



## Fast Track Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Department of Mines, Minerals and Energy                         |
| <b>Virginia Administrative Code (VAC) citation</b> | 4 VAC 25-35  |
| <b>Regulation title</b>                            | Certification Requirements for Mineral Miners                    |
| <b>Action title</b>                                | Amendment to reduce regulatory burdens on mineral mine operators |
| <b>Date this document prepared</b>                 | December 7, 2012   |

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

As part of Governor McDonnell's Regulatory Reform Initiative, this regulatory action amends one section of the Certification Requirements for Mineral Miners. This amendment reduces regulatory burden on mineral mine operators and also ensures consistency with other sections of the administrative code.

### 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 December 7, 2012, the Department of Mines, Minerals and Energy (DMME) adopted an amendment to Certification Requirements for Mineral Miners.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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§45.1-161.292:19A of the Code of Virginia directs DMME to issue certifications for mineral miners to ensure the health and safety of persons and property associated with mineral mining. §45.1-161.292:19C of the Code of Virginia grants DMME the authority to promulgate regulations necessary or incidental to the performance of its duties.

## 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 purpose of this action is to reduce regulatory burden on mineral mine operators in the Commonwealth and to maintain consistency across the administrative code. "Preshift inspections" is a term of the art in the mining industry. The current language requires a mandatory inspection of the work area prior to the beginning of the work shift. The term is overly burdensome and it is not used anywhere else in the Virginia Administrative Code. The amended language reflects a more appropriate, consistent standard.

## 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 the only amendment serves to reduce regulatory burden and to ensure consistency.

**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.) Please be sure to define any acronyms.*

The term “preshift inspections” is changed to “examinations” in this action. As described above, “preshift inspections” is a term of the art and is overly rigid in this particular context. The proposed change would maintain consistency across other sections of the administrative code such as 4VAC25-35-75A and 4VAC25-40-130.

**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.*

The advantages to this action would be reduced regulatory burden and increased consistency. 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.*

There are no requirements that exceed 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.*

There are no particularly affected localities.

**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.

This regulation was reviewed in its entirety as part of Governor McDonnell’s Regulatory Reform Initiative. The proposed amendment was identified as an example of an overly restrictive regulatory burden.

**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.

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| <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>  | \$0. This action will not result in any additional cost to implement.  |
| <b>Projected cost of the new regulations or changes to existing regulations on localities.</b>  | \$0. This action does 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>  | This action affects mineral mine operators with associated cement plant facilities and cement plant examiners at those sites.  |
| <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 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.  |
| <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 proposed regulatory changes or new regulations.</b> | This action should not increase costs on operators. In fact, it may reduce costs by eliminating the requirement to inspect work areas prior to the beginning of the work shift. There are no costs related to real estate. |
| <b>Beneficial impact the regulation is designed</b>   | This action is designed to reduce regulatory burden  |

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| to produce. | on operators by removing the requirement that inspections be made prior to the beginning of the work shift. |
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### 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.*

The sole alternative to this regulation is to leave the overly burdensome current language in place. This would contravene the purpose of Governor McDonnell’s Regulatory Reform Initiative.

### 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 action would have no impact on the family or family stability.

### 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement                            | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|--|--|--|
| 75                     | n/a  | The surface foreman shall oversee any preshift | Preshift inspections is changed to examinations. This is a more flexible,      |

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|  |  | inspections of the plant that are performed by a cement plant examiner. | consistent standard and removes a burdensome regulatory requirement on mineral mine operators. |
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