the initial certification period.
2. Revise Part I of 1VAC30-45 to simplify the renewal procedural to reduce the burden on laboratories and the agency.
3. Revise the fee provisions of 1VAC30-45-130 so that the fees cover the costs of the program.
4. Revise the standards in Part II to reflect the changes that will be proposed for 1VAC30-46 commercial laboratories when the changes provide flexibility and reduce the burden on laboratories.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the*

*agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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There are no viable alternatives to the proposed action with the exception of keeping the current provisions of the regulation.

DCLS could keep the fees at their current levels. However §2.2-1105 C requires the program to charge fees sufficient to cover the certification program. Fewer laboratories than anticipated at the inception of the program have applied for certification. The fees need to be increased as a result. The agency believes there is no alternative to increasing the fees given the statutory requirement as well as the budgetary need for fee support of the program.

DCLS could retain the procedural requirements that pertain to the initial certification period. DCLS believes these requirements are now extraneous to the regulation and no longer necessary.

DCLS could retain the certification renewal requirements. DCLS believes however that these requirements are cumbersome. The laboratories and DCLS would be better served by a streamlined process.

DCLS could keep Part II of 1VAC30-45 as currently written. DCLS believes that certain aspects of the standards can be revised to be more flexible. In a separate action, DCLS is revising Part II of 1VAC30-46 to meet the 2009 TNI standards. DCLS believes it would be advantageous to the noncommercial laboratories to make similar changes to the standards in Part II of 1VAC30-45 when these standards provide more flexibility for the noncommercial laboratories.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on

affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Nancy S. Saylor, in c/o DCLS, 600 North 5th Street, Richmond, VA, 23219, [nssaylor@verizon.net](mailto:nssaylor@verizon.net), 804-231-7980 (phone) or 804-371-7973 (fax). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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It is not anticipated that the proposal will have a direct impact on families. There will be a positive indirect impact on families in that the proposal will protect public health and welfare.