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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Energy
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	4 VAC25-130
<b>VAC Chapter title(s)</b>	Coal Surface Mining Reclamation Regulations
<b>Action title</b>	Regulatory action to reflect updated reclamation plan to match practice of liens on land reclaimed.
<b>Date this document prepared</b>	September 13, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

[4 VAC25-130-882](#) pertains to lien processing on coal surface mining reclamation on private land. Current regulation gives discretionary authority to the director to place a lien on reclaimed private property that results in a significant increase in the fair market value of the property.

Recent review of the State Reclamation Plan by OSMRE recognized outdated language not reflective of current practices or federal guidance under [4VAC25-130-882](#). Federal SMCRA guidance under [30 CFR 882](#) directs that no lien be placed on property of surface owners who did not consent to participate in reclamation work. Further review of the State Reclamation Plan found that [4VAC25-130-882](#) misaligns with current agency practices, which does not place liens on properties that have been entered to address environmental issues related to AML. The practice of placing liens of properties is not currently in practice because it reduces the appeal for landowners in the environmental reclamation of former coal mine land for the benefit of the public. The review of the State Reclamation Plan and recognition of

misaligned language prompted the Virginia Department of Energy to amend [4VAC25-13-882](#) to reflect Federal Guidelines and current practices.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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AML—Abandoned Mine Lands  
OSMRE—Office of Surface Mining Reclamation and Enforcement  
SMCRA—Surface Mining Control and Reclamation Act

## Statement of Final Agency Action

*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 September 13, 2024 the Department of Energy adopted the fast-track action: Regulatory action to reflect updated reclamation plan to match practice of liens on land reclaimed.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

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This regulatory action was not prompted by a mandate. As discussed above, a review of the State Reclamation Plan prompted the Department of energy to update its regulations to avoid misaligned guidance from federal guidelines and current practice.

It is expected to be noncontroversial because current language does not reflect federal guidelines or current agency practice. Current language is obsolete.

## [RIS4] Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The Department of Energy’s regulatory authority for this action can be found in § 45.2-103 and § 45.2-1003 of the Code of Virginia. Federal guidance requiring these changes is stated above.

**[RIS6]**  
**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

The purpose of this regulatory action is to ensure that guidance in 4VAC25-130-882 is reflective of federal guidelines and current agency practice. The agency anticipates this regulatory action to be noncontroversial because it is currently not in practice or application by the agency, so no substantive change is being made.

**Substance**  
**[RIS9]**

*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.*

As discussed above, there are no substantive changes made to agency regulations. The proposed changes are necessary to conform to federal guidelines and current agency practices.

**[RIS10]**  
**Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The primary advantage of this regulatory action is ensuring the agency’s regulations are up to date and conform to federal guidelines. There are no disadvantages to the public or the Commonwealth.

**[RIS12]**  
**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

No substantive changes are made in this regulatory action, therefore there are no change more restrictive than applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The update applies to guidance for the Department of Mined Land Repurposing under the Virginia Department of Energy.

Localities Particularly Affected

None

Other Entities Particularly Affected

None

**Economic Impact**

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>None.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>None.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The change ensures the Department of Energy’s section of the Virginia Administrative Code is up to date and reflective of federal guidance and current agency practice.</p>

**Impact on Localities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	None.
Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is up to date and reflective of federal guidance and current agency practice.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. 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.	None.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None.
Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is up to date and reflective of federal guidance and current agency practice.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

Due to the nature of the underlying legislation, there are no alternatives. There are no substantive changes, thus no substantive impact on small businesses or any regulatory entity.

## Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

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This analysis is not relevant to this particular action as no substantive changes are made.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, 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.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Energy is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Larry Corkey, Manager of Policy and Planning, 1100 Bank Street, 8<sup>th</sup> Floor, Richmond, VA 23219. 804-692-3239, [larry.corkey@energy.virginia.gov](mailto:larry.corkey@energy.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of*

the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
4 VAC25-130-882		A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.	Current guidance not aligned with federal regulations or current agency practice. Current agency practice does not apply liens to lands. The update would make no substantive change.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

**Table 3: Changes to the Emergency Regulation**

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage