



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Department of Mines, Minerals and Energy
<b>VAC Chapter Number:</b>	4 VAC 25-10
<b>Regulation Title:</b>	Public Participation Guidelines
<b>Action Title:</b>	Proposed
<b>Date:</b>	March 11, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Department of Mines, Minerals and Energy's Public Participation Guidelines governs how the regulatory actions of the Department of Mines, Minerals and Energy, the Virginia Gas and Oil Board, the Board of Coal Mining Examiners, and the Board of Mineral Mining Examiners will: (i) respond to petitions for rulemaking; (ii) maintain a regulatory mailing list; (iii) notify and include interested persons in the regulatory development process; and (iv) comply with the requirements for adopting regulations in compliance with the Administrative Process Act.

The proposed amendments to the regulation as clarify what promulgating authorities are governed by the Public Participation Guidelines, provide for use of the new fast track regulatory process, provide for electronic notification of interested parties and references the Virginia

Regulatory Town Hall web site, and state that the department will not accept ex parte communications after a regulation's public comment period has closed.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The director of the Department is authorized to promulgate this regulation pursuant to the following Code Sections: (i) 2.2-4007.D of the Code of Virginia which mandates that agencies adopt public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations, (ii) 45.1-161.3 which provides the director of the department the authority to promulgate regulations necessary to perform its duties, (iii) 45.1-361.15 which provides the Virginia Gas and Oil Board with the authority to issue rules, regulations or orders pursuant to the provisions of the Administrative Process Act, (iv) 45.-161.28.C which provides the Board of Coal Mining Examiners with the authority to promulgate regulations necessary to perform its duties under the provisions of the Coal Mine Safety Act, and (v) 45.1-161.292:19.C which provides the authority to the Board of Mineral Mining Examiners to promulgate regulations necessary to perform its duties under the provisions of the Mineral Mine Safety Act. The referenced Code of Virginia citations may be accessed on the internet at <http://leg1.state.va.us/000/src.htm>.

The Office of the Attorney General has certified that the Department of Mines, Minerals and Energy, the Virginia Gas and Oil Board, the Board of Coal Mining Examiners, and the Board of Mineral Mining Examiners have the statutory authority to promulgate the proposed regulation. This regulation comports with the Code of Virginia.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of the proposed regulation is to amend the Department of Mines, Minerals and Energy's Public Participation Guidelines. This regulation states how the department, the Board of Coal Mining Examiners, the Board of Mineral Mining Examiners and the Virginia Gas and Oil Board will (i) respond to petitions for rulemaking; (ii) maintain a regulatory mailing list; (iii) notify and include interested persons in the regulatory development process; and (iv) comply with the requirements for adopting regulations under the Administrative Process Act.

The proposed amendments to the regulation will enhance participation from the public in the regulatory process. This will result in regulations that better protect public health, safety and welfare.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

4 VAC 25-10-10. Deletes the definition of “promulgating authority” consistent with changes to other sections that clarify which entity, the director, Division of Mines chief, or one of the department boards, is initiating the regulatory action.

4 VAC 25-10-20. Changes code references to keep them consistent with the Code of Virginia amendments and adds provisions to reference the fast-track rulemaking process.

4 VAC 25-10-30. Specifies documents that govern the regulatory process and replaces “promulgating authority” consistent with changes made to 4 VAC 25-10-10. Amending language to be consistent with changes to the Code of Virginia.

4 VAC 25-10-40. Includes the use of e-mail and the Commonwealth’s Regulatory Town Hall Website as a means for interested parties to receive electronic notices of regulatory actions.

4 VAC 25-10-50. Replaces “promulgating authority” consistent with changes made to 4 VAC 25-10-10. Additional changes were made to clarify those newspapers that media releases must be sent to regarding regulatory changes. Provides that the Notice of Regulatory Action be posted on the Regulatory Town Hall Website.

4 VAC 25-10-60. Replaces “promulgating authority” consistent with the changes in 4 VAC 25-10-10. Corrects a Code of Virginia citation.

4 VAC 25-10-70. Replaces “promulgating authority” consistent with the changes in 4 VAC 25-10-10. Removes redundant administrative language. Addresses the treatment of ex parte communications.

4 VAC 25-10-80. Replaces “promulgating authority” consistent with the changes in 4 VAC 25-10-10.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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, please include a sentence to that effect.*

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The department and the regulatory work committee that developed the proposed regulation believe that the regulation will be advantages to the public because it makes clear which entity is initiating regulatory actions. The proposed regulation also provides for expanded opportunities for public notice via e-mail and the Regulatory Town Hall Website. Advantages to the Department of Mines, Minerals, and Energy include a smoother and more efficient regulatory process through the use of electronic notifications of interested parties and creation of a clear guidance on treatment of ex parte communications

The department and the regulatory work committee that developed the proposed regulation believe that the amendments pose no disadvantages to the public or the Commonwealth.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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- (a) There is no projected cost to the state to implement the proposed regulation.
- (b) There is no projected cost to localities.
- (c) Individual miners, companies, and citizens with an interest in DMME regulations will be affected by the regulation.
- (d) There are approximately 10,000 businesses, miners and citizens that may potentially be affected by the proposed regulation.
- (e) There is no projected cost for the individuals, businesses and other entities affected by the regulation.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by*

*the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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4 VAC 25-10-10. The definition of "promulgating authority" was deleted and is being replaced throughout the regulation with specific references to either the director, mines chief, or one of the department boards, whichever is initiating the regulatory action.

4 VAC 25-10-20. Changes code references to keep them consistent with the Code of Virginia and adds provisions to reference the fast-track rulemaking process.

4 VAC 25-10-30. Lists all of the specific documents that govern the regulatory process (executive orders, the Virginia Register Act and Regulations of the Code Commission and not just the Administrative Process Act.) Changes were also made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Clarifying language specifying that petitions to develop or amend regulations will be handled in accordance with provisions of the Code of Virginia.

4 VAC 25-10-40. Includes the use of e-mail and the Commonwealth's Regulatory Town Hall Website as a means for interested parties to receive electronic notices of regulatory actions.

4 VAC 25-10-50. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Provides that the Notice of Intended Regulatory Action be posted on the Commonwealth's Regulatory Town Hall Website in addition to its publication in newspapers and the Virginia Register. Clarifies the newspaper publication provisions for the media releases.

4 VAC 25-10-60. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Corrected a Code of Virginia citation.

4 VAC 25-10-70. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Provides that the proposed draft regulation will also be posted on the Commonwealth's Regulatory Town Hall Website in addition to its publication in the Virginia Register. Removes redundant administrative language. Changes the requirement to send a copy or summary of the regulation to a requirement to send a notice of the regulatory change to interested parties. Addresses the treatment of ex parte communications.

4 VAC 25-10-80. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Lists all of the specific documents that govern the regulatory process (executive orders, the Virginia Register Act and Regulations of the Code Commission and not just the Administrative Process Act.)

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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One alternative to the regulation that the regulatory work committee discussed was whether to reference a web site for more information, copies of materials, etc. After discussion the committee decided to include a web site because it believed the use of electronic communication would only increase in the future. The committee decided to use the Commonwealth's website because it would be the least likely to change and because it would provide a single point of contact for state regulatory actions.

Another alternative that the regulatory work committee discussed was whether to leave the definition of promulgating authority as it was or to change it to specifically state which individual or body was initiating the regulatory action. The committee decided to specifically state which entity was responsible for the regulatory action.

Lastly, the department considered whether to address ex parte communication directly in the regulation. The department decided to add specific language to the regulation addressing ex parte communication.

The committee believes that the proposed regulation reflects the least burdensome alternative available for achieving its purpose.

## Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No public comments were received in response to the Notice of Periodic Review. A regulatory working committee was formed for the purpose of assisting the Department with the periodic review and the development of a draft regulation.

## Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The regulatory work committee which consisted of industry representatives believes this regulation is clearly and concisely written and that it achieves its essential purpose.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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DMME will review this regulation at least once very four years after the proposed regulation is effective. The review will consider whether the regulatory provisions regarding public participation guidelines should be continued, amended, or terminated.

The goal of this proposed regulation is to ensure citizen and industry involvement in the regulatory actions taken by DMME and its boards.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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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This regulation will have no direct effect on families.