



[townhall.virginia.gov](http://townhall.virginia.gov)

## Periodic Review Report of Findings

<b>Agency name</b>	Department of Taxation
<b>Virginia Administrative Code (VAC) citation</b>	23 VAC 10-55
<b>Regulation title</b>	Virginia Corn Excise Tax
<b>Date this document prepared</b>	8/14/2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. 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.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

The Virginia Corn Excise Tax is administered by the Department of Taxation pursuant to *Code of Va.* § 3.2-1412. This regulation was promulgated by the Department of Taxation pursuant to *Code of Va.* § 58.1-203.

## Alternatives

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

The Department of Taxation attempted to repeal this regulation in 2015, but withdrew the proposed repeal due to concerns raised by the Department of Planning and Budget that the rate of the Corn Excise Tax should be set forth in a regulation because the only statutory reference to the rate is in Va. Code § 3.2-1407, the statute setting forth the referendum question. As this situation is unchanged, the Department of Taxation has determined that the regulation is the least burdensome alternative available to achieve its purpose.

## Public Comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

Commenter	Comment	Agency response
Not Applicable		

## Effectiveness

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

As noted above, the Department of Taxation attempted to repeal this regulation in 2015, but withdrew the proposed repeal due to concerns raised by the Department of Planning and Budget that the rate of the Corn Excise Tax should be set forth in a regulation because the only statutory reference to the rate is in the statute setting forth the referendum question. Given these concerns, the Department of Taxation has determined that the regulation is necessary for the administration of the tax and thus necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable

## Decision

*Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

As noted above, the Department of Taxation attempted to repeal this regulation in 2015, but withdrew the proposed repeal due to concerns raised by the Department of Planning and Budget that the rate of the

Corn Excise Tax should be set forth in a regulation because the only statutory reference to the rate is in Va. Code § 3.2-1407, the statute setting forth the referendum question.

As this situation is unchanged, the Department of Taxation has determined that the regulation should be retained as is without making changes.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, 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. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

As the rate of the tax is not clearly set out in statute, the regulation continues to be necessary to clarify the rate of the tax. The Department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2015. The Department is not aware of any technology, economic conditions, or other factors have changed in the area affected by the regulation. Retaining the regulation clarifies the rate of the Corn Excise Tax, and has no economic impact on small businesses.