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Fast Track Proposed Regulation
Agency Background Document

Agency name	Office of the State Inspector General
Virginia Administrative Code (VAC) citation	__1__ VAC_42__-_30___
Regulation title	Fraud and Abuse Whistle Blower Reward Fund
Action title	Per *Code of Virginia* § 2.2-3014: Fraud and Abuse Whistle Blower Reward Fund. The Office of the State Inspector General shall promulgate regulations for the proper administration of the Fund including eligibility requirements and procedures for filing a claim. The Office of the State Inspector General shall submit an annual report to the General Assembly summarizing the activities of the Fund.
Date this document prepared	10/6/2014

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

These proposed regulations define the Fraud and Abuse Whistle Blower Reward Fund (Fund) and its administration by the Office of the State Inspector General (OSIG), including eligibility requirements, amount, distribution, process for leftover moneys at the end of the fiscal year, and the Fund's establishment on the books of the Comptroller.

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.

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Commonwealth" means the Commonwealth of Virginia.

"Employee" means any person who is regularly employed full-time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable by, no more often than biweekly, in whole or in part, a state agency.

"Employee Suggestion Program (ESP)" is a Department of Human Resources Management (DHRM) program that encourages, recognizes, and rewards state employees for suggestions proposed that are adopted and lead to reduction in state expenditures, improvement in productivity or quality of state services, increase in state revenues, or improved or safer working conditions. The ESP is a separate DHRM initiative and is not connected with the WBPA.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the state agency.

"Fraud" means the intentional deception perpetrated by an individual or individuals or an organization or organizations, either internal or external to state government, which could result in a tangible or intangible benefit to themselves, others, or the Commonwealth, or could cause detriment to others or the Commonwealth. Fraud includes a false representation of the facts, whether by words or by conduct. Fraud also includes false or misleading statements, or by the concealment of essential information, or information or actions that deceive or are intended to deceive.

"Fraud and Abuse Whistle Blower Protection Act (WBPA) Program" is the policy of the Commonwealth that Commonwealth citizens and employees of state government be freely able to report instances of wrongdoing or abuse committed by their employing agency, other state agencies, or independent contractors of state agencies.

"Fraud and Abuse Whistle Blower Reward Fund (Fund)" is a fund used solely to provide monetary rewards to Commonwealth citizens who have disclosed information of wrongdoing or abuse under the WBPA for a disclosure that results in a savings of at least $5,000. The amount of the reward is equal to 10% of actual sums recovered by the Commonwealth as a result of the disclosed wrongdoing or abuse. The Office of the State Inspector General administers the Fund and defines the regulations for its operation.

"Good Faith Report" is a reported incident of possible wrongdoing or abuse made without malice, for which the person reporting has reasonable cause to believe wrongdoing or abuse occurred.

"Hotline Coordinator" is a qualified state employee, designated by a state agency director or chief administrator, responsible for conducting State Fraud, Waste, and Abuse Hotline investigations referred to the agency by the Office of the State Inspector General.

"Internal Audit Director/Executive" is a director of a state agency internal audit program.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.

"Office of the State Inspector General (OSIG)" is a state agency that conducts independent investigations, performance reviews, and other services designed to provide objective and useful information to the Commonwealth and those charged with its governance and promote efficiency and effectiveness in state government executive branch agencies. OSIG administers the Fund.

"Reward" means a monetary benefit payable from the Fund by the OSIG to an eligible whistle blower.

"Screening Process" is the OSIG's internal review to ensure reports of information or disclosures of wrongdoing fall within the authority of the WBPA.

"State Agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

"State Fraud, Waste, and Abuse Hotline (Hotline)" is the program that provides Commonwealth citizens with a confidential and anonymous method to report suspected occurrences of fraud, waste, and abuse in state agencies and institutions, and to investigate such occurrences to determine their validity and make appropriate recommendations to address deficiencies.

"Whistle Blower" is a Commonwealth citizen who witnesses or has evidence of wrongdoing or abuse and who makes a good faith, open, and public report of the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

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.

Action: First-time promulgation of *Code of Virginia* **§ 2.2-3014**
Date:10/06/2014
Agency: Office of the State Inspector General
Title of Regulation: Fraud and Abuse Whistle Blower Reward Fund

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.

Code of Virginia **§ 2.2-3014**

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.

These regulations will:

- Provide direction to state agency employees and citizens for reporting instances of fraud and/or abuse within executive branch agencies.
- Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed within executive branch agencies and non-state agencies.
- Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed by independent contractors of state agencies.
- Provide resources to pay monetary rewards to state agency employees and citizens who provide relevant information to the OSIG that results in recovery of funds on behalf of the Commonwealth.
- Provide statutory protection for state employees and citizens who report instances of abuse or wrongdoing from discrimination or retaliation by state agencies.

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.

OSIG is not anticipating any opposition to these regulations.

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.

This is the first issue of the Fraud and Abuse Whistleblower Fund regulations. The proposed regulation defines the Fraud and Abuse Whistle Blower Reward Fund (Fund) and its administration by the Office of the State Inspector General, including Fund eligibility requirements, Fund amount, Fund distribution,

process for leftover Fund moneys at the end of the fiscal year, and the establishment of the Fund on the books of the Comptroller.

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.

Advantages to Public:

- Provide guidance on how to report fraud and abuse under the Whistle Blower Program
- Provide protection information for retaliatory actions
- Establish processes for citizens to receive moneys from the Fund

Advantages to the Commonwealth:

- Establish expectations of OSIG for management of the Fund
- Establish parameters for citizens filing claims under the Fund

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.

N/A

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.

N/A

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.

N/A

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 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	All citizens of the Commonwealth
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.	N/A
Benefits expected as a result of this regulatory proposal.	Guidelines for the Fund Promotes good government practices
Projected cost to the state to implement and enforce this regulatory proposal.	None
Projected cost to localities to implement and enforce this regulatory proposal.	None
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.	None

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.

N/A

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 the 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

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.

N/A

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

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
§ 2.2-3014	Establish regulations for the administration of the Fraud and Abuse Whistleblower Reward Fund	None	Publication of Fund guidelines