



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Department of Mines, Minerals and Energy
VAC Chapter Number:	4 VAC 25-125
Regulation Title:	Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities
Action Title:	Pre-NOIRA
Date:	April 17, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities are designed to ensure the health and safety of mine workers where heavy equipment is used to handle coal and coal related materials on stockpiles and in other bulk material storage facilities with underlying feeders. They will serve to protect mine workers from potential health and safety hazards through the implementation of equipment use procedures and by controlling the use of heavy equipment around coal and material stockpiles and bulk storage and handling facilities located at coal mine facilities that use underlying coal feeders. Regulation of the safe use of equipment associated with coal stockpiles and bulk storage and handling improves the overall health and safety of miners by ensuring the safe use and maintenance of equipment used in conjunction with underground coal mines while encouraging productive mining.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Section 45.1-161.3 of the Code of Virginia states that the Department has the power, to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 of the Code of Virginia and other relevant chapters. These regulations may be promulgated by the Department, the Chief, or the Director, as appropriate. They must be promulgated in accordance with the provisions of Article 2 (§ [2.2-4007](#) et seq.) of the Administrative Process Act.

Sections 45.1-106 and 45.1-254 authorize the Chief of the Department of Mines, Minerals and Energy, Division of Mines to promulgate regulations necessary to ensure the safe and healthy working conditions in underground and surface coal mines. Specifically, such regulations are to address the storage or disposal of any matter or material extracted or disturbed as the result of an underground or surface coal mining operation, used in the mining operation, or used for the refinement or preparation of the materials extracted from the coal mining operation.

Section 45.1-161.107 of the Coal Mine Safety Act directs the Chief to consider a number of factors in regulatory development; the federal mine safety law, standards generally recognized by the coal mining industry or set by recognized professional organizations and the results of research and other information that is available regarding the highest degree of protection and the latest technology.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities are designed to ensure the health and safety of mine workers where underlying coal feeders and heavy equipment are used to handle coal and coal related materials. These regulations will serve to protect mine workers from potential health and safety hazards through the implementation of equipment use procedures by providing guidance on the use of heavy equipment around coal and material stockpiles and bulk storage and handling facilities where underlying coal feeders are

used at coal mine facilities, and by establishing safety standards for practices at coal and bulk material storage facilities such as silos, bins, and hoppers.

This regulation is being promulgated as a means to help prevent fatal and non-fatal injuries and equipment damage. An initial draft of the regulation has been developed with input from the Virginia Coal Mine Safety Board and the federal Mine Safety Health Administration (MSHA).

Industry and government technical information and regulatory guidance used by the federal MSHA and the State of West Virginia are proposed to be incorporated into the regulation.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

An alternative was to not have regulations for coal mine operators to address work that was being done to handle and store coal. Because there have been fatalities and accidents resulting from a lack of clear standards that govern how to safely handle bulk coal and coal related materials, this alternative has been shown to not be effectively protecting the safety of coal miners.

Various industry operators recognized the safety problems associated with the mishandling of bulk coal and materials and began implementing controls, procedures and safety precautions to protect workers. Because not all workers are being protected, consistency is needed in the industry to protect workers on all mine sites. Industry representatives were in agreement that there was a need for the regulation.

An alternative to having the Virginia regulation was to let federal MSHA regulate and monitor safety on and around areas where bulk coal and materials were being handled. Because MSHA lacked sufficient regulation in this area, the state was asked by industry to take initiative on promulgating regulations that would help to keep mine workers safe when handling bulk coal and materials.

The Department considered establishing less restrictive or more restrictive measures than are included in this initial draft. By using input from industry and labor representatives, input from MSHA, and copies of similar regulations from other states DMME has been able to develop thorough regulations that enabled industry flexibility and maintained the highest level of safety for mine operators and workers. More or less restrictive regulations would not maintain this balance.

Finally, an alternative to promulgating a new regulation would be to require use of remote controlled equipment to handle bulk coal and material stockpiles. This was found to be very costly to implement while not providing any substantial increase in safety.

Family Impact Statement

Please provide a preliminary analysis of 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.

The regulation is essential to protect workers by preventing problems, accidents and fatalities in work that is inherently dangerous if not properly controlled. Improper equipment, procedures, conditions, and actions are a significant cause of injuries and fatalities of workers on mine sites where underlying coal feeders are used to handle coal and materials.

The regulation governs working conditions and procedures at coal mines where bulk material is handled and stored. A safe work environment and work practices reduces accidents that may result in reduced family income and increased family stress. Reducing accidents decreases these factors and has positive family impact. Ensuring that workers and operators know how to perform their jobs safely and efficiently has a generally positive effect in areas around coal mines through protection of the public health, safety and welfare from adverse effects of mining operations. The regulation has no effect on family formation, stability, or autonomy.