



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals and Energy
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 25-90
<b>Regulation title</b>	Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines
<b>Action title</b>	Clarifying emission testing and evaluation requirements as the result of periodic review
<b>Date this document prepared</b>	August 2, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The proposed regulation makes a minor change to the section that governs emissions testing and evaluation of diesel engines used in underground coal mines. The changes will allow for a more clearly written regulation and for a more efficient approval process from the testing and evaluation of diesel powered equipment used in underground coal mining.

### 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 23<sup>rd</sup> 2011, the Coal Mine Safety Board (CMSB) completed its periodic review of this section and unanimously voted to amend the Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines.

## 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.*

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§§ 45.1-161.3(4) and 45.1-161.106A of the Code of Virginia (Code) authorize the Chief of DMME's Division of Mines (Chief), in consultation with the CMSB, to promulgate regulations to ensure safe and healthy working conditions in underground mines in the Commonwealth. Also, § 45.1-161.206 of the Code specifically directs the Chief to promulgate regulations necessary to govern the use of diesel powered equipment in underground coal mines.

## 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.*

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The amended regulation is necessary to clarify the language. It is also necessary to improve the efficiency of the approval process. Tests conducted by the Mine Safety and Health Administration are done in a closed, laboratory environment and provide little assistance to the Chief in determining whether to approve equipment.

## 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.*

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This rulemaking is expected to be noncontroversial as it does not represent a substantive change to the regulation. The amendments are to clarify language and enhance the existing process.

**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.)*

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One sentence is stricken for the sake of clarity. The phrase "based on MSHA approval data" is deleted because that data is produced in a closed environment and does not accurately reflect the real world conditions underground where diesel equipment is used.

**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 advantages to this action are a clearly written regulation and a more efficient process by which diesel powered equipment is approved for use in underground mines in the Commonwealth. 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.*

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There are no requirements that are 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.*

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Though coal mining only takes place in a handful of localities in Southwest Virginia, no locality will be particularly affected by the proposed 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 stated above, this regulation is mandated by statute. As the result of the amendments, operators will have more flexibility as the testing and evaluation process will be more efficient and easier to understand.

**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.*

<b>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</b>	The minor changes to this regulation may result in a minimal administrative savings to the Commonwealth, as the approval process will be streamlined.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	\$0. The minor changes to this regulation will not affect localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Underground coal mine operators in the commonwealth are the entities primarily affected by this regulation.
<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 (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.	There are approximately 65 underground mines in Virginia, though not all utilize diesel equipment. A n exact number is not known. Due to increased consolidation in the coal mining industry, few, if any, small businesses will be affected by this regulation.
<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. 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</b>	\$0. A more streamlined approval process may result in a minor increase in efficiency for operators but this is impossible to quantify.

<b>proposed regulatory changes or new regulations.</b>	
<b>Beneficial impact the regulation is designed to produce.</b>	The proposed regulation is designed to produce a more efficient and effective mechanism for testing and evaluating diesel-powered equipment.

**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.*

As discussed above, this regulation is mandated by statute.

**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 regulatory action will have no impact on the family.

**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:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
60 (5)	N/A	The concentration or	Sentence deleted to enhance clarity.

		changes in concentration...	
60 (5)	N/A	...based upon the MSHA engine approval data...	Phrase is deleted. MSHA data is gathered in a closed, laboratory environment and provides little assistance in evaluating data gathered in a real world environment (e.g. underground coal mine).