



## 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>	4VAC25-40
<b>Regulation title</b>	Safety and Health Regulations for Mineral Mining
<b>Action title</b>	Technical Corrections and Amendments for Clarity, Consistency and Improved Safety Resulting from Periodic Review
<b>Date this document prepared</b>	9/7/07

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.*

The purpose of the regulation at 4VAC25-40, Safety and Health Regulations for Mineral Mining, is to provide for the protection of persons and property on and around mineral (noncoal) mines. The current action is intended to improve this chapter by making technical corrections, clarifying unclear language, updating references, making the regulation internally consistent and consistent with the Code of Virginia, and strengthening certain provisions relating to mine safety. Sections to be strengthened relate to blasting, mine rescue, and construction and maintenance of mine structures.

### 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. §§45.1-161.294 and 45.1-161.305

require that the Director of the Department promulgate regulations to ensure safe working conditions and practices at underground and surface mineral mines, respectively. 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 4VAC25-40 containing technical errors, unclear language, outdated references, and inconsistencies with other parts of the regulation. The agency has also identified sections that need to be strengthened to improve the safety of mine workers and the protection of people and property near active mineral mines. In making the regulation more clear, accurate, and consistent, 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 intended action will amend provisions of an existing regulation. Unclear language in various sections will be clarified. Currently, sections identified for clarification are those dealing with examination and inspection of workings, compliance with regulations, repairing machinery, exposure to airborne contaminants, loaders in operation, scaling bars, and open flame restrictions.

Several sections will be amended to make them internally consistent with other sections and with the Code of Virginia. Sections found to be duplicative with other sections will be deleted.

References to external documents and the Code of Virginia will be corrected to reflect more recent publication dates of those documents; references to federal and other agencies that have changed their names will be updated. Corrections will be made to typographical and other technical errors.

During the periodic review, the agency identified sections dealing with mineral mine safety that would benefit from being strengthened. The agency intends to add a section requiring drill logs for boreholes intended for blasting. The agency also intends to amend other sections dealing with blasting to: require reporting of flyrock incidents; require review of drill logs before blasting; require that areas containing loaded boreholes be posted as well as barricaded, if not guarded; require that drill logs be kept as part of the blast record; and require that electronic ignitions systems be of an approved type. Regarding underground rescue in mineral mines, the agency intends to amend and generally strengthen sections dealing with mine rescue stations, equipment, crews, and self-contained breathing apparatus. Also for the purpose of improved safety, the agency intends to add one new section requiring that structures be substantial and well maintained.

**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 the 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, inaccurate, inconsistent, 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 written comments may do so by mail, email or fax to David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond VA 23219; phone (804) 692-3212, fax (804) 692-3237; email David.Spears@dmme.virginia.gov. Written comments may also be submitted to the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.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 stage.

**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 agency will involve 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.*

The regulation at 4VAC25-40, Safety and Health Regulations for Mineral Mining, is intended to protect the health and safety of people working in or living near active mineral (noncoal) 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 have members working in or living 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 not the result of a periodic review of the regulation, please delete this entire section.***

*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.*

This Notice of Intended Regulatory Action is the result of a periodic review. No public comments were received during the public comment period pursuant to the publication of notice of the review. The agency, however, has determined that the regulation is necessary for the protection of public health, safety, and welfare. The current action is intended to strengthen certain safety-related provisions of the regulation, and make the regulation clearer, more accurate and more easily understandable.

**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 persons and property on and around mineral mines. The Department of Mines, Minerals and Energy has determined that all provisions of the regulation are still

needed to protect mine workers as well as people living near active mines and their property. 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 to correct technical errors, improve the clarity of its language, and strengthen certain safety provisions. The agency has also determined that the regulation, when amended, will achieve its intended purpose while minimizing its impact on small businesses in Virginia.