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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Office of the State Inspector General
Virginia Administrative Code (VAC) citation(s)	__1__ VAC__42_-30__
Regulation title(s)	Fraud and Abuse Whistle Blower Reward Fund
Action title	Per <i>Code of Virginia</i> § 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	9/22/2015

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

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, 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.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Without a regulation that establishes the criteria for the Fraud and Abuse Whistle Blower Reward Fund — including eligibility requirements, award distribution amount and administration of the fund — persons who witness, have evidence of, or suspect fraud, waste and abuse in state agencies and institutions may be reluctant and unable to report the wrongdoing or abuse. Such reluctance and inability to report a wrongdoing or abuse creates an emergency situation.

OSIG authority to promulgate regulations was established in 2011. The previous Fast Track Proposed Regulation was withdrawn to file Emergency/NOIRA. (Previous Fast Track 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

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

Code of Virginia [§ 2.2-3014](#)

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

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.

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

OSIG requires emergency regulations to comply with Code of Virginia [§ 2.2-3014](#) while the NOIRA process is under way.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

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.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
301VAC42-30-10	Proposed policy	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Provide readers with information on the Whistle Blower Protection Act and Whistle Blower Reward Fund.
30 1VAC42-30-20	Proposed definition of terms	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Provide readers with definitions for technical terms in regulations and how technical terms apply to Whistle Blower Reward Fund.
30 1VAC42-30-30	Proposed OSIG responsibilities	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains OSIG’s role in administering the Whistle Blower Protection Act Program and the Whistle Blower Reward Fund.
301VAC42-30-40	Proposed WBPA Program/Fund Notification	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains how OSIG will communicate information about and advertise the WBPA Program and the Whistle Blower Reward Fund.
301VAC42-30-50	Proposed guidelines for reporting alleged fraud, abuse, or wrongdoing	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Provides readers with guidelines for reporting instances of alleged fraud, waste, or other wrongdoing in state government executive branch agencies.
301VAC42-30-60	Proposed guidelines for OSIG receipt of an allegation	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains process OSIG staff perform when receive a whistle blower allegation under the WBPA program.
301VAC42-30-70	Proposed guidelines for OSIG’s allegation investigative process	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains process OSIG follows when investigating a whistle blower allegation.
301VAC42-30-80	Proposed guidelines for Whistle Blower Reward Fund as a non-reverting fund.	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains structure of Whistle Blower Reward fund and what happens to its moneys.
301VAC42-30-90	Proposed guidelines for fund payments made out to whistle blowers.	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains how payments from the Whistle Blower Reward Fund are made to whistle blowers and defines the regulations surrounding payments.
301VAC42-30-100	Proposed whistle blower protections under the Whistle Blower Protection Act	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains to readers what legal protections whistle blowers have as a result of the Whistle Blower Protection Act, including anti-retaliation regulations.
301VAC42-30-110	Proposed annual report guidelines	<i>Code of Virginia</i> § 2.2-3014 ; § 2.2-309	Explains the annual report OSIG must provide the General Assembly and the Governor concerning the WBPA Program and the Whistle Blower Reward Fund.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Determination was made to withdraw Fast Track Proposed 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) to file Emergency/NOIRA.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: processes for citizens to receive moneys from the Fund, management of the Fund, parameters for citizens filing claims under the Fund, and the potential impacts of the regulation.

A Regulatory Advisory Panel will be used in the development of the permanent regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Julie Grimes, PO Box 1151, (804)625-3276, FAX: (804) 786-2341, Julie.Grimes@osig.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Please assess the impact of this 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.

Not Applicable.

Periodic review/small business impact review announcement

If you wish to use this emergency/NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.