

(a) In General.—

(1) Issuance and service.— Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 4303(a), or making an election under section 4304(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

- (A)** to produce such documentary material for inspection and copying,
- (B)** to answer in writing written interrogatories with respect to such documentary material or information,
- (C)** to give oral testimony concerning such documentary material or information, or
- (D)** to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) Contents and deadlines.—

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall—

- (i) set forth with specificity the written interrogatories to be answered;
- (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and
- (iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall—

- (i) prescribe a date, time, and place at which oral testimony shall be commenced;
- (ii) identify a false claims law investigator who shall conduct the examination;
- (iii) specify that such attendance and testimony are necessary to the conduct of the investigation;
- (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and
- (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) Protected Material or Information.—

(1) In general.— A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the State of Vermont to aid in a grand jury investigation or conduct an inquest; or

(B) the standards applicable to discovery requests under the Vermont Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws.— Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; Jurisdiction.—

(1) By whom served.— Any civil investigative demand issued under this section may be served by a false claims law investigator, by a law enforcement officer, or by any other individual authorized by law to serve legal process in the jurisdiction in which the demand is served.

(2) Service outside Vermont.— Any demand issued under this section or any petition filed under subsection (i) may be served upon any person or entity who is not found in Vermont, consistent with Title 12, Chapter 25, Vermont Statutes Annotated and in any such manner as provided in the Vermont Rules of Civil Procedure for personal service outside the State. To the extent that the courts of Vermont can assert jurisdiction over any person consistent with due process, the Washington Civil Division shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service Upon Legal Entities and Natural Persons.—

(1) Legal entities.— Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (i) may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business; or

(D) by any other method provided by Title 12, Chapter 25, Vermont Statutes Annotated or the Vermont Rules of Civil Procedure.

(2) Natural persons.— Service of any such demand or petition may be made upon any natural person by—

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person’s residence or principal office or place of business; or

(C) by any other method provided by Title 12, Chapter 25, Vermont Statutes Annotated or the Vermont Rules of Civil Procedure.

(e) Proof of Service.— A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (i) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary Material.—

(1) Sworn certificates.— The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(2) Production of materials.— Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (i)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories.— Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral Examinations.—

(1) Procedures.— The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of Vermont or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the Attorney General, or a

designee. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Vermont Rules of Civil Procedure.

(2) Persons present.— The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken.— The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken not more than 50 miles from where such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony.— When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to Attorney General.— The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the Attorney General, or a designee.

(6) Furnishing or inspection of transcript by witness.— Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.—

(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect

to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Washington Civil Division under subsection (i)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of 12 V.S.A. § 1664.

(8) Witness fees and allowances.— Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the courts of the State of Vermont.

(i) Judicial Proceedings.—

(1) Petition for enforcement.— Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Washington Civil Division or the Civil Division in any county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.—

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the Washington Civil Division or the Civil Division in any county in which such person resides, is found, or transacts business, and serve upon the Attorney General's Office a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the Civil Division in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.—

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the Civil Division in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Jurisdiction.— Whenever any petition is filed under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered may be appealed to the Vermont Supreme Court. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(5) Applicability of rules of civil procedure.— The Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with

the provisions of this section.

(j) Use and Disclosure of material, answers, or transcripts—The Attorney General Office may use the material, answers to interrogatories, or transcripts for any lawful purpose in conducting its investigation under the false claims law, including sharing the materials with the Relator as provided in subsection (a)(1) of this Section. Further, whenever any attorney of the Attorney General’s Office has been designated to appear before any court, grand jury, or agency in any case or proceeding, such attorney may obtain, possess, and use any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section for official use in connection with any such case or proceeding as such attorney determines to be required. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall not be used or disclosed in any other manner than set forth in this subsection without a Court order. No order authorizing such further use or disclosure shall issue without notice to the Attorney General and the person from whom such discovery was obtained, and, if requested by either of those parties, an opportunity to present arguments and/or evidence on the issue of disclosure.

(k) Definitions.— For purposes of this section—

(1) the term “false claims law” means Chapter ___ of Title ___.

(2) the term “false claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term “false claims law investigator” means any attorney or investigator employed by the Attorney General’s Office who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of Vermont acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(5) the term “product of discovery” includes—

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A);
and

(7) the term “official use” means any use that is consistent with the law, and the regulations and policies of the Attorney General’s Office, including use in connection with internal office memoranda and reports; communications between the office and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of an office investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.