



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals and Energy
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC25-140
<b>Regulation title</b>	Coal Surface Mining Regulations
<b>Action title</b>	Repeal of interim coal surface mining regulations
<b>Date this document prepared</b>	5/8/07

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*.

### 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 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.

### 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.*

The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority 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.

### 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 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.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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.

### 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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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.

## 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 hearing is to be held to receive comments on this notice.*

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The Department of Mines, Minerals and Energy is seeking comments on the intended regulatory action.

Anyone wishing to submit written comments may do so by mail, email or fax to

**Gavin Bledsoe, Legal Services Officer**  
**P.O. Drawer 900**  
**Big Stone Gap, VA, 24219-0900**

**phone number 276-523-8157**

**fax number 276-523-8163**

**email address [gavin.bledsoe@dmme.virginia.gov](mailto:gavin.bledsoe@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 hearing will not be held.

## Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved 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.*

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Advisers will not be involved in this 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. The agency has determined, therefore, that the participatory approach is not necessary in this case.

## 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.*

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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.