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Final Regulation Agency Background Document

Agency name	Virginia Department of Mines, Minerals, and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-20
Regulation title	Board of Coal Mining Examiners Certification Requirements
Action title	Final Action
Document preparation date	January 6, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Board of Coal Mining Examiners (BCME) promulgates the Board of Coal Mining Examiners Certification Requirements, 4 VAC 25-20 to ensure that miners are trained and certified to safely perform the duties and responsibilities that come with working on surface and in underground coal mines.

The certification requirements for coal miners ensure that miners are certified to perform specialized tasks required to mine coal. These requirements address application and examination requirements, reciprocity between states, continuing education, and specialized certification requirements designed for positions with special responsibilities underground and at surface mines such as blasters, shot firers, electricians, hoisting engineers, foremen, inspectors, diesel engine mechanics, first aid and first aid instructors, surface facilities foreman, automatic elevator

operators, gas detection, general coal miners, BCME instructors, and on-site examination requirements.

Substantive changes to the regulation included removing the requirement that DMME mail certificate holders notices reminding them of certification dates and deadlines regarding completion requirements.

When administering examinations in a segmented format, a miner will only be required to retake any “sections” failed on completion of all segments. This will represent a first re-take of an examination. A miner would be required to retake the complete examination if the first re-take is failed.

Provisions addressing reciprocal agreements with other states will require miners to meet both conditions set forth by the reciprocating party and meet Virginia-unique requirements.

Underground shot firers will be required to re-certify every five years by providing proof of experience, examination, or continuing education.

Underground electrical repairman will not be allowed to perform electrical work at surface locations.

Hoisting engineers will be required to re-certify every five years by providing proof that they have been performing hoisting duties in their work or passing a practical exam.

Certified instructors will be required to use applicable specialized equipment to help reinforce their teaching.

Miners will be required to have a practical knowledge of mine gases as part of their gas detection qualification.

The final regulation has been amended to provide that surface miners without underground mining experience cannot work underground without the required training and knowledge.

BCME training and continuing education instructors will be required to be knowledgeable of or certified in the areas they teach. In addition, students will be able to critique instructor effectiveness.

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 November 13, 2003, the Board of Coal Mine Examiners adopted a final regulation entitled “Board of Coal Mining Examiners Certification Requirements”, 4 VAC 25-20.

Legal basis

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

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

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

The Board of Coal Mining Examiners (BCME) derives its authority to promulgate this regulation from Virginia Code Sections 45.1-161.28, 45.1-161.29, and 45.1-161.34.

At section 45.1-161.28, the BCME shall have the power 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 the Administrative Process Act.

At section 45.1-161.29, the Board of Coal Mining Examiners may require examination of applicants for certification but shall require certification of mine inspectors. Also, the Board may require additional information as may be necessary to determine the competency and qualifications of candidates. The section requires qualifications for any certification and rules, conditions, and regulations for examinations.

At section 45.1-161.34, the BCME shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications.

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 Coal Mining Examiners has the statutory authority to promulgate this final regulation.

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 it 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 Board of Coal Mining Examiners Certification Regulations, 4 VAC 25-20 have been amended as a result of periodic review. During this review, the Board of Coal Mining Examiners, with input from industry representatives and the DMME found that minor edits were needed to bring the regulation up to date with the Code of Virginia and current industry standards.

During review of the regulation, the department asked the BCME to remove the condition from the regulation that required the division to mail certificate holders notices regarding pending continuing educational requirements. Because miners frequently move around to different companies, it is often difficult to pinpoint exactly where a particular miner is working or living. Placing the responsibility of monitoring certifications on the individual miner provides cost savings to the department and the taxpayers. This should result in a more effective and responsible pool of certified miners.

When administering examinations in a segmented format, a miner will be required to retake any “sections” failed on completion of all segments. This will represent a first re-take of an examination. The regulation includes changes that allow certificate holders increased flexibility to meet continuing education requirements.

Regarding proposed regulatory requirements that outline reciprocal agreements, the workgroup chose to broaden the scope of the regulation to require a miner wishing to be reciprocally certified in Virginia to meet conditions set forth by the reciprocating party and the unique state of Virginia requirements. It was decided that having broader reciprocating requirements would enable miners with specialized backgrounds the flexibility to use their skills in a wider range of locations.

Previously there was no requirement for re-certification of underground shot firers. The board felt that the best alternative to this was to re-certify these individuals every five years and to require proof of experience, examination, or continuing education.

Underground electrical repairman will not be allowed to perform electrical work at surface locations. This is because the responsibilities vary considerably for underground and surface electricians.

Hoisting engineers will be re-certified every five years and the hoisting engineer will be required to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

Advanced first aid certification needed a clear date when the certification expired as opposed to the current language.

In the current regulation, instructors were not explicitly required to use equipment that was necessary to teach advanced first aid. Some instructors were teaching without this equipment. The proposed regulation requires instructors to use any specialized equipment to help reinforce their teaching.

Miners will be required to have a practical knowledge of mine gases. This will provide more thorough mine gas monitoring.

In the current regulation addressing general coal miner certifications, there was no clear distinction between job responsibilities at surface and underground mines. For clarity, the regulation is being amended to ensure that surface miners without underground mining experience are not working underground without the required training and knowledge.

Not all instructors that teach BCME training and continuing education courses are certified in the areas they teach. In addition, the students are not given the opportunity to critique instructors teaching effectiveness. Therefore, the regulation is being amended to ensure the instructor is knowledgeable and able to effectively teach the required courses and that students be given the opportunity to evaluate the courses.

The goals of the regulation are to ensure, through examination and certification of persons working on coal mines, a safe environment for workers employed at coal mines. The regulation is necessary in that it establishes procedures and standards of certification for miners and workers in areas of specific responsibilities at coal mines.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

4 VAC 25-20-20 through 4 VAC 25-20-220, Specific sections relating to the mailing and receiving of notifications to certificate holders are being amended. Many miners do not provide DMME with a forwarding address when they move or leave a job. In many instances hundreds of notification mailings have been sent, only to be returned to the department unopened. This results in wasted costs to the department and the public. The Board believes that miners, operators, and the DMME would benefit if the department provides certification information on a requested basis to interested people. This information can also now be checked on DMME's Internet site.

4 VAC 25-20-20 E., The section is being amended to not specify forms of payment, consistent with the Code of Virginia. The code does not specify any particular form of payment.

4 VAC 25-20-30 F., The section is being amended so that an applicant only must retake the failed “sections” of the exam as opposed to the entire examination. For example, if a miner takes a segmented exam, any sections that are failed are combined for the second retake. If the section retake is failed, the miner would then have to retake the entire examination on the third attempt. If any section is failed during the third attempt, the applicant must wait a year from the date of the first attempt to restart the examination process.

4 VAC 25-20-40, The section is being amended to broaden the scope of the reciprocal agreements and to meet conditions set forth by reciprocating parties and the state of Virginia. This would be for electrical repairmen, mine foremen, and for advanced first aid.

4 VAC 25-20-90, The section is being amended to re-certify underground shot firers every five years and for applicants to provide proof of experience, pass examinations, or participate in continuing education.

4 VAC 25-20-100, The section is being amended to address the differences in responsibilities between surface and underground electrical repairman. Underground electrical repairman requirements would not be permitted to perform electrical work at surface locations. This is consistent with current federal MSHA standards.

4 VAC 25-20-140, The section is being amended so that hoisting engineers must be re-certified every five years. Hoisting engineers will need to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

4 VAC 25-20-210, The section is being amended to provide a clear date when the advanced first aid certification would expire.

4 VAC 25-20-220, The section is being amended to require instructors to use equipment that is necessary to teach advanced first aid and first aid techniques.

4 VAC 25-20-250, The section is being amended to require the applicant to demonstrate a practical knowledge of mine gases in addition to knowing how to operate gas monitoring equipment.

4 VAC 25-20-255, The section is being amended so there is a clear distinction between the required skills that qualify general coal miners to work at surface or underground mines. A miner with a surface certification is not certified to work underground, but a miner with an underground certification may work at the surface of the underground coal mine.

4 VAC 25-20-259, The section is being amended to ensure that BCME instructors are knowledgeable of mines and mining and able to effectively teach continuing education and training courses. The changes also allow students to critique the instructor’s effectiveness.

4 VAC 25-20-390, The section is being amended to address on site investigations by mine inspectors. An inspector would choose ten questions from a pool of questions that relate to the violations found at the mine rather than randomly picking questions that could be unrelated to the violations at the mine.

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.*

This regulation presents advantages and disadvantages to the regulated community. There are advantages that provide for alternative methods of payment for application fees. A disadvantage to the public and the regulated community is that the division will no longer mail advance certification expiration notices to businesses and individuals.

One advantage to the miner is that certification some exams may be segmented as opposed to taking the entire exam at one setting. Any failed segment may be retaken at the completion of the initial examination process.

Also, the regulation addresses the requirements for certification of reciprocal agreement with other states. The regulation will provide for reciprocal certifications while ensuring that the persons coming to Virginia to work are knowledgeable of Virginia-specific requirements.

For shot firers and hoisting engineer certificate holders, an added advantage to the mining community includes the option for the certificate holder to re-certify in most cases by testing, continuing education, or proof of experience. Student choosing to maintain certification by retesting shall meet all requirements of initial certification except work experience forms will not have to be resubmitted.

An advantage to the regulated community is the requirement that certification instructors will be required to have equipment necessary to conduct miner training. This could become a disadvantage to instructors if any must acquire the equipment to continue teaching. In addition, miners that undergo training will be able to critique their instructors. This should provide an advantage to the regulated community because feedback from students generally encourages improved instructor skills, thus ensuring better training for the industry.

Lastly, when mine inspectors give on-site examinations to mine foremen, the questions asked to the examinee will be drawn from a pool of questions as opposed to the inspector writing out the questions. This should be administratively advantageous to the inspector and may reduce any potential stress between the inspector and the foreman related to the examination or the violation.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

A few minor changes were made to clarify the following sections:

4 VAC 25-20-100 E 1., “electrical” was added to clarify “MSHA annual [electrical] retraining”...

4 VAC 25-20-110 E 1., 30 CFR 75.153 (g) was edited to read 30 CFR [77.103(g)]...

4 VAC 25-20-210 C., “initial training.”, was amended with the language “initial [or continuing education] training.”

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Donnie Lowe,	Mr. Lowe was concerned about persons holding hoisting engineer certificates that do not keep their experience current. He was concerned that these certified persons may use their certification to do hoisting work when they have not performed hoisting engineer work for long periods of time or use their elevator operator certification to do hoisting engineer work, without any refresher.	The Board of Coal Mining Examiners recognizes that some certified hoisting engineers may not be regularly performing these duties and maintaining the knowledge and skills required for certification. Therefore, the Board is amending the regulation to require hoisting engineers to be re-certified every five years by showing he has been performing hoisting duties or by passing a practical demonstration of skills.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4 VAC 25-20-20 through 4 VAC 25-20-220	N/A	The current requirement states that the department will notify certificate holders of impending renewal or expiration.	4 VAC 25-20-20 through 4 VAC 25-20-220, Specific sections relating to the mailing and receiving of notifications to certificate holders are being amended. The recommendation to not mail notices was proposed and accepted by the BCME because many miners do not leave a forwarding address when they move or leave a job. In many instances hundreds of notification mailings are sent, only to be returned to the department unopened. This results in wasted costs to the department and the public. The Board agreed that the operators and the DMME would benefit if they made available the information on a requested basis, leaving maintenance notices for certifications up to the responsible individuals. This information can also now be checked on DMME’s Internet site.
4 VAC 25-20-20 E		Current requirement references the Code of VA for acceptable forms of payment.	4 VAC 25-20-20 E., The section is being amended to be consistent with changes in the Code of Virginia. The code does not specify any particular form of payment.
4 VAC 25-20-30 F		Current section on states that the exam may not be taken more than three times a year.	4 VAC 25-20-30 F, The section is being amended so that an applicant participating in segmented testing would take all segments of the exam. The sections that are failed from each

<p>4 VAC 25-20-40</p>		<p>Current requirements did not include requirements regarding reciprocal agreements for specific positions.</p>	<p>segment are combined for the second retake. If the section retake is failed on the second attempt the miner would then have to retake the entire examination on the third attempt.</p> <p>4 VAC 25-20-40, The section is being amended to broaden the scope of the reciprocal agreements and to meet conditions set forth by reciprocating parties and the state of Virginia. This would be for electrical repairmen, mine foremen, and for advanced first aid.</p>
<p>4 VAC 25-20-90</p>		<p>Current requirement did not include any continuing education or re-certification requirements.</p>	<p>4 VAC 25-20-90, The section is being amended to re-certify underground shot firers every five years and for applicants to provide proof of experience, pass examinations, or participate in continuing education.</p>
<p>4 VAC 25-20-100</p>		<p>Current requirement included the surface location as an area where an underground electrical repairman could work.</p>	<p>4 VAC 25-20-100, The section is being amended to address the differences in responsibilities between surface and underground electrical repairman. Underground electrical repairman requirements would exclude performing electrical work at surface locations. “electrical” was added to clarify “MSHA annual [electrical] retraining”.</p>
<p>4 VAC 25-20-110 E</p>		<p>Current language referenced 30 CFR 75.153 (g).</p>	<p>Language was updated to read 30 CFR 77.103 (g). This was to correct a CFR reference.</p>
<p>4 VAC 25-20-140</p>		<p>Current requirement did not include any re-certification requirements.</p>	<p>4 VAC 25-20-140, The section is proposed to have hoisting engineers be re-certified every five years and for the hoisting engineer to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.</p>
<p>4 VAC 25-20-210</p>		<p>Current requirement was not clear on the expiration date.</p>	<p>4 VAC 25-20-210, The section is being amended to provide a clear date when the advanced first aid certification would</p>

<p>VAC 25-20- 220</p>		<p>Current requirement did not require instructors to furnish training aids.</p>	<p>expire. “or continuing educational” was added to read “initial [or continuing education] training”.</p> <p>4 VAC 25-20-220, The section is being amended to require instructors to use equipment that is necessary to teach advanced first aid and first aid techniques.</p>
<p>4 VAC 25-20- 250</p>		<p>The current requirement did not require gas detection personnel to have any relevant knowledge of mine gasses.</p>	<p>4 VAC 25-20-250, The section is being amended for the miner to have a practical knowledge of mine gases in addition to knowing how to operate the gas monitoring equipment.</p>
<p>4 VAC 25-20- 255</p>		<p>Current section did not specify underground or above ground certification.</p>	<p>4 VAC 25-20-255, The section is being amended so there is a clear distinction in the skills between miners that are qualified to work at surface or underground mines.</p>
<p>4 VAC 25-20- 259</p>		<p>Section did not previously provide for instructors to be critiqued or reviewed by students.</p>	<p>4 VAC 25-20-259, The section is being amended to ensure that BCME instructors are knowledgeable of mines and mining and able to effectively teach continuing education and training courses.</p>
<p>4 VAC 25-20- 390</p>		<p>The current section required the inspector to select and write specific questions to present for on-site examination proceeding a violation.</p>	<p>4 VAC 25-20-390, The section is being amended to address on site investigations by mine inspectors. An inspector would choose ten questions from a pool of questions that relate to the violations found at the mine rather than randomly picking questions that would be unrelated to the violations at the mine.</p>

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulation is essential to protect workers at coal 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 coal 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 coal mines through protection of the public health, safety and welfare. The regulation has a positive effect on family formation, stability, and autonomy.