



Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy (DMME)
Virginia Administrative Code (VAC) citation	4 VAC 25-35
Regulation title	Certification Requirements for Mineral Miners
Action title	Amendments to allow for more efficient electronic certification and payment processes for mineral miners.
Date this document prepared	April 13, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

In addition to a definitions section added for clarity, this regulatory action make a host of technical changes designed to allow for mineral miners to file for their required certifications electronically. One substantive change relates to the requirements for certification. Applicants for general mineral miner certification, or applicants for electrical certification who possess a valid master electrician card would not be required to take a written examination.

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.

"BMME" means the Board of Mineral Mining Examiners.

"DMME" means the Department of Mines, Minerals and Energy.

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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§45.1-161.292:19A of the Code of Virginia directs BMME to issue certifications for mineral miners to ensure the health and safety of persons and property associated with mineral mining. §45.1-161.292:19C of the Code of Virginia grants BMME the authority to promulgate regulations necessary or incidental to the performance of its duties.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of this regulatory action is to amend the certification requirements for mineral miners to allow for electronic submission of certification forms. Doing so will allow DMME and the BMME to more effectively and efficiently serve their customers.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

Appropriate sections of the existing regulation will be amended to allow for electronic submission of certification documentation. The regulation will also be amended to allow for payment of fees associated with certification to be submitted electronically. Other aspects of the certification process will be reviewed as well and amended as appropriate to satisfy the overall purpose of this regulatory action.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public and the Commonwealth will be a more convenient, electronic permitting process. This process will create efficiencies for both DMME and the mineral mining industry.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

There are no requirements more restrictive than federal requirements.

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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to **Michael A. Skiffington, DMME Regulatory Coordinator, 1100 Bank Street, 8th Floor, Richmond, VA 23219; phone 804.692.3212; fax 804.692.3237; michael.skiffington@dmme.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 date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

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 requirements create the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>Any costs of implementation would be minimal, one-time costs.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>Zero cost to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>Mineral mining businesses would be affected by the proposed changes.</p>
<p>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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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>Regulated entities can expect administrative cost savings from this proposed regulation. Each mineral mining operation must obtain training for their employees and this regulation would allow that process to be completed more efficiently.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed regulation is designed to increase efficiency for DMME and the mineral mining industry by allowing for certifications to be processed electronically.</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.

The only viable alternative to the regulatory action would be to leave the regulation as is. Doing so would not allow for the Board to serve its customers as efficiently as possible.

Regulatory flexibility analysis

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.

The proposed regulation allows for the maximum amount of flexibility as operators will be able to file certification documents electronically as opposed to the existing paper-based requirement. This will allow mineral mining companies to operate more efficiently. The Virginia Transportation Construction Alliance, an important industry stakeholder, supports the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

DMME received six nonsensical "spam" comments on the Regulatory Town Hall comment forum. These comments did not speak to the regulation and sought only to advertise unrelated products or websites.

Family impact

Please assess the 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.

This regulation will have no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
N/A	5	N/A	A definitions section is added for clarity.
10.A.1	N/A	Reference to Application for Certification Examination form (BMME-1).	Language changed to "an application for certification examination in a form acceptable to the division." This will give BMME greater flexibility in administering the online certification program. Similar changes are made throughout the regulation.
10.A.2	N/A	A copy of all degrees required.	Language changed to verification of all degrees required. This will allow BMME greater flexibility in administering the online certification program.
10.A.2	N/A	First aid cards shall be issued....	Cards changed to certifications. This change reflects the fact that proof of first aid training is provided electronically and a card is not always issued.
10.A.2	N/A	...the Division of Mineral Mining (DMM)	Language changed to division to reflect consistency with other department regulations. This change is made throughout the regulation.
10.A.3	N/A	...at a Department of Mines, Minerals and Energy (DMME) office.	Language changed to department to reflect consistency with other department regulations. This change is made throughout the regulation.
10.A.4	N/A	A Verification of Work Experience form (BMME-2)	Language changed to verification of work experience in a form acceptable to the division. This will allow BMME greater flexibility in administering the online certification program.
10.A.4	N/A	This form shall be signed....	Language changed to work experience shall be verified. This allows for work experience verification to be provided electronically.
20.A	N/A	...shall take a written examination	Written is stricken and a sentence added to allow DMM to specify the manner in which the examination will be given. This gives DMM the option to offer the examination electronically.
20.A	N/A	...applicants who hold a journeyman card.	The word valid is added for clarity. Card is changed to license and master electrician is added to reflect the fact that the training for that is comparable to that necessary for electrical certification for DMM.
30	N/A	...a current copy of their pocket card or certificate...	Language changed to proof of current certification to allow this to be completed electronically.
40.A	N/A	Certificates issued by the Board of Examiners.....	This language is obsolete and has been deleted. The Board of Examiners no

			longer exists and has been replaced by BMME.
40.B	N/A	The forms shall be submitted...	Forms is changed to application for clarity and to allow for greater flexibility in administration.
40.C	N/A	...who have worked a cumulative minimum of 24 months...	Language is added to clarify the 24 months worked must be in the classification for which the worker is certified.
40.D	N/A	they have not worked in the area...	"Area" is changed to classification for clarity and precision.
60	N/A	Section title: Surface foreman	Language is added to clarify the section applies to those foremen whose duties include overseeing blasting activities.
70	N/A	Section title: Surface foreman, open pit	Language is added to specify the section applies to those foremen whose duties do not include overseeing blasting activities.
75.B	N/A	...shall oversee any preshift inspections...	"Preshift" is changed to "beginning of shift" for precision and clarity.
80.B	N/Aa valid record of three hours of training....	Language is changed to require a certificate which represents completion of an approved first aid course. This change adds precision and clarity to the first aid training requirements for surface blasters.
90.B	N/A	...a valid MSHA5000 form...	A similar change is made in this section, requiring underground blasters to possess a certificate representing completion of an approved first aid training course.
100.A	N/A	certification	The word is changed to license to accurately reflect DPOR's designation.
120.A.	N/A	"commencing work" means...	The definition is deleted here as it is listed in the definitions section above.
120.B.1 and 2	N/A[t]o prove to the BMME....	"written" and reference to specific form deleted to allow flexibility for an online examination and certification.