

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R130-22P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

R130-22 proposes to increase the fees for the Division to ensure the environmental Laboratory Certification Program (LCP) can continue to perform its statutory requirements including certifying and inspecting laboratories while maintaining appropriate records, staffing, and staff development. The laboratory certification program includes one supervisor, four staff environmental scientists, and one administrative assistant.

The LCP regulates laboratories that produce data used in regulatory decision-making by division programs in Safe Drinking Water, Water Pollution Control, Mining Regulation and Reclamation, Waste Management, and Corrective Actions. Pursuant to NRS 445A.428, 445A.863, and NRS 459.501, laboratories that perform analyses to meet requirements of the Clean Water Act, Safe Drinking Water Act, and the Resource, Conservation and Recovery Act must be certified by the State of Nevada. This program is funded by fees. Statutory Authority: NRS 445A.800 through 445A.955, 445A.300 through 445A.730, and 459.400 through 459.600.

The need for and purpose of the proposed regulatory amendment is to account for inflation and ensure the agency's continued ability to serve the regulated community and the public effectively. Agency costs have increased due to inflation and legislatively mandated personnel costs, in particular a Cost-of-Living Adjustment (COLA) of 12 percent in FY24 and 11 percent in FY 25 while fees have remained unchanged since 2004.

Additionally, the LCP is operating at a deficit and depleting its reserves. The agency needs the current number of staff to keep up with demand of the regulated community. At this time, without this regulatory amendment, the agency projects fee income verses budgeted expenditures to result in a shortfall of approximately \$150,000 for each fiscal year. The reserves are expected to cover the program through FY2024

and be nearly depleted. Therefore, the fee increase will be used to reestablish and maintain reserves.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

The Division held one hybrid (in-person and virtual) public workshop for R130-22P on December 16, 2022. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada. The workshop was held to present the substance of, and receive public comment on, the proposed regulation. Six members of the public and regulated industry attended the workshop either in-person or virtually.

The Legislative Counsel Bureau published its draft, R130-22P, in the Nevada Register on October 12, 2022. The Division accepted written comments on R130-22I and R130-22P up to December 23, 2022. The Division did not receive any written comments and/or questions concerning R130-22I and/or R130-22P.

This regulatory petition was scheduled to be heard by the SEC on January 19, 2023. This meeting was canceled in response to the Governor's Executive Order 2023-003.

Since that time, the Division has revised R103-22. These revisions are included as a green line version. The Division held another hybrid public workshop for the green line version of R130-22P on November 30, 2023. The public was again invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada. The workshop was held to present the substance of, and receive public comment on, the revised proposed regulation. Eleven members of the public and regulated industry attended the workshop either in-person or virtually. The Division accepted written comments on the green line version of R130-22P up to November 30, 2023. The Division did not receive any written comments concerning the green line version of R130-22P and received one question during the second public workshop regarding availability of the workshop presentation slides.

The SEC held a hybrid regulatory hearing on December 5, 2023, to consider possible action on the green line version of R130-22P. The SEC posted its public notice, which included a link¹ and instructions to access R130-22P as well as the revision and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-december-5-2023>

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended December 5, 2023, hearing: 58 (approximately)
- (b) Testified on this Petition at the hearing: 3

1. Andrea Seifert, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9526
aseifert@ndep.nv.gov
2. Jasmine Curiel, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9506
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3. Michael Perry, Southern Nevada Water Authority (in support of R130-22)
(contact information not provided)

- (c) Submitted to the agency written comments: 0

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through two public workshops and at the December 5, 2023, SEC hearing as noted in number 2 above.

In addition to the public workshops, potentially affected businesses (laboratories currently certified by the program) were surveyed regarding their preference for the fee adoption:

1. Option one: an immediate 48% increase in fees;
2. Option two: an 8% annual fee increase amortized over 5 years. This approach would have a lesser economic impact on small business;
3. Option three: an annual fee adjustment equal to the annual rate of inflation (3.7% in August 2023); and
4. Option four: an annual fee increase of 1/2 the annual inflation rate.

The majority of respondents selected option 2 for the fee adoption.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Commissioners unanimously adopted R130-22P with the green line changes change because the public and the SEC were satisfied with the proposed regulation.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The estimated economic effect on small business will be an initial 40 percent increase in fees, 15 percent increase in year two, 10 percent annual increases for the next two years, and a 5 percent increase in year five. An annual 3 percent increase for inflation will be determined annually from that point forward. The laboratories may pass on those fees to their clients.

Public. The regulatory amendments in R130-22P are expected to have no economic impact on the public.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. The regulatory amendments proposed in R130-22P are not expected to result in any additional costs to the Division.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed amendments in R130-22P do not overlap or duplicate other state or government agencies.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulatory amendments in R130-22P are no more stringent than what is established by federal law.

10. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Anticipated Total revenue increase year one (40 percent increase over FY24 fees) = \$200,936;

Total program revenue = \$703,275

Anticipated Total revenue increase year five (105 percent increase over FY24 fees) = \$525,198;

Total program revenue = \$1,027,538.

The proposed fee increase will provide funding to pay staff salaries, technical assistance to the regulated community, travel for training and inspections, databases, records retention, routine employee hardware and equipment and any other needs to ensure a viable Laboratory Certification Program. Additionally, a one-to two-year reserve will be established to ensure the program remains solvent.