



Virginia Department of Planning and Budget **Economic Impact Analysis**

1 VAC 45-10 Regulations Governing Disclosure of CID (Civil Investigative Demand)
Department of Law
Town Hall Action/Stage: 5680 / 9197
March 10, 2021

Summary of the Proposed Amendments to Regulation

Following a periodic review,¹ the Department of Law (Department) proposes to update this regulation regarding civil investigative demands (CID) to clarify that 1) CIDs issued pursuant to the Bad Faith Assertions of Patent Infringement statutes are subject to this regulation, and 2) this regulation does not apply to law-enforcement authorities in other states.

Background

The Virginia Antitrust Act, the Solicitation of Contributions law, Virginia Consumer Protection Act, and the Virginia Telephone Privacy Protection Act all authorize the Attorney General to issue CIDs. This regulation contains rules on sharing of information obtained through such demands with local law enforcement authorities (e.g., local Commonwealth's Attorneys).

Estimated Benefits and Costs

Following a periodic review of this regulation, the Department proposes that the authority to share information obtained through CIDs issued pursuant to the "Bad Faith Assertions of Patent Infringement" statutes, which were enacted by Chapter 810 and 819 of the 2014 Acts of Assembly,² be incorporated in the regulatory text.

The Department states that since 2015 it has handled between 15 and 20 cases involving bad faith assertions of patent infringement, most of which did not involve litigation. Furthermore, the Department asserts that while these CIDs could have been issued under the

¹ <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1998>

² <https://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+CHAP0810&141+ful+CHAP0810>
<https://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+CHAP0819&141+ful+CHAP0819>

statute, no CIDs have been issued under the bad faith assertions of patent infringement law during the same time period nor has any of the local Commonwealth's Attorneys with whom it shares enforcement authority requested sharing of such CID material. The proposed change mainly clarifies the existing authority of the Department to issue CIDs and share the information regarding bad faith assertions of patent infringement. Thus, the proposed amendment is not expected to create any economic effects if this change becomes final other than improving the clarity of the text.

Additionally, consistent with the Code of Virginia § 59.1-9.10(M), the Department proposes to clarify that sharing of CID information with law-enforcement authorities representing states other than the Commonwealth is not limited by this regulation. Current language is clear that sharing of CID information with federal authorities is not inhibited by this regulation. The proposed change would clarify that this regulation also does not inhibit the Department's authority to share information with law enforcement authorities from other states. This change is also not expected to create any economic effects upon becoming final other than improving the clarity of the regulatory text.

Businesses and Other Entities Affected

The proposed regulation applies to the Department and the 120 local Commonwealth's Attorneys who have authority to enforce the Bad Faith Assertions of Patent Infringement statutes. As noted above, the proposals mainly clarify the regulatory text. Thus, no adverse economic impact³ on any entity is indicated and no entity appears to be disproportionately affected.

Small Businesses⁴ Affected:

The proposed amendments do not adversely affect small businesses.

³ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Localities⁵ Affected⁶

The proposed amendments neither disproportionately affect particular localities, nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not affect employment.

Effects on the Use and Value of Private Property

The proposed amendments neither effect the use and value of private property, nor affect real estate development costs.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁵ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁶ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.