



Final Regulation Agency Background Document

Agency name	Department of Mines, Minerals, and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-35
Regulation title	Certification Requirements for Mineral Miners
Action title	Final Regulation
Document preparation date	January 5, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Certification Requirements for Mineral Miners, 4 VAC 25-35 are designed to provide a pool of qualified and certified mining employees and to ensure that miners are knowledgeable of the practices and processes of mining minerals in a safe and productive manner.

The Certification Requirements for Mineral Miners address application and examination requirements, reciprocity between states, renewals, first aid, and the individual certification requirements that are designated for positions with responsibilities underground and at surface mines as foremen, blasters, electricians, inspectors, and for general mineral miners. The final regulation is amended to include a provision that general mineral miners with applicable experience will be able to help complete pre-shift inspections at cement plants under supervision of a surface foreman.

The regulation also includes administrative changes that will allow different forms of payment for certification. These changes also include the requirement that applicants, except those already holding a journeyman electrician's card, take a written examination for certification as electrician, regardless of experience. The Board of Examiners certificates, prior to 1994 were to be valid until replacement with Board of Mineral Mine Examiners certificates. New certificates were to be issued with expiration dates between 1996-99 with no Board of Examiners certificate valid after July 1, 1999. These transition provisions are no longer needed and are being deleted. Lastly, surface blasters will be required to possess a valid record of three hours of first aid training from an organization using nationally recognized standards or training that meets federal 30 CFR Part 48 requirements. Prior to being changed, the certificate holder was only required to possess a valid MSHA 5000-23 first aid form.

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 December 11, 2003, the Board of Mineral Mine Examiners adopted these final regulations entitled Certification Requirements for Mineral Miners, 4 VAC 25-35.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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.

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Certification Requirements for Mineral Miners are promulgated at the discretion of Board of Mineral Mining Examiners and are not federally mandated. However, the federal MSHA accepts state certificates in lieu of establishing federal certifications.

The Board of Mineral Mining Examiners derives its authority to promulgate this regulation from the Code of Virginia, Section 45.1-161.292:19. Section 45.1-161.292:19.A specifies 8 certifications that must be issued by the Board. Section 45.1-161.292:12.B provides the Board the authority to require certification for additional tasks by regulation.

Section 45.1-161.292:19.C gives the Board of Mineral Mining Examiners the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 of the Administrative Process Act.

The Code of Virginia, including the above citations may be viewed at <http://leg1.state.va.us/000/src.htm>.

The Office of the Attorney General has certified that the Department of Mines, Minerals, and Energy and the Board of Mineral Mining Examiners has the statutory authority to promulgate this regulation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

The Certification Requirements for Mineral Miners, 4 VAC 25-35 were amended as a result of periodic review. During this review, the Board of Mineral Mining Examiners, with input from industry representatives as well as the Department of Mines, Minerals, and Energy, found minor edits were needed to bring the regulation up to date with the Code of Virginia.

Changes made to the regulation include administrative changes that remove a notary requirement and will allow different forms of payment for certification fees. Another change was to require that applicants, except those already holding a journeyman electrician's card, take a written examination for certification as electrician, regardless of experience.

The transition provision for Board of Examiners certificates to be replaced with Board of Mineral Mine Examiners certificates is being removed, it is no longer required. Lastly, surface blasters will be required to possess a valid record of three hours of first aid training from an organization using nationally recognized standards or training that meets federal 30 CFR Part 48 requirements. Presently, the certificate holder is only required to possess a valid MSHA 5000-23 first aid form.

The minimum certification requirements section was amended in the final regulation to accommodate mines that have cement plants onsite. The new section will offer to cement plant foremen, the flexibility to delegate plant area inspections to general mineral miners that are knowledgeable of cement plant operations.

The goals of the regulation are to ensure through proper examination and certification of persons working on mineral mines, the safest environment for workers employed at mineral mines without restricting productivity or efficiency. The regulation is necessary in that it establishes procedures and standards of certification for miners and workers working in areas of specific responsibilities at mineral mines.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

4VAC 25-35-10 D. – The section is being amended to allow alternative forms of payment for certification fees for replacement of lost or destroyed certificates. Alternate forms of payment are already allowed for all other certification fees.

4VAC 25-35-20 A. – The section is being amended by deleting the language in the first sentence "... or those applicants with comparable work experience acceptable to Division of Mineral Mining under 4VAC 25-35-100 A". Experience alone is no longer recognized in lieu of an exam for those wishing to be certified electricians.

4VAC 25-35-30 – The section is being amended to reference a revised section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:24 rather than section 45.1-161.51.

4VAC 25-35-40 A. – This section is being amended to remove transition provisions for old certificates issued by the Board of Examiners. There are now no old certificates in effect.

4 VAC 25-75 – A new section is being added to allow cement plant inspections to be conducted by general mineral miners with the appropriate experience. Inspections would be conducted under the supervision of the surface foreman.

4VAC 25-35-80 B. – This section is being amended for clarity and to be consistent with continuing education requirements and federal requirements for first aid. Surface blasters will be required to have first aid training that meets nationally recognized standards.

4VAC 25-35-100 B. – The section is being amended for clarity and to be consistent with federal requirements. The section is also being amended to reference 30 CFR Part 46 as well as Part 48.

4VAC 25-35-110 – The section is being amended to reference a revised section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:11 rather than section 45.1-161.19 and section 45.1-161.292:12 rather than 45.1-161.20.

4VAC 25-35-120 A. - The section is being amended to reference a revised section of the Code of Virginia and work commencing date. It should read Code of Virginia section 45.1-161.292:28 rather than section 45.1-161.55. The section is also being amended to reference 30 CFR Part 46.

4VAC 25-35-120 C. - The section is being amended to reference a revised section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:28 B rather than section 45.1-161.55 B.

4VAC 25-35-120 G. – The section is being amended to be consistent with the Code of Virginia, section 45.1-161.292:28. The section should reflect a January 1,1997 starting date for General Mineral Miner certification.

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.

As amended, this final regulation presents no new advantages or disadvantages to the public or the Commonwealth. The final regulation updates administrative requirements and makes the regulation consistent with the Code of Virginia. A substantive provision was added as a new section of the regulation, 4 VAC 25-75, that adds flexibility for cement plant operators to conduct plant safety inspections. There are no additional provisions added or made that are of consequence to the community, government officials, or the public.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
4 VAC 25-10 B	The work verification form was required to be notarized	Notary requirement was removed.	The requirement was outdated and unnecessary.
4 VAC 25-75	None	N/A	New section added to allow cement plant inspections to be conducted by general mineral miners with the appropriate experience. Inspections would be conducted under the supervision of the surface foreman.
4 VAC	Language was added by	The language was removed.	It was considered as

25-80 B.	the registrar; “form showing training in”...		unnecessary language.
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Roanoke Cement Co.- Dan Crowley, Plant mgr.	The primary concern is that the Virginia Safety and Health Regulations for Mineral Mining requirement that a certified mine foreman must conduct the pre-shift examination of their cement plant creates unnecessary burdens that put Virginia operations at a competitive disadvantage with other cement-producing states. It was stated by Roanoke Cement that “it is practically and economically infeasible for the foreman to inspect all active workings of the cement plant prior to each shift,” and that it could take an excessive length of time to conduct.	The Board of Mineral Mine Examiners felt that the regulation could be amended to provide that inspections could be performed by certified general mineral miners with at least one year of experience at a cement plant in a manner that would not lessen safety. The new section, 4 VAC 25-75, Cement Plant Examiner was added.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4VAC	N/A	...The fee shall be in the	– The section is being amended to allow

<p>25-35-10</p>		<p>form of a certified check, cashier's check or money order made payable to the Treasurer of Virginia per §45.1-161.50 of the Code of Virginia. Cash will be accepted if paying in person at a Department of Mines, Minerals, and Energy office. The work experience form was required to be notarized.</p>	<p>alternative forms of payment for certification fees for replacement of lost or destroyed certificates. Alternate forms of payment are already allowed for all other certification fees. The work experience form notarization was removed because it was unnecessary.</p>
<p>4VAC 25-35-20 A.</p>		<p>All applicants for certification shall take a written examination except candidates for the general mineral miner certification and electrical certification applicants who hold a journeyman card or those applicants with comparable work experience acceptable to the Division of Mineral Mining under 4VAC25-35-100 A.</p>	<p>– The section is being amended by deleting the language in first sentence “... or those applicants with comparable work experience acceptable to the Division of Mineral Mining under 4VAC 25-35-100 A”. Experience alone is no longer recognized in lieu of exam.</p>
<p>4VAC 25-35-30</p>		<p>Reciprocity shall be available for certified persons in other states as provided for in §45.1-161.51.</p>	<p>– The section is being amended to reference a revised section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:24 rather than section 45.1-161.51.</p>
<p>4VAC 25-35-40 A.</p>		<p>Certificates issued by the Board of Examiners prior to July 1, 1994, shall be accepted as valid until the Board of Mineral Mine Examiners issues a certificate to replace the Board of Examiners certificate. The Board of Mineral Mine Examiners will issue replacement certificates with expiration dates spread between 1996 until 1999. No Board of</p>	<p>– This section is being amended to remove transition provisions for old certificates issued by the Board of Examiners. There are now no old certificates in effect.</p>

<p>4 VAC 25-75</p>		<p>Examiners certificate shall be valid after July 1, 1999.</p> <p>New section</p>	<p>–The section is being added to allow general mineral miners to perform cement plant inspections under the supervision of a surface foreman.</p>
<p>4VAC 25-35-80 B</p>		<p>Applicants shall possess a valid Mine Safety and Health Administration (MSHA) 5000-23 form showing training in first aid. Language was added by the registrar; “form showing training in”...</p>	<p>– This section is being amended for clarity and to be consistent with continuing education requirements and federal requirements for first aid. For surface blasters to have a valid certification, they are required to have first aid training that meets nationally recognized standards. The language added by the registrar was removed as unnecessary.</p>
<p>4VAC 25-35-100 B.</p>		<p>Applicants shall submit documentation of training as required by 30 CFR Part 48 or provide evidence of their knowledge of safe working practices on the mine site as approved by the Division of Mineral Mining.</p>	<p>– The section is being amended for clarity and to be consistent with federal requirements. The section is also being amended to reference 30 CFR Part 46 as well as Part 48.</p>
<p>4VAC 25-35-110</p>		<p>In addition to the requirements set forth in §45.1-161.19 of the Code of Virginia, mine inspector applicants shall demonstrate knowledge and competence in those areas specified in §45.1-161.20 of the Code of Virginia through the examination process.</p>	<p>– The section is being amended to reference a revised section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:11 rather than section 45.1-161.19 and section 45.1-161.292:12 rather than 45.1-161.20.</p>
<p>4VAC 25-35-120 A.</p>		<p>As set forth in §45.1-161.55 of the Code of Virginia, miners commencing work after January 1, 1996, shall have a general mineral miner certification. For the</p>	<p>- The section is being amended to reference a revised section of the Code of Virginia and work commencing date. It should read Code of Virginia section 45.1-161.292:28 rather than section 45.1-161.55. The section is also being</p>

		<p>purposes of these regulations, "commencing work" means after employment but before beginning job duties. Persons excluded from the general mineral miner certification are those involved in delivery, office work, maintenance, service and construction work, other than the extraction and processing of minerals, who are contracted by the mine operator. Hazard training as required by 30 CFR Part 48 shall be provided to these persons.</p>	<p>amended to include 30 CFR Part 46.</p>
<p>4VAC 25-35-120 C.</p>		<p>The trainer will certify to the Board of Mineral Mine Examiners that the training and demonstrations required by §45.1-161.55 B of the Code of Virginia and this section have occurred by completing the BMME-4 form.</p>	<p>- The section is being amended to reference a revised section of the Code of Virginia. It should read Code of Virginia section 45.1-161.292:28 B rather than section 45.1-161.55 B.</p>
<p>4VAC 25-35-120 G.</p>		<p>The mine operator shall maintain the following records for those miners required to obtain a general mineral miner certification and those who qualify for exemption, starting January 1, 1996:</p>	<p>– The section is being amended to be consistent with the Code of Virginia, section 45.1-161.292:28. The section should reflect a January 1,1997 starting date for General Mineral Miner certification.</p>

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulation is essential to protect workers at mineral mine sites by preventing health problems, accidents and fatalities in work that is inherently dangerous. Improper conditions and actions are a significant cause of injuries and fatalities.

The regulation sets forth requirements for the certification of individuals who work at mineral mine sites. A knowledgeable worker, a safe work environment and work practices reduce accidents that may result in reduced family income and increased family stress. Reducing accidents decreases these factors and has positive family impact. Ensuring that workers and operators know how to perform their jobs safely and efficiently has a generally positive effect in areas around mineral mines through protection of the public health, safety and welfare. The regulation has a positive effect on family formation, stability, and autonomy.