



Periodic Review / Retain Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4VAC25-140
Regulation title	Coal Surface Mining Regulations
Document preparation date	September 4, 2009

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

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 § 45.1-261.1, Operators may perform reclamation.

- 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.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The Department considered the alternative of repealing the regulation, but determined that the regulation is still needed to protect public safety, health, and welfare. The agency also considered the alternative of amending the regulation, but determined that no amendments are necessary at this time.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

DMME received three public comments in response to the Notice of Periodic Review published in *The Virginia Register of Regulations*. The commenters generally asked that environmental protections in the regulation be strengthened, and that the practice of mountaintop removal coal mining be terminated. DMME has promulgated a separate chapter of regulations, 4VAC25-130, that governs modern surface coal mining and provides environmental protections as strong as the agency has authority to promulgate. The environmental protective provisions of that chapter meet the requirement of being as effective as, but no more stringent than, corresponding federal regulations.

Parties who have indicated an interest in this regulation were notified by email of the periodic review. The proposed regulation was reviewed internally by DMME. The agency did not form an advisory group to assist in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

DMME has determined, with advice from the Office of the Attorney General, that the regulation is necessary for the protection of public health, safety, and welfare. The agency interprets the low number of public comments to indicate general satisfaction with the regulation, the manner of implementation, clarity and ease of comprehension, and the effectiveness of the regulation.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Mines, Minerals and Energy recommends that that this regulation stay in effect without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

The purpose of this regulation is to assure that surface coal mining is carried out in an environmentally sound manner. Except that it protects adjacent lands from the potentially harmful affects of surface coal mining, it has no other impact on the institution of the family and family stability.