



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation(s)	4VAC25-40
Regulation title(s)	Safety and Health Regulations for Mineral Mining
Action title	Amendments to ensure compliance with federal standards
Date this document prepared	February 28, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Mines, Minerals and Energy is amending 4VAC25-40, Safety and Health Regulations for Mineral Mining. These amendments will ensure DMME regulations are clear, align with federal requirements and codify long-standing agency policies.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DMM DMME Division of Mineral Mining
DMME Department of Mines, Minerals and Energy

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 28, 2018, DMME adopted amendments to its Safety and Health Regulations for Mineral Mining.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

DMME's authority to promulgate these regulations can be found in [§ 45.1-161.3](#) and [§ 45.1-161.292:19\(C\)](#) of the Code of Virginia.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

These amendments ensure the regulations are clear, align with federal requirements, and codify long-standing agency policies. The amendments are specifically designed to provide operators with the most flexibility possible while maintaining public health, safety, environmental and economic welfare through effective recordkeeping, reporting, safety precautions, and hazard mitigation. As such, this regulatory action enhances the health, safety and welfare of the citizens of the Commonwealth.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This rulemaking is expected to be noncontroversial as these changes clarify the current requirements, provide some increased flexibility for operators, align with federal requirements, and codify long-standing DMME policies while maintaining health, safety, environmental and economic welfare in the Commonwealth.

Substance

Please 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.

This regulatory action adds three definitions, changes 20 sections, including repealing and replacing one section. These changes add clarity, provide operators increased flexibility in managing certain work, and increase safety around unattended mine works, blasting, mine equipment, confined spaces, and suspended loads.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantages to the public and the Commonwealth are enhanced protection of health and safety through increased clarity as well as consistency with federal requirements and existing agency policies. The primary advantages for the commonwealth are consistency with federal requirements and existing agency policies as well as enhanced worker safety provisions. There are no disadvantages to the public or the commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

The proposed changes to 4VAC25-40-800 would require a pre-blasting warning that is loud enough to be heard within the entire blast area. Existing federal regulations only require that "ample warning" be given. This has been an issue in at least one recent blasting incident. The proposed change allows for a standard that is more precise and that supports worker safety.

The proposed changes to 4VAC25-40-2550 would require confined spaces contain adequate ventilation. There have been multiple fatalities associated with inadequate ventilation in confined spaces in the Commonwealth. Responsible operators already do this. The required ventilation can typically be provided by a \$100-200 industrial fan, which the operator usually owns already.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality would be disproportionately affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

This regulatory action includes the shortening and simplification of recordkeeping requirements. This action also includes options for work to be performed by competent trained employees when appropriate rather than only by certain certified workers. These changes are designed to provide operators with the most flexibility possible while maintaining health, safety, environmental and economic welfare.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	Any costs of implementation, which are expected to be minimal, would be absorbed by DMME.
Projected cost of the new regulations or changes to existing regulations on localities.	\$0. The minor changes to this regulation will not affect localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Mineral mine operators and mineral mine workers.
Agency’s best estimate of the number of such entities that will be affected. Please 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.	There are approximately 443 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these would qualify as small businesses.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all	The net projected costs of the new regulations on individuals, business, or other entities will be negligible. While certain changes likely have a cost, such as maintaining training records for the

<p>costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>duration of a miner’s employment or ensuring mine vehicles have backup alarms, these costs will be minimal. These costs will also be offset by savings lowering accident recordkeeping requirements from five to three years and allowing appropriate work to be performed by competent trained workers rather than only certified workers.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulation is designed to make mineral mining safer, the regulations themselves easier to understand, and to align with federal requirements.</p>

Alternatives

Please describe any viable 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. 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 regulation.

One alternative to the amendments is maintaining outdated provisions that do not align with federal regulations or long-standing agency policies. This alternative would not adequately protect the health and safety of the citizens of the Commonwealth.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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.

This fast-track action is not the result of periodic review.

Family impact

Please assess the impact of this 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.

This regulation will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
4VAC25-40-10		Definitions.	Adding definition for “barricaded” to align with federal requirements and ensure clarity in the regulations.
4VAC25-40-10		Definitions.	Adding definition for “confined space” to align with federal requirements and ensure clarity in the regulations.
4VAC25-40-10		Definitions.	Adding definition for “mine vehicle” to ensure clarity in the regulations and to align with federal requirements.
4VAC25-40-50		Requires mine operators to report accidents and injuries.	Revisions for clarity and to minimize administrative burden on operators and to align with federal requirements.
4VAC25-40-100		Requires records of employee training be kept in writing at mine site for two years or for 60 days after termination.	Language amended to ensure DMME can properly and thoroughly investigate accidents.
4VAC25-		Requires	Clarifying language adding the word “mine” before

40-290		restricted access to unattended mine roads and openings by using gates, doors, or fences along with warning signs.	"openings."
4VAC25-40-300		Requires effective closure or fencing of abandoned mine roads and openings along with postings.	Clarifying language adding the word "mine" and replacing "pits" with "surface excavations."
4VAC25-40-380		Requires stationary grinding machines to be equipped with peripheral hoods, adjustable tool resets, and safety washers.	Requires adjustable tool rests to be set "no further than 1/8 inch from the wheel." Language changed to align with federal requirements.
4VAC25-40-460		Requires examination of active workings for unsafe conditions prior to starting work.	Adds language that any unsafe condition found be corrected or reported to "a competent person" "when a certified foreman is not required." Language added to provide flexibility for small mine operators. Under existing regulation, operations with less than three employees do not require a certified foreman to be present.
4VAC25-40-800		Requirements for the use of explosives including blast warning signals.	Clarifying language that audible warning signals are "loud enough to be heard within the entire blast area." Language added for clarity and to enhance safety.
4VAC25-40-810		Requirements for recordkeeping of each surface blast.	Clarifying language that records will be maintained "at the mine site." Language aligns with federal requirements.
4VAC25-40-810		Requirements for recordkeeping of height or length of stemming.	Clarifying language that stemming records must be kept "for each hole."
4VAC25-40-810		Requirements for recordkeeping	Removing unnecessary and adds clarifying language.

		of seismograph records.	
4VAC25-40-810		Requirements for recordkeeping of number of holes per delay period of eight milliseconds or greater.	Removing old requirement and requiring specific information to attached to blast record as soon as possible but no later than five working days after the shot when using a permanently installed seismograph. Languages codifies existing agency policy, added at the request of operators.
4VAC25-40-880		Requires ground vibration from blasting not to exceed certain limits.	Removes previous blast limits chart and replaces it with the previous alternative ground vibration limits from 4VAC25-4-880(C). These limits align with federal requirements.
4VAC25-40-880		Requires ground vibration from blasting not to exceed certain limits.	Remove option for alternate vibration limits. Language changed to align with federal requirements.
4VAC25-40-893		Requires operators to maintain action plans to control effects of blasting adjacent to operation and make those plans available to DMM upon request.	Removes requirement that plan be available for review by DMM upon request and replaces it with a requirement that the plan be subject to review in the event of a blasting complaint, accident, or flyrock. Strengthening this language ensures DMME can fully carry out its investigative responsibilities.
4VAC25-40-910		Requirements for seismic testing and evaluation for blasting.	Clarifying language changing “airblast” to “air overpressure” and removing “when applicable” as unnecessary language. Language changed for consistency with DMME Mineral Mining Safety Regulations (4VAC25-40-980).
4VAC25-40-931	New section		Requires operators to provide DMM access to all available data, including videos, in the event of blasting complaint, accident, or flyrock investigation. Language ensures DMME can properly and thoroughly fulfill its investigative responsibilities.
4VAC25-40-1580		Requires backup alarms on heavy duty mobile equipment with an obstructed view to the rear.	Adds “mine vehicles” to the requirement of backup alarms on equipment with an obstructed view to the rear. Language added for clarity.
4VAC25-40-2015		Requirements for the installation of electric on	Clarifying language that electrical work includes both “new” and “modifications to existing” must be under “direct” supervision of a certified repairman.

		surface and underground mines.	
4VAC25-40-2015		Requirements for the installation of electric on surface and underground mines.	Adds the option that routine maintenance “may be performed by a competent person who has received task training” from a certified repairman. The change codifies agency policy.
4VAC25-40-2550		Safety requirements for entering confined spaces.	Clarifying language including replacing a list of spaces with the defined term “confined spaces.”
4VAC25-40-2550		Safety requirements for entering confined spaces.	Adds tagging out equipment and “adequate ventilation” to the list of requirements for entering confined spaces.
4VAC25-40-2580		Requires “safe design” and use of hitches and slings for hoist materials.	Adds that hitches and slings used to hoist material must be “maintained in a safe condition.” Language added to align with federal requirements.
4VAC25-40-2600		Requires persons to “stay clear of suspended loads.”	Adds that suspended loads must be handled to “prevent their unintentional release.”
4VAC25-40-3328		Requirements that underground blasting shots be fired by a certified underground blaster.	Clarifies that a certified underground blaster “be in direct charge of all blasting activities” as well as firing all shots. Ensures accountability.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
4VAC25-40-90	4VAC25-40—9999	Documents incorporate by reference.	Repeal and replace with section 4VAC25-40-9999.
	4VAC25-40-9999		Documents incorporated by reference from 4VAC25-40-90 including updated document, NFPA 10: Standard for Portable Fire Extinguishers, 2013 Edition. Section changed to reflect

			updated document and correct procedure from Registrar's office.
--	--	--	---