



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Department of Mines, Minerals, and Energy
<b>VAC Chapter Number:</b>	4 VAC 25-35
<b>Regulation Title:</b>	Board of Mineral Mining Examiners Certification Requirements
<b>Action Title:</b>	Periodic Review - Pre-NOIRA
<b>Date:</b>	December 28, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

The Board of Mineral Mining Examiners Certification Requirements, 4 VAC 25-35 are designed to provide a pool of qualified and certified mining employees and to ensure that miners are knowledgeable of the practices and processes of mining minerals in a safe and productive manner.

This regulation sets forth guidance for the mineral mining industry. The certification requirements for mineral miners address application and examination requirements, reciprocity between states, renewals, first aid, and the individual certification requirements that are designated for positions with responsibilities underground and at surface mines as foremen,

blasters, electricians, inspectors, and for general mineral miners. This review is pursuant to Executive Order 25(98) and is being conducted to determine if these regulations should be terminated, amended, or retained in their current form.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The Board of Mineral Mine Examiners (BMME) derives its authority to promulgate this regulation from the Code of Virginia, Section 45.1-292:19.C.

Section 45.1-292:19.C gives the Board of Mineral Mine Examiners (BMME) the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 of the Administrative Process Act.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

The regulation was opened to public for comment by the department on September 10, 2001. The DMME asked for comments regarding the essential need of the regulations to protect the health, safety, or welfare of citizens or for the efficient and economical importance of an important government function. No public comments were received.

The department convened the Board of Mineral Mining Examiners (BMME) to review the regulation after the end of the end of the public comment period. The Board will establish a regulatory work group during the formal promulgation process.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The goals of the Board of Mineral Mining Examiners Certification Requirements, 4 VAC 25-35 regulations are designed to provide a pool of qualified and certified mining employees and to ensure that miners are knowledgeable of the practices and processes of mining minerals in a safe and productive manner. The Board of Mineral Mining Examiners Certification Requirements are necessary to maintain the knowledge, skills, education, and abilities that are necessary to safely and responsibly perform the duties of operating mineral mine sites. These include: certification requirements, examination requirements, reciprocity between states, renewals, underground and surface mineral mine worker requirements, blasting, electrical, inspector requirements, and general mineral miner requirements.

The Board of Mineral Mining Examiners Certification Requirements, 4 VAC 25-35 are essential for the protection of the health and safety of mineral miners and for the protection of the citizens that could be impacted by mineral mine operations. The work of the miner is inherently dangerous and requires supervision, training, and continuing education with certification to ensure that mine workers continue to maintain a healthy and safe work environment.

Public and private entities involved in the review process have determined the regulation to be clearly written and easily understood.

### Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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During the review of the Certification Requirements for Mineral Miners, alternative types of payment were considered. The workgroup agreed that persons requesting the replacement of a lost or destroyed certificate should be able to use alternative form of payment.

The original certification regulation allowed comparable documented work experience to be considered in lieu of a certification exam for mine electricians. This was allowable for applicants that were grandfathered into the system. The time period for grandfathering is passed and this work experience is no longer considered to be an alternative to examination.

Also, in the regulation addressing certification of surface blasters, an alternative to the sole reliance on the MSHA 5000-23 form as valid proof of training in first aid was to allow the applicant to be able to provide valid documentation of first aid training.

After the review of the existing Board of Mineral Mining Examiners Certification Requirements, 4 VAC 25-35, it has been determined that the regulation serves a useful function through certification and education to the mine industry and its workers. The guidelines set forth in this regulation provide a necessary function and are the least burdensome.

**Recommendation**

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

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The DMME and the BMME are recommending that the Board of Mineral Mining Examiners Certification Requirements, 4 VAC 25-35 be amended to update the regulations to meet current federal requirements and public and industry needs.

**Substance**

*Please detail any changes that would be implemented.*

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4VAC 25-35-10 D. – The section is being amended to allow alternative forms of payment for certification fees.

4VAC 25-35-20 A. – The section needs to be amended by deleting the language in first sentence "... or those applicants with comparable work experience acceptable to DMM under 4VAC 25-35-100 A". Experience alone is no longer recognized in lieu of exam.

4VAC 25-35-30 – The section is being amended to reference the correct section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:24 rather than section 45.1-161.51.

4VAC 25-35-40 A. – This section is being amended for clarity and to reflect current mining practices.

4VAC 25-35-80 B. – This section is being amended for clarity and to be consistent with continuing education requirements and federal requirements for first aid. Revision in language needed to address requirement that applicant possess a valid record of training from an organization that uses nationally recognized standards in first aid.

4VAC 25-35-100 B. – The section is being amended for clarity and to be consistent with federal requirements. The section is also being amended to reference 30 CFR Part 46 as well as Part 48.

4VAC 25-35-110 – The section is being amended to reference the correct section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:11 rather than section 45.1-161.19 and section 45.1-161.292:12 rather than 45.1-161.20.

4VAC 25-35-120 A. - The section is being amended to reference the correct section of the Code of Virginia and work commencing date. It should read Code of Virginia section 45.1-161.292:28 rather than section 45.1-161.55. The section is also being amended to include 30 CFR Part 46.

4VAC 25-35-120 C. - The section is being amended to reference the correct section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:28 B rather than section 45.1-161.55 B.

4VAC 25-35-120 G. – The section is being amended for clarity. The section should reflect a January 1,1997 starting date for General Mineral Miner record documentation.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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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The regulation is essential to protect workers at mineral mine sites by preventing health problems, accidents and fatalities in work that is inherently dangerous. Improper conditions and actions are a significant cause of injuries and fatalities.

The regulation sets forth requirements for the certification of individuals who work at mineral mine sites. A knowledgeable worker, a safe work environment and work practices reduce accidents that may result in reduced family income and increased family stress. Reducing accidents decreases these factors and has positive family impact. Ensuring that workers and operators know how to perform their jobs safely and efficiently has a generally positive effect in areas around mineral mines through protection of the public health, safety and welfare. The regulation has a positive effect on family formation, stability, and autonomy.