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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Energy
Virginia Administrative Code (VAC) Chapter citation(s)	4VAC25-11, 4VAC25-20, 4VAC25-31, 4VAC25-35, 4VAC25-40, 4VAC25-70, 4VAC25-90, 4VAC25-101, 4VAC25-110, 4VAC25-125, 4VAC25-130, 4VAC25-145, 4VAC25-150, 4VAC25-160, 4VAC25-165, 4VAC25-170
VAC Chapter title(s)	Public Participation Guidelines, BCME Certification Requirements, Reclamation Requirements for Mineral Mining, Safety and Health Regulations for Mineral Mining, Regulations Governing Disrupting of Communications in Mines, Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines, Regulations Governing Vertical Ventilation Holder and Mining Near Gas and Oil Wells, Regulations Governing Blasting in Surface Mining Operations, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities, Coal Surface Mining Reclamation Regulations, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects, Virginia Gas and Oil Regulation, Virginia Gas and Oil Board Regulations, Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes, Geothermal Energy Regulations
Action title	Regulatory action to reflect agency name change and recodification of Titles 45.1 and 67 of the Code of Virginia.
Date this document prepared	January 3, 2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

Two pieces of legislation passed in 2021 are the impetus for this regulatory action. One ([HB1855](#)) changed the agency's name from the Department of Mines, Minerals and Energy to the Department of Energy. It also changed two of the agency's division names. The second piece of legislation ([SB1453](#)) recodified Titles 45.1 and 67 of the Code of Virginia into the new Title 45.2.

This action would have been filed as an exempt final action but for technical problems with RIS 2.0 and the ransomware attacks that struck websites of the Division of Legislative Services.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

No acronyms are used in this form.

Statement of Final Agency Action

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 January 3, 2022, the Department of Energy adopted the fast-track action: Regulatory action to reflect agency name change and recodification of Titles 45.1 and 67 of the Code of Virginia.

Mandate and Impetus

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, or board decision). 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, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

As discussed above, two pieces of legislation require the Department of Energy to update its regulations to avoid obsolete agency/division names and references to a Title that no longer appears in the Code of Virginia.

It is expected to be noncontroversial because no substantive changes are proposed. The action merely updates agency/division names and references to the Code of Virginia.

Legal Basis

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

The Department of Energy's regulatory authority for this action can be found in § [45.2-103](#) of the Code of Virginia. The legislation requiring these changes is cited above.

Purpose

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.

The purpose of this regulatory action is to ensure all references to the agency name and cites to the Code of Virginia are up to date and accurate. No substantive changes have been made.

Substance

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.

As discussed above, there are no substantive changes made to agency regulations. The proposed changes are necessary to conform to recently enacted legislation.

Issues

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.

The primary advantage to this regulatory action is ensuring the agency's regulations are up to date and conform to recently enacted legislation. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

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.

No substantive changes are made in this regulatory action, therefore there are no changes more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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.

No agency, locality or entity is particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<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	None.
<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.	None.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is up to date.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None.
Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is up to date.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be	No entities will be affected.
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affected, include a specific statement to that effect.	
Agency's best estimate of the number of such entities that will be affected. 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.	None.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. 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.	None.
Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is up to date.

Alternatives to Regulation

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.

Due to the nature of the underlying legislation, there are no alternatives. There are no substantive changes, thus no substantive impact on small businesses or any regulatory entity.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This analysis is not relevant to this particular action as no substantive changes are made. It was only due to matters far beyond the agency's control that resulted in the need for this fast-track action rather than an exempt final action.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Energy is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Michael Skiffington, Director of Policy and Planning, 1100 Bank Street, 8th Floor, Richmond VA 23219. 804.370.1833, mike.skiffington@energy.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
Numerous	N/A	"Department of Mines, Minerals and Energy"	Changed to "Department of Energy" to reflect HB1855.
Numerous	N/A	"Division of Mined Land Reclamation"	Changed to "Division of Mined Land Repurposing" to reflect HB1855.

Numerous	N/A	Cites to Title 45.1 of the Code of Virginia.	Changed to analogous sections of Title 45.2 of the Code of Virginia to reflect SB1453. The Virginia Code Commission's recodification report includes a chart that lists the individual section changes from Title 45.1 to Title 45.2 on page 453 of 510.
Numerous	N/A	Cites to other obsolete sections to the Code of Virginia.	Some cites to FOIA were changed from Title 2.1 to the current Title 2.2.
Numerous	N/A	Some sections include outdated mailing addresses for agency offices in Southwest Virginia.	The Department of Energy's office in Lebanon has been closed so any reference to that has been updated to reflect the agency's Big Stone Gap office address. That address was also recently modified by the United States Postal Service so those updates are included here as well.