DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

July 20, 2017
1:30 p.m. Central Time
Nebraska State Office Building
301 Centennial Mall South, Lincoln, Nebraska
Lower Level, Room A

The purpose of this hearing is to receive comments on proposed changes to Title 179, Chapter 20 of the Nebraska Administrative Code (NAC) – *Laboratory Certification and Agreement Requirements for Testing Drinking Water.* The purpose of the proposed changes is to bring the regulations into compliance with the statutory changes made to the Nebraska Safe Drinking Water Act in 2016. Prior to the statutory changes, all compliance testing for public drinking water systems, with the exception of coliform testing, has been conducted at the DHHS Division of Public Health Environmental Health Laboratory. Analytical laboratories in and outside of Nebraska will now be able to conduct compliance drinking water laboratory testing for Nebraska public water systems. The current draft regulations reflect proposed changes made to the text following an initial public hearing held in May 2017.

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively. A copy of the proposed changes is available online at http://www.sos.ne.gov, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8223. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, Room 1305, State Capitol, Lincoln, NE, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

PROPOSED REGULATION
POLICY PRE-REVIEW CHECKLIST

Agency: DHHS – Division of Public Health
Title, Chapter of Regulation: Title 179 NAC 20
Subject: Laboratory Certification & Agreement Requirements for Testing Drinking Water
Prepared by: Mary Sue Semerena
Telephone: 402-471-0928

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

   Revisions to Title 179 NAC 20 incorporates changes from statutory changes to the Nebraska Safe Drinking Water Act (LB 19 (2015)). These regulations will allow laboratories to perform compliance water testing for public water systems in Nebraska. Prior to the passage of this bill, all compliance testing for public drinking water systems has been conducted at the DHHS Division of Public Health Environmental Laboratory with the exception of coliform testing. The analytical laboratories both in and outside of Nebraska will be able to perform drinking water laboratory testing for public water systems. This offers a level of competition that has not been available prior to the passage of the bill. That is a positive aspect of the new regulations. Our Environmental Laboratory stands to lose business as a result of this bill. How much remains to be determined. The public water systems enjoy a level of service that may change with new partners. This will be a learning experience for us all.

2. Describe changes being proposed to current policy and briefly provide rationale.

   The changes required by LB 19 are actually an expansion of current policy. We currently have agreements with laboratories to conduct compliance testing for coliform in drinking water. This was done because of the short holding time of the samples. LB 19 expands the number and types of tests that laboratories can perform for compliance samples. A compliance sample is one which a public water system submits to show they are in compliance with regulations.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.) Updated forms to coincide with new changes.

2. Annual changes – cost of living, hunting season schedules, etc. No

3. Law was changed – federal ___ or state _X__ [Cite authorizing statute(s) or legislative bill(s)] LB 19 (2015) Neb. Rev. Stat. § 71-5306

4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority) No
5. Constituent initiated No
6. Financial needs – increases/decreases in fees NO
7. Litigation requires changes in rules No
8. Addresses legal or constitutional concerns of Attorney General's office No
9. Implements federal or court mandate No
10. Other (explain) None

C. What happens if these rules are not adopted?

Displeasure of the Legislature and a group of stakeholders who are anxious for these regulations.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy? No. This set of regulations will change the policy of Division of Public Health that all laboratory compliance testing, with the exception of coliform testing, will be performed by the Environmental Laboratory. These regulations will allow any laboratory certified by the Department to perform compliance testing for public water systems.

2. Does the policy in the proposed regulation reflect legislative intent? Yes it reflects legislative intent.

3. Is the policy proposed in the regulation a state mandate on local government? No Is it funded? N/A

4. Is the policy proposed in the regulation a federal mandate on local government? No Is it funded? N/A

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE? Yes. There will be increased cost but also increased fees.

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? Yes. These draft regulations have been reviewed by a stakeholder group.

3. Does the proposed regulation impact another agency? No. Explain the impact. We included the Department of Environment Quality in Our Stakeholder's Group. They believe the changes have no impact.

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? These regulations will increase reporting of laboratory results for those laboratories that choose to increase the type of compliance testing they want to offer to public water systems.

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information. The amount of spending is based on the number of tests ordered. The number of tests will drop as public water systems choose laboratories closer to their operations. Not only will test numbers and revenues drop, we anticipate test fees will rise. The cost per test is partially a function of the testing volume.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE. No impact on FTE in the first couple of years. In future years, the loss of test volume in the Environmental Laboratory will dictate what will happen to the level of FTEs.

F. Unique problems or issues and recommendations.

This set of regulations allows laboratories, other than the DHHS Public Health Environmental Health Laboratory, to perform compliance laboratory testing for public water systems in Nebraska. The Environmental Laboratory provides for each public water system the necessary water sampling kits automatically.

Even though that will continue for our customers, we will no longer be able to do that for public water systems that choose other laboratories for some or all of their testing. Our concern is the public water systems that do not collect samples on time or at all can be subject to administrative penalties. That was the basis for setting up our original system of providing sample kits automatically. Since the kits are included in the price of the test, in the new system, the new laboratories will have to supply the kits.

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

We have had a stakeholder's group review these regulations. I have attached a copy of the invited stakeholders.

We do not expect opposition to these regulations. There may be suggestions for small changes.

H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed. No.

DHHS Division Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Thomas L. Williams MD

Thomas L. Williams, MD
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

4-5-2017
Date

FISCAL IMPACT STATEMENT

Agency: **Department of Health and Human Services**	
Title:179	Prepared by:Mary Sue Semerena
Chapter:20	Date prepared:March 30, 2017
Subject: Laboratory Certification	Telephone:402-471-0928

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(☐)	(☐)	(☐)
Increased Costs	(☐)	(☒)	(☒)
Decreased Costs	(☐)	(☐)	(☐)
Increased Revenue	(☐)	(☒)	(☒)
Decreased Revenue	(☒)	(☐)	(☐)
Indeterminable	(☐)	(☐)	(☐)

Provide an Estimated Cost & Description of Impact:

State Agency: The Public Health Environmental Laboratory will have a small increase in revenue from the laboratories that add new sections to their certifications as a results of LB 19. More importantly, revenue will decrease in time as external laboratories take on laboratory analyses that have up till now have been performed by the Environmental Laboratory. This decrease in revenue is dependent on the number of tests the outside laboratories begin to analyze.

Political Subdivision: Political subdivisions that have laboratories that want to expand their testing for public water systems as a result of these regulations will have to pay the fee for the section they want to add to their certification. They will, as a result, be able to increase revenue by adding analytes.

Regulated Public: The Laboratories that want to do compliance testing for public water systems will have to apply to the Department for those laboratory sections they want to be certified. They will have to pay the fee associated with that laboratory section.