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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Office of Attorney General
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC §§ 45-10-10 through 45-10-100
VAC Chapter title(s)	Regulations Governing Disclosure of CID (Civil Investigative Demands)
Date this document prepared	November 17, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the “Definitions” section of the regulation.

The only acronyms used in this form are OAG, which stands for Office of Attorney General; CID, which stands for Civil Investigative Demand; and VAA, which stands for Virginia Antitrust Act. The only technical terms used in the form are “law-enforcement authority” and “material,” which are defined in the definitions section of the regulation. 1 VAC 45-10-10.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The OAG is the promulgating agency. The Attorney General is the chief executive officer of the Virginia Department of Law and authorized to "perform such duties as may be prescribed by law." Va. Code § 2.2-500. The VAA, Virginia Code §§ 59.1-9.1 through 59.1-9.17, authorizes the Attorney General to promulgate rules and regulations to implement and carry out the provisions of the section giving the Attorney General authority to issue CIDs. Va. Code § 59.1-9.10(M). The CID regulations were implemented pursuant to this authority in August 1981 and amended in November 2015 to reference three additional statutes that authorize the Attorney General to issue CIDs to investigate possible statutory violations, and that authorize other Virginia law-enforcement authorities to enforce the same statutes, i.e., to address additional situations where the OAG may desire to share CID material with other Virginia law-enforcement authorities. The three additional statutes listed at that time were the Solicitation of Contributions law, Virginia Code §§ 57-48 through 57-69; the Virginia Consumer Protection Act, Virginia Code §§ 59.1-196 through 59.1-207; and the Virginia Telephone Privacy Protection Act, Virginia Code §§ 59.1-510 through 59.1-518. See Va. Code §§ 57-59(C), 59.1-201.1, and 59.1-516.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The only alternative would be to have no regulations governing the information sharing procedures relating to CID material received by the OAG. This alternative was rejected in favor of continuing to have required and written procedures governing our sharing of CID material with other Virginia law-enforcement authorities, as we have since 1981. If we continue to have regulations in this area, the regulations should be consistent and apply to all similarly-situated statutes, i.e., those where we have CID authority and share enforcement authority with other Virginia law-enforcement authorities. The proposed amendments are needed for continued consistency.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
N/A	N/A	N/A – No comments received.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order No. 14 (2018). It is necessary to interpret the law and identify the specific state law-enforcement authorities with whom the OAG may share CID investigative material. The regulation protects the public health, safety, and welfare by limiting the Virginia law-enforcement authorities with which the OAG may share access to CID material, restricting the use and

disclosure of such material by any state law-enforcement authorities that receive it, and generally by ensuring the confidentiality of such material when it is shared. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

After periodic review, the OAG is recommending two amendments to the CID Regulation: (1) amending 1 Va. Admin. Code §§ 45-10-10, 45-10-70, and 45-10-80 to include the Bad Faith Assertions of Patent Infringement law, Virginia Code §§ 59.1-215.1 through 59.1-215.4, in the list of statutes for which the Attorney General can share CID material with other Virginia law-enforcement authorities; and (2) amending 1 Va. Admin. Code § 45-10-30 to make clear that the chapter does not apply to law-enforcement authorities that represent States other than the Commonwealth.

The first proposed amendment is needed for consistency. The amendment will allow the OAG to share CID material it receives with the other Virginia law-enforcement authorities that can enforce the Bad Faith Assertions of Patent Infringement law, similar to the manner in which the OAG currently can share relevant CID materials with other law-enforcement authorities that can enforce the VAA, the Solicitation of Contributions law, the Virginia Consumer Protection Act, and the Virginia Telephone Privacy Protection Act.

The second proposed amendment also is needed for consistency. The amended provision currently states that the chapter "shall not apply to federal law-enforcement authorities." Without the amendment, the OAG is concerned that someone may have the mistaken impression that we do not on occasion share CID material with the Attorneys General and agencies of other states that enforce similar consumer protection laws. Similar to our ability to share CID material with federal law-enforcement authorities, the OAG takes the position that Virginia Code § 59.1-9.10(N) authorizes it to share CID material it receives with the Attorneys General and agencies of other states who enforce similar laws, so long as such Attorneys General or agencies are subject to confidentiality restrictions similar to those imposed on the OAG.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The amendments proposed here resulted from a periodic review. As noted above, the existing regulation was promulgated in 1981 and last amended in 2015 as part of another periodic review. Because they govern the procedures that apply to the OAG's sharing of CID material with other Virginia law-enforcement authorities who enforce the same laws, there is a continued need for, and there will be a continued benefit from, having the regulation. The number of Virginia statutes where the OAG shares enforcement authority with other Virginia law-enforcement authorities continues to grow. The regulations are not complex, have no direct impact on small businesses, and do not conflict with any federal or state law or regulation. The OAG has not received any complaints or comments from the public concerning the regulations as part of the periodic review process or otherwise.