

Department of Taxation

Regulation Title: MINING AND MINERAL PROCESSING
VAC Number: 23 VAC 10-210-960

- 1. Statement identifying and describing the source of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;**

Section 58.1-203 of the Code of Virginia authorizes the Commissioner of the Department of Taxation to promulgate regulations related to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the department.

- 2. Statement delineating the potential issues to be addressed in the proposed regulation;**

The purpose of the regulation is to explain the application of the retail sales and use tax to mining and mineral processing. Legislative changes created an exemption for natural gas and oil mining industries. These exemptions are not included in the current regulation and are the subject of the amendments to the regulation. In addition, language will be added to reflect recent policy determinations by the Tax Commissioner, that transportation of gas from the well through the final phase of dehydration qualifies for the exemption. The proposed amendments will also reflect comments received from the Virginia Aggregates Association regarding exempt reclamation activities. Finally, language will be added identifying the Department of Mines, Mineral and Energy as the appropriate agency for the certification of pollution control equipment.

- 3. Statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve;**

Based on the number of ruling requests and audit appeals, and the concerns expressed by the Virginia Aggregates Association, the revision of this regulation is essential in order to clarify the legislative changes. It is critical that the regulation be revised to reflect current policy in the event of litigation.

- 4. Statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential**

purpose, the alternatives considered or to be considered, and the reasoning by which the agency has rejected any of the alternatives considered.

Alternatives which might achieve the essential purpose for which the regulatory action has been undertaken were considered. However, since policy determinations, rulings, Tax Bulletins, guidelines, etc., do not carry any weight in court, it has been determined that a regulation is essential for enforcement purposes and to ensure uniform interpretation and application of the law. Without the regulation, the department's interpretation of the oil and gas mining exemption statute would not be disseminated to the public in any enforceable manner.