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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Energy
Virginia Administrative Code (VAC) Chapter citation(s)	4VAC25-40
VAC Chapter title(s)	Safety and Health Regulations for Mineral Mining
Action title	Regulatory action to update regulatory code related to towing equipment
Date this document prepared	October 11, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary [RIS1]

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

4VAC25-40-1670 pertains to use of towing equipment during mining operations.

[Executive Order No 19](#) (2022) directed agencies to review regulatory guidance document in an effort to reduce regulatory burden and streamline regulatory processes. The Department of Energy's Division of Mineral Mines reviewed regulatory guidance related to Safety and Health Regulations for Mineral Mining and found towing guidance unaligned with federal guidance and unnecessarily burdensome. Current language requires use of a tow bar and safety chain to tow heavy equipment that is not being operated under its own power. Federal guidance from [MSHA 30 CFR 56.14209.\(a\)](#) lessens regulatory burden for mine operators by providing additional pathways to compliance without threatening safety. This regulatory action would update language to reflect federal guidance and reduces regulatory and cost burdens.

Updated language would reflect federal regulatory documents by providing the option for “other effective and safe means of control”.

[RIS2]
Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

MSHA—Mine Safety and Health Administration

Statement of Final Agency Action

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 July 30, 2024 the Department of Energy adopted the fast-track action: Regulatory action to reflect updated reclamation plan to match practice of liens on land reclaimed.

Mandate and Impetus
[RIS3]

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

As discussed above, a review of the agency regulatory documents revealed an opportunity to reduce regulatory burdens related to towing in mining operations. Updated language would better reflect federal guidance and provide additional pathways for compliance without compromising safety.

It is expected to be noncontroversial because current language does not reflect federal guidelines and creates unnecessary regulatory burden.

[RIS4]
Legal Basis
[RIS5]

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Department of Energy’s regulatory authority for this action can be found in § 45.2-103 and § 45.2-1114(c) of the Code of Virginia. Federal guidance requiring these changes is stated above.

[RIS6]
Purpose
[RIS7]

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The purpose of this regulatory action is to ensure that guidance in 4VAC25-40-1670 is reflective of federal guidelines and reduces regulatory and cost burdens without threat to safety.

Tow bars designed to handle the weight of heavy-duty off-road mining equipment are specialty items which require different adapters to fit different equipment types. Adapters are often required for both the towing and towed equipment. This makes these tow bars sometimes difficult to obtain and expensive. Maintaining an inventory of multiple different adapters for each piece of equipment adds considerably to the expense especially when it is not known when and if they will be needed. Not having the tow bar or the correct adapter readily available may facilitate the need to repair the machinery in the field where it failed causing delays in production.

The change in the regulation allows for alternative methods to tow equipment that is not being operated under its own power provided that these alternative methods are effective and contain a safe means of control of the machinery. Depending on the circumstances of the tow, a tow bar may not be needed to maintain adequate separation between the towed and towing equipment and to protect the operator of the towing vehicle. This regulation change can reduce the cost of obtaining and maintaining the tow bar and required adapters as well as reduce equipment downtime and production downtime.

As a whole, tow-bars are not utilized very often for heavy-duty off-road mining equipment (front-end loaders, dozers, excavators, etc.) These large pieces of equipment are more often repaired in the field if they cannot be moved under their own power back to a shop facility. If necessary, they often can be dragged an adequate distance to free up an active mining area if needed. Other alternatives would be partial disassembly and moved by trailer to a repair facility.

[RIS8]
Substance
[RIS9]

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.

As discussed above, there are no substantive changes made to agency regulations. The proposed changes conform to federal guidelines and allow alternative pathways for compliance.

[RIS10]
Issues
[RIS11]

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of this regulatory action is ensuring the agency’s regulations are reasonable and conform to federal guidelines. This action would provide alternative pathways to compliance ensuring cost effective methods. There are no disadvantages to the public or the Commonwealth.

[RIS12]
Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

No substantive changes are made in this regulatory action, therefore there are no changes more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The update applies to guidance for the Mineral Mining Office under the Virginia Department of Energy.

Localities Particularly Affected

None

Other Entities Particularly Affected

Regulated Community

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;</i>	None.
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is streamlined and accessible.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	None.
Benefits the regulatory change is designed to produce.	The change ensures the Department of Energy's section of the Virginia Administrative Code is streamlined and accessible.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The regulated community, owners and operators of mineral mining operators.
Agency's best estimate of the number of such entities that will be affected. 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.	432 Mineral Mining Operations across the state of Virginia. Outside of these regulated mineral mining operations, the impact is expected to be small.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	For the purposes of this action, an internet search of towbars for heavy-duty off-road equipment was conducted and indicated a product capable of towing a front end loader. In speaking with an equipment representative, it was determined that these units are made per order based on the specifications of both the towed and towing vehicle. A cost estimate was obtained for a tow bar that is capable of dozer towing a front end loader. That estimate indicated that the cost was roughly \$52,000 with a delivery time of 10 weeks from time of approval. This would be a significant investment for an operation

	<p>for a piece of equipment that it may never need to utilize. The 10 week lead time is prohibitive for ordering the tow-bar on an as-needed basis. Additionally, not having the tow bar or the correct adapter readily available may facilitate the need to repair the machinery in the field where it failed causing delays in production. A conservative cost estimate of these delays can be set at between \$10,000 and \$15,000 of potential lost revenue per hour of production downtime.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The change ensures the Department of Energy’s section of the Virginia Administrative Code is streamlined and accessible. Additionally, this change reduces regulatory burden to mineral mine operators by providing alternative pathways to compliance and reducing costs.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

An alternative to this would be to leave regulations static. The alternative option, however, makes operations more burdensome and stricter than federal guidance. There are no substantive changes, thus no substantive impact on small businesses or any regulatory entity.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This analysis is not relevant to this particular action as no substantive changes are made.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Energy is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Larry Corkey, Manager of Policy and Planning, 1100 Bank Street, 8th Floor, Richmond, VA 23219. 804-692-3239, larry.corkey@energy.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
4VAC25-40-1670		Requires use of “tow bar and safety chain” for towing of heavy equipment not operated under its own power.	Update adds option of “or other effective and safe means of control”, reducing regulatory burden by providing additional pathways to compliance. Securing a tow bar rated for the size of equipment is challenging and a heavy duty bar is not readily available, making this operationally burdensome. Federal

			guidance in MSHA allows for operators to utilize “other effective means of control” ensuring safety, while reducing regulatory burden. This change would follow federal guidance and streamline this process.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage