



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Mines, Minerals, and Energy
VAC Chapter Number:	4 VAC 25-35
Regulation Title:	Certification Requirements for Mineral Miners
Action Title:	Proposed
Date:	March 11, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Certification Requirements for Mineral Miners, 4 VAC 25-35 are designed to provide a pool of qualified and certified mining employees and to ensure that miners are knowledgeable of the practices and processes of mining minerals in a safe and productive manner.

This regulation sets forth guidance for the mineral mining industry. The certification requirements for mineral miners address application and examination requirements, reciprocity between states, renewals, first aid, and the individual certification requirements that are designated for positions with responsibilities underground and at surface mines as foremen, blasters, electricians, inspectors, and for general mineral miners.

Changes made to the regulation include administrative changes that will allow different forms of payment for certification. Substantive changes include the requirement that applicants take a written examination for certification as electrician, regardless of experience. This would not include electricians with an electrical journeyman's card. The Board of Examiners (BOE) certificates, prior to 1994 were to be valid until replacement with Board of Mineral Mine Examiners certificates. However, new certificates were, in the existing regulation, to be issued with expiration dates between 1996-99 with no BOE certificate valid after July 1, 1999. Lastly, surface blasters will be required to possess a valid record of three hours of first aid training from an organization using nationally recognized standards or training that meets federal 30 CFR Part 48 requirements. Presently, the certificate holder is only required to possess a valid MSHA 5000-23 form.

Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its **scope and the extent to which it is mandatory or discretionary**; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, **web site addresses** for locating the text of the cited authority must be provided. Please **state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.***

The Certification Requirements for Mineral Miners are promulgated at the discretion of Board of Mineral Mining Examiners and are not federally mandated. However, the federal MSHA accepts state certificates in lieu of establishing federal certifications.

The Board of Mineral Mining Examiners (BMME) derives its authority to promulgate this regulation from the Code of Virginia, Section 45.1-161.292:19. Section 45.1-161.292:19.A specifies 8 certifications that must be issued by the Board. Section 45.1-161.292:12.B provides the Board the authority to require certification for additional tasks by regulation.

Section 45.1-161.292:19.C gives the Board of Mineral Mining Examiners (BMME) the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 of the Administrative Process Act.

The Code of Virginia, including the above citations may be viewed at <http://leg1.state.va.us/000/src.htm>.

The Office of the Attorney General has certified that the Department of Mines, Minerals, and Energy and the Board of Mineral Mining Examiners has the statutory authority to promulgate the proposed regulation. This regulation comports with the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Certification Requirements for Mineral Miners, 4 VAC 25-35 are being amended as a result of periodic review. During this review, the Board of Mineral Mining Examiners, with input from industry representatives as well as the DMME found that minor edits were needed to bring the regulation up to date with the Code of Virginia.

Changes made to the regulation include administrative changes that will allow different forms of payment for certification. Another change was to require that applicants take a written examination for certification as electrician, regardless of experience. This would not include electricians previously certified with an electrical journeyman's card.

The transition provision for Board of Examiners (BOE) certificates to be replaced with Board of Mineral Mine Examiners certificates is being removed, it is no longer required. Lastly, surface blasters will be required to possess a valid record of three hours of first aid training from an organization using nationally recognized standards or training that meets federal 30 CFR Part 48 requirements. Presently, the certificate holder is only required to possess a valid MSHA 5000-23 form.

The goals of the agency are to ensure through proper examination and certification of persons working on mineral mines, the safest environment for workers employed at mineral mines without restricting productivity or efficiency. The regulation is necessary in that it establishes procedures and standards of certification for miners and workers working in areas of specific responsibilities at mineral mines.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

4VAC 25-35-10 D. – The section is being amended to allow alternative forms of payment for certification fees for replacement of lost or destroyed certificates. Alternate forms of payment are already allowed for all other certification fees.

4VAC 25-35-20 A. – The section is being amended by deleting the language in first sentence "... or those applicants with comparable work experience acceptable to DMM under 4VAC 25-35-100 A". Experience alone is no longer recognized in lieu of exam.

4VAC 25-35-30 – The section is being amended to reference the correct section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:24 rather than section 45.1-161.51.

4VAC 25-35-40 A. – This section is being amended to remove transition provisions for old certificates issued by the Board of Examiners. There are now no old certificates in effect.

4VAC 25-35-80 B. – This section is being amended for clarity and to be consistent with continuing education requirements and federal requirements for first aid. For surface blasters to have a valid certification, they are required to have first aid training that meets nationally recognized standards.

4VAC 25-35-100 B. – The section is being amended for clarity and to be consistent with federal requirements. The section is also being amended to reference 30 CFR Part 46 as well as Part 48.

4VAC 25-35-110 – The section is being amended to reference the correct section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:11 rather than section 45.1-161.19 and section 45.1-161.292:12 rather than 45.1-161.20.

4VAC 25-35-120 A. - The section is being amended to reference the correct section of the Code of Virginia and work commencing date. It should read Code of Virginia section 45.1-161.292:28 rather than section 45.1-161.55. The section is also being amended to include 30 CFR Part 46.

4VAC 25-35-120 C. - The section is being amended to reference the correct section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:28 B rather than section 45.1-161.55 B.

4VAC 25-35-120 G. – The section is being amended to be consistent with the Code of Virginia, section 45.1-161.292:28. The section should reflect a January 1,1997 starting date for General Mineral Miner certification.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

As amended, this regulation presents no new advantages or disadvantages to the public or the Commonwealth. The amended regulation updates administrative requirements and makes the regulation consistent with the Code of Virginia. There are no substantive provisions added or made that are of consequence to the community, government officials, or the public.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

(a) The projected cost to the state to implement and enforce the proposed regulation:

- (i) Fund Source/Fund Detail: General Fund; 0100: Permit Fees; 0218
- (ii) Budget Activity:
 - Functional Area; Health and Safety (409);
Program/subprogram; Certification (50602)
 - Functional Area; Administration (402)
 - Program/subprogram; Certification (50602)
- (iii) One-time cost vs. on-going expenditures: One time cost to DMM of approximately \$8,000 for re-printing of regulations. DMM's annual budget already includes the costs associated with reprinting of regulations.

(b) The projected cost of the regulation on localities: No cost to localities.

(c) A description of the individuals, businesses or other entities that likely are to be affected by the regulation:

- Certified Miners (Surface Foreman, Surface Blaster, Underground Foreman, Underground Blaster, General Mineral Miner, Mineral Mining Electrician)

(d) The agency's best estimate of the number of such entities that will be affected:

- Approximately 30 certified miners each year request replacement of lost or destroyed certificates.

(e) The projected cost of the regulation for affected individuals, businesses, or other entities:

Mineral mining companies and personnel should encounter no new costs related to the proposed amendments to the regulations. Minimal cost savings may be realized with approximately 30 certified miners each year who request replacement of a lost or destroyed certificate, and the ability of these persons to pay the replacement fee by a form of payment (e.g., personal check) other than certified check, cashier's check, or money order, which typically costs about \$5-10.00. This change will result in a savings of \$5-10.00 per miner who requests a replacement certificate.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

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4VAC 25-35-120 G. – The section is being amended to be consistent with section 45.1-161.292:28 of the Code of Virginia. The section should reflect a January 1,1997 starting date for General Mineral Miner certification.

Alternatives

Please describe the specific 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.

During the review of the Certification Requirements for Mineral Miners, alternative types of payment were considered. The workgroup agreed that persons requesting the replacement of a lost or destroyed certificate should be able to use alternative form of payment.

The original certification regulation allowed comparable documented work experience to be considered in lieu of a certification exam for mine electricians. This was allowable for applicants that were grandfathered into the system. The time period for grandfathering is passed and this work experience is no longer considered to be an alternative to examination.

Also, in the regulation addressing certification of surface blasters, an alternative to the sole reliance on the MSHA 5000-23 form as valid proof of training in first aid was to allow the applicant to be able to provide valid documentation of first aid training.

After the review of the existing Board of Mineral Mining Examiners Certification Requirements, 4 VAC 25-35, it has been determined that the regulation serves a useful function through certification and education to the mine industry and its workers. The guidelines set forth in this regulation provide a necessary function and are the least burdensome.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comments were received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department of Mines, Minerals, and Energy, through examination of the regulation and relevant input and review has determined that this regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than **three** years after the proposed regulation is expected to be effective.*

The Department of Mines, Minerals, and Energy expects to publish the final version of the Certification Requirements for Mineral Miners in December of 2003. According to the most recent applicable Executive Order, EO 21 (2002), the regulation will be reviewed and re-evaluated to determine if the regulation should be continued, amended, or terminated no more than 4 years from the effective date (1/2004), unless requested earlier by the Counselor of the Governor.

The specific and measurable goals of the review will include a determination of regulatory effectiveness. This process will begin with periodic review notification to the public for comments through the Regulatory Town Hall for a minimum of 21 days. No later than 90 days from the close of the public comment period, the agency will submit its report for Executive Review through the Town Hall along with its recommendation to keep as is, amend or to terminate the regulation.

If the decision is to amend the regulation, the Notice of Regulatory Action will be published in the Virginia Register to begin the regulatory process.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 regulation is essential to protect workers at mineral mine sites by preventing health problems, accidents and fatalities in work that is inherently dangerous. Improper conditions and actions are a significant cause of injuries and fatalities.

The regulation sets forth requirements for the certification of individuals who work at mineral mine sites. A knowledgeable worker, a safe work environment and work practices reduce accidents that may result in reduced family income and increased family stress. Reducing

accidents decreases these factors and has positive family impact. Ensuring that workers and operators know how to perform their jobs safely and efficiently has a generally positive effect in areas around mineral mines through protection of the public health, safety and welfare. The regulation has a positive effect on family formation, stability, and autonomy.