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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals and Energy
<b>Virginia Administrative Code (VAC) citation(s)</b>	4 VAC 25-20, 4 VAC 25-35
<b>Regulation title(s)</b>	Board of Coal Mining Examiners Certification Requirements
<b>Action title</b>	Clarifying amendments regarding underground and surface coal mine certifications
<b>Date this document prepared</b>	April 5, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The proposed amendments clarify distinctions between underground and surface mine certification regulations. The proposed amendments also remove or modify obsolete language, such as "first class" foreman, in the regulations.

### 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.*

BCME Board of Coal Mining Examiners  
DMME Department of Mines, Minerals, and Energy

### 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.*

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On April 5, 2017, the BCME voted to adopt the amendments to the Board of Coal Mine Examiners Certification Requirements.

### 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.*

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§ 45.1-161.28 of the Code of Virginia grants authority the BCME and DMME to regulate the certification of persons who work in coal mines in the Commonwealth.

### 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.*

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The purpose of the amended regulations is to modify or eliminate obsolete language in the regulations. The amendments also clarify the distinction between surface and underground mine certifications.

### 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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This action will be noncontroversial because it is clarifying regulations and does not create additional regulatory burdens on individuals or businesses.

### 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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The substantive changes to the regulations are the modification of language for clarity or the removal of obsolete language. Obsolete language is removed to keep the regulation up to date. Language has been added to illustrate the distinction between surface mine foremen and inspectors and underground mine foremen and inspectors. Finally, language is added to allow for individuals carrying a valid coal surface mine inspector certification can receive a certification to inspect mineral mines.

### 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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The primary advantage of the proposed amendments is increased clarity for mine certification regulations. There are no known 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.*

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There are no requirements more restrictive than 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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There is no direct effect upon any particular locality in the Commonwealth. Coal is only mined in counties in far Southwest Virginia (Russell, Lee, Scott, Wise, Tazewell, Dickenson and Buchanan.)

### 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.

This regulatory action will not affect small business as there are no substantive changes to regulatory requirements. This action merely removes obsolete language and creates a separate surface mine inspector certification to allow DMME to more effectively allocate internal resources.

### 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>Any costs of implementation, which are expected to be minimal, would be absorbed by DMME.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>\$0. The changes to this regulation will not affect localities.</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>Individuals applying for or holding a mining foreman or inspector certification may be affected.</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>It is estimated that no regulated individuals, businesses, or small businesses will be affected.</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>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>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>There are no projected costs of the new regulation for individuals, businesses, or other entities.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The regulations are designed to produce increased clarity in mining certification regulations.</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.*

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One alternative would be to leave the regulation as is although the proposed regulations result in greater clarity and remove obsolete language.

### 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.*

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This action is not the result of a periodic review/small business impact review.

### 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.*

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

**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>
4VAC25-20-15		Definitions	Removes obsolete language and updates citations.
50, A, E, F, G3		Requirements for first class mine foreman	Modifies obsolete language by replacing "first class" with "underground"
60, B		Requirements for first class shaft or slope foreman	Modifies obsolete language by removing "first class"
70, D, E, F3		Requirements for surface foreman	Modifies obsolete language by adding "mine" before "foreman"
180, C, D, E		Requirements for mine inspectors.	Modifies obsolete language by replacing "first class" with "underground" or adding "underground" before "mine inspector"
340A, B, D, E		Requirements for mine foreman examinations.	Modifies and clarifies language by adding "underground" before "mine foreman"
350B		Actions brought before the BCME.	Modifies and clarifies language by adding "underground mine" before "foreman"
360A, B, C		Guidelines for on-site examination of a mine foreman	Modifies language by adding "underground" before "mine foreman"
370A, A1, A2, B		Determination by the inspector to conduct an on-site examination.	Modifies language by adding "underground" before "mine foreman"
380A, B		Notification of intent to conduct an on-site examination.	Modifies language by adding "underground" before "mine foreman"
390A, B3, B4, B5		Procedures for conducting on-site examination	Modifies language by adding "underground" before "mine foreman"
400A, B, C, D		Results of the on-site examination.	Modifies language by adding "underground" before "mine foreman"
4VAC25-35-110		Mine inspector necessary knowledge and competence.	Clarifying language to allow surface coal mine inspectors to receive certification to inspect mineral mines.