



Virginia
Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC25-140
Regulation title	Coal Surface Mining Regulations
Action title	Repeal of interim coal surface mining regulations
Document preparation date	5/23/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action will repeal an obsolete chapter of regulations governing the surface mining of coal. The subject chapter, 4VAC25-140 (Coal Surface Mining Regulations), was promulgated and enforced during an interim period of regulation by the Department of Mines, Minerals and Energy, before the Department was granted primacy for regulation of surface coal mining by the federal Office of Surface Mining in the U.S. Department of the Interior. There are no longer any mining operations in Virginia regulated under this chapter. The provisions of the chapter have been completely replaced by 4VAC25-130, Coal Surface Mining Reclamation Regulations.

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On September 10, 2007, the Department of Mines, Minerals and Energy repealed 4VAC25-140, Coal Surface Mining Regulations.

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.

The Department of Mines, Minerals and Energy (DMME) has authority to take this action under language found in § 45.1-161.3, Powers of the Department, § 45.1-230, Authority and duties of Director, and § 45.1-242, Performance standards.

- Section 45.1-161.3 empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-230 of the Code of Virginia empowers the DMME Director to promulgate regulations as may be necessary to carry out the provisions of the Virginia Coal Surface Mining Control and Reclamation Act, chapter 19 of Title 45.1 of the Code.
- Section 45.1-242 of the Code of Virginia directs the DMME Director to, by regulation, establish performance standards applicable to all surface mining and reclamation operations. Establishment of these performance standards by regulation is mandatory.

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 purpose of this action is to repeal an obsolete chapter of regulations governing the surface mining of coal. The subject chapter, 4VAC25-140 (Coal Surface Mining Regulations), was promulgated and enforced during an interim period of regulation by the Department of Mines, Minerals and Energy, before the Department was granted primacy for regulation of surface coal mining by the federal Office of Surface Mining in the U.S. Department of the Interior. There are no longer any mining operations in Virginia regulated under this chapter. The provisions of the chapter have been completely replaced by 4VAC25-130, Coal Surface Mining Reclamation Regulations.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-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 objection 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.

The agency has determined that no citizens or businesses are currently being regulated under this chapter, and that it does not intend to enforce this regulation in the future. Therefore, the action is not anticipated to be controversial nor are objections from the public or members of the General Assembly expected.

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.)

The Department of Mines, Minerals and Energy is repealing all sections of the regulation at 4VAC25-140. The sections to be repealed are 4VAC25-140-10 through 4VAC25-140-1090.

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 regulation is being repealed because it is now obsolete and unnecessary. A newer chapter has replaced the provisions of the regulation. The Department of Mines, Minerals and Energy anticipates no potential issues that will need to be addressed as a result of this action. The agency has identified no disadvantages to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	None. This action repeals an existing regulation.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the	None

regulation	
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.	None
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None

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.

The Department of Mines, Minerals and Energy considered the alternative of taking no action and leaving the subject regulation in place. This alternative, however, would violate the provision of Executive Order 36 (2006) that regulations not be considered perpetual. The Department has determined that there is no longer a continued need for the regulation, and is therefore taking this action to repeal it.

Family impact

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

This action, being the repeal of a regulatory chapter no longer enforced or necessary, will have no impact on the institution of the family and family stability.

Detail of changes

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

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

The Department of Mines, Minerals and Energy is repealing 4VAC25-140, Coal Surface Mining Regulations, in its entirety. The sections to be repealed are numbered 4VAC25-140-10 through 4VAC25-140-1090.