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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Taxation
<b>Virginia Administrative Code (VAC) citation(s)</b>	23 VAC 10-350
<b>Regulation title(s)</b>	Virginia Forest Products Tax
<b>Action title</b>	Repeal of the Forest Products Tax Regulation Not Necessary for Administration of the Tax
<b>Date this document prepared</b>	August 15, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Forest Products Tax Regulation initiated by the Department of Taxation on April 28, 2016 and completed June 6, 2016, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and it is not necessary to protect the public health, safety, or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.

Effective July 1, 2015, the Forest Products Tax is imposed on the first manufacturer using, consuming, or processing forest products unless the tax has been previously paid by the severer of the forest products.

The Forest Products Tax also is imposed on the first manufacturer storing forest products for sale or shipment out of state unless the tax has been previously paid by the severer of the forest products. If there is no manufacturer or the manufacturer is not registered for the tax, then the tax is levied on the severer of the forest products. The Forest Products Tax revenues are dedicated to the protection and development of forest resources and the reforestation of timberlands.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Forest Products Tax.

### 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 determined to repeal the Virginia Forest Products Tax regulation on June 30, 2016.

### 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. § 3.2-1612 authorizes the Tax Commissioner to administer the Forest Products 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 Forest Products Tax Regulation initiated by the Department of Taxation on April 28, 2016 and completed June 20, 2016, the Department of Taxation has determined that the regulation should be repealed because the statutes imposing the Forest Products Tax were substantially amended effective July 1, 2015, and the regulation provides no guidance on the new

statutes. Additionally, the new law was drafted with the participation of the forest products industry and no guidance beyond the plain meaning of the Forest Products Tax statutes is necessary at this time. Therefore, the regulation is 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.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Forest Products Tax.

### 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?*

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The Department is using the fast-track process because the repeal of the Forest Products Tax Regulation is expected to be noncontroversial because the statutes imposing the Forest Products Tax were substantially amended effective July 1, 2015, and the regulation provides no guidance on the new statutes. 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.*

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This action will repeal the Forest Products Tax Regulation. Effective July 1, 2015, the Forest Products Tax is imposed on the first manufacturer using, consuming, or processing forest products unless the tax has been previously paid by the severer of the forest products. The Forest Products Tax also is imposed on the first manufacturer storing forest products for sale or shipment out of state unless the tax has been previously paid by the severer of the forest products. If there is no manufacturer or the manufacturer is not registered for the tax, then the tax is levied on the severer of the forest products. The Forest Products Tax revenues are dedicated to the protection and development of forest resources and the reforestation of timberlands.

Because the statutes imposing the Forest Products Tax were recently rewritten and the regulation provides no guidance on the new statutes, repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Forest Products 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.*

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As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, the regulation is unnecessary. Accordingly, its repeal poses no disadvantages to the public or the Commonwealth.

### 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.*

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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.*

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As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, the regulation is unnecessary and no locality would be particularly affected by the repeal of this regulation.

### 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 new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, the regulation is unnecessary. The only alternative to its repeal would be to leave in place an unnecessary regulation.

### 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.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, there are no costs related to the repeal of the Forest Products Tax Regulation.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, there are no costs related to the repeal of the Forest Products Tax Regulation.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, no one will be affected by the repeal of the Forest Products Tax Regulation.</p>
<p><b>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.</b> 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 new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, no one will be affected by the repeal of the Forest Products Tax Regulation.</p>
<p><b>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:</b></p>	<p>As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, there are no costs related to the repeal of the Forest Products Tax Regulation.</p>

<p><b>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.</b></p>	
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>As the new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, repeal of the Forest Products Tax Regulation would remove an unnecessary regulation.</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 new statutes imposing the Forest Products Tax are clear and unambiguous and the regulation provides no guidance on the new statutes, repeal of the Forest Products Tax Regulation would remove an unnecessary regulation.

### 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
None		

No comments were received.

As a result of a periodic review of the Forest Products Tax Regulation initiated by the Department of Taxation on April 28, 2016 and completed June 20, 2016, the Department of Taxation has determined that the regulation should be repealed because the statutes imposing the Forest Products Tax were substantially amended effective July 1, 2015, and the regulation provides no guidance on the new statutes. Additionally, the new law was drafted with the participation of the forest products industry and no guidance beyond the plain meaning of the Forest Products Tax statutes are necessary at this time. Therefore, the regulation is 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.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Forest Products Tax.

**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.*

Repeal of the Forest Products Tax regulation 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:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
23VAC10-350-10	Not applicable	Reiterates statutory title of the Forest Products Tax.	The repeal of the section would not affect the current statutory provisions.
23VAC10-350-20	Not applicable	Reiterates the statutory definitions for the Forest Products Tax prior to the legislative change.	The repeal of the section would not affect the current statutory provisions.
23VAC10-350-30	Not applicable	Reiterates the statutory requirements regarding the levy of the Forest Products Tax prior to the legislative change.	The repeal of the section would not affect the current statutory provisions.
23VAC10-350-40	Not applicable	Reiterates the statutory requirements regarding liens based on the Forest Products Tax.	The repeal of the section would not affect the current statutory provisions.

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:

<b>Current chapter-section number</b>	<b>Proposed new chapter-section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>

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.