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Fast-Track Regulation
Agency Background Document

Agency name	Virginia Department of Taxation
Virginia Administrative Code (VAC) citation(s)	23 VAC 10-210-940
Regulation title(s)	Medicines, drugs, eyeglasses, and related items
Action title	To amend the retail sales and use tax regulation, 23VAC10-210-940 to clarify the tax treatment of purchases of medicines and drugs by medical service providers and consumers.
Date this document prepared	December 31, 2015

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 (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This regulatory action makes several amendments to the Medicines, drugs, eyeglasses and related items regulation in order to reflect several legislative changes that were enacted following the last regulatory update. Legislation enacted by the 2006 General Assembly (2006 *Acts of Assembly*, Chapters 331, 361) allows a veterinarian to purchase medicines and drugs used to treat agricultural production animals, and medicines and drugs that are sold to farmers for direct use in producing an agricultural product for market, exempt of the retail sales and use tax. The General Assembly also expanded the exemption available for the purchase of medicines and drugs to those purchased by for-profit nursing homes, clinics, and similar corporations (2006 *Acts of Assembly*, Chapter 217).

In 1998, the Department of Taxation ("Department") released a Tax Bulletin (VTB 98-4) to explain a 1997 legislative change authorizing a sales and use tax exemption on the purchase of nonprescription medicines and drugs and certain samples of nonprescription drugs, effective July 1, 1998. The Tax Bulletin outlined the categories of items that fell within the nonprescription drugs classification. The Department updated this Tax Bulletin in 2013 (VTB 13-5) to reflect additional rulings that had been issued regarding nonprescription drugs after the 1998 Tax Bulletin.

The regulation also requires clarification concerning items that are not specifically identified in the statute, or regulation, but are frequently utilized in the health care industry and have been the subject of numerous PDs issued by the Department.

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.

The following acronyms are used in this Agency Background Document. Every technical term used in this document is defined in the regulation.

DME: means Durable Medical Equipment
PD: means Public Document
VTB: means Virginia Tax Bulletin.

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.

The Tax Commissioner approved the amendment of the Medicines, Drugs, Eyeglasses, and Related Items regulation on December 2, 2015.

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 § 58.1-203 provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

The current regulation does not reflect numerous statutory changes that have been made regarding the Retail Sales and Use Tax. Legislation enacted by the 2006 General Assembly (2006 *Acts of Assembly*, Chapters 331, 361) changed the application of the Retail Sales and Use Tax for veterinarians purchasing medicines and drugs. Prior to this legislative change, a veterinarian was deemed the user and consumer of any medicine or drug used in his operation, and was required to pay his suppliers the sales and use tax when purchasing these items. The 2006 General Assembly amended this statute by exempting a veterinarian's purchase of medicines and drugs that are either used by the veterinarian in treating agricultural production animals or sold to a farmer for direct use in producing an agricultural product for market. The current regulation does not reflect this statutory change, as it explicitly excludes veterinarians from the "licensed physician" definition.

The General Assembly also enacted law in 2006 (2006 *Acts of Assembly*, Chapter 217) that expanded the exemption to allow for-profit nursing homes, clinics, and similar corporations to purchase medicines and drugs tax-free. This change is not reflected in the current regulation.

In 1999, the General Assembly expanded the sales and use tax exemption available for eyeglasses and related items to include eyeglass cases, contact lens storage containers, solutions or sterilization kits and other similar devices, when distributed free of charge by optometrists, ophthalmologists, and opticians. This legislative change is not reflected in the current regulation.

In 1998, the Department released a Tax Bulletin (VTB 98-4) to explain a legislative change that exempted nonprescription drugs, as well as samples of nonprescription drugs distributed free of charge by the manufacturer (1997 *Acts of Assembly*, Chapter 696), from sales and use tax. The Tax Bulletin identified categories of taxable items and provided a detailed list of items falling under the exempt nonprescription drug classification. The Department updated this Tax Bulletin in 2013 (VTB 13-5) to provide clarification to retailers and purchasers of nonprescription drugs. These statutory and administrative changes are not reflected in the current regulation.

In addition, the regulation clarifies the tax treatment of various items not specifically identified in the statute or current regulation, but frequently utilized in the provision of health care services, including, for example, eyeglasses, durable medical equipment, or other medical devices.

Because the existing regulation does not reflect current law and requires clarification regarding the tax treatment of certain items, it does not provide the sufficient guidance needed to ensure that taxpayers comply with Virginia's sales and use tax laws. This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety and welfare of its citizens.

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?

The fast-track process is intended for proposed regulations that are expected to be noncontroversial. As the regulation will be amended to reflect current law, and will not make any changes to the Department's current policy regarding medicines and drugs, this action is not expected to be controversial. The Department has issued numerous published ruling letters, Tax Bulletins, and other PDs that address the Retail Sales and Use Tax as it applies to the purchase of medicines, drugs, medical devices, durable

medical equipment, and other medical-related items. These PDs and recent law changes form the basis for the proposed changes to this regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This regulatory action will amend the regulation entitled, "Medicines, drugs, eyeglasses, and related items" (23VAC10-210-940) to reflect changes made during the 1997 and 2006 General Assembly sessions and to incorporate policy set forth in numerous PDs. Substantive changes or new provisions to the regulation are as follows:

Controlled Drugs

While the current regulation provides an exemption to licensed physicians for controlled drug purchases, this exemption also extends to optometrists, licensed nurse practitioners, and licensed physician assistants. Moreover, the *Code of Virginia* defines controlled drug, but this regulatory action expands that definition by explaining that the manufacture, distribution, and dispensation are heavily regulated by the state and federal government because of the drug's potential for abuse and physical or psychological dependence. The regulation also describes the documentation that may be used to demonstrate that the exemption requirements have been satisfied.

Durable Medical Equipment

In addition to the exemption available for durable medical equipment, items specifically designed for use with durable medical equipment or devices are exempt from the Retail Sales and Use Tax. General purpose supplies do not qualify for this exemption. Additional items have been added to the current list of qualifying durable medical equipment. Durable medical equipment and related items must be purchased by or on behalf of an individual, and may not be purchased in bulk and then dispensed to individual patients. If the purchaser of these items has no blanket exemption for his purchases, and no certificate of exemption or other exemption notice from the Department applies, the taxpayer must obtain a signed statement from the purchaser certifying that the durable medical equipment or related items are purchased on behalf of a specific patient through a doctor's prescription or hospital's work order and is for sole use by that patient. Taxpayers are obligated to keep records documenting that the purchase was for a specific patient, but they may redact identifying information regarding each patient in order to comply with federal and state privacy laws.

Eyeglasses

Optometrists, ophthalmologists, and opticians are engaged in the provision of professional services, and must pay the tax to their suppliers at the time they purchase tangible personal property used in performing their professional services, or remit the use tax directly to the Department. When these practitioners provide eyeglass cases, contact lens storage containers, solutions or sterilization kits, or other similar devices to their patients free of charge, they may purchase these specified items exempt of the tax.

Hemodialysis and Periotoneal Dialysis Equipment

Hemodialysis and peritoneal dialysis equipment, supplies, and drugs used in dialysis are not subject to the Retail Sales and Use Tax, regardless of the nature of the purchaser.

Licensed Hospitals/Nursing Homes

Licensed hospitals and nursing homes may purchase medicines and drugs for their use and consumption exempt from the Retail Sales and Use Tax.

Medical Supplies purchased by Medicaid Recipients

Medicaid recipients may purchase otherwise taxable medical products and supplies exempt of the Retail Sales and Use Tax provided the purchase is made through a Department of Medical Assistance Services Provider agreement.

Nonprescription drugs

Nonprescription medicines and drugs and proprietary medicines and drugs purchased for the cure, mitigation, treatment or prevention of disease in human beings are exempt from Retail Sales and Use Tax, regardless of the nature of the purchaser. In addition, samples of nonprescription drugs distributed free of charge by the manufacturer, as well as the packaging materials and constituent elements, are also exempt. The exemption does not extend to cosmetics; toilet articles; food products and supplements; vitamins and mineral concentrates sold as dietary supplements or adjuncts; devices; certain products listing natural or herbal ingredients; and items containing nonprescription drugs that serve a secondary function to the intended use of the product. A list of exempt nonprescription medicines and taxable items that do not qualify for the nonprescription drug exemption is provided.

Prosthetic Devices

Implants used for cosmetic purposes do not qualify for exemption from the tax because their main function is not to replace a missing body part, but rather, to promote beauty.

Samples of Prescription Drugs

Pharmaceutical manufacturers are authorized to distribute samples of prescription drugs and medicines and their packaging free of charge to certain medical care providers, and are not required to remit use tax for these items.

Veterinarians

Veterinarians have been added to the list of medical providers on whose written prescription medicines and drugs may be purchased exempt of the Retail Sales and Use Tax. A separate section has been added to indicate that, while veterinarians are deemed the users or consumers of medicines and drugs and must pay the retail sales and use tax on such purchases, they may purchase medicines and drugs used in caring for agricultural production animals exempt of the retail sales and use tax.

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.

This regulatory action will ease voluntary taxpayer compliance and the Department's administration of the state tax laws by amending a regulation that does not reflect current law. By clarifying the Retail Sales and Use Tax treatment for medicines and drugs, the Department ensures uniform application of the tax laws to taxpayers, particularly physicians, optometrists, ophthalmologists, veterinarians, audiologists, and other medical service providers, as well as purchasers of these services. In addition, business taxpayers will be better equipped to predict the tax consequences of transactions and avoid unanticipated tax assessments as the result of audits.

This regulatory action poses no disadvantages to the public or the Commonwealth.

There are no other matters of interest.

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.

There are two federal requirements related to this proposal. The *Federal Food, Drug and Cosmetic Act* (21 *USCA.* § 353) authorizes the manufacturer or distributor of record of a drug to distribute drug samples by mail or common carrier to practitioners licensed to prescribe such drugs or, at the request of a licensed practitioner, to pharmacies of hospitals or other health care entities. The distribution of drug samples may only be made 1) in response to a written request for drug samples made on a qualifying form, and 2) under a system which requires the recipient of the drug sample to execute a written receipt for the drug sample upon its delivery and the return of the receipt to the manufacturer or authorized distributor of record. As this regulatory action authorizes pharmaceutical manufacturers to distribute samples of prescription drugs to licensed physicians, hospital pharmacies, and other health care facilities, without incurring any use tax liability, this proposal is not more restrictive than federal law.

In addition, Virginia's current policy requires that durable medical equipment and related items be purchased on behalf of an individual in order for the purchaser to obtain an exemption from the retail sales and use tax. The Department has previously ruled that a taxpayer's purchase documentation must include patient identification information at the time of purchase in order for the purchase to be deemed made on behalf of individuals (PD 00-215). Several PDs provide that durable medical equipment may not be purchased in bulk and subsequently dispensed to individual patients. In the event that the purchaser of these items has no blanket exemption for these purchases, and no certificate of exemption or other exemption notice from the Department applies, the taxpayer must obtain a signed statement from the purchaser certifying that the durable medical equipment or related items are purchased on behalf of a specific patient through a doctor's prescription or hospital's work order and is for sole use by that patient. (PD 95-266)

An argument has been presented that this requirement conflicts with the *Health Insurance Portability and Accountability Act of 1996* ("HIPAA")'s patient privacy rules. Under 45 CFR. § 164.502, a covered entity must disclose protected health information in only two situations: 1) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to the United States Department of Health & Human Services ("HHS") when it is undertaking a compliance investigation or review or enforcement action. In all other instances, HIPAA's patient privacy provisions prohibit the disclosure of patient identifying information on invoices or other source documents. The Department allows dealers to redact identifying information regarding each patient in order to comply with federal and state privacy laws.

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.

No localities are particularly affected by this regulatory action.

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.

The Department has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

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.

Projected cost to the state to implement and enforce the proposed regulation, including: **a) fund source / fund detail; and** **b) a delineation of one-time versus on-going expenditures**	Because the intent of this regulatory action is to bring this regulation in conformity with current law and sales tax policy, the projected cost to the state to implement and enforce the proposed regulation is expected to be *de minimis*.
Projected cost of the new regulations or changes to existing regulations on localities.	Because the intent of this regulatory action is to bring this regulation in conformity with current law and sales tax policy, the projected cost of the regulation on localities is *de minimis*.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The changes in law necessitating this regulatory action will likely impact physicians, optometrists, ophthalmologist, veterinarians, and other health care providers, as well as purchasers of these services. However, because the intent of this regulatory action is to bring this regulation in conformity with current law and sales tax policy, its amendment will have no impact on individuals, businesses or other entities beyond the impact of

	current law.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	Because the intent of this regulatory action is to bring this regulation in conformity with current law and sales tax policy, its amendment will affect no individuals, businesses or other entities not affected by current law.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: **a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and** **b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.**	Because the intent of this regulatory action is to bring this regulation in conformity with current law and sales tax policy, its amendment will result in no costs for individuals, businesses or other entities beyond the impact of current law.
Beneficial impact the regulation is designed to produce.	The intent of this regulatory action is to bring the regulation in conformity with current law and sales tax policy. By clarifying the Retail Sales and Use Tax treatment for medicines, drugs, and related items, the Department hopes to ensure uniform application of the tax laws to taxpayers, particularly physicians, optometrists, ophthalmologists, veterinarians, audiologists, and other medical professionals, as well as users of such services. In addition, business taxpayers will be better equipped to predict the tax consequences of transactions and avoid unanticipated tax assessments as the result of audits.

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.

The Department considered alternatives to the proposed regulatory action. Taking no action would leave the regulation inconsistent with the statute. Repealing the regulation would reduce the level of customer service and, as a result, tend to reduce the level of voluntary compliance with the tax laws. Audit and compliance activity would produce less uniform results and would be much less effective in enforcing the tax laws.

Since 1980, administrative interpretations of the tax laws that are not in the form of published rulings or a regulation have not been admissible as evidence in court. *Code of Virginia* § 58.1-205. Even published

"rulings and policies themselves are not entitled to great weight, unless expressed in regulations." *Chesapeake Hospital Authority v. Commonwealth*, 262 Va. 551, 554 S.E. 2d 55 (2001). Therefore, to support enforcement, it is necessary to promulgate regulations containing the Tax Commissioner's interpretations of the tax laws.

Public participation notice

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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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.

Commenter	Comment	Agency response

This fast-track is not a result of a periodic review/small business impact review.

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.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10-210-940(A)	10-210-940(B)	Sets forth the general rules with respect to medicines, drugs, artificial eyes, contact lenses, durable medical equipment, etc.	• Subsection A, paragraph 1 moved to subsection B, paragraph 2. Opticians, nurse practitioners, physician assistants, and veterinarians have been added to the list of professionals, on whose prescription certain medicines and drugs may be purchased exempt of sales tax in accordance with *Va. Code* § 58.1-609.10(9). • Subsection A, paragraph 2 moved to subsection B, subdivision 8, and further explained in subsection F. The language of this subsection has been changed but the substance of the text has not changed. • These proposed changes will have no additional impact because they reflect current law.
10-210-940(B)	10-210-940(A)	Provides definitions for following terms: prosthetic devices, controlled drugs, and licensed physician.	This paragraph moved to subsection A and terms have been alphabetized in accordance with § 3.10(D) of the Form, Style, and Procedure Manual for Publication of Virginia Regulations ("Style Manual"). The following terms were added to the existing list of definitions: cosmetics (VTB 98-4), devices (*Va. Code* § 54.1-3401), drugs (*Va. Code* § 54.1-3401), durable medical equipment (*Va. Code* § 58.1-609.10(10), glycolic acid products (VTB 13-5), hemodialysis (Webster's Dictionary), homeopathic product (VTB 13-5), nonprescription drug (*Va. Code §* 58.1-609.10(14), peritoneal dialysis (Webster's Dictionary), prescription (*Va. Code* § 54.1-3401), proprietary medicine (VTB 98-4, VTB 13-5), and toilet articles (VTB 98-4, VTB 13-5). Some language was replaced in accordance with § 3.12(D) of the Style Manual. These proposed changes will have no additional impact because they reflect the Department's longstanding policy.

10-210-940(C)(1)	N/A	Provides that sales of medicines or drugs purchased on prescriptions written specifically by physicians or dentists are exempt from sales tax.	Language added to indicate that the exemption is extended to purchases of medicines or drugs pursuant to prescriptions written by optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians based on exemption provided in *Va. Code* § 58.1-609.10(9). Oxygen reference moved to "drug" definition in new subsection A. These proposed changes will have no additional impact because they reflect current law.
10-210-940(C)(2)	N/A	A licensed physician may purchase controlled drugs for use in his professional practice exempt from sales and use tax.	Language added to indicate that the exemption for controlled drugs applies, not only to licensed physicians, but also to optometrists, licensed nurse practitioners, and licensed physician assistants. Language added to explain the Department's process for determining whether the qualifying party made the purchase for use in his professional practice. (PD 08-78, PD 06-110, PD 04-116). These proposed changes will have no additional impact because they reflect current law and the Department's longstanding policy.
10-210-940(C)(3)	10-210-940(D)	Sales of nonprescription medicines and drugs to users or consumers are taxable. Hospitals and nursing homes conducted for profit are subject to the retail sales and use tax on purchases of medicines and drugs unless such sales are made as a result of a written prescription of a licensed physician for a particular patient under the care of the hospital or nursing home.	As the provision addressing nonprescription drugs does not reflect current law (nonprescription drugs are exempt from the Retail Sales and Use Tax pursuant to *Va. Code* § 58.1-609.10(14)), it has been deleted. The current provision addressing sales of medicines and drugs to for-profit hospitals and nursing homes has been replaced with a section providing that sales of medicines and drugs to licensed hospitals and nursing homes are exempt from the Retail Sales and Use Tax. The discussion on nonprescription drugs has been moved to subsection D. The 2006 General Assembly extended the exemption to include all licensed hospitals and nursing homes, regardless of whether such hospitals or nursing homes are conducted for profit, or not-for profit. (2006 *Acts of Assembly*, Chapter 217) This paragraph has been revised to reflect this legislative change. These proposed changes will have no additional impact because they reflect current law.
10-210-940(C)(4)	N/A	Retailer's purchase of drugs to fill prescriptions is an exempt sale for resale, and must be purchased using a certificate of exemption.	Policy retained. Clarifying language added to specify that Form ST-10 is the proper exemption certificate. As this is not a change in policy, this change will have no impact.
N/A	10-210-940(D)	N/A	Nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment or prevention of disease in human beings are exempt from the Retail Sales and Use Tax regardless of the nature of the

			purchaser. (1990 *Acts of Assembly*, Chapter 117; 1996 *Acts of Assembly*, Chapter 459). Provision identifies categories of items that do not qualify, as well as a list of exempt and taxable nonprescription items. (VTB 13-5; PD 13-32). Samples of nonprescription drugs distributed free of charge by the manufacturer, including packaging of materials and constituent elements and ingredients are also exempt. (1997 *Acts of Assembly*, Chapter 696). These proposed changes will have no impact because they reflect current law and the Department's current's policy regarding purchases of nonprescription drugs.
10-210-940(D)	10-210-940(E)	Sales of eyeglasses ground on prescription of physicians, ophthalmologists or optometrists are not subject to the tax. Consumers may purchase eyeglass frames in connection with the repair of these items exempt of the tax.	This subsection has been moved to subsection E, and an additional subdivision has been added (E1) that provides that optometrists, ophthalmologists and opticians must pay the tax to their suppliers at the time they purchase tangible personal property used in performing their professional services. However, when optometrists, ophthalmologists, and opticians provide eyeglass cases, contact lens storage containers, solutions or sterilization kits or other similar devices, they may purchase them exempt of the tax. (1999 *Acts of Assembly*, Chapters 472, 523). These proposed changes will have no impact because they reflect current law.
10-210-940(E)(1)	10-210-940(F)	Durable medical equipment is exempt from the Retail Sales and Use Tax provided it meets all the DME requirements and is purchased by or on behalf of an individual	This subsection was moved to subsection (F). The subsection on wheelchairs and other devices has been combined with the durable medical equipment subsection. Additional changes were made to the individual subdivisions under this subsection. • **Subdivision 1**—Language has been added to indicate that parts or supplies designed for use with durable medical equipment or devices can be purchased exempt of the tax, though general purpose supplies do not qualify (PD 97-196). The existing example concerning the purchase of a wheelchair on behalf of another individual has been stricken and a similar example was created and placed in a later section. • **Subdivision 2**—A provision has been added to indicate that implants used for cosmetic purposes do not qualify as prosthetic devices (PD 94-127). • **Subdivision 3**—Newly added subdivision. The list of DME items contained in the original regulation under subsection F has been alphabetized in accordance with the Style Manual and moved to this section. Additional items were added, consistent with PDs issued by the Department (apnea monitors and accessories, CPAP and CPAP accessories, gas oxygen

			refills/tanks, glucose monitors and supplies, i.v. supplies, liquid and gas oxygen systems, oximeters, oxygen conserving devices, certain physical therapy items, phototherapy lights, pneumatic compression units, respiratory accessories, electrical nerve stimulators, and tracheotomy and suction supplies (PD 93-144) . Examples were added to further clarify the 4-part DME test (PD 06-113, PD 01-180). • **Subdivision 4**—Newly added subdivision. This subdivision was added to describe the documentation necessary to satisfy the DME exemption (PD 95-266, PD 00-215). These proposed changes will have no additional impact because they reflect the Department's longstanding policy regarding durable medical equipment and devices.
10-210-940(E)(2)	10-210-940(G)	Hemodialysis and peritoneal dialysis equipment, supplies, and drugs used in dialysis are not subject to the Retail Sales and Use Tax, regardless of the nature of the purchaser.	Policy retained. This subsection was moved from E to G.
10-210-940(F)	Some language stricken and combined with wheelchairs section.	N/A	Policy retained and combined with previous subsection.
10-210-940(G)	Stricken from this section and combined with previous section	Provides that the exemption for wheelchairs and repair parts, diabetic testing equipment, and other durable medical equipment is available for items purchased on behalf of an individual for his use. The item must be specifically purchased for the individual, and may not be purchased in bulk.	As the requirement that the qualifying item be "purchased on behalf of a specific individual" applies to durable medical equipment, diabetic testing equipment, wheelchairs, etc., this provision was added to the new durable medical equipment subsection (F), rather than given its own subsection. Therefore, the language in subsection G was stricken in its entirety. As the policy is retained, these proposed changes will have no additional impact.
N/A	10-210-940(H)	N/A	Individual subsection added to explain that pharmaceutical manufacturers may distribute samples of prescription drugs and medicines and their packaging free of charge to licensed physicians, hospitals, pharmacies, and other health care facilities, and are not required to remit use tax for these items. (*Va. Code* § 58.1-609.10(14), PD 97-253). These proposed changes will have no additional impact because they reflect current law and the Department's longstanding policy regarding samples of prescription drugs.
N/A	10-210-940(I)	N/A	Individual section added to show that veterinarians are deemed the users or consumers of all medicines and drugs, but may purchase all medicines and drugs that will be used for agricultural production animals

			exempt of the Retail Sales and Use Tax. (2006 *Acts of Assembly*, Chapters 331, 361). These proposed changes will have no impact because they reflect current law.
N/A	10-210-940(J)	N/A	Medicaid recipients may purchase medical products and supplies that are otherwise taxable exempt of the Retail Sales and Use Tax, provided the purchase is made through a Department of Medical Assistance Services Provider agreement. (*Va. Code* § 58.1-609.10(17)). These proposed changes will have no impact because they reflect current law.