



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25 -165
Regulation title	Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes
Action title	New regulation to administer arbitration process for coalbed methane gas ownership disputes
Date this document prepared	August 17, 2010

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Chapter 442 of the 2010 Acts of Assembly directs the Virginia Gas and Oil Board (VGOB) to adopt regulations to implement the arbitration process created in that act within 280 days of its enactment. VGOB adopts its regulations through the Department of Mines, Minerals and Energy (DMME). This regulation establishes the guidelines for the arbitration process. Some of the key provisions include how

arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration itself.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.

As mentioned above, Chapter 442 of the 2010 Acts of Assembly mandates these regulations. Also, the Director of DMME is generally empowered with regulatory authority under § [45.1-161.3](#) and § [45.1-361.4](#) of the Code of Virginia. (Code). VGOB possesses authority to issue regulations under § [45.1-361.15](#) of the Code. On August 17, 2010, the VGOB voted to adopt emergency regulations pursuant to Chapter 442 of the 2010 Acts of Assembly.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulation is to administer the arbitration process mandated in Chapter 442 of the 2010 Acts of Assembly. The act creates a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. Currently, there is approximately \$26 million in royalties held in escrow because conflicting claims of ownership have not yet been resolved. Creating an arbitration system that is an effective alternative to litigation can help reduce the amount of funds in escrow.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulation is needed to establish the parameters of the arbitration process created by Chapter 442 of the 2010 Acts of Assembly. This voluntary process is designed to offer parties an alternative to litigation to resolve disputes over ownership of coalbed methane gas. By establishing the regulations governing the arbitration process, this regulation will help enhance the welfare of citizens as they will have an alternative to litigation to establish ownership of coalbed methane gas and associated royalty payments.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The regulation will establish the arbitration process. It will detail how interest is calculated to determine if sufficient funds are available to fund the arbitration, how the process works, and what happens once a determination is issued.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

This regulation is mandated by statute, thus there are no alternatives.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting by mail, email or fax to **Michael Skiffington, Program Support Manager, 1100 Bank Street, 8th Floor, Richmond, VA 23219, 804.692.3212 phone, 804.692.3237 fax, michael.skiffington@dmme.virginia.gov** Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency/board is using the participatory approach to develop the regulation. Persons interested in assisting in the development of the regulation should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential 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 regulation will have no impact on the family.