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## 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 VAC25-31
<b>Regulation title</b>	Reclamation Regulations for Mineral Mining
<b>Action title</b>	Amendments to reclamation regulations for mineral mining resulting from periodic review
<b>Date this document prepared</b>	April 15, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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.*

As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-31, Reclamation Regulations for Mineral Mining. The amendments will facilitate the use of electronic permitting and forms and clarify reclamation and post-mining land use requirements. Miscellaneous obsolete items, such as addresses that have changed, will be updated. The agency will also consider expanding the types of financial instruments that can be used for performance bonds. These amendments are needed to keep the regulation current, accurate, and clear.

### 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 is authorized to promulgate regulations necessary to the performance of its duties under §45.1-161.3 of the Code of Virginia. §45.1-180.3 gives the Director of the

agency specific authority to promulgate regulations to implement statutory requirements for the reclamation of noncoal mineral mines. This authority 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.*

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As a result of periodic review, the Department of Mines, Minerals and Energy has identified sections of the regulation at 4VAC25-31 that would benefit from being amended. The proposed regulatory action will enhance the protection of the health, safety and welfare of citizens of the Commonwealth.

**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.*

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The proposed action will amend sections of an existing regulation. The agency's commitment to offering electronic services to customers will require certain sections to be amended to facilitate the use of electronic forms. Other sections will be reorganized or reworded to make them clearer. Obsolete information, such as agency addresses that have changed, will be corrected. Sections dealing with reclamation standards and post-mining land use will be clarified and strengthened to assure adequate protection of the environment. The agency is also considering the evaluation of additional types of financial instruments to be used as bond.

**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.*

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During periodic review, the Department considered the alternative of taking no action. The agency determined, however, that taking no action would result in a regulation containing sections that were unclear, out of date, and not as specific as necessary for achieving the intended purpose of protecting public health and safety in the most cost-effective manner. Although taking this action is considered by the Department to be the most effective means of updating the regulation, the agency will seek public input to identify alternatives.

**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 agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to **David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8<sup>th</sup> Floor, Richmond VA 23219-3402; phone (804) 692-3212, fax (804) 692-3237; email [David.Spears@dmme.virginia.gov](mailto:David.Spears@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 be held after the publication of the proposed text of the regulation.

### 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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The Department of Mines, Minerals and Energy will use the participatory approach in the development of the proposed language of the amendments. The agency anticipates using an *ad hoc* advisory committee in developing the language of the proposed amendments to the regulation.

### 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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The regulation at 4VAC25-31, Reclamation Regulations for Mineral Mining, is intended to protect the environment in and around active mineral (non-coal) mines in Virginia. The current action, which is aimed at correcting, clarifying and strengthening this chapter, will increase the protection presently offered by the regulation. It will, therefore, provide additional protection to families who live on or own land near mineral mines. The Department of Mines, Minerals and Energy anticipates that the action will have no impact on the authority and rights of parents, economic self-sufficiency of families, the marital commitment, or disposable family income.

**Periodic review – Public comment**

*If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) 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.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Barbara Scheid	Ms. Scheid had observed mountain top removal coal mining in southwestern Virginia and commented that Virginia should have higher standards than the federal EPA and should, in fact, stop this activity. She was concerned that the proposed regulatory action would end the regulation of coal mining.	This action deals with a regulatory chapter that governs non-coal mineral mines, not coal mines. The agency maintains other chapters for the reclamation of coal mines (see 4VAC25-130, for example). This action will not eliminate or lower reclamation standards for either coal or non-coal mines in Virginia.

This Notice of Intended Regulatory Action is the result of a periodic review. One public comment, as noted in the table above, was received during the public comment period pursuant to the publication of notice of the review. The agency has determined that the regulation is necessary for the protection of public health, safety, and welfare.

**Periodic review – Discussion**

*If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency’s consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

This regulation is intended to protect the environment on and around mineral mines. The Department of Mines, Minerals and Energy has determined that all provisions of the regulation are still needed to maintain the essential purpose of the chapter. The agency has also determined that the regulation is no more complex than is necessary to achieve its intended purpose, and that it does not unnecessarily duplicate, overlap, or conflict with federal or state law or regulations.

The agency has determined, through the process of periodic review, that this chapter should be amended. The regulation was promulgated in 2003 and has not been comprehensively reviewed or amended since then. The agency has also determined that the regulation, when amended, will achieve its intended purpose while minimizing its impact on small businesses in Virginia.

