



Fast Track Proposed Regulation Agency Background Document

Agency name	Office of the Attorney General of Virginia
Virginia Administrative Code (VAC) citation	1 VAC 45-10-10 through 45-10-100
Regulation title	Regulations Governing Disclosure of CID (Civil Investigative Demand) Material
Action title	Extends coverage to material obtained through CIDs issued pursuant to the Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions Law; conforms procedure for disclosure to the requirements of the statute; and makes stylistic amendments.
Date this document prepared	June 2, 2014

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed amendments to Va. Admin. Code §§ 45-10-10 through 45-10-100 are meant to modernize the regulations. The regulations, as currently drafted, are designed to provide a uniform procedure for local officials to request copies of material we obtain through Civil Investigative Demands issued pursuant to the Virginia Antitrust Act. The proposed amendments extend their coverage to Civil Investigative Demands issued pursuant to statutes that were passed after the regulations were originally promulgated and that incorporate the Virginia Antitrust Act's Civil Investigative Demand provision. The proposed amendments also make stylistic and other non-substantive changes.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"CID" means Civil Investigative Demand.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Office of the Attorney General/Department of Law approved the proposed amendments on January 23, 2014. The regulations are entitled "Regulations Governing Disclosure of CID (Civil Investigative Demand)."

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 Code § 59.1-9.10(M) authorizes the Attorney General to promulgate rules and regulations pertaining to Civil Investigative Demands issued pursuant to the Virginia Antitrust Act. Virginia Code §§ 57-59(C), 59.1-201.1, and 59.1-516 incorporate the provisions of Virginia Code § 59.1-9.10, thereby authorizing the Attorney General to promulgate regulations pertaining to Civil Investigative Demands issued pursuant to the Solicitation of Contributions law, Virginia Consumer Protection Act, and the Virginia Telephone Privacy Protection Act.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed amendments are necessary to modernize the regulation and to expand its coverage to the statutes that incorporate the Virginia Antitrust Act's Civil Investigative Demand provision. This will protect the welfare of citizens by giving local law enforcement officials, who have concurrent enforcement authority under those statutes, the ability to access evidence and information obtained by the Attorney General through Civil Investigative Demands, thus encouraging enforcement of those laws.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The rulemaking is expected to be noncontroversial because it does not directly affect the public. Its direct effect is limited to those law-enforcement authorities that represent the Commonwealth, its political subdivisions, or its public agencies that are empowered to enforce the Virginia Antitrust Act and the other statutes that incorporate its CID provision. In addition, the rulemaking is not designed to limit those officials’ access to the material the Attorney General obtains through CIDs. Instead, it is designed to set up a formal, transparent process for the Attorney General to evaluate information sharing requests.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

The proposed amendments do not add any new provisions. The only substantive changes brought about by the proposed amendments are: (1) extending the coverage of the regulations to materials obtained through CIDs issued under the Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law; and (2) requiring any requesting authority to show that it is subject to confidentiality requirements similar to those found in Virginia Code § 59.1-20(N), as opposed to requiring the authority to show that it will comply with those confidentiality requirements, to better reflect the requirements of the statute.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

There are no disadvantages to the public or the Commonwealth to implementing the proposed regulations. The primary advantage to the Commonwealth and the public is that the regulations will create a clear framework for information sharing with local officials, which will encourage those officials to exercise their authority to enforce those statutes.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by the regulations.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulations will not have an adverse impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or	The regulations should have no economic impact
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other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	on anyone.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	We estimate that zero entities will be affected.
Benefits expected as a result of this regulatory proposal.	We expect no economic benefits from the adoption of the proposed amendments.
Projected cost to the state to implement and enforce this regulatory proposal.	The state will bear no cost in implementing or enforcing the regulatory proposal.
Projected cost to localities to implement and enforce this regulatory proposal.	Localities should face no cost in enforcing the regulatory proposal.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	We project that the regulatory proposal will not cost anyone anything.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The essential purpose of the proposal is to update the CID regulations to cover materials obtained through CIDs issued under the Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law. There are no viable alternatives to achieve this purpose.

Periodic review and small business impact review report of findings

If this fast-track regulation is not the result of a periodic review and/or small business impact review report of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

If this fast-track regulation is also a small business impact review report of the regulation, 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 is required.

Commenter	Comment	Agency response
N/A	N/A	N/A

The regulation meets the criteria set out in Executive Order 14 (2010). The regulations and the proposed amendments serve the public welfare by promoting the enforcement of the Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law.

Family impact

Please assess the 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.

The proposed amendments will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
45-10-10	N/A	The current regulation defines “law enforcement authority” as “any public official, and his designees, representing the Commonwealth, which includes his political subdivisions or his public agencies, and empowered to enforce the Commonwealth’s antitrust laws regulating commerce in any manner authorized by those laws.”	The proposed amendments change the definition to “any public official, and his designees, representing the Commonwealth, which includes its political subdivisions and its public agencies, and empowered to bring civil actions to enforce the Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, or the Solicitation of Contributions law.” The changes are intended to change the pronoun referring to the Commonwealth from “his” to “its” and extend the definition to include public officials that may bring civil actions to enforce the Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law in addition to the Virginia Antitrust Act.
45-10-10	N/A	The current regulation defines “material” to include, but not be limited to, “names, testimony, documents or answers to interrogatories which are taken, furnished, received, examined or copied pursuant to CIDs issued by the Attorney General pursuant to the Virginia Antitrust Act.	The proposed amendments change the definition to the following: “‘Material’ shall mean any information taken, furnished, received, examined or copied pursuant to CIDs issued by the Attorney General pursuant to the Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, or the Solicitation of Contributions law, including, but not limited to, names, testimony, documents, or answers to interrogatory.” The changes are intended to provide a concrete definition of the term and to extend the definition to include material obtained pursuant to CIDs issued pursuant to the acts that incorporate the Antitrust Act’s CID provision.
45-10-10	N/A	The current regulation defines “person” as “any natural person, corporation, trust, partnership, proprietorship or association of any type.”	The proposed amendments change the definition to “any natural person, corporation, trust, partnership, association, company or any other legal entity.” The changes are meant to modernize the definition to cover new forms of business entities and any future entity that may be created.
45-10-20	N/A	The current regulation states that the purpose of the chapter is to provide a regular procedure for sharing material, to ensure that material furnished is	The proposed amendments delete “and applicability of chapter” from the title of the section. They add “The purpose of this chapter is to” to the beginning of the section to make it a complete sentence. They change “antitrust violations” to

		maintained subject to the confidentiality requirements of Virginia Code § 59.1-9.10(N), to facilitate the investigation of antitrust violations and the full enforcement of law in exercise of the Commonwealth’s police power regulating commerce, and to create penalties for violating this chapter.	“violations of the Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law” to reflect the expanded scope of the regulations. They change “full enforcement of the law in exercise of the Commonwealth’s police power regulating commerce” to “the full enforcement of those laws in exercise of the Commonwealth’s police power” in recognition that the chapter applies to the additional statutes listed above.
45-10-30	N/A	The current regulation provides that the chapter applies to all law-enforcement authorities that request material from the Attorney General which was obtained through CIDs issued pursuant to the Virginia Antitrust Act and that the chapter does not apply to federal law-enforcement authorities.	The proposed amendments delete “which was obtained through CIDs issued pursuant to the Virginia Antitrust Act” because it is unnecessary. The term “material” is defined to mean information obtained through CIDs issued pursuant to one of the enumerated acts.
45-10-40	N/A	“Any law-enforcement authority may request of the Attorney General material obtained directly through CIDs. The request shall be in writing. The request shall state with reasonable specificity the material desired, subject matter of the investigation for which material is desired and the specific police powers of the Commonwealth regulating commerce that the authority is empowered to enforce. All requests shall be directed to the Attorney General and signed by the chief officer of the law-enforcement authority. All requests for material shall be used exclusively as delineated by statute and by these regulations. The request for material shall further include an affirmative showing, to the satisfaction of the Attorney General, that the law-enforcement authority will comply with the confidentiality requirements of § 59.1-10(n) of the Code of Virginia.”	In the first sentence, the proposed amendments delete “of the Attorney General material obtained directly through CIDs” and substitutes “material from the Attorney General.” This is a stylistic change. In the third sentence, the proposed amendments insert “the” between “which” and “material,” delete “police powers of the Commonwealth regulating commerce” and replace it with “statute,” and add “under which the investigation is being conducted” to the end of the sentence. The changes are meant to recognize that the regulations now apply to officials seeking information obtained pursuant to CIDs issued under the Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law in addition to the Virginia Antitrust Act. In the last sentence, the proposed amendments delete “will comply with” and replace it with “is subject to confidentiality requirements similar to” to better reflect the statute which authorizes the regulation, which specifies that the law enforcement authority with whom the Attorney General shares information with must have restrictions governing confidentiality similar to those imposed on the Attorney General by § 59.1-9.10(N). Finally, in the last sentence, the proposed amendments change the citation from § 59.1-10(n) to § 59.1-9.10(N)

			to correct a typographical error and to capitalize the letter of the subsection to reflect the Code's style.
45-10-50	N/A	<p>“Within seven days of receipt of a request for material, the Attorney General, in his discretion, shall inform the chief officer of the law-enforcement authority: (i) of his refusal to disclose any material; or (ii) that no such material exists; or (iii) that all or part of the material shall be made available, at the discretion of the Attorney General, for examination at the Office of the Attorney General; or (iv) that all or part of the material shall be made available, at the discretion of the Attorney General, for copying at the Office of the Attorney General. If option (iii) or (iv) is exercised, it shall be so exercised within 21 days of the receipt of the request.”</p>	<p>The proposed amendments remove the “or” between (i) and (ii) and between (ii) and (iii). This is a stylistic change.</p>
45-10-70	N/A	<p>“The law enforcement authority and its custodian in receipt of material shall strictly maintain the confidentiality of CID material. The law-enforcement authority shall use material provided pursuant to this chapter to conduct an investigation into violations of the Commonwealth’s laws regulating commerce and prohibiting restraints on trade or to conduct any litigation related to such violations. Nothing herein shall preclude the use of the materials provided by this chapter before a court of law except as may otherwise be precluded by law.”</p>	<p>In the first sentence, the proposed amendments delete “CID” and replace it with “the.” This is meant to avoid confusion, as “material” is a defined term, but “CID material” is not. In the second sentence, the proposed amendments delete “Commonwealth’s laws regulating commerce and prohibiting restraints on trade” and substitute “Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law.” This is meant to reflect the new statutes that incorporate the Virginia Antitrust Act’s CID provision. Also in the second sentence, the proposed amendments add “civil” before “litigation” to ensure that the material is only used for the civil enforcement of the Solicitation of Contributions law, which also gives some law-enforcement officials criminal enforcement authority. In the final sentence, the proposed amendments change “material” to “materials.” This is meant to maintain consistency, as the term is singular in the other sections.</p>
45-10-80	N/A	<p>“The law-enforcement authority and its custodians in receipt of materials shall not</p>	<p>The proposed amendments change the title from “Restrictions on use” to “Restrictions on disclosure” to better reflect</p>

		release material provided pursuant to this chapter, either directly or indirectly, to any person not employed by or assigned to the law-enforcement authority for purposes of enforcement of the antitrust laws, nor to any other law-enforcement authority.”	the substance of the section. They add “civil” before “enforcement” to restrict the availability of the material to civil enforcement of the Solicitation of Contributions law. They also change “antitrust laws” to “Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, or the Solicitation of Contributions law” to reflect the additional statutes that incorporate the Virginia Antitrust Act’s CID provision. They change “materials” to “material” to make the usage consistent throughout the regulation.
45-10-90		“The law-enforcement authority and its custodian in receipt of materials shall be bound to abide by any further regulations promulgated by the Attorney General pertaining to the safekeeping and custody of civil investigative demands.”	The proposed amendments change “civil investigative demands” to “such material.” This change is intended to make it clear that the regulations that the law-enforcement authority will be subject to deal with the custody and sharing of material, not the CID itself.
45-10-100		“In addition to the criminal penalties enumerated in the Virginia Antitrust Act, when applicable, any law-enforcement authority found to have used material provided by the Attorney General in a manner inconsistent with this chapter shall be required to immediately return all materials provided as well as copies thereof and information derived therefrom. The Attorney General may also suspend for a definite period the law-enforcement authority from receiving additional materials pursuant to this chapter.”	The proposed amendments delete “In addition to the criminal penalties enumerated in the Virginia Antitrust Act, when applicable.” The Virginia Antitrust Act only imposes criminal penalties for failing to maintain the secrecy of material on the Attorney General or his designees. In addition, the proposed amendments change “materials” wherever it occurs to “material” to make the usage consistent throughout the regulation, add “additional” between “receiving” and “materials” to clarify the meaning of the provision, and set off the phrase “as well as copies thereof” with commas to make the sentence easier to read and understand.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements