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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

<b>Agency name</b>	Department of General Services, Division of Consolidated Laboratory Services
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC 30-41
<b>Regulation title</b>	Regulation for the Certification of Laboratories Analyzing Drinking Water
<b>Date</b>	July 3, 2018

This information is required pursuant to Executive Order 17 (2014).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.*

#### 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."

Promulgating Entity

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

**Alternatives**

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

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. No public comments provide a reason to amend the regulation. The regulation is the least burdensome alternative to meet federal and Virginia law and regulations.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
American Association for Laboratory Accreditation (A2LA)	A2LA is dedicated to advancing and supporting the growth of accreditation through a multitude of initiatives including efforts by the Department of General Services, Division of Consolidated Laboratory Services (DCLS) to provide	The agency appreciates the comments submitted by A2LA.  The federal drinking water regulation at 40 CFR 141.28 requires that analyses to determine compliance be

	<p>common sense regulations and guidance regarding analytical testing of drinking water. The efforts of DCLS are important to the advancement of reliable testing and end user confidence and for these reasons, A2LA offers the following comments and recommendations for consideration.</p> <p>In March 2017, A2LA was formally recognized as a non-governmental accreditation body (NGAB) from The NELAC Institute (TNI) for accrediting environmental laboratories, using ISO/IEC 17025 and the TNI standard. The National Environmental Laboratory Accreditation Program (NELAP) typically utilizes state accreditation bodies to evaluate and accredit environmental testing laboratories; however, recognition as an NGAB identifies A2LA as being equivalent to the state accreditation bodies and confirms that A2LA has demonstrated capability to ensure laboratories' competence to provide accurate and defensible analytical data analyzing environmental samples using approved methods. A2LA kindly asks that DCLS include A2LA and the TNI NGAB program in cases where the laboratory is located outside the state as an accepted alternative to typical NELAP program providers.</p>	<p>carried out by a laboratory certified by the "state." The definition of "state" at 40 CFR 141.2 is as follows: "the agency of the State or Tribal government which has jurisdiction over public water systems. During any period when a State or Tribal government does not have primary enforcement responsibility pursuant to section 1413 of the Act, the term "State" means the Regional Administrator, U.S. Environmental Protection."</p> <p>The Virginia Office of Drinking Water (ODW) of the Department of Health has been delegated primary enforcement responsibility by EPA for drinking water standards in the Commonwealth. In turn ODW has delegated responsibility for certifying drinking water laboratories to the Division of Consolidated Laboratory Services (DCLS) of the Department of General Services.</p> <p>There is no legal basis for DCLS to include A2LA and the TNI NGAB program as an acceptable alternative to certify drinking water laboratories either inside or outside Virginia.</p>
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**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and 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.

**Result**

*Please state that the reason why the agency is recommending that the regulation should stay in effect without change.*

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

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 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, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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This is the first 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.