



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-145
Regulation title	Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects
Action title	Technical changes as the result of periodic review
Date this document prepared	July 21, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

As the result of a periodic review, this fast-track action will incorporate technical changes suggested by DMME's Division of Mined Land Reclamation's regulatory workgroup. There are no substantive changes to the regulation.

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.

On June 22, 2011, after a periodic review, DMME elected to amend the Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§ 45.1-261.1 mandates the Director of DMME promulgate regulations to implement the process by which operators can perform reclamation work in the Commonwealth.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The amendments to the regulation are necessary to ensure it remains easily understandable for operators and the general public. As discussed above, the regulation is required by statute.

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?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This rulemaking should be noncontroversial because no substantive changes are proposed. Technical changes are proposed to ensure the references made in the regulation are up to date and to ensure the regulation remains clearly written.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

There are no substantive changes to the regulation, only technical ones as described above.

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.*

The primary advantage to this regulation would be ensuring the regulation is technically correct and easy to understand for operators and the general public. There are no disadvantages.

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 requirements more restrictive than 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.

Though coal mining occurs only in the Southwest region of the state, no localities will be particularly affected from this regulation.

Regulatory flexibility analysis

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 discussed above, this regulation is mandated by statute. Also, there are no substantive changes so there will be no adverse impact upon 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.

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	\$ 0. Only technical changes are made to the regulation. Substantively, the program remains the same. Only one operator has used the section in the recent past, and DMME estimates only 4 hours of staff time was necessary to process, resulting in a minimal expense to the Commonwealth.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	\$ 0. See above
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Very few operators have sought to complete reclamation work under this section. The technical changes made to this regulation will have no effect on this.
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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See above. The technical changes will have no effect on operators in the Commonwealth. DMME estimates the number of operators to be less than 5.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.	As the proposed regulation contains no substantive program changes, there are no additional costs.
Beneficial impact the regulation is designed to produce.	A technically correct, clearly written regulation is the desired impact.

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.

This regulation is mandated by statute. Additionally, no substantive changes are made so there is no additional impact upon small businesses.

Family impact

Please assess the impact of the proposed 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.

This regulation will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	N/A	Definition of relevant mining experience	Reference to obsolete Chapter 17 of Title 45.1 is stricken here and throughout the regulation.
20 A	N/A	Operator requirements	Sentence added to clarify requirements of operators.
20 B	N/A	Director of the department...	Superfluous phrase "of the department" deleted.
20 B	N/A	..or State Program	"Reclamation" is added to title of program to match title in the Code.
40 A	N/A	certification by a CPA...	CPA is spelled out for clarity.
40 B	N/A	contained in CPA statements...	Language edited for clarity

40 C		definition of net worth	Subsection deleted as net worth is defined in Section 10
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