



Exempt Action Final Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-20
Regulation title	Board of Coal Mining Examiners Certification Requirements
Action title	Clarification of right to representation in formal hearings before the Board
Final agency action date	February 8, 2007
Document preparation date	February 7, 2007

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Mines, Minerals and Energy (DMME) is amending its Board of Coal Mining Examiners (BCME) regulation to eliminate a provision stating that a party may be represented in formal hearings before the Board by an individual of their choice, whether or not that individual is an attorney. The amendment specifies instead that each party has the right to be represented by legal counsel in formal hearings before the Board. This change is necessary to comply with UPL Opinion No. 209 of the Supreme Court of Virginia, dated February 28, 2006, which states that Virginia Unauthorized Practice of Law Rule 1-101(A) applies to representation before a board of the Department of Mines, Minerals and Energy. The rule states that a non-lawyer shall not represent another before a tribunal. A DMME board meets the definition of "tribunal" "...when it determines the rights and obligations of parties to proceedings before it, as opposed to promulgating rules and regulations of general applicability." The amendment makes allowable representation before the BCME consistent with Rule 1-101(A), and also brings the affected regulation into compliance with Virginia Supreme Court Rule 1A: 4, as amended November 28, 2006, regarding out-of-state lawyers. The agency has no discretion in enacting this regulatory change. It is exempt from executive branch review pursuant to § 2.2-4006 of the Virginia Administrative Process Act.

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 February 8, 2007, the Department of Mines, Minerals and Energy amended 4 VAC 25-20, Board of Coal Mining Examiners Certification Requirements.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This action does not require parties to have an attorney when they appear before the Board; therefore, it will not cause additional expense to those parties. It is expected to have no impact on Virginia's families.