

# Comments of the Independent Regulatory Review Commission



## Department of General Services Regulation #8-27 (IRRC #3237)

### State Metrology Laboratory Fee Schedule

August 28, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the June 29, 2019 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of General Services (Department) to respond to all comments received from us or any other source.

#### **1. Determining whether the regulation is in the public interest; Economic or fiscal impacts; Reasonableness; Compliance with the RRA.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

The Department's Preamble and responses to several questions on the RAF are not sufficient to allow this Commission to determine if the regulation is in the public interest. In the Preamble and RAF submitted with the final-form regulation, we ask the Department to provide more detailed information related to economic and fiscal impact as required under § 745.5(a) of the RRA. Specifically, we ask the Department to address the following concerns:

- The Department states in response to RAF #10 that the regulation will allow the Commonwealth to charge an appropriate fee for the services provided, thus ensuring that the cost of performing these testing services is borne by the parties who are receiving the services and not by taxpayers. The Preamble states that over the past four years, the State Metrology Laboratory (Laboratory) has had a total shortfall of approximately \$1.6 million. Based on the Department's response to RAF #15, we note that the fees appear to be increasing on average by 160 percent. While we recognize that the Department is statutorily required by Section 4178 of the Consolidated Weights and Measures Act to charge and collect fees for actual metrology laboratory calibration, type evaluation and any other testing services which may be rendered (3 Pa.C.S. § 4178), this increase is

significant. House State Government Chairman Garth Everett comments that Pennsylvania's fees would be among the highest in the cost comparison study submitted by the Department. We ask the Department to explain how the economic impact of the fees and the percentage increase of fees are reasonable and in the public interest.

- In response to RAF #28, the Department explains that in October 2013, the Department calculated the average of the fees charged by seven state laboratories (California, Hawaii, Missouri, Oklahoma, South Carolina, Virginia and Vermont) and one county laboratory (Los Angeles County, California) over a twelve-year period for each parameter and used that as the baseline fee. The Department then updated those average baseline fees by a calculated historical average fee increase of 16.71 percent (using data from 2000 to 2012 biennial NCSL State Laboratory Program Workload Surveys) to determine the fees in the proposed regulation. It has been six years since the Department's last fee increase; why is the Department using a 12-year average rather than a six-year average? We ask the Department to provide the specific fees charged by the labs in the seven states and one county, and to show how each fee in the final-form regulation is calculated and that each fee is in line with the other states. Additionally, we ask the Department to explain why the method used for calculating fees in the final-form regulation is reasonable and in the public interest.
- In response to RAF #12, the Department states that the proposed fees are in line with fees charged by the labs in the seven states and one county referenced above. Why did the Department choose these states rather than states surrounding Pennsylvania? Did the Department consider using Pennsylvania-based data? The Department states in the Preamble that the 2010 fee increases were based on data from other states, as well, and, as indicated by the approximately \$1.6 million deficit, were inadequate to meet the cost to run the Laboratory. We ask the Department to evaluate the use of data specific to Pennsylvania in determining the fees in the final-form regulation, and to explain why the data used for calculating fees in the final regulation is reasonable and in the public interest.

## 2. Miscellaneous clarity.

The Department states in response to RAF #15 that "those fees will be increased **on a yearly basis** under the proposed rulemaking." [Emphasis added.] Since the proposed regulation provides for a one-time fee increase, the Department should correct this statement in the final-form RAF.