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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals and Energy
<b>Virginia Administrative Code (VAC) citation(s)</b>	4 VAC 25-31 4 VAC 25-40
<b>Regulation title(s)</b>	Reclamation Requirements for Mineral Mining Safety and Health Requirements for Mineral Mining
<b>Action title</b>	Amendments resulting from periodic review to clarify and codify longstanding agency policy
<b>Date this document prepared</b>	December 20, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

As the result of periodic review, the Department of Mines, Minerals and Energy is amending reclamation requirements for mineral mining to clarify and codify longstanding agency policy. Additionally, the agency is making one minor technical change to its mineral mining safety and health regulations to correct an omission from a recent update.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

COV = Code of Virginia  
DMME = Department of Mines, Minerals and Energy  
DMM = DMME's Division of Mineral Mining

### 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 20, 2018, DMME adopted amendments to its Reclamation Regulations for Mineral Mining and its Safety and Health Requirements for Mineral Mining

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

*As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

The mandate for this regulatory change is the requirement that every regulation be reviewed at least once every four years.

This rulemaking is noncontroversial because it merely makes minor changes and clarifies and codifies longstanding agency policy.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

DMME's regulatory authority for this action is located in §§ [45.1-161.3](#), [45.1-161.292:19\(C\)](#) and [45.1-180.3\(A\)](#) of the COV.

### Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

This regulatory change is necessary to clarify and codify longstanding agency policy. This will result in clearer, more precise requirements that will enhance worker and public safety, as well as environmental protection.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

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Substantive changes to existing sections in this regulatory action include specifying requirements for operation and reclamation plans, clarification of permit application notification requirements, clarification of top soil requirements for reclamation, clarification of temporary cessation conditions, and the addition of a standard for fire extinguishers on mineral mine sites. Other clarifying changes are described below. Almost all of these changes merely clarify existing agency policy.

## Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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The public, DMME, and the regulated community will all benefit from regulatory requirements that codify and clarify longstanding agency policy. These changes will result in enhanced environmental protection, and public and worker health and safety. There are no known disadvantages to the public or the Commonwealth.

## Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

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There are no applicable federal requirements.

## Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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Other State Agencies Particularly Affected

None

Localities Particularly Affected

None

Other Entities Particularly Affected

None

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>DMME anticipates no significant costs or savings resulting from these changes. To the extent there are costs, they can be absorbed within existing funds.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>None</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change is necessary to clarify and codify longstanding agency policy. This will result in clearer, more precise requirements that will enhance worker and public safety, as well as environmental protection.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>None</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change is necessary to clarify and codify longstanding agency policy. This will result in clearer, more precise requirements that will enhance worker and public safety, as well as environmental protection.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>There are approximately 440 permitted mineral mine operations across the Commonwealth.</p>
<p>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. Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 440 permitted mineral mine sites across the Commonwealth. Approximately 90% of the operators of these sites would qualify as small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;  c) fees;  d) purchases of equipment or services; and  e) time required to comply with the requirements.</p>	<p>There are no costs related to real estate, fees, or equipment or service purchases. DMME is unable to estimate exact costs to operators. However, as these changes merely clarify existing agency policy, it is estimated that any cost increase to operators would be minimal.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change is necessary to clarify and codify longstanding agency policy. This will result in clearer, more precise requirements that will enhance worker and public safety, as well as environmental protection.</p>

## Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

One alternative considered would be to leave the regulation as is. This approach was rejected for reasons discussed above. One example that demonstrates DMME’s commitment to select the least burdensome requirement that meets the purpose of the regulation is Section 405. The new language requires an adequate cover and seeding of mine water used as fill. The current requirement is four feet of soil. This one-size-fits-all approach is not always appropriate, given the vastly different conditions and topography at mineral mine sites across the Commonwealth.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

DMME always seeks to protect the health, safety and welfare of workers and citizens while simultaneously minimizing adverse impact on the regulated community in general and small business in particular. One example of this is exempting operations in the Coastal Plain from top soil reclamation requirements due to the lack of sufficient top soil in that region. Such a requirement would have been unduly burdensome.

### Public Participation

*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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

*If the regulatory change will be 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 change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

For changes to existing regulation(s), please use the following chart:

<b>Current section number</b>	<b>Current requirement</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
4VAC25-31-120	Amount of permit fees set out in regulation	Language changed to reference COV section to avoid having to change regulation language when fees increase in the future. No practical impact.
130(1)	Contents of mining plans	Added language to specify requirements for storage and disposal of hazardous materials. This language is necessary to protect the environment and worker safety. Operators routinely provide this information already, and this is current policy.

130(3)	Contents of reclamation plans	Added language to require plans for closing or securing underground mine entrances. This language is necessary to protect public and worker safety and will only affect two mineral mines in the Commonwealth.
130(6)	Hydrologic balance assessment	Clarifying language is added to specify that DMM will review and approve hydrologic balance assessment. This merely reflects ongoing practice and will have no practical impact.
170	Permit application notifications	The section has been reorganized for clarity, One substantive change requires operators to send a copy of a permit notification to DMM at the time they are mailed to those who must be noticed. This will serve as a heads up to DMM that it will soon receive a permit application and will increase efficiency while only minimally burden operators.
240A	Bond amount	Similar to 120 above, language changed to reference COV bond requirements.
360A	Operation and reclamation	Clarifying language added to specify that operations shall be conducted in accordance with approved plans. This is a clarifying change and will have minimal practical impact.
405	Disposal of mine waste	Clarifying language added to specify how mine waste (defined term) is disposed. Also removing requirement of four feet of soil cover and changing it to “adequate” cover and seeding. Using mine waste as fill is a site specific exercise that should not be regulated in a one-size-fits-all fashion. This change will provide greater flexibility to mine operators.
410	Storage of top soil	Clarifying language was added codifying longstanding agency policy. Adding this language will give the public a better understanding of reclamation requirements. As these are already in policy, there is no impact on operators. Language added to exempt sand and gravel operations in the Coastal Plain (eastern Va) because of a general lack of suitable top soil in that region.
420C	Screening	“spoil areas” and “top soil” changed to “berm” for clarity. This is not a substantive change and will have no significant impact.
430A	Completion of active mining	Language is added to clarify that the director must approve the declaration of completed mining operations so that reclamation can begin.
430B	Completion of active mining	Clarifying language is added to specify disturbed areas must be reclaimed or adequately stabilized or erosion and sediment control structures must be maintained, and berms, basins and drains are considered drainage structures. These changes are largely clarifying in nature and will maintain flexibility for operators while ensuring no offsite impacts.
440 & 450	Drainage and sediment control Sediment Basins	Language moved from 450 to 440 for clarity. No impact
4VAC25-40-670	Fire extinguishers	Language is added to clarify that mandatory fire extinguishers shall conform to existing national standards. This change was inadvertently omitted from a recent regulatory change.

