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Fast-Track Regulation Agency Background Document

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| Agency name | Department of Taxation |
| Virginia Administrative Code (VAC) citation(s) | 23 VAC 10-370 |
| Regulation title(s) | Virginia Cigarette Tax |
| Action title | Amendment of the Cigarette Tax Regulation to Reflect Statutory Changes |
| Date this document prepared | April 19, 2018 |

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

As a result of a periodic review of the Cigarette Tax Regulation initiated by the Department of Taxation (the "Department") on August 3, 2016 and completed September 26, 2016, the Department has determined that the regulation should be amended. The Department received no comments during the periodic review. The amendment of the regulation does not reflect any change in current tax policy and will have no impact on the administration of the Cigarette Tax. The regulation will be amended to reflect statutory changes and to strike provisions that paraphrase statutes that are clear and unambiguous. For example, this action will amend the regulation to 1) strike language authorizing the use of meter impressions to evidence payment of the tax; 2) reflect the Department's policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand; and 3) clarify that only duly qualified stamping agents may purchase stamps and apply them to cigarettes.

This action will repeal sections 23 VAC 10-370-80, 23 VAC 10-370-120, and 23 VAC 10-370-180 as they are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply. The sections are not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Terence R. McAuliffe's Executive Order 17 signed June 30, 2014.

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.

Not applicable.

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 Department of Taxation approved the amendment of the Virginia Cigarette Tax Regulation on May 1, 2018.

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 Va. § 58.1-203 authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. Code of Va. § 58.1-1016 authorizes the Department of Taxation to administer the Cigarette Tax.

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.

As a result of a periodic review of the Cigarette Tax Regulation initiated by the Department of Taxation (the "Department") on August 3, 2016 and completed September 26, 2016, the Department has determined that the regulation should be amended because the majority of the regulation sections are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply. This action will strike language that provides no guidance beyond the plain meaning of the statutes.

The amendment of the regulation does not reflect any change in current tax policy and will have no impact on the administration of the Cigarette Tax. The regulation will be amended to reflect statutory changes and to strike provisions that paraphrase statutes that are clear and unambiguous. For example, this action will amend the regulation to 1) strike language authorizing the use of meter impressions to evidence payment of the tax; 2) reflect the Department’s policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand; and 3) clarify that only duly qualified stamping agents may purchase stamps and apply them to cigarettes.

This action will repeal sections 23 VAC 10-370-80, 23 VAC 10-370-120, and 23 VAC 10-370-180 as they are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply.

The amendment of the regulation does not reflect any change in current tax policy and will have no impact on the administration of the Cigarette Tax.

The repealed sections are not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Terence R. McAuliffe’s Executive Order 17 signed June 30, 2014.

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 Department is using the fast-track process because the amendment of the regulation to strike language that is outdated and provides no guidance beyond the plain meaning of the statutes is expected to be noncontroversial. No comments were received during the periodic review of the 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.

The Commonwealth imposes a state cigarette tax at the rate of 1.5 cents per cigarette (30 cents per pack of 20 cigarettes), which is paid by stamping agents through the purchase of stamps. The revenues from the Cigarette Tax are dedicated to the Health Care Fund and used solely for the provision of health care services including, but not limited to, Medicaid payments, disease diagnosis, prevention and control, and community health services.

The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the Cigarette Tax.

This action will repeal sections 23 VAC 10-370-80, 23 VAC 10-370-120, and 23 VAC 10-370-180 as they are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply.

This action will amend 23 VAC 10-370-40 to strike language authorizing the use of meter impressions to evidence payment of the tax. The Department has not allowed meter impressions for at least 17 years. This action will also strike stamping requirements reflecting statutory law that has been amended.

This action will amend 23 VAC 10-370-70, “Forms and Kinds of Containers, Methods of Breaking Packages, and Methods of Affixing Stamps; Penalty for Interfering with Enforcement of Article,” to remove language that is outdated and provides no guidance beyond the plain meaning of the statute to which it

applies. This section also will be amended to strike language authorizing the use of meter impressions to evidence payment of the tax. The statute does not authorize the use of meter impressions and the Department has never implemented the use of meter impressions. This section will also be amended to reflect the mandate of Va. Code § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under Va. Code § 58.1-1011 may apply revenue stamps to cigarettes. This section will be amended to reflect the Department’s policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand.

This action also will amend section 23 VAC 10-370-90, “Monthly Reports of Wholesale Dealers,” to remove language that is outdated and provides no guidance beyond the plain meaning of the statute to which it applies. This section will also be amended to reflect the mandate of Va. Code § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under Va. Code § 58.1-1011 may apply revenue stamps to cigarettes.

This action will amend regulation section 23 VAC 10-370-100, “Preparation, Design and Sale of Stamps; Unlawful Sale of Stamps a Felony,” to remove language that is outdated and provides no guidance beyond the plain meaning of the statute to which it applies. This section will be amended to reflect the mandate of Va. Code § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under Va. Code § 58.1-1011 may apply revenue stamps to cigarettes.

This action will amend regulation section 23 VAC 10-370-110, “Sale of Unstamped Cigarettes by Wholesale Dealers; Penalty,” to reflect the mandate of Va. Code § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under Va. Code § 58.1-1011 may apply revenue stamps to cigarettes.

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.

As the regulatory action will update the Cigarette Tax Regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, there are no issues or disadvantages to the Commonwealth, the agency, and the public associated with this regulatory action.

The primary advantage to the Commonwealth, the agency, and the public is that this action will repeal regulatory text which is unnecessary and in some cases contrary to the statutory law because of changes in the statutory law that have been made since the regulation was promulgated. The remaining regulation will be up-to-date.

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 no applicable federal requirements.

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.

As the regulatory action will update the Cigarette Tax Regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, no locality would be particularly affected by it.

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.

As the regulatory action will update the Cigarette Tax Regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, this regulatory action will have no impact on anyone, including small businesses. The only alternative to this action would be to leave in place the outdated and unnecessary language. Removal of the outdated language will eliminate confusion and will have no impact on small businesses.

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.

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| <p>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</p> | <p>As the regulatory action will update the regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, there is no cost to the state to implement and enforce the amended regulation sections.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>As the regulatory action will update the regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, there will be no cost to localities related to the amended regulation sections.</p> |

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| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>As the regulatory action will update regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, no one will be affected by the amended regulation sections.</p> |
| <p>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.</p> | <p>As the regulatory action will update the regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, no one will be affected by the amended regulation sections.</p> |
| <p>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.</p> | <p>As the regulatory action will update the regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, there are no costs related to the amended regulation sections to any individuals, businesses, or other entities.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>Striking language that is outdated and provides no additional guidance to statutes that are clear and unambiguous will eliminate confusion and unnecessary regulation sections.</p> |

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.

As the regulatory action will update the Cigarette Tax Regulation to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, the only alternative to this action would be to leave in place the outdated and unnecessary language.

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 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 |
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| None | | |

The Department of Taxation (the "Department") initiated a periodic review of the Cigarette Tax Regulation. No comments were received during the periodic review public comment period that began on August 3, 2016 and was completed September 26, 2016.

As a result of the periodic review, the Department has determined that the regulation should be amended because the majority of the regulation sections are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply. The current regulation does not meet the criteria set out in Executive Order 17 (2014) in that it is mostly outdated and provides no guidance beyond the plain meaning of the statutes it addresses. As it is outdated, it is not clearly written and easily understandable

This regulatory action will strike language that provides no guidance beyond the plain meaning of the statutes. The regulation sections are necessary for the economical performance of the administration of taxes, which is an important governmental function, and the regulation is clearly written and easily understandable.

The amendment of the regulation does not reflect any change in current tax policy and will have no impact on the administration of the Cigarette Tax. The intent of this regulatory action is to reflect current law and strike language that is outdated and provides no additional guidance to statutes that are clear and unambiguous and will result in no changes to Virginia's policies. Therefore, small businesses will not be impacted by the amended regulation sections. The Cigarette Tax Regulation was last revised in 2007 to repeal eleven sections that provided no additional guidance to statutes that were clear and unambiguous.

The Department has considered the continued need for the regulation and determined that most of the regulation is unnecessary. The Department will repeal the unnecessary parts of the regulation in this action.

The Department has considered the nature of complaints or comments received concerning the regulation from the public. Although it has received no complaints regarding the regulation, it must update the regulation and remove unnecessary language under Executive Order 17.

The Department has considered the complexity of the regulation and determined that it is too complex in that, in part, it is incorrect or paraphrases statutes that are clear and unambiguous.

The Department has considered the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation. The Department will repeal any aspect of the regulation that overlaps, duplicates, or conflicts with federal or state law or regulation in this action.

The Department has considered 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. The Cigarette Tax Regulation was last revised in 2007 to repeal eleven sections that provided no additional guidance to statutes that were clear and unambiguous. As a result of the recent Periodic Review of the Cigarette Tax Regulation, the Department has identified additional sections and provisions that may be repealed.

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.

The repeal of unnecessary and/or outdated sections and provisions from the regulation in this regulatory action will have no impact on the institution of the family and family stability and will not 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.

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 |
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| 23VAC10-370-20 | Not applicable | This regulation section paraphrases an obsolete provision in Va. Code § 58.1-1001 providing the cigarette tax rate (one-quarter mills per | With the exception of the provision clarifying that the tax is not imposed on persons who sell, store, or receive cigarettes bearing Virginia revenue stamps, the Department proposes to |

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| | | <p>cigarette) prior to August 1, 2004.</p> <p>This regulation clarifies that although the tax is imposed on every person who sells, stores or receives cigarettes in Virginia for distribution within the Commonwealth, it is not imposed on persons who sell, store, or receive cigarettes bearing Virginia revenue stamps.</p> | <p>amend this regulation section by striking provisions for the following reasons:</p> <ul style="list-style-type: none"> • The regulation section is outdated and does not reflect the current tax rate imposed by <i>Va. Code</i> § 58.1-1001. Chapter 3 of the 2004 <i>Acts of Assembly</i>, Special Session 1, increased the rate to one cent per cigarette, effective August 1, 2004 and to 1.5 cents per cigarette, effective July 1, 2005. This provision is clear and unambiguous and does not need interpretation through a regulation. • The regulation section is outdated and does not reflect the exemption set forth in <i>Va. Code</i> § 58.1-1001 for law enforcement agencies in possession of unstamped cigarettes necessary in the performance of investigatory duties. This provision is clear and unambiguous and does not need interpretation through a regulation. <p>For the reasons stated above, the amendment of this regulation section will have no impact other than to eliminate unnecessary and/or incorrect regulatory language.</p> |
| <p>23VAC10-370-40</p> | <p>Not applicable</p> | <p>Primarily, this regulation section simply paraphrases statutory procedures regarding the payment of the tax by wholesalers and retailers by applying Virginia revenue stamps set forth in <i>Va. Code</i> § 58.1-1003.</p> <p>This regulation section also clarifies that cigarettes destined for sale outside Virginia and in the inventory of a wholesale dealer engaged in interstate business may be set aside and remain unstamped.</p> | <p>With the exception of provisions of this regulation section clarifying that cigarettes destined for sale outside Virginia and in the inventory of a wholesale dealer engaged in interstate business may be set aside and remain unstamped, the Department proposes to amend this regulation section for the following reasons:</p> <ul style="list-style-type: none"> • <i>Va. Code</i> § 58.1-1003 is clear and unambiguous and the regulation section does not provide any additional guidance beyond the statute. • The regulation section is outdated and does not reflect: <ul style="list-style-type: none"> ○ Chapter 1029 of the 2004 <i>Acts of Assembly</i>, which (1) limited cigarette stamping to persons holding a stamping permit issued |

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| | | | <p>by the Department, (2) changed the time period in which stamping of cigarettes must begin from within one hour to one day of receipt, and (3) imposed a monthly reporting requirement on stamping agents regarding cigarettes stamped in the prior month. This provision is clear and unambiguous and does not need interpretation through a regulation.</p> <ul style="list-style-type: none"> ○ Chapter 28 of the 2005 <i>Acts of Assembly</i>, which changed the penalty for violating the section from a criminal penalty to a civil penalty. This provision is clear and unambiguous and does not need interpretation through a regulation. <p>For the reasons stated above, the amendment of this regulation section will have no impact other than to eliminate unnecessary and/or incorrect regulatory language.</p> |
| 23VAC10-370-70 | Not applicable | This regulation section paraphrases <i>Va. Code</i> § 58.1-1006, which sets forth the rules regarding the methods of affixing stamps. | <p>With the exception of the provisions of this regulation section clarifying how stamps may be affixed, the Department proposes to amend this regulation section for the following reasons:</p> <ul style="list-style-type: none"> • This action will clarify the requirement of <i>Va. Code</i> § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under <i>Va. Code</i> § 58.1-1011 may apply revenue stamps to cigarettes. • This action will clarify the Department's policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand. • This action will strike language regarding the penalty for interfering with the enforcement of the tax as the language paraphrases the statute, which is clear and unambiguous, and the language does not address civil penalties that have been added to the statute since the regulation was promulgated. This provision is clear and unambiguous and does not need |

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| | | | <p>interpretation through a regulation</p> <p>For the reasons stated above, the amendment of this regulation section will have no impact other than to eliminate unnecessary and/or incorrect regulatory language. <i>Va. Code</i> § 58.1-1006 is otherwise clear and unambiguous and the regulation section does not provide any additional guidance beyond the statute.</p> |
| 23VAC10-370-80 | Not applicable | <p>This regulation section paraphrases the statutory requirements of <i>Va. Code</i> § 58.1-1007 regarding documentation of purchases and sales of cigarettes. Much of the statute has since been amended.</p> | <p>The Department proposes to repeal this regulation section for the following reasons:</p> <ul style="list-style-type: none"> • <i>Va. Code</i> § 58.1-1007 is clear and unambiguous and the regulation section does not provide any additional guidance beyond the statute. • The regulation section is outdated and does not reflect legislative changes subsequent to the promulgation of the regulation: <ul style="list-style-type: none"> ○ Chapter 738 of the 2015 <i>Acts of Assembly</i>, which amended the statute to allow inspection of records by representatives of the Office of the Attorney General, the Department of Alcoholic Beverage Control, or by a local cigarette tax administrative or enforcement official. ○ Chapter 28 of the 2005 <i>Acts of Assembly</i>, which added a civil penalty in addition to the criminal penalty for violation of the statute. This provision is clear and unambiguous and does not need interpretation through a regulation <p>For the reasons stated above, the repeal of this regulation section will have no impact other than to eliminate unnecessary and/or incorrect regulatory language.</p> |
| 23VAC10-370-90 | Not applicable | <p>This regulation section paraphrases the provisions of <i>Va. Code</i> § 58.1-1008 regarding the monthly reports of stamping agents.</p> <p>This regulation section also</p> | <p>The Department proposes to amend this section to reflect the mandate of <i>Va. Code</i> § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under <i>Va. Code</i> § 58.1-1011 may apply revenue stamps to cigarettes. With the exception of the provision of this</p> |

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| | | <p>explains how the Department will allow cigarette tax credits for stamps applied to cigarettes that have been destroyed or are otherwise unsaleable.</p> | <p>regulation section explaining the procedures to obtain cigarette tax credits for stamps applied to cigarettes that have been destroyed or are otherwise unsaleable, the Department proposes to amend the regulation section by striking language in the regulation section that is outdated and does not provide any additional guidance beyond the statute:</p> <ul style="list-style-type: none"> • The due date for the monthly reports listed in the regulation section is incorrect and the statute is clear and unambiguous. • The regulation section lists the summary information that stamping agents provide on the monthly report. Both the statute and the instructions for the form are more detailed than the regulation section. • The penalty for failure to file listed in the regulation section is incorrect and the statute is clear and unambiguous. <p>For the reasons stated above, the amendment of this regulation section will have no impact other than to eliminate unnecessary and/or incorrect regulatory language.</p> |
| <p>23VAC10-370-100</p> | <p>Not applicable</p> | <p>The section paraphrases the provisions of <i>Va. Code</i> § 58.1-1009, regarding preparation and sale of cigarette stamps.</p> | <p>With the exception of the provisions of this regulation that explain the procedures for purchase of Virginia revenue stamps, the Department proposes to amend this regulation section for the following reasons:</p> <ul style="list-style-type: none"> • The section does not provide any additional guidance beyond the statute. • The regulation section is outdated: <ul style="list-style-type: none"> ○ The section does not reflect the additional offenses provided in the statutes regarding the unlawful purchase of cigarette stamps. ○ The discount for stamping agents listed in the section is incorrect and the statute is clear and unambiguous. |
| <p>23VAC10-</p> | <p>Not applicable</p> | <p>The section explains the</p> | <p>As the provisions of this section are</p> |

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| 370-110 | | provisions of <i>Va. Code</i> § 58.1-1010 regarding statutory exemptions and prohibitions regarding sale of unstamped cigarettes. | <p>relevant and necessary, the Department proposes only to amend this regulation section as follows:</p> <ul style="list-style-type: none"> • Reflect the mandate of <i>Va. Code</i> § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under <i>Va. Code</i> § 58.1-1011 may apply revenue stamps to cigarettes. • Delete the penalty listed in the section, which is incorrect. The statute is clear and unambiguous on this point. |
| 23VAC10-370-120 | Not applicable | This section paraphrases the statutory provisions set forth in <i>Va. Code</i> § 58.1-1010 regarding qualifications for a stamping agent permit. | <p>The Department proposes to repeal this regulation section for the following reasons:</p> <ul style="list-style-type: none"> • The section does not provide any additional guidance beyond the statute. • The section is outdated: <ul style="list-style-type: none"> ○ The requirements for qualifying for a stamping agent permit listed in the regulation section are incorrect and the statute is clear and unambiguous. ○ The regulation section does not reflect the legislative change authorized the Department to revoke a stamping agent's permit for violating Cigarette Tax statutes. ○ The penalty listed in the section is incorrect and the statute is clear and unambiguous. |
| 23VAC10-370-180 | Not applicable | This section paraphrases the statutory provisions set forth in <i>Va. Code</i> § 58.1-1011 regarding the penalties for the sale, purchase, or possession of cigarettes for the purpose of evading tax prior to legislative changes. | <p>The Department proposes to repeal this regulation section for the following reasons:</p> <ul style="list-style-type: none"> • The section does not provide any additional guidance beyond the statute. • The section is outdated: <ul style="list-style-type: none"> ○ The regulation section does not reflect the additional offenses |

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| | | | <p>provided in the statutes regarding the unlawful possession of unstamped cigarettes.</p> <ul style="list-style-type: none"> ○ The penalty listed in the section is incorrect and the statute is clear and unambiguous. |
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

| Current chapter-section number | Proposed new chapter-section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
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If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

| Section number | Proposed requirements | Other regulations and law that apply | Intent and likely impact of proposed requirements |
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If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.