

Virginia Code Commission  
Meeting Materials  
September 16, 2019

# VIRGINIA CODE COMMISSION

*Monday, August 19, 2019 - 10:00 a.m.  
Richmond, Virginia 23219*

## Minutes

**Draft**

**Members Present:** John S. Edwards; James A. Leftwich, Jr.; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Malfourd W. Trumbo; Mark Vucci

**Members Absent:** Ryan T. McDougale; Samuel T. Towell

**Staff Present:** David Barry, Brooks Braun, Meg Lamb, Scott Meacham, Sarah Stanton, Amigo Wade, Karen Perrine, Anne Bloomsburg, Lilli Hausenfluck, Division of Legislative Services (DLS)

**Others Present:** Brian Kennedy, LexisNexis

**Call to order; welcome and introduction of new member:** Senator Edwards, chair, called the meeting to order at 10:00 a.m. He introduced Nicole "Nikki" Cheuk, who joins the Commission as a nonlegislative citizen member with legal knowledge and experience in the codification of session laws and recodification of statutes, and welcomed her to the Commission.

**Approval of minutes:** The minutes of the May 6, 2019, meeting of the Commission, as printed and distributed to the members, were approved without objection.

### **Review of codified sections currently shown as "Not Set Out":**

As part of the Commission's 2019 work plan and ongoing review of sections that appear in the Code of Virginia with only a section number, DLS staff presented sections for consideration by the Commission to be set out in the Code of Virginia. Based on decisions made in the past by the Code Commission, the text of these sections is currently not set out in the Code. DLS staff presented reports and recommendations regarding approximately 13 individual sections that are currently not set out.

#### **Title 2.2 - Administration of Government and Title 36 - Housing:**

Amigo Wade presented §§ 2.2-4503 and 2.2-5500 in Title 2.2 and §§ 36-19.1, 36-19.4, 36-27.1, 36-72, and 36-85.4 in Title 36 of the Code of Virginia.

Section 2.2-4503: Mr. Wade explained that Fairfax County has a finance director instead of a treasurer, and this section provides the finance director with the same authority as a treasurer. The Commission concurred with the recommendation to set out the section.

Section 2.2-5500: Mr. Wade suggested removing the purpose and intent language in sentences 1, 3, and 4 as shown in the materials. After a brief discussion, Delegate Leftwich moved that the Code section be set out with only technical changes. Ms. Davis seconded and the motion carried, with Mr. Moncure and Mr. Trumbo voting no.

Sections 36-19.1, 36-19.4, and 36-27.1: Mr. Wade explained that under the Commission's policy to replace population brackets with the name of the affected city or county, the population bracket language is replaced with the appropriate city name as follows: Roanoke in § 36-19.1, Portsmouth in § 36-19.4, and Waynesboro in § 36-27.1. Upon a question from Judge Lilley, Mr. Wade indicated that he will check for other localities that may have grown into the bracket for all three sections. The Commission asked Mr. Wade to prepare a bill for consideration by the Commission at a later meeting reflecting the requested information.

Section 36-72: The Commission concurred with the recommendation to set out this section.

Section 36-85.4: The Commission concurred with the recommendation to proceed with a bill for introduction in the 2020 Session of the General Assembly that includes the deletion of the first sentence of the section.

#### Title 57 - Religious and Charitable Matters; Cemeteries:

Brooks Braun presented §§ 57-39.2 through 57-39.7 (Article 1) of Title 57 of the Code of Virginia, which addresses how an owner of certain cemeteries may acquire abandoned cemetery lots. Mr. Braun said that most of the changes are technical and explained that references to a court of equity are updated to reflect the current structure of the Virginia judicial system. The Commission concurred with the recommendation to set out §§ 57-39.3 through 57-39.7.

Section 57-39.2 contains a population bracket, and other counties may have grown into this bracket. Mr. Braun will contact the localities involved and report to the Commission at a meeting later this year. The Commission asked Mr. Braun to prepare a bill for consideration by the Commission at a later meeting reflecting the requested information.

**Restructuring of certain sections of the Code of Virginia:** The Commission's work plan for 2019 included consideration of certain sections of the Code of Virginia to be restructured and reorganized. Staff of DLS presented proposals for sections in Titles 54.1 and 24.2 of the Code of Virginia.

#### Title 54.1 - Professions and Occupations:

Sarah Stanton presented a proposal for restructuring § 54.1-3408. Ms. Stanton explained that this section has become very long and unwieldy, containing subsections A through Z. New subsections are proposed each year, and this section will likely continue to grow. Section 54.1-3408 includes provisions relating to (i) prescribing, (ii) dispensing, and (iii) administering drugs and devices by numerous categories of health care providers and other individuals. Ms. Stanton explained that prescribing, dispensing, and administering are subject to different statutory requirements and restrictions. The lack of organization makes this section difficult to navigate.

Under the proposal regarding § 54.1-3408 and related sections, § 54.1-3408 will retain only the provisions related to the administration of drugs and devices, which make up the most substantial portion of the section and are not addressed elsewhere in a cohesive fashion. Provisions related to the prescription and dispensation of drugs and devices in § 54.1-3408 will be moved to Chapter 33, which contains provisions governing the practice of pharmacy, or other sections of Chapter 34, which is the Drug Control Act.

Ms. Stanton indicated that changes to other related sections brings diverse provisions relating to prescribing together in a cohesive group of sections governing the requirements for a prescription to be valid, the form of prescriptions, and the transmission of prescriptions. As these provisions are most appropriate for and consistent with the Drug Control Act, provisions related to prescribing currently found in Chapter 33 (Pharmacy) are moved to Chapter 34 (Drug Control Act), so that only sections dealing with the practice of pharmacy are in Chapter 33.

The proposal sets out the provisions governing the dispensing of drugs and devices by various categories of health care providers and other individuals in a new section separate from the provisions governing the dispensing of drugs and devices by a pharmacist.

If the Commission approves this approach, Ms. Stanton will contact stakeholders and prepare a draft bill for the Commission's review at a meeting later this year.

In response to a question from Ms. Davis, Ms. Stanton identified possible downsides to this effort including that the scope and size of the restructuring may appear to be a major change and that there is risk of inadvertently leaving something out in moving language around.

Hearing no objection, Senator Edwards directed Ms. Stanton to proceed with drafting a bill per her presentation and contacting stakeholders.

#### Title 24.2 - Elections:

Meg Lamb presented a proposal and draft bill to restructure existing § 24.2-604, relating to polling place activities, which currently addresses (i) prohibited activities within a certain distance outside of a polling place, (ii) prohibited activities within a polling place, (iii) presence of authorized representatives of political parties or candidates, (iv) presence of candidates, (v) presence of authorized neutral observers, (vi) presence of news media, (vii) electioneering, (viii) simulated election activities, and (ix) penalties, making individual requirements often difficult to find.

Ms. Lamb explained that the proposed restructuring will limit the scope of § 24.2-604 to (i) prohibited activities within a certain distance outside of the polling place and (ii) prohibited activities within the polling place. The other provisions currently in § 24.2-604 will be moved to new sections as follows: presence of authorized representatives of political parties or candidates to § 24.2-604.4, presence of authorized neutral observers and news media to § 24.2-604.5, and simulated election activities to § 24.2-604.6. At the request of Senator Edwards, Ms. Lamb will check to see if the provisions on simulated elections are obsolete. Penalties are included in each section as appropriate.

Ms. Lamb next presented a proposal regarding existing §§ 24.2-652 and 24.2-653, relating to provisional voting. Currently, § 24.2-652 contains the conditions that must be met for a voter whose name is not in the poll book to cast a ballot. However, the provisions stating what happens when the conditions cannot be met are located in § 24.2-653. The proposed bill moves these provisions to § 24.2-652 as new subsection B so that the relevant provisions are in a single section.

Section 24.2-653 also currently contains (i) the process for the electoral board to determine the validity of provisional votes after election day and (ii) the reasons a voter would be permitted to vote provisionally. The proposed bill moves the language relevant to the process for the electoral board to new § 24.2-653.01 and the language relating to the reasons why a voter is permitted to vote provisionally to § 24.2-653.2, so the remaining scope of § 24.2-653 is only provisional voting procedures in the polling place.

The Commission concurred with the recommendation to introduce the bills in the 2020 Session of the General Assembly, subject to the question regarding simulated elections.

Brooks Braun presented a proposal to restructure Article 1 of Chapter 8 of Title 24.2, consisting of §§ 24.2-800 through 24.2-802, so that the sections are more cohesive. Section 24.2-802 has become lengthy, and the proposal moves certain subsections to other current or proposed new sections.

Mr. Nolen asked if the cross-reference on line 114 regarding discovery in a contested election is correct. Mr. Braun will research this question and report at a subsequent meeting.

Mr. Braun noted that to reduce possible confusion regarding the multiple senses of the words "determination," "redetermination," and "recount" as currently used in the Title 24.2, (i) "determination" is changed to "recount" in §§ 24.2-802 A and 24.2-802.2 B and to "counting" in § 24.2-802.1 B and (ii) "redetermination" is changed to "recount" in § 24.2-802.2 D.

The Commission concurred with the recommendation to introduce a bill in the 2020 Session of the General Assembly, subject to the question regarding discovery in a contested election.

Mr. Nolen left the meeting at 11:45 a.m.

**Recodification of Title 45.1, Mines and Mining:** The DLS recodification team, Scott Meacham and David Barry, presented proposed Chapter 5, Coal Mine Safety Act, and reported that the work group had met three times. Mr. Meacham reviewed the revised proposed organization of proposed Title 45.2, which is divided into five subtitles: Administration, Coal Mines, Mineral Mines, Oil and Gas, and Other Forms of Energy. He noted that the proposal moves the majority of existing Title 67, the Virginia Energy Plan, into new Title 45.2. Other sections of Title 67 will be moved elsewhere in the Code so the plan will no longer be in a separate title.

Mr. Meacham described most of the changes in Chapter 5 as grammatical corrections or modernizations or clarifications of existing language.

Mr. Vucci asked about the change in license renewal date from 15 business days following the anniversary of the date operations began to 15 business days following the expiration of the license (lines 769-771). Mr. Trumbo stated that he could foresee a circumstance, such as a severe weather event, that might delay the opening of a mine. Mr. Meacham will review this change with the work group again and report to the Commission.

Mr. Meacham explained that the change in the license fee for operation of a coal mine fee was based on the 2019 Appropriation Act, which set the amount at \$350. Mr. Meacham will contact the Department of Mines, Minerals and Energy regarding the change in the fee.

**Other business:**

- Ms. Perrine stated that the Southern Legislative Conference was sponsoring a staff exchange for staff of the Arkansas Bureau of Legislative Research, which has been charged with creating an administrative code, placing it online with regular updates, and providing a search feature. Virginia was asked to host the exchange and share our experience with creating, updating daily, and publishing the Virginia Administrative Code (VAC) and operating the Regulatory Information System application used to update VAC and publish the *Virginia Register*. Several years ago, Virginia hosted a delegation from Kentucky for a similar purpose.

- Mr. Vucci explained that the supplement for Volume 5A of the Code of Virginia (Elections to Fisheries) is being reissued to clarify the 2019 amendments regarding absentee voting and to set out twice certain sections with different effective dates. The supplement is expected in late August or early September.

- Mr. Vucci reminded the Commission that the November meeting is the same day as the Special Session and every effort will be made to move all November agenda items to December 16.

- Ms. Davis stated that the Governor had issued Executive Order 32 to establish a commission to examine racial inequity in Virginia law. The Commission will review the Acts of Assembly, the Code of Virginia, and administrative regulations to identify and make recommendations to address laws that were intended to or could have the effect of promoting or enabling racial discrimination or inequity. The Commission will be assisted by law students who will review the acts.

**Public comment, adjournment:** Senator Edwards opened the floor for public comment. As there was no public comment and no further business to discuss, the meeting adjourned at 12:17 p.m.

**Virginia Code Commission**  
**Recommendations for Sections Not Set Out in Title 19.2**

**Title 19.2**  
**Criminal Procedure**

Chapter 18.

SENTENCE; JUDGMENT; EXECUTION OF SENTENCE.

Article 1.

General Provisions.

**§ 19.2-309.1. Sentence of confinement to jail farms maintained by the Cities of Danville, Martinsville and Newport News.** Notwithstanding any other provision of law, any person sentenced to a term of incarceration of up to two years by the courts of the Twenty-second Judicial Circuit may be confined, at the discretion of the court and subject to applicable regulations, at the farm established and maintained by the City of Danville pursuant to § 53.1-96; any person sentenced to such term by the Twenty-first Judicial Circuit may be so confined at the farm so established and maintained by the City of Martinsville; and any person sentenced to such term by the Seventh Judicial Circuit may be so confined at the farm so established and maintained by the City of Newport News.

(1988, cc. 764, 785.)

**RECOMMENDATION: Set out in the Code using the current section number. All other sections of this article are set out in the Code.**

**Virginia Code Commission**  
**Recommendations for Codified Sections Currently Shown as**  
**"Not Set Out" in Title 46.2**

**Title 46.2.**  
**Motor Vehicles.**

CHAPTER 3.  
LICENSURE OF DRIVERS.

Article 6.1.  
Commercial Driver's License Act.

**§ 46.2-341.2. Statement of intent and purpose.**

The purpose of this ~~Act~~ [act](#) is to improve the safety of commercial motor vehicle operations in the Commonwealth and to implement in Virginia the applicable provisions of the federal Commercial Motor Vehicle Safety Act of 1986 (Title XII of ~~Pub. Law~~ [P.L.](#) 99-570), as amended. It is intended that the adoption of this ~~Act~~ [act](#), in conjunction with the adoption of similar legislation in all other states, will improve the safety of commercial motor vehicle operations in Virginia and in the United States by (i) permitting commercial drivers to hold only one driver's license and to have only one driving record; (ii) disqualifying drivers from the operation of commercial motor vehicles for certain offenses and violations; and (iii) strengthening licensing and testing standards for commercial drivers.

(1989, c. 705.)

**RECOMMENDATION: Repeal this section by way of a bill. This section does not create substantive law. It merely states the intent of the Commercial Driver's License Act. That intent is accomplished in the substantive provisions of the Act that follow this section. If this section is not repealed, it can be set out with the technical amendments as shown. It still accurately represents the contents of the Commercial Driver's License Act.**

CHAPTER 10.  
MOTOR VEHICLE AND EQUIPMENT SAFETY.

Article 15.

Maximum Vehicle Widths and Heights.

**§ 46.2-1106. Bus widths in Arlington County.**

Upon application by the governing body of Arlington County, the Commonwealth Transportation Board may by general or special order, which may be amended or rescinded from time to time, permit the operation of passenger buses wider than 96 inches but no wider than 102 inches on certain highways or parts thereof in Arlington County as designated by the Board ~~in Arlington County~~.

(1989, c. 727.)

**RECOMMENDATION:** Set out in the Code, with amendment as shown to clarify that the Commonwealth Transportation Board designates the "highways or parts thereof." While this section is specific to only one locality, it also addresses the authority of the Commonwealth Transportation Board. Representatives of Arlington County have advised that they do not need this section set out. Representatives for the Department of Motor Vehicles have requested that this section be set out because it is relevant for them to know how Arlington County has authority that differs from other localities.

Article 17.

Maximum Vehicle Weights.

**§ 46.2-1138. County ordinances fixing weight limits on roads ~~which~~ that have been withdrawn from secondary system.**

A. The governing bodies of Arlington and Henrico Counties may adopt ordinances providing weight limits in accordance with the weight limits established by §§ 46.2-1123 through 46.2-1127 for any vehicle or combination of vehicles passing over any such highway under the county's jurisdiction. Any such ordinance shall provide for the assessment of liquidated damages as to overweight vehicles at rates and amounts not exceeding those applicable to the liquidated damages under § 46.2-1135.

B. Such ordinances may also provide that:



1. Upon a finding of a violation of any weight limit prescribed therein, the court shall assess the owner, operator, or other person causing the operation of such overweight vehicle at such rate and amount as is provided in the ordinance;

2. The assessment shall be entered by the court as a judgment for such county;

3. The entry of such judgment shall constitute a lien upon the overweight vehicles;

4. Such sums shall be paid into the treasury of such county, and allocated to the fund appropriated by such county for the construction and maintenance of such roads under its jurisdiction.

C. Such ordinances may include additional provisions relating to payment of such assessment and enforcement powers applicable to such county and corresponding to the provisions of §§ 46.2-1131 ~~and~~, 46.2-1133 ~~through~~, 46.2-1134, and 46.2-1135, except that civil penalties, liquidated damages, and the weighing fees collected pursuant to such ordinances shall be paid to the county, and the county attorney or his designee shall represent the county in any court proceeding.

(1989, c. 727.)

**RECOMMENDATION: Set out in the Code with the included technical amendments. This section, while limited in scope to two localities, places limits on the localities of which the public may not be aware unless this section is set out. Representatives of Henrico County have advised that they currently rely on § 46.2-1313 for their authority to prosecute overweight trucks but do not see a downside to setting this section out. Representatives from Arlington County have advised that they do not need this section set out. Representatives from the Department of Motor Vehicles have advised that they would like to see this section set out because it is cross-referenced in §§ 46.2-1131 and 46.2-1135 and the authority granted by this section is relevant to DMV because they issue overweight permits on behalf of other localities.**

CHAPTER 12.

ABANDONED, IMMOBILIZED, UNATTENDED AND TRESPASSING VEHICLES;  
PARKING.

Article 13.

Trespassing Vehicles, Parking and Towing.

§ 46.2-1235. Authority of Chesterfield County law-enforcement ~~personnel~~ officers to  
issue parking tickets.

Law-enforcement officers ~~in~~ employed by Chesterfield County are authorized to issue  
tickets or citations for motor vehicles that are illegally parked anywhere in Chesterfield County.  
(1989, c. 727.)

**RECOMMENDATION:** Set out this Code section as amended. Setting out the section will  
increase public access to this section that grants Chesterfield County law-enforcement  
officers the authority to issue parking citations and places limitations on such authority.  
Representatives from Chesterfield County have advised that they would prefer that this  
section not be set out because they usually write parking tickets under the County Code.  
The Chesterfield County Code cites §§ 46.2-1220, 46.2-1221, 46.2-1224, and 46.2-1225 as  
their authorizing statutes.

CHAPTER 15.  
MOTOR VEHICLE DEALERS.

Article 9.

Motor Vehicle Dealer Advertising.

**~~§ 46.2-1580. Legislative findings.~~**

~~Whereas the purchase of a motor vehicle is often the second largest purchase made by the average consumer; and, whereas the business of retail sales of motor vehicles is highly competitive; and, whereas, advertising for the retail sale of motor vehicles is intensive and often specialized; and, whereas, it is in the interest of the consuming public and legitimate motor vehicle dealers to insure that the advertising of the sale of motor vehicles is honest, fair, and clear, the General Assembly of Virginia hereby finds that the deceptive or misleading advertising of the retail sale of motor vehicles should be prohibited. The General Assembly further finds that the Commissioner of the Department of Motor Vehicles has the expertise and experience in licensing of motor vehicle dealers and, therefore, the Commissioner shall be solely responsible for the enforcement of this act. The authority granted in this article shall be in addition to and not a substitute for the powers and authority granted pursuant to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).~~  
~~(1989, c. 308.)~~

**RECOMMENDATION:** Repeal this section and amend and reenact § 46.2-1582 as shown below by way of a bill. The first sentence and the portion of the second sentence before the language "and, therefore" of § 46.2-1580 do not create substantive law. Additionally, the Commissioner of the Department of Motor Vehicles is no longer solely responsible for the enforcement of the provisions related to motor vehicle dealer advertising. Therefore, that portion of the section does not reflect current practice. Enforcement of this article is handled by the Motor Vehicle Dealer Board. The provision of this section regarding the Consumer Protection Act is still applicable and relevant and has been retained as a proposed amendment to § 46.2-1582.

**§ 46.2-1582. Enforcement; regulations.**

A. The Board may promulgate regulations reasonably necessary for enforcement of this article.

B. In addition to any other sanctions or remedies available to the Board under this chapter, the Board may assess a civil penalty not to exceed \$1,000 for any single violation of this article. Each day that a violation continues shall constitute a separate violation.

C. The authority granted in this article shall be in addition to and not a substitute for the powers and authority granted pursuant to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

To: Virginia Code Commission

Re: Proposed Restructuring of Recounts Article in Title 24.2

Meetings Date: August 19, 2019 and September 16, 2019

From: Brooks C. Braun, Attorney, Division of Legislative Services

TITLE 24.2.

ELECTIONS.

CHAPTER 8.

RECOUNTS AND CONTESTED ELECTIONS.

Article 1.

Recounts.

**Drafting note: This proposed restructuring of Article 1 (§ 24.2-800 et seq.) of Chapter 8 of Title 24.2 is presented with all sections of Article 1 and one section outside of Article 1 in which a cross-reference is updated.**

**§ 24.2-800. Recounts in all elections.**

A. The provisions of this article apply to all elections held in the Commonwealth.

B. When there is between any candidate apparently nominated or elected and any candidate apparently defeated a difference of not more than one percent of the total vote cast for the two such candidates as determined by the State Board or the electoral board, the defeated candidate may appeal from the determination of the State Board or the electoral board for a recount of the vote as set forth in this article. When there is between any write-in candidate apparently nominated or elected and any candidate apparently defeated, or between any candidate apparently nominated or elected and any write-in candidate apparently defeated, a difference of not more than five percent of the total vote cast for the two such candidates as determined by the State Board or the electoral board, the defeated candidate may appeal from the determination of the State Board or the electoral board for a recount of the vote as set forth in this article. In an election of electors for the President and Vice President of the United States,

the presidential candidate shall represent the vice presidential candidate and slate of electors and be the party to the recount for purposes of this article.

C. When there is between the vote for a question and the vote against a question a difference of not more than ~~fifty~~ 50 votes or one percent of the total vote cast for and against the question as determined by the State Board or the electoral board, whichever is greater, ~~fifty~~ 50 or more voters qualified to vote on the question, by signing and filing their petition, may appeal from the determination of the State Board or the electoral board for a recount of the vote as set forth in this article.

~~D. The State Board shall promulgate standards and instructions for the conduct of simultaneous recounts of two or more elections in a single election district.~~

**Drafting note: Subsection D is relocated as proposed subsection B of § 24.2-802. Technical changes are made.**

**§ 24.2-801. (Effective until July 1, 2020) Petition for recount; recount court.**

A. The petition for a recount of an election, other than an election for presidential electors, shall be filed within 10 days from the day the State Board or the electoral board certifies the result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide office and in the circuit court of the county or city in which the candidate being challenged resides in the case of any other office. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide referendum and in the circuit court of any county or city comprising a part of the election district in the case of any other referendum.

B. The petition shall set forth the results certified by the State Board or electoral board and shall request the court to have the ballots in the election recounted or, in the case of direct recording electronic machines, the vote redetermined.

C. In an election for office, a copy of the petition shall be served on the candidate apparently nominated or elected as provided under § 8.01-296 and within 10 days after the State Board or electoral board has certified the results of such election. In a referendum, a copy of the

petition shall be so served on the governing body or chief executive officer of the jurisdiction in which the election was held.

D. The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under §§ 24.2-805 and 24.2-806.

E. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.

**Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802. Subsection labels are added for easier reference to distinct parts of the section. Technical changes are made.**

**§ 24.2-801. (Effective July 1, 2020) Petition for recount; recount court.**

A. The petition for a recount of an election, other than an election for presidential electors, shall be filed within 10 days from the day the State Board or the electoral board certifies the result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide office and in the circuit court of the county or city in which the candidate being challenged resides in the case of any other office. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide referendum and in the circuit court of any county or city comprising a part of the election district in the case of any other referendum.

B. The petition shall set forth the results certified by the State Board or electoral board and shall request the court to have the ballots in the election recounted.

C. In an election for office, a copy of the petition shall be served on the candidate apparently nominated or elected as provided under § 8.01-296 and within 10 days after the State Board or electoral board has certified the results of such election. In a referendum, a copy of the

petition shall be so served on the governing body or chief executive officer of the jurisdiction in which the election was held.

D. The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under §§ 24.2-805 and 24.2-806.

E. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.

**Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802. Subsection labels are added for easier reference to distinct parts of the section. Technical changes are made.**

**§ 24.2-801.1. (Effective until July 1, 2020) Petition for recount of election for presidential electors; recount court.**

A. The petition for a recount of an election for presidential electors shall be filed no later than 5:00 p.m. on the second calendar day after the day the State Board certifies the result of the election under § 24.2-679, but not thereafter. Presidential candidates who anticipate the possibility of asking for a recount are encouraged to so notify the State Board by letter as soon as possible after election day. The petition shall be filed in the Circuit Court of the City of Richmond. If any presidential candidate is eligible to seek a recount of the results of the election for presidential electors under § 24.2-800 the State Board shall, within 24 hours of the certification of the results, notify the Circuit Court of the City of Richmond and the Supreme Court of Virginia (i) that a recount is possible, (ii) which presidential candidate is eligible to seek a recount, and (iii) of the date the results were certified. The Circuit Court of the City of Richmond shall make arrangements to receive any such filing if the office would normally be closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the State Board certified the result of the election.



103           B. The petition shall set forth the results certified by the State Board and shall request the  
104 court to have the ballots in the election recounted or, in the case of direct recording electronic  
105 machines, the vote redetermined.

106           C. A copy of the petition shall be served on the presidential candidate whose electors  
107 were apparently elected as provided under § 8.01-296 and within five calendar days after the  
108 State Board has certified the results of such election.

109           D. As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify  
110 the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit  
111 with the chief judge, and the court shall be constituted and sit in all respects as a court appointed  
112 and sitting under § 24.2-805.

113           E. Commencing upon the filing of the recount, nothing shall prevent the discovery or  
114 disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of  
115 an election.

116           F. Any recount of an election for presidential electors shall be held promptly and  
117 completed, in accordance with the provisions of 3 U.S.C. § 5, at least six days before the time  
118 fixed for the meeting of the electors.

119           **Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802.**  
120 **Subsection labels are added for easier reference to distinct parts of the section. Technical**  
121 **changes are made.**

122           **§ 24.2-801.1. (Effective July 1, 2020) Petition for recount of election for presidential**  
123 **electors; recount court.**

124           A. The petition for a recount of an election for presidential electors shall be filed no later  
125 than 5:00 p.m. on the second calendar day after the day the State Board certifies the result of the  
126 election under § 24.2-679, but not thereafter. Presidential candidates who anticipate the  
127 possibility of asking for a recount are encouraged to so notify the State Board by letter as soon  
128 as possible after election day. The petition shall be filed in the Circuit Court of the City of  
129 Richmond. If any presidential candidate is eligible to seek a recount of the results of the election

for presidential electors under § 24.2-800 the State Board shall, within 24 hours of the certification of the results, notify the Circuit Court of the City of Richmond and the Supreme Court of Virginia (i) that a recount is possible, (ii) which presidential candidate is eligible to seek a recount, and (iii) of the date the results were certified. The Circuit Court of the City of Richmond shall make arrangements to receive any such filing if the office would normally be closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the State Board certified the result of the election.

B. The petition shall set forth the results certified by the State Board and shall request the court to have the ballots in the election recounted.

C. A copy of the petition shall be served on the presidential candidate whose electors were apparently elected as provided under § 8.01-296 and within five calendar days after the State Board has certified the results of such election.

D. As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under § 24.2-805.

E. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.

F. Any recount of an election for presidential electors shall be held promptly and completed, in accordance with the provisions of 3 U.S.C. § 5, at least six days before the time fixed for the meeting of the electors.

**Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802. Subsection labels are added for easier reference to distinct parts of the section. Technical changes are made.**

**§ 24.2-802. (Effective until July 1, 2020) ~~Procedure for recount~~ Recount standards.**

157           A. The State Board of Elections shall promulgate standards for (i) the proper handling  
158           and security of voting and counting machines, ballots, and other materials required for a recount,  
159           (ii) ~~accurate-determination~~ counting of votes based upon objective evidence and taking into  
160           account the counting machine and form of ballots approved for use in the Commonwealth, and  
161           (iii) any other matters that will promote a timely and accurate resolution of the recount.

162           B. The State Board shall promulgate additional standards and instructions for the conduct  
163           of simultaneous recounts of two or more elections in a single election district.

164           C. The chief judge of the circuit court or the full recount court may, consistent with State  
165           Board of Elections standards, resolve disputes over the application of the standards and direct all  
166           other appropriate measures to ensure the proper conduct of the recount.

167           ~~The recount procedures to be followed throughout the election district shall be as uniform~~  
168           ~~as practicable, taking into account the types of ballots and voting and counting machines in use~~  
169           ~~in the election district.~~

170           ~~In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed~~  
171           ~~ballots and other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or~~  
172           ~~room not open to the public or to anyone other than the clerk and his staff; (c) cause such vault~~  
173           ~~or room to be securely locked except when access is necessary for the clerk and his staff; and (d)~~  
174           ~~certify that these security measures have been taken in whatever form is deemed appropriate by~~  
175           ~~the chief judge.~~

176           ~~B. Within seven calendar days of the filing of the petition for a recount of any election~~  
177           ~~other than an election for presidential electors, or within five calendar days of the filing of a~~  
178           ~~petition for a recount of an election for presidential electors, the chief judge of the circuit court~~  
179           ~~shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of~~  
180           ~~procedure may be fixed, both subject to review by the full court. As part of the preliminary~~  
181           ~~hearing, the chief judge may permit the petitioner and his counsel, together with each other party~~  
182           ~~and his counsel and at least two members of the electoral board and the custodians, to examine~~  
183           ~~any direct recording electronic machine of the type that prints returns when the print-out sheets~~

184 ~~are not clearly legible. The petitioner and his counsel and each other party and their counsel~~  
185 ~~under supervision of the electoral board and its agents shall also have access to pollbooks and~~  
186 ~~other materials used in the election for examination purposes, provided that individual ballots~~  
187 ~~cast in the election shall not be examined at the preliminary hearing. The chief judge during the~~  
188 ~~preliminary hearing shall review all security measures taken for all ballots and voting and~~  
189 ~~counting machines and direct, as he deems necessary, all appropriate measures to ensure proper~~  
190 ~~security to conduct the recount.~~

191 ~~The chief judge, subject to review by the full court, may set the place or places for the~~  
192 ~~recount and may order the delivery of election materials to a central location and the~~  
193 ~~transportation of voting and counting machines to a central location in each county or city under~~  
194 ~~appropriate safeguards.~~

195 ~~After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at~~  
196 ~~which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it~~  
197 ~~shall issue a written order setting out such rules of procedure. The court shall call for the advice~~  
198 ~~and cooperation of the Department, the State Board, or any local electoral board, as appropriate,~~  
199 ~~and such boards or agency shall have the duty and authority to assist the court. The court shall~~  
200 ~~fix procedures that shall provide for the accurate determination of votes in the election.~~

201 ~~The determination of the votes in a recount shall be based on votes cast in the election~~  
202 ~~and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast~~  
203 ~~but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test~~  
204 ~~purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced~~  
205 ~~with a new ballot.~~

206 ~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing~~  
207 ~~upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence~~  
208 ~~that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

209 ~~C. The court shall permit each candidate, or petitioner and governing body or chief~~  
210 ~~executive officer, to select an equal number of the officers of election to be recount officials and~~

211 ~~to count printed ballots, or in the case of direct recording electronic machines, to redetermine the~~  
212 ~~vote. The number shall be fixed by the court and be sufficient to conduct the recount within a~~  
213 ~~reasonable period. The court may permit each party to the recount to submit a list of alternate~~  
214 ~~officials in the number the court directs. There shall be at least one team of recount officials to~~  
215 ~~recount printed ballots and to redetermine the vote cast on direct recording electronic machines~~  
216 ~~of the type that prints returns for the election district at large in which the recount is being held.~~  
217 ~~There shall be at least one team from each locality using ballot scanner machines to insert the~~  
218 ~~ballots into one or more scanners. The ballot scanner machines shall be programmed to count~~  
219 ~~only votes cast for parties to the recount or for or against the question in a referendum recount.~~  
220 ~~Each team shall be composed of one representative of each party.~~

221 ~~The court may provide that if, at the time of the recount, any recount official fails to~~  
222 ~~appear, the remaining recount officials present shall appoint substitute recount officials who shall~~  
223 ~~possess the same qualifications as the recount officials for whom they substitute. The court may~~  
224 ~~select pairs of recount coordinators to serve for each county or city in the election district who~~  
225 ~~shall be members of the county or city electoral board and represent different political parties.~~  
226 ~~The court shall have authority to summon such officials and coordinators. On the request of any~~  
227 ~~party to the recount, the court shall allow that party to appoint one representative observer for~~  
228 ~~each team of recount officials. The representative observers shall have an unobstructed view of~~  
229 ~~the work of the recount officials. The expenses of its representatives shall be borne by each party.~~

230 ~~D. The court (i) shall supervise the recount and (ii) may require delivery of any or all~~  
231 ~~pollbooks used and any or all ballots cast at the election, or may assume supervision thereof~~  
232 ~~through the recount coordinators and officials.~~

233 ~~The redetermination of the vote in a recount shall be conducted as follows:~~

234 ~~1. For paper ballots, the recount officials shall hand count the paper ballots using the~~  
235 ~~standards promulgated by the State Board pursuant to subsection A.~~

236 ~~2. For direct recording electronic machines (DREs), the recount officials shall open the~~  
237 ~~envelopes with the printouts and read the results from the printouts. If the printout is not clear,~~

238 ~~or on the request of the court, the recount officials shall rerun the printout from the machine or~~  
239 ~~examine the counters as appropriate.~~

240         ~~3. For ballot scanner machines, the recount officials shall rerun all the machine-readable~~  
241 ~~ballots through a scanner programmed to count only the votes for the office or issue in question~~  
242 ~~in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes.~~  
243 ~~The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which~~  
244 ~~a scanner could not be programmed to meet the programming requirements of this subdivision,~~  
245 ~~shall be hand counted using the standards promulgated by the State Board pursuant to subsection~~  
246 ~~A. If the total number of machine-readable ballots reported as counted by the scanner plus the~~  
247 ~~total number of ballots set aside by the scanner do not equal the total number of ballots rerun~~  
248 ~~through the scanner, then all ballots cast on ballot scanner machines for that precinct shall be set~~  
249 ~~aside to be counted by hand using the standards promulgated by the State Board pursuant to~~  
250 ~~subsection A. Prior to running the machine-readable ballots through the ballot scanner machine,~~  
251 ~~the recount officials shall ensure that logic and accuracy tests have been successfully performed~~  
252 ~~on each scanner after the scanner has been programmed. The result calculated for ballots~~  
253 ~~accepted by the ballot scanner machine during the recount shall be considered the correct~~  
254 ~~determination for those machine-readable ballots unless the court finds sufficient cause to rule~~  
255 ~~otherwise.~~

256         ~~There shall be only one redetermination of the vote in each precinct.~~

257         ~~At the conclusion of the recount of each precinct, the recount officials shall write down~~  
258 ~~the number of valid ballots cast, this number being obtained from the ballots cast in the precinct,~~  
259 ~~or from the ballots cast as shown on the statement of results if the ballots cannot be found, for~~  
260 ~~each of the two candidates or for and against the question. They shall submit the ballots or the~~  
261 ~~statement of results used, as to the validity of which questions exist, to the court. The written~~  
262 ~~statement of any one recount official challenging a ballot shall be sufficient to require its~~  
263 ~~submission to the court. If, on all direct recording electronic machines, the number of persons~~  
264 ~~voting in the election, or the number of votes cast for the office or on the question, totals more~~

than the number of names on the pollbooks of persons voting on the voting machines, the figures recorded by the machines shall be accepted as correct.

~~At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and votes. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for each party to the recount and declare the person who received the higher number of votes to be nominated or elected, as appropriate, or (b) the votes for and against the question and declare the outcome of the referendum. The Department shall post on the Internet any and all changes made during the recount to the results as previously certified by it pursuant to § 24.2-679.~~

~~E. Costs of the recount shall be assessed against the counties and cities comprising the election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated or elected and the candidate petitioning for the recount a difference of not more than one-half of one percent of the total vote cast for the two such candidates as determined by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate petitions for a recount, the court may assess costs in an equitable manner between the counties and cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date shall be assessed against any candidate or petitioner who defaults or withdraws his petition.~~

~~F. The court shall determine the costs of the recount subject to the following limitations: (i) no per diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the county or city for service on election day; and (iii) per diem payments to alternates shall be allowed only if they serve.~~

~~G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.~~

~~H. The recount proceeding shall be final and not subject to appeal.~~

~~I. For the purposes of this section:~~

~~"Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or positions than the number for which he was lawfully entitled to vote and no vote shall be counted with respect to that office or issue.~~

~~"Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or positions than the number for which he was lawfully entitled to vote.~~

**Drafting note: The catchline is amended to reflect the revised content of the section as proposed. Subsection A is amended to reduce possible confusion regarding the multiple senses of the words "redetermination" and "recount" currently used in this chapter. Proposed subsection B is derived from § 24.2-800. The first stricken paragraph in existing subsection A is relocated to proposed subsection B of § 24.2-802.1. The second stricken paragraph in existing subsection A is removed from the article because the procedures unnecessarily duplicate those already set out in subsection A of § 24.2-668 and subsection D of § 24.2-802. Existing subsections B and C and the first paragraph of existing subsection D are relocated to proposed § 24.2-802.1; however, The fourth paragraph of existing subsection B is relocated to proposed subsection B of § 24.2-802.2, the first sentence of the fifth paragraph of existing subsection B is relocated to proposed subsection C of § 24.2-802.2, and the second sentence of the fifth paragraph of existing subsection B is relocated to subsection E of §§ 24.2-801 and 24.2-801.1. The remainder of existing subsection D is relocated to proposed subsections D, E, and F of § 24.2-802.2. Subsections E, F, and G are**



relocated to proposed § 24.2-802.3. Subsections H and I are relocated to § 24.2-802.2 as proposed subsections G and A, respectively. Technical changes are made.

**§ 24.2-802. (Effective July 1, 2020)-~~Procedure for recount~~ Recount standards.**

A. The State Board of Elections shall promulgate standards for (i) the proper handling and security of voting systems, ballots, and other materials required for a recount, (ii) accurate ~~determination~~ counting of votes based upon objective evidence and taking into account the voting system and form of ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a timely and accurate resolution of the recount.

B. The State Board shall promulgate additional standards and instructions for the conduct of simultaneous recounts of two or more elections in a single election district.

C. The chief judge of the circuit court or the full recount court may, consistent with State Board of Elections standards, resolve disputes over the application of the standards and direct all other appropriate measures to ensure the proper conduct of the recount.

~~The recount procedures to be followed throughout the election district shall be as uniform as practicable, taking into account the types of ballots and voting systems in use in the election district.~~

~~In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed ballots and other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff; (c) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and (d) certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.~~

~~B. Within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court. The petitioner and his counsel~~

345 ~~and each other party and their counsel under supervision of the electoral board and its agents~~  
346 ~~shall have access to pollbooks and other materials used in the election for examination purposes,~~  
347 ~~provided that individual ballots cast in the election shall not be examined at the preliminary~~  
348 ~~hearing. The chief judge during the preliminary hearing shall review all security measures taken~~  
349 ~~for all ballots and voting systems and direct, as he deems necessary, all appropriate measures to~~  
350 ~~ensure proper security to conduct the recount.~~

351 ~~The chief judge, subject to review by the full court, may set the place or places for the~~  
352 ~~recount and may order the delivery of election materials to a central location and the~~  
353 ~~transportation of voting systems to a central location in each county or city under appropriate~~  
354 ~~safeguards.~~

355 ~~After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at~~  
356 ~~which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it~~  
357 ~~shall issue a written order setting out such rules of procedure. The court shall call for the advice~~  
358 ~~and cooperation of the Department, the State Board, or any local electoral board, as appropriate,~~  
359 ~~and such boards or agency shall have the duty and authority to assist the court. The court shall~~  
360 ~~fix procedures that shall provide for the accurate determination of votes in the election.~~

361 ~~The determination of the votes in a recount shall be based on votes cast in the election~~  
362 ~~and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast~~  
363 ~~but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test~~  
364 ~~purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced~~  
365 ~~with a new ballot.~~

366 ~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing~~  
367 ~~upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence~~  
368 ~~that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

369 ~~C. The court shall permit each candidate, or petitioner and governing body or chief~~  
370 ~~executive officer, to select an equal number of the officers of election to be recount officials and~~  
371 ~~to count printed ballots. The number shall be fixed by the court and be sufficient to conduct the~~

~~recount within a reasonable period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team from each locality using ballot scanner machines to insert the ballots into one or more scanners. The ballot scanner machines shall be programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Each team shall be composed of one representative of each party.~~

~~The court may provide that if, at the time of the recount, any recount official fails to appear, the remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials. The representative observers shall have an unobstructed view of the work of the recount officials. The expenses of its representatives shall be borne by each party.~~

~~D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials.~~

~~The redetermination of the vote in a recount shall be conducted as follows:~~

~~1. For paper ballots, the recount officials shall hand count the paper ballots using the standards promulgated by the State Board pursuant to subsection A.~~

~~2. For ballot scanner machines, the recount officials shall rerun all the machine-readable ballots through a scanner programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be programmed to meet the programming requirements of this subdivision, shall be hand counted using the standards promulgated by the State Board pursuant to subsection~~

~~A. If the total number of machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside by the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast on ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards promulgated by the State Board pursuant to subsection A. Prior to running the machine-readable ballots through the ballot scanner machine, the recount officials shall ensure that logic and accuracy tests have been successfully performed on each scanner after the scanner has been programmed. The result calculated for ballots accepted by the ballot scanner machine during the recount shall be considered the correct determination for those machine-readable ballots unless the court finds sufficient cause to rule otherwise.~~

~~There shall be only one redetermination of the vote in each precinct.~~

~~At the conclusion of the recount of each precinct, the recount officials shall write down the number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates or for and against the question. They shall submit the ballots or the statement of results used, as to the validity of which questions exist, to the court. The written statement of any one recount official challenging a ballot shall be sufficient to require its submission to the court. If, on all ballot scanners, the number of persons voting in the election, or the number of votes cast for the office or on the question, totals more than the number of names on the pollbooks of persons voting on the voting machines, the figures recorded by the machines shall be accepted as correct.~~

~~At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and votes. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for each party to the recount and declare the person who received the higher number of votes to be nominated or elected, as appropriate, or (b) the~~

426 ~~votes for and against the question and declare the outcome of the referendum. The Department~~  
427 ~~shall post on the Internet any and all changes made during the recount to the results as previously~~  
428 ~~certified by it pursuant to § 24.2-679.~~

429 ~~E. Costs of the recount shall be assessed against the counties and cities comprising the~~  
430 ~~election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the~~  
431 ~~petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate~~  
432 ~~apparently nominated or elected and the candidate petitioning for the recount a difference of not~~  
433 ~~more than one-half of one percent of the total vote cast for the two such candidates as determined~~  
434 ~~by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall~~  
435 ~~be assessed against the candidate petitioning for the recount or the petitioners in a recount of a~~  
436 ~~referendum. If more than one candidate petitions for a recount, the court may assess costs in an~~  
437 ~~equitable manner between the counties and cities and any such candidate if both are liable for~~  
438 ~~costs under this subsection. Costs incurred to date shall be assessed against any candidate or~~  
439 ~~petitioner who defaults or withdraws his petition.~~

440 ~~F. The court shall determine the costs of the recount subject to the following limitations:~~  
441 ~~(i) no per diem payment shall be assessed for salaried election officials; (ii) no per diem payment~~  
442 ~~to officers of election serving as recount officials shall exceed two-thirds of the per diem paid~~  
443 ~~such officers by the county or city for service on election day; and (iii) per diem payments to~~  
444 ~~alternates shall be allowed only if they serve.~~

445 ~~G. Any petitioner who may be assessed with costs under subsection E shall post a bond~~  
446 ~~with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the~~  
447 ~~petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the~~  
448 ~~bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the~~  
449 ~~bond, he shall be liable for such excess.~~

450 ~~H. The recount proceeding shall be final and not subject to appeal.~~

451 ~~I. For the purposes of this section:~~

~~"Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or positions than the number for which he was lawfully entitled to vote and no vote shall be counted with respect to that office or issue.~~

~~"Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or positions than the number for which he was lawfully entitled to vote.~~

**Drafting note: The catchline is amended to reflect the revised content of the section as proposed. Subsection A is amended to reduce possible confusion regarding the multiple senses of the words "redetermination" and "recount" currently used in this chapter. Proposed subsection B is derived from § 24.2-800. The first stricken paragraph in existing subsection A is relocated to proposed subsection B of § 24.2-802.1. The second stricken paragraph in existing subsection A is removed from the article because the procedures unnecessarily duplicate those already set out in subsection A of § 24.2-668 and subsection D of § 24.2-802. Existing subsections B and C and the first paragraph of existing subsection D are relocated to proposed § 24.2-802.1; however, The fourth paragraph of existing subsection B is relocated to proposed subsection B of § 24.2-802.2, the first sentence of the fifth paragraph of existing subsection B is relocated to proposed subsection C of § 24.2-802.2, and the second sentence of the fifth paragraph of existing subsection B is relocated to subsection E of §§ 24.2-801 and 24.2-801.1. The remainder of existing subsection D is relocated to proposed subsections D, E, and F of § 24.2-802.2. Subsections E, F, and G are relocated to proposed § 24.2-802.3. Subsections H and I are relocated to § 24.2-802.2 as proposed subsections G and A, respectively. Technical changes are made.**

**§ 24.2-802.1. (Effective until July 1, 2020) Recount court proceedings.**

~~B. A.~~ Within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court. As part of the preliminary

479 hearing, the chief judge may permit the petitioner and his counsel, together with each other party  
480 and his counsel and at least two members of the electoral board and the custodians, to examine  
481 any direct recording electronic machine of the type that prints returns when the print-out sheets  
482 are not clearly legible. The petitioner and his counsel and each other party and their counsel  
483 under supervision of the electoral board and its agents shall also have access to pollbooks and  
484 other materials used in the election for examination purposes, provided that individual ballots  
485 cast in the election shall not be examined at the preliminary hearing. The chief judge during the  
486 preliminary hearing shall review all security measures taken for all ballots and voting and  
487 counting machines and direct, as he deems necessary, all appropriate measures to ensure proper  
488 security to conduct the recount.

489 The chief judge, subject to review by the full court, may set the place ~~or places~~ for the  
490 recount and may order the delivery of election materials to a central location and the  
491 transportation of voting and counting machines to a central location in each county or city under  
492 appropriate safeguards.

493 B. After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing  
494 at which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it  
495 shall issue a written order setting out such rules of procedure. The court shall call for the advice  
496 and cooperation of the Department, the State Board, or any local electoral board, as appropriate,  
497 and such boards or agency shall have the duty and authority to assist the court. The court shall  
498 fix procedures that shall provide for the accurate ~~determination~~ counting of votes in the election.  
499 The recount procedures to be followed throughout the election district shall be as uniform as  
500 practicable, taking into account the types of ballots and voting and counting machines in use in  
501 the election district.

502 ~~The determination of the votes in a recount shall be based on votes cast in the election~~  
503 ~~and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast~~  
504 ~~but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test~~

~~purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced with a new ballot.~~

~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, to select an equal number of the officers of election to be recount officials and to count printed ballots, or in the case of direct recording electronic machines, to redetermine the vote. The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team of recount officials to recount printed ballots and to redetermine the vote cast on direct recording electronic machines of the type that prints returns for the election district at large in which the recount is being held. There shall be at least one team from each locality using ballot scanner machines to insert the ballots into one or more scanners. ~~The ballot scanner machines shall be programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount.~~ Each team shall be composed of one representative of each party.

The court may provide that if, at the time of the recount, any recount official fails to appear, the remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials. The representative observers shall have an unobstructed view of the work of the recount officials. The expenses of its representatives shall be borne by each party.



D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials.

**Drafting note: Proposed subsections A and B are derived from subsection B of § 24.2-802. Subsection B is amended to reduce possible confusion regarding the multiple senses of the words "redetermination" and "recount" currently used in this chapter. Additional new language in proposed subsection B is derived from the first stricken paragraph in subsection A of § 24.2-802. The first stricken paragraph of proposed subsection B is relocated to subsection B of proposed § 24.2-802.2. The first sentence of the second stricken paragraph of proposed subsection B is relocated to subsection C of proposed § 24.2-802.2. The second sentence of the second stricken paragraph of proposed subsection B is relocated to proposed subsection E of § 24.2-801 and proposed subsection E of 24.2-801.1. Proposed subsection C is derived from subsection C of § 24.2-802. The stricken language in subsection C is removed from the article because it unnecessarily duplicates the language in proposed subdivision D 3 of § 24.2-802.2. Proposed subsection D is derived from the first paragraph of subsection D of § 24.2-802. Technical changes are made.**

**§ 24.2-802.1. (Effective July 1, 2020) Recount court proceedings.**

~~B. A.~~ Within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court. The petitioner and his counsel and each other party and their counsel under supervision of the electoral board and its agents shall have access to pollbooks and other materials used in the election for examination purposes, provided that individual ballots cast in the election shall not be examined at the preliminary hearing. The chief judge during the preliminary hearing shall review all security measures taken

for all ballots and voting systems and direct, as he deems necessary, all appropriate measures to ensure proper security to conduct the recount.

The chief judge, subject to review by the full court, may set the place ~~or places~~ for the recount and may order the delivery of election materials to a central location and the transportation of voting systems to a central location in each county or city under appropriate safeguards.

B. After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it shall issue a written order setting out such rules of procedure. The court shall call for the advice and cooperation of the Department, the State Board, or any local electoral board, as appropriate, and such boards or agency shall have the duty and authority to assist the court. The court shall fix procedures that shall provide for the accurate ~~determination~~ counting of votes in the election. The recount procedures to be followed throughout the election district shall be as uniform as practicable, taking into account the types of ballots and voting systems in use in the election district.

~~The determination of the votes in a recount shall be based on votes cast in the election and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced with a new ballot.~~

~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, to select an equal number of the officers of election to be recount officials and to count printed ballots. The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may permit each party to the recount to submit a

list of alternate officials in the number the court directs. There shall be at least one team from each locality using ballot scanner machines to insert the ballots into one or more scanners.~~The ballot scanner machines shall be programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount.~~ Each team shall be composed of one representative of each party.

The court may provide that if, at the time of the recount, any recount official fails to appear, the remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials. The representative observers shall have an unobstructed view of the work of the recount officials. The expenses of its representatives shall be borne by each party.

D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials.

**Drafting note: Proposed subsections A and B are derived from subsection B of § 24.2-802. Subsection B is amended to reduce possible confusion regarding the multiple senses of the words "redetermination" and "recount" currently used in this chapter. Additional new language in proposed subsection B is derived from the first stricken paragraph in subsection A of § 24.2-802. The first stricken paragraph of proposed subsection B is relocated to subsection B of proposed § 24.2-802.2. The first sentence of the second stricken paragraph of proposed subsection B is relocated to subsection C of proposed § 24.2-802.2. The second sentence of the second stricken paragraph of proposed subsection B is relocated to proposed subsection E of § 24.2-801 and proposed subsection E of 24.2-801.1. Proposed subsection C is derived from subsection C of § 24.2-802. The**

612 **stricken language in subsection C is removed from the article because it unnecessarily**  
613 **duplicates the language in proposed subdivision D 2 of § 24.2-802.2. Proposed subsection**  
614 **D is derived from the first paragraph of subsection D of § 24.2-802. Technical changes are**  
615 **made.**

616 **§ 24.2-802.2. (Effective until July 1, 2020) General recount procedures.**

617 ~~I.~~A. For the purposes of this section:

618 "Overvote" means a ballot on which a voter casts a vote for a greater number of  
619 candidates or positions than the number for which he was lawfully entitled to vote and no vote  
620 shall be counted with respect to that office or issue.

621 "Undervote" means a ballot on which a voter casts a vote for a lesser number of  
622 candidates or positions than the number for which he was lawfully entitled to vote.

623 B. ~~The determination~~ recount of the votes ~~in a recount~~ shall be based on votes cast in the  
624 election and shall not take into account ~~(a)~~ (i) any absentee ballots or provisional ballots sought  
625 to be cast but ruled invalid and not cast in the election, ~~(b)~~ (ii) ballots cast only for administrative  
626 or test purposes and voided by the officers of election, or ~~(c)~~ (iii) ballots spoiled by a voter and  
627 replaced with a new ballot.

628 C. The eligibility of any voter to have voted shall not be an issue in a recount.

629 D. There shall be only one recount of the vote in each precinct. ~~The redetermination~~  
630 recount of the vote ~~in a recount~~ shall be conducted as follows:

631 1. For paper ballots, the recount officials shall hand count the paper ballots using the  
632 standards promulgated by the State Board pursuant to ~~subsection A~~ § 24.2-802.

633 2. For direct recording electronic machines (DREs), the recount officials shall open the  
634 envelopes with the printouts and read the results from the printouts. If the printout is not clear,  
635 or on the request of the court, the recount officials shall rerun the printout from the machine or  
636 examine the counters as appropriate.

637 3. For ballot scanner machines, the recount officials shall rerun all the machine-readable  
638 ballots through a scanner programmed to count only the votes for the ~~office~~ parties to or issue in

question in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be programmed to meet the programming requirements of this subdivision, shall be hand counted using the standards promulgated by the State Board pursuant to ~~subsection A, § 24.2-802~~. If the total number of machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside by the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast on ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards promulgated by the State Board pursuant to ~~subsection A, § 24.2-802~~. Prior to running the machine-readable ballots through the ballot scanner machine, the recount officials shall ensure that logic and accuracy tests have been successfully performed on each scanner after the scanner has been programmed. The result calculated for ballots accepted by the ballot scanner machine during the recount shall be considered ~~the correct determination~~ for those machine-readable ballots unless the court finds sufficient cause to rule otherwise.

~~There shall be only one redetermination of the vote in each precinct.~~

E. At the conclusion of the recount of each precinct, the recount officials shall write down the number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates or for and against the question. They shall submit the ballots or the statement of results used, as to the validity of which questions exist, to the court. The written statement of any one recount official challenging a ballot shall be sufficient to require its submission to the court. If, on all direct recording electronic machines, the number of persons voting in the election, or the number of votes cast for the office or on the question, totals more than the number of names on the pollbooks of persons voting on the voting machines, the figures recorded by the machines shall be accepted as correct.

F. At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all

questioned ballots and votes. After ~~determining~~ settling all matters pertaining to the recount ~~and~~  
~~redetermination~~ of the vote as raised by the parties, the court shall certify to the State Board and  
the electoral board ~~or boards~~ ~~(a)~~ (i) the vote for each party to the recount and declare the person  
who received the higher number of votes to be nominated or elected, as appropriate, or ~~(b)~~ (ii)  
the votes for and against the question and declare the outcome of the referendum. The  
Department shall post on the Internet any and all changes made during the recount to the results  
as previously certified by it pursuant to § 24.2-679.

H. G. The recount proceeding shall be final and not subject to appeal.

**Drafting note: Proposed subsection A is derived from subsection I of § 24.2-802.  
Proposed subsections B and C are derived from the fourth paragraph and first sentence of  
the fifth paragraph of subsection B of § 24.2-802. Proposed subsections D, E, and F are  
derived from subsection D of § 24.2-802, excluding the first paragraph of that existing  
subsection. The line "There shall be only one recount of the vote in each precinct" is moved  
from the middle of the existing subsection to the beginning of proposed subsection D. The  
first sentence of proposed subsection B and the opening paragraph of proposed subsection  
D are amended to reduce possible confusion regarding the multiple senses of the words  
"redetermination" and "recount" currently used in this chapter. Language in proposed  
subdivision D 3 is changed from "office" to "parties to" to express the more specific  
requirements of similar language stricken from subsection C of proposed § 24.2-802.1.  
Proposed section G is derived from subsection H of § 24.2-802. Technical changes are made.**

**§ 24.2-802.2. (Effective July 1, 2020) General recount procedures.**

I. A. For the purposes of this section:

"Overvote" means a ballot on which a voter casts a vote for a greater number of  
candidates or positions than the number for which he was lawfully entitled to vote and no vote  
shall be counted with respect to that office or issue.

"Undervote" means a ballot on which a voter casts a vote for a lesser number of  
candidates or positions than the number for which he was lawfully entitled to vote.

693           B. The ~~determination~~ recount of the votes ~~in a recount~~ shall be based on votes cast in the  
694 election and shall not take into account ~~(a)~~ (i) any absentee ballots or provisional ballots sought  
695 to be cast but ruled invalid and not cast in the election, ~~(b)~~ (ii) ballots cast only for administrative  
696 or test purposes and voided by the officers of election, or ~~(c)~~ (iii) ballots spoiled by a voter and  
697 replaced with a new ballot.

698           C. The eligibility of any voter to have voted shall not be an issue in a recount.

699           D. There shall be only one recount of the vote in each precinct. The ~~redetermination~~  
700 recount of the vote ~~in a recount~~ shall be conducted as follows:

701           1. For paper ballots, the recount officials shall hand count the paper ballots using the  
702 standards promulgated by the State Board pursuant to ~~subsection A~~ § 24.2-802.

703           2. For ballot scanner machines, the recount officials shall rerun all the machine-readable  
704 ballots through a scanner programmed to count only the votes for the ~~office~~ parties to or issue in  
705 question in the recount and to set aside all ballots containing write-in votes, overvotes, and  
706 undervotes. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots  
707 for which a scanner could not be programmed to meet the programming requirements of this  
708 subdivision, shall be hand counted using the standards promulgated by the State Board pursuant  
709 to ~~subsection A~~ § 24.2-802. If the total number of machine-readable ballots reported as counted  
710 by the scanner plus the total number of ballots set aside by the scanner do not equal the total  
711 number of ballots rerun through the scanner, then all ballots cast on ballot scanner machines for  
712 that precinct shall be set aside to be counted by hand using the standards promulgated by the  
713 State Board pursuant to ~~subsection A~~ § 24.2-802. Prior to running the machine-readable ballots  
714 through the ballot scanner machine, the recount officials shall ensure that logic and accuracy  
715 tests have been successfully performed on each scanner after the scanner has been programmed.  
716 The result calculated for ballots accepted by the ballot scanner machine during the recount shall  
717 be considered ~~the correct determination~~ for those machine-readable ballots unless the court finds  
718 sufficient cause to rule otherwise.

719           ~~There shall be only one redetermination of the vote in each precinct.~~

720           E. At the conclusion of the recount of each precinct, the recount officials shall write down  
721 the number of valid ballots cast, this number being obtained from the ballots cast in the precinct,  
722 or from the ballots cast as shown on the statement of results if the ballots cannot be found, for  
723 each of the two candidates or for and against the question. They shall submit the ballots or the  
724 statement of results used, as to the validity of which questions exist, to the court. The written  
725 statement of any one recount official challenging a ballot shall be sufficient to require its  
726 submission to the court. If, on all ballot scanners, the number of persons voting in the election,  
727 or the number of votes cast for the office or on the question, totals more than the number of  
728 names on the pollbooks of persons voting on the voting machines, the figures recorded by the  
729 machines shall be accepted as correct.

730           F. At the conclusion of the recount of all precincts, after allowing the parties to inspect  
731 the questioned ballots, and after hearing arguments, the court shall rule on the validity of all  
732 questioned ballots and votes. After ~~determining~~ settling all matters pertaining to the recount ~~and~~  
733 ~~redetermination~~ of the vote as raised by the parties, the court shall certify to the State Board and  
734 the electoral board ~~or boards~~ ~~(a)~~ (i) the vote for each party to the recount and declare the person  
735 who received the higher number of votes to be nominated or elected, as appropriate, or ~~(b)~~ (ii)  
736 the votes for and against the question and declare the outcome of the referendum. The  
737 Department shall post on the Internet any and all changes made during the recount to the results  
738 as previously certified by it pursuant to § 24.2-679.

739           H. G. The recount proceeding shall be final and not subject to appeal.

740           **Drafting note: Proposed subsection A is derived from subsection I of § 24.2-802.**  
741 **Proposed subsections B and C are derived from the fourth paragraph and first sentence of**  
742 **the fifth paragraph of subsection B of § 24.2-802. Proposed subsections D, E, and F are**  
743 **derived from subsection D of § 24.2-802, excluding the first paragraph of that existing**  
744 **subsection. The line "There shall be only one recount of the vote in each precinct" is moved**  
745 **from the middle of the existing subsection to the beginning of proposed subsection D. The**  
746 **first sentence of proposed subsection B and the opening paragraph of proposed subsection**



**D are amended to reduce possible confusion regarding the multiple senses of the words "redetermination" and "recount" currently used in this chapter. Language in proposed subdivision D 2 is changed from "office" to "parties to" to express the more specific requirements of similar language stricken from subsection C of proposed § 24.2-802.1. Proposed section G is derived from subsection H of § 24.2-802. Technical changes are made.**

**§ 24.2-802.3. Costs of the recount.**

~~E.~~A. Costs of the recount shall be assessed against the counties and cities comprising the election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated or elected and the candidate petitioning for the recount a difference of not more than one-half of one percent of the total vote cast for the two such candidates as determined by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate petitions for a recount, the court may assess costs in an equitable manner between the counties and cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

~~F.~~B. The court shall determine the costs of the recount subject to the following limitations: (i) no per diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the county or city for service on election day; and (iii) per diem payments to alternates shall be allowed only if they serve.

~~G.~~C. Any petitioner who may be assessed with costs under subsection ~~E~~A shall post a bond with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.

**Drafting note: Proposed subsections A, B, and C are derived from subsections E, F, and G of § 24.2-802 in order to provide a separate section addressing the costs of a recount. Technical changes are made. This proposed section does not need to be set out twice because the underlying language from the existing sections is identical.**

**§ 24.2-814. Contest following recount.**

A candidate in a primary or an election to office, who was originally declared a winner and subsequently loses as the result of a recount, may file either (i) notice of his intent to contest the result in accordance with § 24.2-803 or-§ 24.2-804 or (ii) a written complaint pursuant to § 24.2-805 or-§ 24.2-806. Such notice or complaint shall be filed within 10 days following the date of the entry of the order of the recount court pursuant to subsection ~~D~~F of § ~~24.2-802~~ 24.2-802.2.

In the case of a contest pursuant to § 24.2-803 or-§ 24.2-804, the times for filing the answer, petition, and reply and for taking depositions and affidavits shall be set by the Committee on Privileges and Elections of the appropriate house. The Committee may consider the contestant's and contestee's recommendations for the procedural schedule.

This section shall not be applicable to a contest of an election for the President and Vice President of the United States.

**Drafting note: Technical changes.**

## **Title 45.1 Recodification: Outline**

**9/9/2019**

Underlined text indicates proposed chapter or article number.

### **Subtitle I. Administration.**

Ch. 1. Chapter 14.1 Administration (§§ 45.1-161.1 through 45.1-161.6)  
7 sections.

Ch. 2. Chapter 25 Division of Geology and Mineral Resources (§§ 45.1-383 through 45.1-389)  
7 sections.

Ch. 3. Chapter 20 Interstate Mining Compact (§ 45.1-271) (covers both coal and non-coal)  
1 section.

Ch. 4. Chapter 24 Interstate Compact to Conserve Oil and Gas (§§ 45.1-381 through 45.1-382)  
2 sections.

### **Subtitle II. Coal Mines.**

#### **Part A. Coal Mines Generally.**

Ch. 5. Chapter 14.2 Coal Mine Safety Act (§§ 45.1-161.7 through 45.1-161.104)  
10 articles containing 81 sections.

#### Ch. 6. Coal Mining Property, Interests, Adjacent Owners, and Dams.

Article 1. Chapter 14.7 Rights of Owners of Land Adjacent to Coal Mines (§§ 45.1-161.310 through 45.1-161.311)  
2 sections.

Article 2. Chapter 14.7:2 Trust for Coal Interests (§§ 45.1-161.311:3 through 45.1-161.311:8)  
2 articles containing 6 sections.

Article 3. Chapter 14.8 Emergency Seizure of Coal Properties by Commonwealth (§§ 45.1-161.312 through 45.1-161.322)  
11 sections.

Article 4. Chapter 18 Coal Mining Refuse Piles, Water and Silt Retaining Dams (§§ 45.1-221 through 45.1-225)  
4 sections.

#### **Part B. Underground Coal Mines.**

Ch. 7. Portion of Chapter 14.3 Requirements Applicable to Underground Coal Mines (§§ 45.1-161.105 through 45.1-161.252) [Articles 1-3, 5-8, 15, and 16]  
9 articles containing approximately 77 sections.

Ch. 8. Portion of Chapter 14.3 Requirements Applicable to Underground Coal Mines (§§ 45.1-161.105 through 45.1-161.252) [Articles 4 and 9-14]  
7 articles containing approximately 64 sections.

## **Title 45.1 Recodification: Outline**

**9/9/2019**

### **Part C. Surface Coal Mines.**

Ch. 9. Chapter 14.4 Requirements Applicable to Surface Coal Mines (§§ 45.1-161.253 through 45.1-161.292)

13 articles containing 40 sections

Ch. 10. Chapter 19 Virginia Coal Surface Mining Control and Reclamation Act of 1979 (§§ 45.1-226 through 45.1-270.7)

5 articles containing 54 sections.

### **Subtitle III. Mineral Mines.**

#### **Part A. Mineral Mines Generally.**

Ch. 11. Chapter 14.4:1 Mineral Mine Safety Act (§§ 45.1-161.292:1 through 45.1-161.292:73)

9 articles containing 69 sections.

Ch. 12. Chapter 16 Permits for Certain Mining Operations; Reclamation of Land (§§ 45.1-180 through 45.1-197.18) (“Nothing herein shall apply to mining of coal.”)

4 articles containing 42 sections.

Ch. 13. Mineral Mining Dams and Adjacent Owners.

Article 1. Chapter 18.1 Mineral Mining Refuse Piles, Water and Silt Retaining Dams (§§ 45.1-225.1 through 45.1-225.3)

3 sections.

Article 2. Chapter 14.7:1 Rights of Owners of Land Adjacent to Mineral Mines (§§ 45.1-161.311:1 through 45.1-161.311:2)

2 sections.

#### **Part B. Underground Mineral Mines.**

Ch. 14. Chapter 14.5 Requirements Applicable to Underground Mineral Mines (§§ 45.1-161.293 through 45.1-161.303)

11 sections.

#### **Part C. Surface Mineral Mines.**

Ch. 15. Chapter 14.6 Requirements Applicable to Surface Mineral Mining (§§ 45.1-161.304 through 45.1-161.309)

6 sections.

### **Subtitle IV. Oil and Gas.**

Ch. 16. Chapter 22.1 The Virginia Gas and Oil Act (§§ 45.1-361.1 through 45.1-361.44)

4 articles containing 47 sections.

Ch. 17. **Title 67** Chapter 3 Offshore Energy Resources (§§ 67-300 through 67-301)

2 sections: royalties from offshore; put wind in Subtitle V.

## **Title 45.1 Recodification: Outline**

**9/9/2019**

### **Subtitle V. Other Sources of Energy; Energy Policy.**

#### Ch. 18. Energy Generally.

Chapter 26 Energy Division, Etc. (§§ 45.1-390 through 45.1-394)

2 sections: all forms of energy.

**Title 67** Ch. 1 Energy Policy of the Commonwealth (§§ 67-100 to 67-103)

4 sections: energy policy, objectives, etc., some renewable

**Title 67** Chapter 2 Virginia Energy Plan (§§ 67-200 through 67-203)

5 sections: DMME Div. of Energy develop plan, reporting by utilities

**Title 67** Ch. 6 Va. Coastal Energy Research Consortium (§§ 67-600 to 604)

5 sections, university group studies waves, wind, oil and gas.

**Title 67** Ch. 9 Renewable Electricity Production Grant Prog. (§§ 67-900 to 903)

2 sections: Dept. grant to corp. for renewable electricity production.

Should be in Title 56 but for DMME involvement.

**Title 67** Ch. 10 Solar and Wind Energy System Acquisition Grant Program

(§§ 67-1000 through 67-1003). Contingent effective date.

4 sections: DMME funding to buy solar/wind.

**Title 67** Ch. 16 Southwest Virginia Energy Research and Development Authority

(§§ 67-1600 through 67-1607)

8 sections: Creates independent authority, promotes energy development.

#### Ch. 19. Wind Energy.

**Title 67** Subsection C of § 67-300, wind energy

1 subsection

**Title 67** Chapter 12 Virginia Offshore Wind Development Authority

(§§ 67-1200 through 67-1211)

12 sections: Political subdivision with DMME assistance.

#### Ch. 20. Solar Energy.

**Title 67** Ch. 15 Virginia Solar Energy Development and Energy Storage Auth.

(§§ 67-1500 through 67-1509)

10 sections

#### Ch. 21. Geothermal Energy.

Chapter 15.1 Geothermal Energy (§§ 45.1-179.1 through 45.1-179.11)

2 articles containing 11 sections.

#### Ch. 22. Nuclear Energy.

**Title 67** Chapter 14 Virginia Nuclear Energy Consortium

(§§ 67-1400 through 67-1406)

7 sections: Authority (DMME and universities) establishes Consortium.

**Title 45.1 Recodification: Outline**  
**9/9/2019**

Ch. 23. Uranium Mining.

Title 45.1 Chapter 21 Exploration for Uranium Ore  
(§§ 45.1-272 through 45.1-285.10)  
24 sections.

**Portions of Title 67 that are not proposed for incorporation into Title 45.2:**

Title 67 Chapter 4 Clean Coal Projects (§§ 67-400 through 67-402).  
We propose to move to new Article 4 in Chapter 13 of Title 10.1, comprising new §§ 10.1-1328 and 10.1-1329.

Title 67 Chapter 5 Biodiesel Fuel (§§ 67-500 through 67-501).  
We propose to combine the two sections into one new section numbered 33.2-120 and move to Chapter 1 of Title 33.2.

Title 67 Chapter 7 Covenants Restricting Solar Energy Collection Devices (§§ 67-700 through 67-701).  
We propose to combine the two sections into one new section numbered 55.1-1996 and move to new Chapter 19.1 in Subtitle IV of Title 55.1.

Title 67 Chapter 8 Motor Vehicle Fuel Efficiency Standards (§§ 67-800 through 67-801).  
We propose to combine the two sections into one new section numbered 33.2-120 and move to Chapter 1 of Title 33.2.

Title 67 Chapter 11 Renewable Energy Co-Location of Distribution Facilities (§§ 67-1100 through 67-1110). Contingent effective date.  
We propose to move to new Chapter 29 in Title 56, comprising new §§ 56-614-56-624.

Expired chapter

Title 67 Chapter 13 Voluntary Solar Resource Development Fund [Expired] (§ 67-1300).  
One section.

CHAPTER 6.

COAL MINING PROPERTY, INTERESTS, ADJACENT OWNERS, AND DAMS.

**Drafting note: Proposed Chapter 6, Coal Mining Property, Interests, Adjacent Owners, and Dams, retains existing Chapters 14.7, Rights of Owners of Land Adjacent to Coal Mines; 14.7:2, Trust for Coal Interests; 14.8, Emergency Seizure of Coal Properties by Commonwealth; and 18, Coal Mining Refuse Piles, Water and Silt Retaining Dams, as Articles 1 through 4, respectively.**

~~CHAPTER 14.7.~~

~~RIGHTS OF OWNERS OF LAND ADJACENT TO COAL MINES.~~

Article 1.

Rights of Owners of Land Adjacent to Coal Mines.

**Drafting note: Existing Chapter 14.7, Rights of Owners of Land Adjacent to Coal Mines, is retained as proposed Article 1 of Chapter 6.**

§ ~~45.1-161.311~~ 45.2-xxx. Consent required before working mine near land of another.

No owner or tenant of any land containing coal within the Commonwealth, shall open or sink, dig, excavate, or work in any mine on such land within five feet of the line dividing such land from that of another person, without the written consent, ~~in writing~~, of every person interested in or having title to such adjoining lands or mineral rights in possession, reversion, or remainder, or of the guardian of any such person ~~that may be~~ if the person is under a disability. ~~If any~~ Any person who violates this section, ~~he~~ shall forfeit \$500 to any person injured by such activity and to anyone whose consent is required but not obtained.

**Drafting note: Technical changes are made.**

§ ~~45.1-161.311~~ 45.2-xxx. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

A. The owner, tenant, or occupant of any land or coal, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense if he such

person has reason to believe his property is being trespassed, ~~to have ingress and egress with~~  
~~surveyors and assistants to explore and survey such mine at his own expense, for the~~ upon. The  
purpose of ~~ascertaining~~ such survey shall be to ascertain whether a violation of § ~~45.1-161.310~~  
~~45.2-xxx~~ has occurred; ~~however.~~ However, such person ~~shall~~ is not be entitled to enter the  
property more often than once a month. Every owner, tenant, occupant, or agent who ~~shall~~  
~~refuse~~ refuses such permission, exploration, or survey, shall forfeit ~~twenty dollars~~ \$20 for each  
refusal, to the person so refused.

B. The judge of the general district court of the county or city in which such mine is  
located, before whom any complaint of such refusal shall be made, may issue a summons to  
such owner, tenant, occupant, or agent, to answer such complaint. On the return of the summons  
executed, and proof that (i) the complainant has a right of entry, and ~~that it~~ (ii) such right has  
been refused without sufficient cause, the judge shall designate an early and convenient time  
for such entry to be made, and issue ~~his~~ a warrant, commanding the sheriff of the county or city  
to attend and prevent ~~obstructions and impediments~~ any obstruction or impediment to such  
entry, exploration ~~and, or~~ survey. The costs of such summons, and a fee of ~~three dollars~~ \$3 to  
the sheriff executing the warrant, shall be paid by the person whose refusal caused the  
complaint. If the court dismisses the complaint, the costs shall be paid by the party making the  
complaint.

**Drafting note: Technical changes are made and language is updated for modern  
usage.**

#### ~~CHAPTER 14.7:2.~~

#### ~~TRUST FOR COAL INTERESTS.~~

#### ~~Article 1~~ 2.

#### ~~Unknown Trusts for Coal Owners Interests.~~

**Drafting note: Existing Chapter 14.7:2, Trust for Coal Interests, is renamed and  
retained as proposed Article 2, Trusts for Coal Interests, of Chapter 6. The two existing  
articles of existing Chapter 14.7:2 are combined to form this article.**

§ ~~45.1-161.311:3~~ 45.2-xxx. Petition to establish a trust for missing coal owners.



57 A. ~~Any person or persons~~ coal owner or lessee ~~with greater than~~ who (i) has at least a  
58 50 percent interest in the coal on a particular tract, who is seeking and (ii) seeks to impress a  
59 trust upon unknown or missing owners of such tract of coal, may petition the circuit court in  
60 the county or city containing the majority of the tract of coal to establish a trust to protect the  
61 interests of all coal owners and lessees.

62 B. The petition shall:

63 1. Describe the particular tract of coal at issue;

64 2. List all known-owners, missing-owners, and unknown owners of interests in such  
65 tract of coal and set forth the efforts to locate and identify the ~~unknown or missing or unknown~~  
66 ~~owners of the interests in the tract of coal and such~~ provide any other information known to the  
67 petitioner that ~~may could~~ be helpful in identifying or locating the ~~every present-owners owner~~  
68 thereof; and

69 ~~2-3.~~ Include the proposed terms of a lease to be offered to the trust, which. Such lease  
70 shall be typical of other arm's-length leases in the area.

71 C. The petitioner shall establish to the satisfaction of the court that a diligent effort has  
72 been made to identify and locate the present owners of such interests.

73 **Drafting note: Amendments are made for consistent use of "owners" and "lessees"**  
74 **and of "known," "missing," and "unknown" owners. The requirement that the petition**  
75 **describe the tract of coal at issue, implied in the following section, proposed § 45.2-xxx**  
76 **[45.1-161.311:4], is made express in proposed subdivision B 1.**

77 ~~§ 45.1-161.311:4~~ 45.2-xxx. Advertisement upon filing of petition.

78 Immediately upon filing ~~of the petition~~ pursuant to § 45.2-xxx [§ 45.1-161.311:3], the  
79 petitioner shall advertise a notice of the pending action, including a statement that the action is  
80 brought for the purpose of impressing a trust authorizing the execution of a valid and present  
81 coal lease for the development of a tract of coal described in the petition pursuant to the  
82 provisions of subsection B of § 45.2-xxx [45.1-161.311:3]. Such notice shall appear in a local  
83 newspaper of general circulation at least once a week for two consecutive weeks.

**Drafting note: Technical changes are made and a cross-reference to the prior section, proposed § 45.2-xxx [45.1-161.311:3], is added.**

~~§ 45.1-161.311:5~~ 45.2-xxx. Court may declare trust; trustee sale of lease.

A. If, upon presentation of a petition pursuant to § 45.2-xxx [§ 45.1-161.311:3] to the circuit court ~~of the petition~~ in the county or city containing the majority of the tract of coal, it appears to the court that development of the interests in ~~the~~ such tract of coal will be advantageous to the unknown or missing owners, the court shall declare a trust in the coal interests, and shall appoint a trustee for such interests. The court shall authorize the trustee to execute a lease covering the coal interests in the identified tract of coal. The order of the court shall provide for all the terms and provisions of the lease that the trustee is authorized to make.

B. The trustee shall proceed in compliance with the provisions of the order to execute the lease, and after executing the lease shall submit a report thereof to the court.

C. The court shall not authorize a trustee's lease upon the coal interests of any owner whose identity and ~~whereabouts~~ is location ~~is~~ are known, ~~or~~ can be ascertained, or ~~is~~ are discovered as a result of the action brought under this article. Any such owner may intervene as a matter of right at any time prior to the judgment approving the trustee's lease, for the purpose of establishing his title to the coal interests. ~~If the~~ such coal owner's claim is established to the satisfaction of the court, the court shall dismiss the action at the plaintiff's cost.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.311:6~~ 45.2-xxx. Duty of trustee; sale of lease; distribution of funds.

A. The trustee shall collect the proceeds from the sale of the lease and hold and invest such proceeds for the use and benefit of the unknown or missing owners. The court may authorize the trustee to expend an amount not to exceed 10 percent of the funds collected by the trustee for the purpose of searching for the unknown or missing owners.

B. Five years after the date of first commercial production of the coal interests, the proceeds in the trust shall be disposed of pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.).

**Drafting note: No change.**

~~§ 45.1-161.311:7~~ 45.2-xxx. Payment of ~~attorney's~~ attorney fees, expenses, and court costs.

All ~~attorney's~~ attorney fees, expenses, and court costs incident to the original proceedings shall be paid by the lessee if a lease is executed, and by the plaintiff if for any reason no lease is executed. Subsequent to entry of judgment, all allowable attorney fees, expenses, and court costs shall be paid out of funds controlled by the trustee.

**Drafting note: Technical changes.**

~~Article 2.~~

~~Known Coal Owners.~~

**Drafting note: Article 2 of existing Chapter 14.7:2 is combined with Article 1 of existing Chapter 14.7:2 to form proposed Article 2 of Chapter 6.**

~~§ 45.1-161.311:8~~ 45.2-xxx. Production of coal by majority interest owner; petition to establish trust for known coal owners.

A. Any ~~person or persons~~ coal owner or lessee ~~with who~~ (i) has at least a two-thirds interest in the coal on a particular tract of land, ~~who is seeking~~ and (ii) seeks to extract such coal; may petition the circuit court in the county or city containing the majority of the tract of coal to establish a trust for known coal owners and lessees.

B. The petition shall:

1. Describe the particular tract of coal at issue;
2. List all known owners of interests in the tract of coal; and
- ~~2-3.~~ Include the proposed terms of a lease to be offered to the each minority owners,  
which owner. Such lease shall be typical of other arm's-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to obtain the consent of each minority ~~owners'~~ consent owner to lease ~~their~~ his interest in the coal. The petitioner shall demonstrate to the court that (i) the production of the coal by the petitioner's lessee is of economic benefit to all parties; (ii) if the coal is not produced, ~~then~~ the economic value of the coal is lost and the economic benefit of owning the

coal is decreased; and (iii) there is no practical method for dividing such coal among the owners without extracting the coal.

D. Immediately upon filing the petition, the petitioner shall send by registered or certified mail, with a return receipt requested, notice of the petition to the party subject to the petition.

E. The court may appoint a trustee and authorize the trustee to execute a lease pursuant to ~~§ 45.1-161.311:5~~ 45.2-xxx.

F. The court shall escrow or direct the trustee to escrow the proceeds of the lease attributable to each of the minority interests until such time as ~~the~~ such minority owner's claim is established to the satisfaction of the court.

**Drafting note: Amendments are made in subsection A for consistent use of "owners" and "lessees." Technical changes are made, including changes made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

#### ~~CHAPTER 14.8.~~

#### ~~EMERGENCY SEIZURE OF COAL PROPERTIES BY COMMONWEALTH.~~

#### Article 3.

#### Emergency Seizure of Coal Property by the Commonwealth.

**Drafting note: Existing Chapter 14.8, Emergency Seizure of Coal Properties by Commonwealth, is renamed and retained as proposed Article 3, Emergency Seizure of Coal Property by the Commonwealth, of Chapter 6.**

~~§ 45.1-161.313~~ 45.2-xxx. "Public uses" defined; ~~declaration~~ Declaration of policy.

A. ~~As used in this chapter, "public uses" means the mining, production and marketing of coal for the purpose of providing and furnishing heat and power to the people of Virginia.~~

B. Any substantial interruption or imminent threat of substantial interruption or existing substantial interruption of such service the mining, production, or marketing of coal for the purpose of providing and furnishing heat or power to the people of the Commonwealth is hereby declared to be contrary to the public policy of the Commonwealth, ~~and it.~~ It is the duty of the

government of the Commonwealth to exercise all available means and every power at its command to prevent ~~the same~~ such interruption so as to protect its citizens from any dangers, perils, calamities, or catastrophes ~~which~~ that would result therefrom.

**Drafting note: The definition of "public uses" is relocated to the following section, proposed § 45.2-xxx [45.1-161.312]. Technical changes are made.**

~~§ 45.1-161.312~~ 45.2-xxx. Mining, "Public uses" defined; mining, etc., of coal essential business; subject to seizure by Commonwealth.

A. As used in this article, "public uses" means the mining, production, or marketing of coal for the purpose of providing and furnishing heat or power to the people of the Commonwealth.

B. Any person engaged in the business of the mining, production and, or marketing of coal, any portion of which is customarily used in the manufacture of heat and or power, is hereby declared to be engaged in a business essential to the ~~welfare~~, health and, safety, and welfare of the people of Virginia, and, under the Commonwealth. Under the conditions and in the manner ~~hereinafter~~ set forth in this article, such business may be seized and operated by the Commonwealth of Virginia, or any agency created and organized for such purpose, for public uses.

**Drafting note: The definition of "public uses" is relocated from existing § 45.1-161.313 as proposed subsection A, and proposed subsection B is divided into two sentences for clarity. The phrase "such business" is substituted for the implied "any person" as the entity subject to seizure. Technical changes are made.**

~~§ 45.1-161.314~~ 45.2-xxx. Interruption of public uses; proclamation of emergency; seizure.

When in the judgment of the Governor there ~~is~~ exists a substantial interruption or an imminent threat of a substantial interruption or there exists a substantial interruption of the public uses, he shall proclaim that an emergency exists in ~~this the~~ the Commonwealth ~~endangering that endangers~~ the welfare, health, and safety, and welfare of its people and the enjoyment of the public and private property within its borders, ~~and it~~. It shall then be the duty of the Governor

to ~~forthwith~~ seize and operate the property of any person used in the mining, production ~~and,~~  
or marketing of coal that ~~he~~ the Governor deems essential for the protection of the ~~welfare,~~  
health ~~and,~~ safety, and welfare of the people of ~~Virginia~~ the Commonwealth.

**Drafting note: References to "interruption" and "threat of interruption" are  
reordered to match the first section in this article. Language is updated for modern usage  
and the section's single sentence is divided into two sentences for clarity. Technical  
changes are made.**

~~§ 45.1-161.315~~ 45.2-xxx. Additional powers of Governor to operate seized properties.

The Governor ~~shall, in addition to his inherent power as Governor, have and may~~  
exercise the powers and authority to possess and operate ~~properties of~~ for public uses any ~~person~~  
person's property used in the mining, production ~~and,~~ or marketing of coal ~~for public uses~~ in  
the manner ~~hereinafter~~ provided in this article.

**Drafting note: Language is simplified and updated for modern usage.**

~~§ 45.1-161.316~~ 45.2-xxx. Virginia Fuel Commission; purpose; membership;  
compensation; staff; powers and duties; report.

~~To~~ A. The Virginia Fuel Commission (the Commission) may be established by the  
Governor as a supervisory commission in the executive branch of state government. The  
purpose of the Commission is to act for and on behalf of the Governor in the enforcement of  
the powers and duties set forth in this ~~chapter, the Governor may appoint a commission, known~~  
~~and designated as the Virginia Fuel Commission, hereafter the Commission~~ article.

B. The Commission shall ~~be composed~~ have a total membership of three nonlegislative  
citizen members who are residents of the Commonwealth, one of whom. Each member of the  
Commission shall be appointed to serve at the pleasure of the Governor, and any vacancy shall  
be filled in the same manner as the original appointment. One member of the Commission shall  
be designated by the Governor as chairman. A majority of the members shall constitute a  
quorum. The meetings of the Commission shall be held at the call of the Governor or the  
chairman.

223 C. Members shall receive such compensation for the performance of their duties as fixed  
224 by the Governor. Funding for the costs of compensation and expenses of the members shall be  
225 provided by the Department.

226 D. The Department shall provide staff support to the Commission. All agencies of the  
227 Commonwealth shall provide assistance to the Commission, upon request.

228 E. The Commission, subject to the approval of the Governor, shall have, in addition to  
229 such powers and duties incident hereto to this article as the Governor may have and shall  
230 delegate delegates to it, the following powers power and duties duty to:

231 1. To promulgate Adopt such rules and regulations and to issue such orders as may are,  
232 in the judgment of the Commission be, necessary to accomplish in full the purposes of this  
233 chapter, which article. Such rules, regulations, and orders shall have the force and effect of law,  
234 and the violation thereof shall be is punishable as a Class 1 misdemeanor;

235 2. To appoint Appoint and employ such officers and personnel as are, in its judgment  
236 may be, required to carry out the provisions of this chapter and to article; remove, in its  
237 discretion, any and all persons serving thereunder; and to fix, subject to approval by the  
238 Governor, the remuneration of all such officers and other personnel. Such personnel shall work  
239 subject to such safety provisions as are in force on the property at the time of acquisition;

240 3. To acquire Acquire under the power of eminent domain, or by purchase, lease, or  
241 otherwise, all of the property of any person used in the business of the mining, production and,  
242 or marketing of coal, including all lands, tipples, mines, ores, rights-of-way, leaseholds, and  
243 every character and type of equipment deemed by the Commission necessary and or incidental  
244 to the continuous mining and production of coal; and

245 4. To operate Operate, manage, and control any such properties property so acquired; to  
246 purchase coal, coke and, or other fuel and to sell the same such fuel, either at retail or at  
247 wholesale; to enter into contracts; to allocate and provide for the distribution of coal and other  
248 fuels so as to assure ensure a distribution deemed most likely to promote the welfare, health  
249 and, safety, and welfare of the people of Virginia the Commonwealth; and to do any and all

things necessary ~~and incident~~ and incidental to the mining, production ~~and, or~~ marketing of coal; and

5. In any year in which the Commission meets, submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. In any year in which the Commission meets, the chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of the next regular session of the General Assembly. The executive summary shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**Drafting note: The language that provides the Governor the option to establish the Virginia Fuel Commission is updated to reflect current language preferred in the Code for commissions, boards, and councils. The provisions of existing § 45.1-161.317, which relate to appointment and compensation of board members, are relocated to subsections B and C. Technical changes are made.**

~~§ 45.1-161.317. Terms and compensation of members of Commission.  
Members of the Commission shall be appointed to serve at the pleasure of the Governor at a compensation fixed by the Governor.~~

**Drafting note: The provisions of this section are relocated to proposed § 45.2-xxx [§ 45.1-161.316].**

~~§ 45.1-161.319~~ 45.2-xxx. Negotiating purchase or lease of coal properties.  
Whenever the Governor ~~shall have proclaimed~~ proclaims that an emergency exists under this ~~chapter, article~~ and the Governor has appointed appoints the Virginia Fuel Commission pursuant to § 45.2-xxx [§ 45.1-161.316], the Commission shall ~~forthwith~~ make a bona fide attempt to negotiate the purchase or lease of the coal ~~properties~~ property of ~~such persons~~ any person engaged in the mining, production ~~and, or~~ marketing of coal as the Commission deems necessary to accomplish the purposes of this ~~chapter except~~ article.



278 However, where such negotiations cannot be promptly made due to the incapacity of the  
279 ~~owners, or one or more of them,~~ owner of the property, or for any other reason, ~~no~~ the  
280 Commission is not required to attempt to negotiate for the acquisition of such property ~~need be~~  
281 ~~made~~.

282 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
283 **throughout the Code any word used in the singular includes the plural and vice versa.**  
284 **Language is updated for modern usage and the section's single sentence is divided into**  
285 **two sentences for clarity. Technical changes are made.**

286 § ~~45.1-161.320~~ 45.2-xxx. Proceedings for condemnation.

287 A. Proceedings for condemnation ~~hereunder~~ pursuant to this article shall be instituted  
288 and conducted in the name of the Commission, and the procedure shall, except ~~insofar~~ as altered  
289 ~~herein~~ by the provisions of this article, be carried out as provided in Chapter 3 (§ 25.1-300 et  
290 seq.) of Title 25.1.

291 B. The proceedings for condemnation shall be by petition to the circuit court of the  
292 county or city in which the land, property ~~and, or~~ property-right, right, or the major portion  
293 thereof sought to be temporarily acquired ~~are, is~~ located, ~~which~~. The petition shall set forth with  
294 reasonable particularity a description and designation of the ~~interests, rights and~~ interest, right,  
295 or property intended to be temporarily taken, the name ~~or names~~ of the ~~owners~~ owner of the  
296 interest, right, or property ~~which~~ that is to be taken or affected; and such other facts, ~~if any~~, as  
297 ~~may be deemed~~ the Commission deems necessary ~~by the Commission, in order~~ to give adequate  
298 information to the court and all persons in interest, ~~which~~. The petition shall be verified by oath  
299 by a member of the Commission.

300 C. Upon (i) the filing of ~~said~~ the petition described in subsection B in the office of the  
301 clerk of the circuit court to which it is addressed, together with as many copies thereof as there  
302 are defendants upon which it is to be served, and (ii) the depositing with the clerk for the custody  
303 of the court, and for the benefit of the owners of the ~~properties~~ property taken or affected, such  
304 an amount of money as the Commission shall estimate to be just compensation for the property  
305 temporarily taken and ~~the~~ any damage done, ~~if any~~, the Commission shall thereupon seize and

take possession, custody, and control of ~~said the property or properties~~. The amount of money so deposited pursuant to clause (ii) shall not limit the amount of just compensation to be allowed to the ~~owners~~ owner of the property. ~~Service of said~~ The service of such petition upon the ~~defendants~~ defendant shall be made in the manner prescribed by the Rules of the Supreme Court of Virginia with respect to Practice and Procedure in Civil Actions ~~at Law~~ in effect at the time the petition is filed.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage, the new designation of subsection C is added in existing subsection B for clarity, and the title of the relevant section of the Rules of Supreme Court of Virginia is updated.**

~~§ 45.1-161.321~~ 45.2-xxx. Expense of acquiring and operating coal ~~properties~~ property; funds derived from operation.

The expense of acquiring and operating any property ~~or properties~~ acquired under this ~~chapter~~ article shall be paid out of moneys transferred from the general fund ~~of the Commonwealth that are~~ not otherwise appropriated. Such transfer shall be made upon such authorizations authorization as the Governor ~~may prescribe~~ prescribes and shall be credited to the account of the Commission, and all funds and revenues derived from or received as a result of ~~said such~~ operations shall be paid into the state treasury and credited to the same account. Any ~~amounts~~ amount transferred upon authorization of the Governor from the general fund ~~of the Commonwealth~~ shall be ~~known and~~ designated as the "Capital Account" of the Commission, ~~which~~. Such amount, or the residue thereof, together with any surplus that ~~may accrue~~ accrues, shall be returned to the general fund ~~of the Commonwealth~~ in the event of liquidation or, in the absence of liquidation, in such installments and at such times as the Governor ~~may prescribe~~ prescribes.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~45.1-161.322~~ 45.2-xxx. Restoration of property to owner or operator.

A. Whenever (i) the owner or operator ~~of engaged in~~ the business of the mining, production ~~and, or~~ marketing of coal, whose property has been acquired by the Commission, ~~shall notify~~ notifies the Commission in writing, ~~stating that he is in position to, and~~ can and will resume operation and render normal service, and ~~shall satisfy~~ satisfies the Commission of the correctness of such ~~statement~~ notice, or ~~whenever (ii)~~ in the judgment of the Governor, the emergency declared by him no longer exists, the Commission shall restore the possession of the property so acquired by ~~them~~ it to ~~the~~ such owner or operator upon his request. In the event the Commission refuses such restoration of possession, the owner or operator shall have the right to have a ~~rule~~ ruling issued requiring the Commission to show cause why such possession ~~should~~ shall not be restored, and the court shall determine the matter as provided in this section provided.

B. Any such owner or operator shall be entitled to receive reasonable, proper, and lawful compensation for the use of the ~~properties so~~ property acquired by the Commonwealth pursuant to this article and shall be paid the same such compensation out of the state treasury. In the event the Commission has acquired such property by purchase, the ~~owners~~ owner or operator from whom it was acquired shall, upon reacquisition ~~shall~~, repay the purchase price less fair compensation for the use of such property. In the event the Commission and the owner or operator are unable to agree upon the amount of such compensation, either party in interest may file a petition in the circuit court for the county or city in which the majority of the property is located for the purpose of having the ~~same~~ amount of compensation judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and (i) render judgment thereon or ~~may~~ (ii) refer to a commissioner such questions as are considered proper and act upon the commissioner's report as in any other equity ~~proceedings~~ proceeding. An appeal shall lie to the Supreme Court from any final judgment of the court rendered upon the provisions of this ~~chapter~~ article.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.318~~ 45.2-xxx. Chapter Article subject to provisions of general law.

~~This chapter shall be~~ The provisions of this article are subject to all of the provisions of general law applicable to coal mining operations.

**Drafting note: Technical changes.**

~~CHAPTER 18.~~

~~COAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS.~~

Article 4.

Coal Mine Refuse Impoundments and Retaining Dams.

**Drafting note: Existing Chapter 18, Coal Mining Refuse Piles, Water and Silt Retaining Dams, is renamed and retained as proposed Article 4, Coal Mine Refuse Impoundments and Retaining Dams, of Chapter 6.**

~~§ 45.1-221. Repealed.~~

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

~~§ 45.1-221.1~~ 45.2-xxx. Definitions.

As used in this ~~chapter~~ article, unless the context requires a different meaning:

"Coal refuse" means waste material resulting from the mining and screening or processing of coal.

"Coal slurry" means waste water and impurities produced as the result of coal washing and preparation of coal for market, containing a combination of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings.

~~"Impounding water" means to impound~~ "Mine refuse impoundment" means a mine refuse pile that retains water that has been used in carrying out any part of the process necessary in the production or preparation of coal.

387 ~~"Refuse pile"~~ "Mine refuse pile" means a pile of coarse or fine coal refuse that is a result  
388 of the mining or screening process that may be stacked, spread, or graded and covers ~~a minimum~~  
389 ~~of 20 acre-feet or more.~~

390 "Operator" means any person who operates, controls, or supervises ~~a water, coal slurry,~~  
391 ~~or silt retaining dam or a mine refuse pile impounding water~~ impoundment.

392 ~~"Dam"~~ "Retaining dam" means an artificial barrier or obstruction that is designed to  
393 impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream  
394 toe of the structure, and has a storage volume of 20 acre-feet or more; ~~or is designed to impound~~  
395 ~~water, coal slurry, or silt (ii)~~ (ii) to an elevation of 20 feet or more measured at the open channel  
396 spillway or from the crest of the dam in a closed system, regardless of storage volume.

397 "Silt" means fine particles resulting from a mining operation, suspended in or deposited  
398 by water.

399 "Water" means liquid or slurry ~~as a result of that results from~~ the processing of coal in  
400 mining operations.

401 **Drafting note: The term "dam" is renamed as "retaining dam" and moved into**  
402 **alphabetical order and the definition is clarified and shortened to reduce redundant text.**  
403 **The adjective phrase "impounding water," which is used in the existing article to modify**  
404 **"mine refuse pile," is changed to the term "mine refuse impoundment" and incorporates**  
405 **"mine refuse pile" in its definition. The term "refuse pile" is renamed as "mine refuse**  
406 **pile" and moved into alphabetical order. Technical changes are made and language is**  
407 **updated for modern usage.**

408 ~~§ 45.1-222~~ 45.2-xxx. Design and construction of ~~water, coal slurry, or silt a retaining~~  
409 ~~dams dam~~ or mine refuse ~~piles impounding water~~ impoundment; designs and other data to be  
410 submitted to ~~the~~ Chief.

411 A. ~~New water, coal slurry, or silt~~ Any new retaining ~~dams, dam~~ or mine refuse ~~piles~~  
412 ~~impounding water~~ impoundment, or the modification of an existing ~~water, coal slurry, or silt~~  
413 retaining ~~dams dam~~ or mine refuse ~~piles impounding water~~ impoundment, shall be designed

and constructed by, or under the direction of, a licensed professional engineer, ~~if such retaining dam or~~. Such requirement shall only apply to a mine refuse pile:

1. ~~Is impoundment if it is~~ designed to impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream toe of the structure; and

2. ~~Has~~ has a storage volume of 20 acre-feet or more; or

3. ~~Is designed to impound water or silt~~ (ii) to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

The design, construction specifications, and other related data, including final abandonment plans for such retaining dam or mine refuse impoundment, shall be certified by the licensed professional engineer.

B. No person shall place, construct, enlarge, alter, repair, remove, or abandon such ~~water, coal slurry, or silt retaining dam or mine refuse pile impounding water~~ impoundment until the operator has filed an application for and received approval from the Chief for such construction or modification. However, routine repairs that do not affect the engineering design criteria ~~and or~~ or safety of an approved ~~water, coal slurry, or silt retaining dam or mine refuse pile~~ impounding water impoundment are not subject to the application and approval requirements.

**Drafting note: Language is updated for clarity and technical changes are made.**  
The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-xxx [§ 45.1-221.1].  
Requirements that control whether a new or modified impoundment shall be constructed under the direction of a licensed professional engineer are removed as redundant for retaining dams because, as defined, "retaining dam" includes only those structures that already meet the requirements.

~~§ 45.1-223. Repealed.~~

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

§ ~~45.1-224~~ 45.2-xxx. Examination of ~~water, coal slurry, or silt~~ retaining ~~dams~~ dam or mine refuse ~~piles~~ impounding water impoundment; potentially hazardous ~~conditions~~ condition; plans to be submitted by operators.

A. ~~All water, coal slurry, or silt~~ Each retaining ~~dams~~ dam or mine refuse ~~piles~~ impounding water impoundment shall be examined by an authorized person, as defined in § ~~45.1-161.8~~ 45.2-xxx, at least every seven days or as otherwise approved by the Chief. Each such retaining dam or mine refuse pile impoundment shall be examined for compliance with approved design and maintenance requirements, visible structural weakness, volume overload, and other hazards.

B. After each examination, the authorized person, as defined in § 45.2-xxx [~~§ 45.1-161.8~~], shall promptly record the results of the examination in a book that shall be available at the retaining dam or mine refuse pile impoundment, or other designated location, for inspection by the Chief or his authorized representative. ~~All~~ Each examination ~~records~~ record shall include a description of any potentially hazardous condition found and any action taken to abate ~~any such potentially hazardous condition~~. ~~Records~~ Each record shall be countersigned by the supervisor of the authorized person creating the ~~records~~ record. ~~Where~~ If ~~such records disclose a record discloses a potentially hazardous conditions condition~~, the countersigning of the ~~records~~ record shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination was completed, and the person countersigning shall ensure that actions to eliminate or control the potentially hazardous ~~conditions~~ condition have been taken. The operator of the retaining dam or mine refuse pile impoundment may authorize ~~another~~ a person ~~with equivalent~~ who possesses authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign the ~~records~~ record and ensure that action is taken to eliminate the potentially hazardous ~~conditions~~ condition disclosed in the ~~records~~ record.

C. When rising water, coal slurry, or silt reaches 80 percent by volume of the safe design capacity of ~~the a retaining dam or mine refuse pile impoundment~~, such the examination required

by subsection A shall be made more often as required by the Chief or his authorized representative.

D. When a potentially hazardous condition exists, the operator shall immediately initiate procedures to:

1. Remove all persons from the area ~~which~~ that may reasonably be expected to be affected by the potentially hazardous condition;

2. Eliminate the potentially hazardous condition; and

3. Notify the Chief and other governing agencies by the quickest available means following the protocol established in the site's ~~Emergency Notification and Evacuation Plan~~ emergency notification and evacuation plan pursuant to § 45.2-xxx [§ 45.1-224.1].

E. The operator of each coal site on which a ~~water, coal slurry, or silt~~ retaining dam or mine refuse pile ~~impounding water~~ impoundment is located shall submit a plan for carrying out the requirements of ~~§ 45.1-222~~ § 45.2-xxx and subsections A, B, C, and D for approval by the Chief. The plan shall include:

1. The designs, construction specifications, and other related data required ~~under~~ pursuant to § 45.1-222 § 45.2-xxx;

2. A schedule and procedures for inspection of the retaining dam or mine refuse impoundment by a qualified person under normal conditions and under conditions that could cause flooding;

3. Procedures for evaluating a potentially hazardous condition ~~conditions~~ condition;

4. Procedures for removing all persons from the area ~~which~~ that may reasonably be expected to be affected by the potentially hazardous ~~conditions~~ condition;

5. Procedures for eliminating the potentially hazardous ~~conditions~~ condition;

6. Procedures for notifying the Chief and other governing agencies; and

7. Any additional information ~~which~~ that may be required by the Chief.

F. Before making any changes or modifications in the approved plan, the operator shall obtain approval of such changes or modifications from the Chief.



G. The Chief shall notify the operator in writing whether the operator's plan is approved or disapproved. If ~~he~~ the Chief disapproves the plan, he shall provide the operator with his written objections thereto and his required amendments.

**Drafting note: The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-xxx [§ 45.1-221.1]. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-224.1 45.2-xxx. Emergency Notification and Evacuation Plan~~ notification and evacuation plan.

A. On or before July 1 of each year, the operator of any ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile that impounds water~~ impoundment that meets the criteria of subsection A of ~~§ 45.1-222~~ 45.2-xxx shall submit to the Chief an ~~Emergency Notification and Evacuation Plan~~ emergency notification and evacuation plan. If there are no changes to a plan at the time the updated plan is due, the operator may submit a notice that there are no changes to the plan in lieu of submitting an updated plan to the Chief.

B. The plan and attendant maps, appropriate for the level of hazard of ~~the~~ such retaining dam or mine refuse ~~pile~~ impoundment, shall describe the ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile that impounds water~~ impoundment and shall include:

1. The name and address of the operator owning, operating, or controlling the structure;
2. The identification numbers of the structure as assigned by the Chief, the Mine Safety and Health Administration, and the Office of Surface Mining;
3. The location of the structure indicated on (i) a current United States Geological Survey ~~7 1/2-minute~~ 7.5-minute or 15-minute topographic quadrangle map, (ii) an equivalent digital map, or (iii) a topographic map of a scale approved by the Chief;
4. The name and size in acres of the watershed in which the structure is located;

5. A description of the physical and engineering properties of the foundation materials on which the structure is to be or was constructed;

6. The location of existing or proposed instrumentation;

7. A statement of the runoff attributable to the probable maximum precipitation of six-hour duration and the calculations used in determining such runoff;

8. A statement of the runoff attributable to the storm for which the structure is designed and the calculations used in determining such runoff;

9. ~~The locations~~ location of any surface ~~and or~~ or underground coal ~~mines~~ mine, including the depth and extent of such workings, under and within 1,000 feet around the perimeter of the retaining dam, mine refuse impoundment, and the area of impounded material, shown at a scale not to exceed one inch equals 1,000 feet;

10. A map depicting the impoundment area, and downstream and adjacent drainways, streambeds, roads, structures, and other public areas that ~~might~~ could be affected ~~should~~ if an accident were to occur at the impoundment. The map shall be at a scale not to exceed one inch equals 1,000 feet;

11. ~~The name~~ names of persons who are familiar with the plan protocols and can take actions necessary to eliminate the hazard and minimize the impact to miners, the community, and the environment;

12. A location where a command and communication center ~~can~~ could be established for the company team and emergency response personnel to report during an impoundment event;

13. The location of potential evacuation centers where affected parties may take shelter during an impoundment event;

14. An emergency contact list for agencies that would respond to an impoundment event; and

15. A list of miners employed at the site and businesses, community buildings, residences, and other occupied buildings within the impact zone that could be affected by an impoundment event, or other effective means of identifying such impact zone.

**Drafting note: The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-xxx [§ 45.1-221.1]. Language is updated for clarity and technical changes are made, including changes made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

**556**            ~~§ 45.1-225. Repealed.~~

**557      Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

558 #

PART C.

SURFACE COAL MINES.

**Drafting note: In proposed Subtitle II, proposed Part C (Surface Coal Mines) is created to logically organize provisions relating to surface coal mines and contains two chapters: proposed Chapter 9, Requirements Applicable to Surface Coal Mines, and proposed Chapter 10, Virginia Coal Surface Mining Control and Reclamation Act of 1979.**

CHAPTER-14.4 9.

REQUIREMENTS APPLICABLE TO SURFACE COAL MINES.

**Drafting note: Existing Chapter 14.4, Requirements Applicable to Surface Coal Mines, which is divided into 13 articles, is retained as proposed Chapter 9. Articles 1 through 13 of existing Chapter 14.4 are retained in that order in this proposed chapter.**

Article 1.

General Provisions.

**Drafting note: Existing Article 1, containing general provisions, is retained as proposed Article 1.**

~~§ 45.1-161.253~~ 45.2-xxx. Scope of chapter.

~~This chapter shall be applicable~~ applies to the operation of any surface coal mine in the Commonwealth, and ~~shall supplement~~ supplements the provisions of Chapter-14.2 5 (§ ~~45.1-161.7~~ 45.2-xxx et seq.).

**Drafting note: Technical changes are made to modernize language.**

~~§ 45.1-161.254~~ 45.2-xxx. ~~Regulations~~ Rules and regulations governing conditions and practices at surface coal mines.

A. The Chief ~~shall have authority~~ is authorized, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), to ~~promulgate~~ adopt rules and regulations necessary to ensure safe and healthy working conditions in surface coal mines in the Commonwealth. Such rules and regulations governing surface coal mines shall relate to:

29 1. Safety and health standards for the protection of the life, health, and property of,  
30 and the prevention of injuries to, persons involved in or likely to be affected by any surface  
31 coal mining operations ~~which shall include but not be limited to~~. Such rules and regulations  
32 shall include standards for the control of dust concentration levels; the installation,  
33 maintenance, and use of electrical devices, equipment, cables, and wires; fire protection; the  
34 use and storage of explosives; hoistings; drilling; loading and haulage areas; the training of  
35 surface miners; the preparation of responses to emergencies; examinations of conditions at a  
36 surface mine site; and reporting requirements;

37 2. The storage or disposal of any matter or ~~materials~~ material that is (i) extracted or  
38 disturbed as the result of a surface coal mining operation ~~or operations~~ or (ii) used in the  
39 surface coal mining operation or for the refinement or preparation of the ~~materials~~ material  
40 that is extracted from the surface coal mining operation, so that such matter or material does  
41 not threaten the health ~~or~~, safety, or property of the miners or the general public; and

42 3. The operation, inspection, operating condition, and movement of drilling equipment  
43 and machines to protect the health, safety, and property of miners and the general public.

44 B. The Chief shall ~~not promulgate any~~ adopt no rule or regulation establishing  
45 ~~requirements~~ a requirement for the operation of, or for conditions at, a surface coal mine  
46 ~~which are~~ that is inconsistent with ~~requirements~~ any requirement established by ~~this~~ the Act.

47 **Drafting note: The term "promulgate regulations" is changed to "adopt**  
48 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
49 **and includes the promulgation process. In subdivision A 1, the phrase "but not limited**  
50 **to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes'**  
51 **means includes, but not limited to." The word "property" is added to subdivision A 2**  
52 **for consistency with subdivision A 1. Technical changes are made pursuant to § 1-227,**  
53 **which states that throughout the Code any word used in the singular includes the plural**  
54 **and vice versa. Other technical changes are made to modernize language.**

55 ~~§ 45.1-161.255~~ 45.2-xxx. Standards for regulations.

In ~~promulgating the~~ adopting rules and regulations pursuant to § ~~45.1-161.254~~ 45.2-xxx, the Chief shall consider:

1. Standards utilized and generally recognized by the surface coal mining industry;
2. Standards established by recognized professional coal mining organizations and groups;
3. Standards established by federal mine safety laws;
4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under ~~this~~ the Act and other mine safety laws; and
5. Such other criteria as ~~shall be~~ are necessary for the protection of the safety and health of miners and other persons or property likely to be affected by surface coal mines or related operations.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made.**

#### Article 2.

Work Area Examinations, ~~Record Keeping~~ Recordkeeping, and Reporting.

**Drafting note: Existing Article 2, concerning work area examinations, recordkeeping, and reporting, is retained as proposed Article 2. Technical changes are made to the name.**

§ ~~45.1-161.256~~ 45.2-xxx. Safety examinations.

A. ~~On-shift examinations~~ An on-shift examination of the work area, including any pit, auger, thin seam ~~and, or~~ highwall-operations operation, shall be conducted by a certified ~~persons once every~~ person for each production shift and at such other times or frequency as the Chief designates as necessary for hazardous conditions.

B. ~~Pre-operational examinations~~ A pre-operational examination of all mobile equipment shall be conducted by an authorized person.

~~C. Pre-shift examinations~~ A pre-shift examination shall be conducted by a certified person for certain hazardous conditions designated by the Chief.

~~D. Mine~~ Each mine refuse-piles pile, as defined in § 45.2-xxx [§ 45.1-221.1], shall be examined ~~daily~~ by an authorized person on any day on which ~~a~~ any person works at such location.

E. The location of ~~all each~~ natural gas ~~pipelines pipeline~~ pipeline on a permitted surface mine ~~areas area~~ shall be identified and conspicuously marked so that equipment operators can readily ~~see~~ identify the location of such ~~lines pipeline~~ pipeline. ~~Pre-shift examinations~~ A pre-shift examination shall be conducted of the location of ~~pipelines each pipeline~~ each pipeline whenever the work area approaches within 500 feet of such pipeline unless otherwise approved by the Chief.

~~F. Air~~ An air quality-examinations examination shall be conducted by a certified person when a surface coal mining operation intersects an underground mine, auger hole, or other underground ~~workings working~~.

G. ~~Examinations~~ At least one examination for methane shall be conducted for each production shift in each surface ~~installations installation, enclosures enclosure,~~ or other facilities facility in which coal is handled or stored ~~once each production shift~~. ~~Such areas~~ Each such area shall also be tested for methane before any activity involving welding, cutting, or an open flame. ~~Examinations~~ An examination pursuant to this subsection shall be made by an authorized person certified to make gas tests.

H. Electrical equipment and wiring shall be inspected as often as necessary but at least once ~~a~~ per month.

~~I. Fire extinguishers~~ Each fire extinguisher shall be examined at least once every six months.

~~J. Areas~~ Each area of an inactive surface coal ~~mines mine~~ shall be examined for hazardous conditions by a mine foreman immediately before ~~miners are~~ any miner is permitted to enter into such ~~areas~~ an area to take emergency actions to preserve a mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

112 **Reference to the definition of "mine refuse pile" is made as that term is not defined in**  
113 **this chapter.**

114 § ~~45.1-161.257~~ 45.2-xxx. Records of examinations.

115 A. Documentation of examinations and testing conducted pursuant to § ~~45.1-161.256~~  
116 45.2-xxx shall be recorded in a mine record book provided for that purpose. Documentation  
117 shall include records of hazardous conditions found in the work area. However, examinations  
118 of fire extinguishers shall be conducted by an authorized person and documentation shall be  
119 accomplished by recording the date of the examination on a permanent tag attached to ~~the~~  
120 each extinguisher.

121 B. The actual methane readings taken during examinations required under ~~this~~ the Act  
122 shall be recorded in the mine record book.

123 C. The surface foreman shall maintain and sign a daily record book. Where any such  
124 ~~reports disclose~~ report discloses a hazardous conditions condition, the surface foreman shall  
125 take prompt action to have such ~~conditions~~ condition corrected, barricaded, or posted with  
126 warning signs.

127 D. ~~Records~~ Each record shall be countersigned by the supervisor of the examiner  
128 creating the ~~records~~ record. Where such ~~records disclose~~ record discloses a hazardous  
129 ~~conditions~~ condition, the countersigning of the ~~records~~ record shall be performed no later than  
130 the end of the next regularly scheduled working shift following the shift for which the  
131 examination ~~records were~~ record was completed, and the person countersigning shall ensure  
132 that actions to eliminate or control the hazardous ~~conditions~~ condition have been taken.  
133 Where such ~~records do~~ record does not disclose a hazardous conditions condition, the  
134 countersigning ~~may~~ shall be completed within 24 hours following the end of the shift for  
135 which the examination ~~records were~~ record was completed. The operator may authorize  
136 another person ~~with equivalent~~ who has authority equivalent to that of the supervisor to act in  
137 the supervisor's temporary absence to read and countersign ~~the~~ records and ensure that action  
138 is taken to eliminate ~~the any~~ hazardous ~~conditions~~ condition disclosed in ~~the records~~ a record.



E. All records of inspections shall be open for inspection by any interested ~~persons~~  
person and maintained at the mine site for a minimum of one year.

**Drafting note: Subsection D is clarified so that it does not allow an operator to convey the authority of a supervisor to another person. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.258~~ 45.2-xxx. Areas with safety or health hazards; duties of surface mine foreman.

A. Any hazardous condition shall be corrected promptly or the affected area shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

B. The surface mine foreman shall see that the requirements of ~~this~~ the Act pertaining to his duties and to the health and safety of the miners are fully complied with at all times.

C. The surface mine foreman shall see that every miner employed to work at the mine, before beginning work therein, is aware of ~~all~~ any hazardous ~~conditions~~ condition incident to his work at the mine.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

### Article 3.

#### Personal Protection.

**Drafting note: Existing Article 3, concerning personal protection, is retained as proposed Article 3.**

~~§ 45.1-161.259~~ 45.2-xxx. Personal protection devices and practices.

A. ~~All persons~~ Every person at a surface coal mine shall wear the following protection in the specified conditions:

1. ~~Hard hats~~ A hard hat in and around ~~mines~~ any area of a mine where falling objects may could cause injury.

2. Hard-toed footwear in and around ~~mines~~ a mine.

3. Safety goggles or ~~shields~~ a shield where there is a hazard of flying material.

~~Protective~~ A protective shield or goggles when welding.

5. Snug-fitting clothes when working around moving parts or machinery.

6. Gloves where the hands could be injured. Gauntlet cuffed gloves are prohibited around moving machinery.

B. ~~Ear~~ The operator shall supply ear protection ~~shall be supplied by the operator to all miners any miner~~ upon request.

C. Every person assigned to or performing duties at a surface mine work area shall wear reflective ~~materials~~ material adequate to ~~be~~ make the person visible from all sides. ~~The~~ Such reflective material shall be placed on the ~~hard hats~~ hat and at least one other item of outer clothing, such as ~~belts~~ a belt, suspenders, ~~jackets~~ a jacket, ~~coats~~ a coat, coveralls, ~~shirts~~ a shirt, pants, or ~~vests~~ a vest.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa Other technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.260~~ 45.2-xxx. Housekeeping.

A. Good housekeeping shall be practiced in and around ~~buildings~~ every building, ~~shafts~~ shaft, ~~slopes~~ slope, ~~yards and~~ yard, or other ~~areas~~ area of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass, and material that ~~may~~ potentially could fall or roll.

B. ~~All~~ Every surface mine ~~structures~~ structure, ~~enclosures~~ enclosure, ~~and~~ or other ~~facilities~~ facility shall be maintained in a safe condition.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.261~~ 45.2-xxx. Noxious fumes.

~~Painting or operations creating any operation that creates~~ noxious fumes shall be performed only in a well-ventilated atmosphere.

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Article 4.

First Aid Equipment; Medical Care; Emergency Medical Services Providers.

**Drafting note: Existing Article 4, concerning first aid equipment, medical care, and emergency medical services providers, is retained as proposed Article 4.**

~~§ 45.1-161.262~~ 45.2-xxx. First aid equipment.

~~Each~~ Every surface coal mine shall have ~~an adequate supply~~ supplies of first aid equipment as determined by the Chief. Such supplies shall be located at strategic locations at the mine site so as to be available in a reasonable response time. ~~The first aid~~ Such supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture proof. In addition to the supplies in the ~~cases~~ receptacles, blankets, splints, and properly constructed stretchers in good ~~conditions~~ condition shall be provided at every mine. ~~The~~ All of the first aid supplies shall be available for use ~~of all persons~~ by any person employed at the mine. No first aid supplies shall be removed or diverted without authorization except in case of injury at the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.263~~ 45.2-xxx. First aid training.

~~A. Surface foremen~~ Each surface foreman shall ~~have completed~~ complete and ~~passed~~ pass a first aid course of study as prescribed by the Chief. The Chief is authorized to utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of mine operators in making such programs available to their employees.

B. Each operator of a surface coal mine, ~~upon request,~~ shall make first aid training,  
including refresher training, available upon request to every miner employed ~~in~~ at such mine  
~~first aid training, including refresher training.~~

**Drafting note: Technical changes are made pursuant to § 1-227, which states that  
throughout the Code any word used in the singular includes the plural and vice versa.  
Language is updated for modern usage.**

~~§ 45.1-161.264~~ 45.2-xxx. Attention to injured persons.

A. Prompt medical attention shall be provided in the event of an injury, and adequate  
facilities shall be made available for transporting injured persons to a hospital where  
necessary.

B. Safe transportation shall be provided to move injured persons from the site where  
the injury occurred ~~to areas~~ an area that is accessible to emergency transportation.

C. The operator of each mine shall post directional signs that are conspicuously  
located to identify ~~the routes~~ each route of ingress to and egress from any mine located off of  
a public road.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that  
throughout the Code any word used in the singular includes the plural and vice versa.**

#### Article 5.

#### Fire Prevention and Fire Control.

**Drafting note: Existing Article 5, concerning fire prevention and fire control, is  
retained as proposed Article 5.**

~~§ 45.1-161.265~~ 45.2-xxx. ~~Fire fighting~~ Firefighting equipment; duties in case of fire;  
fire precaution in transportation of mining equipment; fire prevention generally.

A. Each mine shall be provided with suitable ~~fire fighting~~ firefighting equipment, that  
is adequate for the size of the mine and ~~shall include~~ includes at least three 20-pound dry  
chemical fire extinguishers. Equipment and devices used for the detection, warning, and  
extinguishing of fires shall be suitable in type, size, and quantity for the type of fire hazard

that ~~may~~ could be encountered. Such equipment and devices shall be strategically located and plainly identified.

B. Suitable fire extinguishers shall be provided at ~~all~~ or on each (i) ~~electrical stations station~~, such as ~~substations~~ a substation, ~~transformer stations and station~~, or permanent pump ~~stations, station~~; (ii) piece of self-propelled mobile equipment; (iii) ~~belt heads, head~~; (iv) ~~areas~~ area used for the storage of flammable materials; (v) ~~fueling stations, station~~; and (vi) other ~~areas~~ area that ~~may~~ could constitute a fire hazard. Such fire extinguishers shall be placed so as to be out of the smoke in case of a fire.

**Drafting note: Language is updated for modern usage and technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.266~~ 45.2-xxx. Duties in case of fire.

A. ~~Should~~ If a fire ~~occurs~~ occurs, the person discovering it and any other person in the vicinity of the fire shall make a prompt effort to extinguish it. When a fire that ~~may~~ could endanger persons at the mine cannot be extinguished immediately, all persons shall be withdrawn promptly from the area of the fire.

B. In case of any unplanned fire at or about a mine that is not extinguished within ~~thirty~~ 30 minutes of discovery, the operator or agent shall report the fire to the Chief by the quickest available means ~~to the Chief~~, giving all information known to ~~him~~ the operator or agent regarding the fire. The Chief shall take prompt action, ~~based on the information~~, and decide whether to go in person or dispatch qualified subordinates to the scene of the fire for consultation, and ~~assist~~ assistance in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his designated subordinate shall be final, but ~~must~~ such decision shall be given to the operator in writing in order to have the force of an order.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.267~~ 45.2-xxx. Fire precautions.

277 A. An examination for fire shall be made after every blasting operation.

278 B. No person shall smoke or use an open flame within ~~twenty-five~~ 25 feet of ~~locations~~  
279 any location used to handle or store flammable or combustible liquids or where an arc or  
280 flame ~~may~~ could cause a fire or explosion.

281 C. ~~Areas~~ Any area surrounding a flammable liquid storage ~~tanks, tank or~~ electrical  
282 ~~substations and transformers~~ substation or transformer shall be kept free of combustible  
283 material for at least ~~twenty-five~~ 25 feet in ~~all directions~~ every direction. ~~Such~~ Each such  
284 ~~storage tanks, substations and transformers~~ tank, substation, or transformer shall be posted  
285 with readily visible fire hazard warning signs.

286 D. ~~Structures~~ Any structure or areas area used for storage of flammable materials shall  
287 be constructed of fire resistant material, ~~well-ventilated~~, kept well-ventilated, clean, and  
288 orderly, and posted with readily visible fire hazard warning signs.

289 E. ~~Fuel lines~~ Every fuel line shall be equipped with a shut-off ~~valves~~ valve at the  
290 ~~sources~~ its source. Such valves shall be readily accessible and maintained in good operating  
291 condition.

292 F. ~~Battery~~ Every battery charging ~~areas~~ area shall be ~~well-ventilated~~ well-ventilated  
293 and posted with warning signs prohibiting smoking or open flames within ~~twenty-five~~ 25 feet.

294 G. Oil, grease, ~~other~~ flammable hydraulic fluid, and other flammable materials shall  
295 be kept in closed metal containers and separated from other materials so as to not create a fire  
296 hazard.

297 H. Combustible materials, grease, lubricants, paints, and other flammable materials  
298 and liquids shall not be allowed to accumulate where they could create a fire hazard.  
299 Provision shall be made to prevent the accumulation of such material on any equipment, at  
300 any storage areas area, and at any location where the material is used.

301 I. Electric motors, switches, lighting fixtures, and controls shall be protected by dust-  
302 tight construction.

303 J. Precautions shall be taken to ensure that ~~sparks~~ no spark or other hot ~~materials do~~  
304 ~~not result~~ material results in a fire when welding or cutting. Welding or cutting with an arc or

flame shall not be done in any excessively dusty ~~atmospheres~~ atmosphere or ~~locations~~ location. ~~Fire-fighting~~ Firefighting apparatus shall be readily available when welding or cutting is performed.

K. Precautions shall be taken before applying heat, cutting, or welding on any pipe or container that has contained a flammable or combustible material.

L. ~~Oxygen and~~ Every oxygen or acetylene bottles bottle shall be (i) stored in ~~racks~~ designated and a rack constructed and designated for the storage of such bottles with their caps in place and (ii) secured when not in use. Such bottles shall not be stored near oil, grease, and or other flammable material.

M. ~~Oxygen~~ Every oxygen and acetylene ~~gauges~~ gauge and ~~regulators~~ regulator shall be kept clean and free of oil, grease, and other combustible materials.

N. ~~Belt conveyors~~ Every belt conveyor shall be equipped with a control ~~switches~~ switch to automatically stop the driving motor of the conveyor in the event that the belt is stopped by slipping on the driving pulley, ~~by~~ as a result of breakage or other accident.

O. ~~Areas~~ The area surrounding every main fan ~~installations and~~ installation or other mine ~~openings~~ opening shall be kept free from grass, weeds, underbrush, and other combustible materials for ~~twenty-five~~ 25 feet in ~~all directions~~ every direction.

P. ~~Internal~~ Every internal combustion ~~engines~~ engine, except a diesel ~~engines~~ engine, shall be shut off prior to fueling.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage and parallel construction.**

#### Article 6.

#### Surface Equipment.

**Drafting note: Existing Article 6, concerning surface equipment, is retained as proposed Article 6.**

§ ~~45.1-161.268~~ 45.2-xxx. Haulage and mobile equipment; operating condition.

- 333 A. All mobile equipment shall be maintained in a safe operating condition.
- 334 B. Positive-acting stopblocks shall be used where necessary to protect persons from  
335 danger of moving or runaway haulage equipment.
- 336 C. Where it is necessary for ~~men~~ persons to cross conveyors regularly, suitable  
337 crossing facilities shall be provided.
- 338 D. ~~Persons~~ No person shall ~~not~~ get on or off moving equipment.
- 339 E. When the equipment operator is present, ~~persons shall notify him before~~ any person  
340 getting on or off mobile equipment shall notify the operator before doing so.
- 341 F. Mobile equipment shall not be left unattended unless the brakes are set. Mobile  
342 equipment with wheels or tracks, when parked on a grade, shall either be blocked or turned  
343 ~~into~~ in to a bank unless the lowering of the bucket or blade to the ground will prevent  
344 movement and such bucket or blade is lowered.
- 345 G. ~~Persons~~ No person shall ~~not~~ work on or from a piece of mobile equipment in a  
346 raised position unless the equipment is specifically designed to lift ~~persons~~ a person.
- 347 H. Water, debris, or spilled materials ~~which may~~ that could create ~~hazards~~ a hazard to  
348 moving equipment shall be removed.
- 349 I. Where seating facilities are provided on self-propelled mobile equipment, the  
350 operator shall be seated before such equipment is moved. No person shall be allowed to ride  
351 on top of self-propelled mobile equipment.
- 352 J. ~~Operators~~ The operator of a piece of self-propelled haulage equipment shall sound a  
353 warning before ~~starting~~ he starts such equipment and as ~~approaching~~ he approaches any place  
354 where ~~persons are~~ a person is or ~~are~~ is likely to be.
- 355 K. Each ~~man-trip~~ mantrip shall be operated independently under the charge of an  
356 authorized person, ~~and operated independently~~.
- 357 L. ~~Operator provided man-trips~~ Each mantrip shall be maintained in safe operating  
358 condition, ~~and enough of them~~. Mantrips shall be provided in sufficient number to prevent  
359 ~~their being any mantrip from becoming~~ overloaded.



360 M. ~~Employees~~ No employee shall ~~not~~ board or leave a moving ~~man-trips; they~~  
361 mantrip. Each employee shall remain seated while in a moving ~~cars, car~~ and shall proceed in  
362 an orderly manner to and from ~~man-trips~~ a mantrip.

363 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
364 **throughout the Code any word used in the singular includes the plural and vice versa.**  
365 **Language is updated for modern usage. The unnecessary phrase "Operator provided" is**  
366 **removed from subsection L to make the subsection parallel to subsection C of § 45.1-**  
367 **161.150 in proposed chapter 7.**

368 § ~~45.1-161.269~~ 45.2-xxx. Equipment operation.

369 A. Equipment operating speeds, conditions, and characteristics shall be prudent and  
370 consistent with the conditions of the roadway, ~~grades~~ grade, clearance, visibility, and traffic;  
371 and the type and use of equipment.

372 B. ~~Vehicles~~ Any vehicle that follows another vehicle shall ~~follow~~ do so at a safe  
373 distance; passing shall be limited to areas of adequate clearance and visibility.

374 C. Mobile equipment shall be operated under power control at all times and each  
375 mobile equipment ~~operators~~ operator shall have full control of the equipment while in motion.

376 D. Before starting or moving equipment, an equipment operator must be certain by  
377 signal or other means that all persons are clear.

378 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
379 **throughout the Code any word used in the singular includes the plural and vice versa.**  
380 **Language is updated for modern usage.**

381 § ~~45.1-161.270~~ 45.2-xxx. Safety measures on equipment.

382 A. ~~Rubber-tired~~ Every rubber-tired or crawler-mounted crawler-mounted piece of  
383 equipment shall have a rollover protective ~~structures~~ structure to the extent required by 30  
384 ~~CFR 77.403a~~ C.F.R. § 77.403-1.

385 B. ~~Seat belts~~ Each seat belt provided in mobile equipment shall be maintained in safe  
386 working condition. ~~Operators~~ Every operator of such equipment shall wear a seat ~~belts~~ belt  
387 when the equipment is in motion.

388 C. Mobile equipment shall be equipped with adequate brakes and parking brakes.

389 D. Cab windows shall be of ~~safety~~ safe design, kept in good condition, and clean for  
390 adequate visibility.

391 E. ~~Tires~~ Any tire shall be deflated before ~~repairs~~ any repair on ~~them~~ it is started,  
392 and adequate means shall be provided to prevent ~~wheel locking~~ wheel-locking rims from  
393 creating a hazard during tire inflation.

394 F. An audible warning device and headlights shall be provided on ~~all~~ each piece of  
395 self-propelled mobile equipment.

396 G. An automatic backup alarm, that is audible above surrounding noise levels, shall be  
397 provided on ~~all~~ each piece of mobile equipment. An automatic reverse-activated strobe light  
398 may be substituted for an audible alarm when mobile equipment is operated at night.

399 H. ~~All~~ Each piece of equipment that is raised for repairs or other work shall be  
400 securely blocked ~~prior to persons positioning themselves~~ before any person positions himself  
401 where the falling of such equipment could create a hazardous condition.

402 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
403 **throughout the Code any word used in the singular includes the plural and vice versa.**  
404 **The cross-reference to the Code of Federal Regulations in subsection A is updated to**  
405 **reflect a redesignation of the section number in 71 Fed. Reg. 16669 (April 3, 2006).**  
406 **Language is updated for modern usage.**

407 ~~§ 45.1-161.271~~ 45.2-xxx. Transportation of personnel.

408 No person shall be permitted to ride or ~~be~~ otherwise be transported (i) on or in: ~~(i)~~  
409 ~~dippers, shovels, buckets, forks and clamshells~~ a dipper, shovel, bucket, fork, or clamshell;  
410 ~~(ii) on or in the cargo space of a dump trucks, truck;~~ (ii) on or in the cargo space of a dump truck; ~~(iii) outside cabs or beds~~ the cab or bed  
411 of a piece of heavy equipment; or ~~(iv) on or in a chain, belt, or bucket conveyors~~ conveyor,  
412 unless such items described in clauses (i) through (iv) are specifically designed to transport  
413 persons.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is added for clarity.**

~~§ 45.1-161.272~~ 45.2-xxx. Lighting.

A. Lights shall be provided on or in surface structures as needed, ~~in or on surface structures~~.

B. Roads, paths, and walks outside of surface structures shall be kept free from obstructions and shall be ~~well-illuminated~~ well-illuminated if used at night.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-161.273~~ 45.2-xxx. Shop and other equipment.

A. The following shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, fan blades or propellers, friction devices, and couplings with protruding bolts or nuts.

2. Shafting and projecting shaft ends that are within seven feet of the floor or the platform level.

3. Belt, chain, or rope drives that are within seven feet of the floor or the platform.

4. Fly wheels. ~~Where a~~ Any fly-wheel extends wheel that extends more than seven feet above the floor, ~~they~~ shall be guarded to a height of at least seven feet.

5. Circular and band saws and planers.

6. Repair pits. Guards shall be kept in place when ~~the pits are~~ a pit is not in use.

7. Counterweights.

8. Mine fans. The approach to any mine fan shall be guarded.

9. Lighting and other electrical equipment that ~~may cause~~ could create a shock-hazards hazard or cause personal injury.

~~B. Machinery~~ No machinery shall not be repaired or oiled while in motion; ~~provided, however, that this shall not apply where~~ unless a safe remote oiling-devices are device is used.

C. A guard or safety device that is removed from any machine shall be replaced before the machine is put in operation.

442 ~~D. Mechanically operated~~ Every mechanically operated grinding wheels wheel shall  
443 be equipped with:

444 1. Safety washers and tool rests;

445 ~~2. Substantial~~ A substantial retaining ~~hoods~~ hood, the hood opening of which shall not  
446 expose more than a 90 degree sector of the wheel. ~~Such hoods~~ Each such hood shall include a  
447 device to control and collect excess rock, metal, or dust particles, ~~or. If no such device is~~  
448 provided, equivalent protection shall be provided to ~~the employees~~ each employee operating  
449 such machinery; and

450 3. Eyeshields, unless goggles are worn by the ~~operators~~ operator.

451 E. The operator or his agent shall develop proper procedures for examining for  
452 potential hazards, completing ~~proper~~ maintenance, and ~~properly~~ operating each type of  
453 centrifugal pump. The procedures shall, at a minimum, address the manufacturers'  
454 recommendations for start-up and shutdown of ~~the pumps~~ each type of pump, the proper  
455 actions to be taken when a pump is suspected of overheating, the safe location of start and  
456 stop switches, and the actions to be taken when signs of structural metal fatigue, such as  
457 cracks in the frame, damaged cover mounting brackets, or missing bolts or other components,  
458 are detected. ~~All miners~~ Every miner who ~~repair repairs,~~ maintain maintains, or ~~operate~~  
459 operates any such pumps pump shall be trained in these procedures.

460 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
461 **throughout the Code any word used in the singular includes the plural and vice versa.**  
462 **Language is updated for modern usage.**

463 § 45.1-161.274 45.2-xxx. Hydraulic hoses.

464 ~~All~~ Every hydraulic hoses used on equipment purchased after January 1, 1986, hose  
465 that is used on equipment shall ~~be clearly stamped or labeled by~~ have the hydraulic hose  
466 ~~manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For~~  
467 ~~hoses purchased after January 1, 1989, the rated pressure shall be~~ permanently affixed on the  
468 outer surface of the hose and repeated at least every two feet. ~~Hoses~~ Every hose purchased  
469 and installed on an automatic displacement hydraulic ~~systems~~ system shall either (i) have a

four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system, (such as a relief valve), or ~~shall~~ (ii) meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

**Drafting note: Obsolete dates for manufacture of hydraulic hoses are removed and language is amended accordingly. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

#### Article 7.

##### ~~Travelways,~~ Travel Ways and Loading and Haulage Areas.

**Drafting note: Existing Article 7, concerning travel ways and loading and haulage areas, is retained as proposed Article 7. Technical changes are made to the name.**

~~§ 45.1-161.275~~ 45.2-xxx. Stairways, platforms, runways, and floor openings.

A. Stairways, platforms, and runways shall be provided where ~~men~~ persons work or travel.

B. Stairways, elevated platforms, ~~floor openings,~~ and elevated runways, and floor openings shall be equipped with suitable handrails or guardrails.

C. ~~Elevated~~ Stairways, elevated platforms, runways, and floor openings, ~~stairways,~~ and runways shall be provided with toe boards. ~~Platforms, stairways,~~ Stairways, platforms, and runways shall be kept clear of stumbling and slipping hazards and shall be maintained in good repair.

**Drafting note: Language is updated for modern usage and consistency.**

~~§ 45.1-161.276~~ 45.2-xxx. Loading and haulage work area requirements.

A. ~~Ramps and dumps~~ Every ramp or dump shall be of solid construction, ample width, and ample clearance, ~~and head room and headroom~~ shall be kept reasonably free of spillage.

498 B. Berms or guards shall be provided on the outer bank of every elevated haulage  
499 roads ~~road. Berms constructed on or after July 1, 2005, Every berm~~ shall be constructed of  
500 substantial material to the mid-axle height of the largest vehicle regularly used on ~~the~~ such  
501 haulage road. The width and height of the berm shall be constructed on a two-to-one ratio  
502 when it is constructed of unconsolidated material. Other ~~no less~~ equally effective and  
503 appropriate methods may be used for berms.

504 C. Berms, bumper blocks, safety hooks, or similar means shall be provided to prevent  
505 overtravel and overturning at ~~dump~~ dumping stations.

506 D. Dumping locations and haulage roads shall be kept reasonably free of water, debris,  
507 and spillage. Water, debris, or spilled material that creates ~~hazards~~ a hazard to moving  
508 equipment shall be removed.

509 E. ~~Haulage roads~~ Every haulage road constructed on or after July 1, 2005, shall be  
510 constructed at least one and one-half times the width of the widest equipment in use, and  
511 ~~those any~~ any haulage ~~roads~~ road that is used for passing shall be constructed at least three times  
512 the width of the widest equipment in use. In ~~areas where this may~~ any area in which it is not  
513 be possible to construct the haulage road to at least the applicable minimum width, the  
514 foreman shall establish procedures for safe travel of haulage vehicles.

515 F. Traffic rules, signals, and warning signs shall be standardized at each mine and  
516 shall be posted. This Such rules, signals, and signs shall include, ~~but not be limited to~~, rules  
517 for the travel of on-road vehicles operating near off-road haulers in work areas.

518 G. ~~Dumping stations where~~ Every dumping station at which material is dumped over  
519 an embankment shall be designed to minimize backing and, where conditions permit, to  
520 provide for perpendicular travel to allow the equipment operator to observe the dumping  
521 station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other  
522 available means shall be used to clearly indicate each dumping ~~locations~~ location. This  
523 subsection shall not apply to a dumping stations station (i) that ~~are~~ is moved after each  
524 dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are  
525 dumped short and pushed over the embankment. ~~Dump stations~~ Any dumping station that

~~may could~~ interfere with ~~haulroads~~ a haulage road or work ~~areas~~ area below shall be clearly marked with signs to prevent further dumping, unless other effective precautions are taken to protect ~~haulroads~~ such haulage road or work ~~areas~~ area below the dump station.

**Drafting note: The berm construction date reference is removed from subsection B because it has been made obsolete by federal law. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity, consistency, and modern usage. The word "haulroads," which appears only in this section, is replaced with the standard "haulage road."**

~~§ 45.1-161.277~~ 45.2-xxx. Equipment operation.

A. ~~If truck spotters are~~ a truck spotter is used, ~~they~~ he shall be well in the clear while ~~trucks are~~ any truck is backing into dumping position and dumping. ~~Truck spotters~~ Every truck spotter shall use lights at night to direct backing and dumping operations.

B. ~~Dippers, buckets, scraper blades, and similar movable parts~~ Every dipper, bucket, scraper blade, or similar movable part shall be secured or lowered to the ground when not in use.

C. ~~Equipment which~~ that is to be hauled shall be loaded and protected so as to prevent sliding or spillage. When moving between work areas, the equipment shall be secured in the travel position.

D. Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar.

E. Dust control measures shall be taken so as to ~~not obstruct~~ prevent the obstruction of visibility of any equipment operator ~~operator~~.

F. ~~Dippers~~ No dipper, bucket, loading booms boom, or other heavy loads load shall ~~not~~ be swung over ~~cabs~~ the cab of haulage equipment until the driver is out of the cab and ~~is~~ in a safe location, unless the equipment is designed specifically to protect ~~drivers~~ the driver from falling material.

G. Lights, flares, or other warning devices shall be posted when parked equipment creates a hazard for other vehicles.

**Drafting note: Language is updated for clarity and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Article 8.

Dust Control.

**Drafting note: Existing Article 8, concerning dust control, is retained as proposed Article 8.**

~~§ 45.1-161.278~~ 45.2-xxx. Control of dust and combustible material.

A. Where a surface coal mining operation raises an excessive amount of dust into the air, such dust shall be allayed at its sources by the use of water or, water with a wetting agent added to it, or other another effective methods shall be used to allay such dust at its sources method.

B. Drilling in rock shall be done wet; or other means of dust control shall be used.

C. Loose coal, coal dust, oil, grease, ~~and~~ or other combustible materials shall not be permitted to accumulate excessively on equipment or surface structures.

**Drafting note: Language is updated for clarity and technical changes are made.**

Article 9.

Electricity.

**Drafting note: Existing Article 9, concerning electricity, is retained as proposed Article 9.**

~~§ 45.1-161.279~~ 45.2-xxx. Overhead high-potential power lines; surface transmission lines; electric wiring in surface buildings.

A. Overhead high-potential power lines shall be (i) placed at least ~~fifteen~~ 15 feet above the ground and ~~twenty 20~~ feet above ~~driveways and any driveway or haulage roads, shall be road,~~ (ii) installed on insulators, and ~~shall be~~ (iii) supported and guarded to prevent contact with other circuits.



B. Surface transmission lines shall be protected against short circuits and lightning.

C. Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.280~~ 45.2-xxx. Transformers.

A. Unless ~~a surface transformers are~~ transformer is isolated by elevation ~~( to a height of eight feet or more above the ground), they, it~~ shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is made of metal, ~~it~~ such enclosure or fence shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times; unless an authorized ~~persons are~~ person is present.

B. ~~Surface transformers containing~~ Any surface transformer that contains flammable oil and is installed where ~~they present~~ it presents a fire hazard shall be provided with a means to drain or ~~to~~ confine the oil in the event of a rupture of the transformer casing.

C. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every transformer ~~stations~~ station on the surface.

D. ~~All~~ Every transformer ~~stations~~ station on the surface shall be kept free of nonessential combustible materials and refuse.

E. No electrical work shall be performed on any low-voltage, medium-voltage, or high-voltage distribution ~~circuits~~ circuit or equipment; except by (i) a certified person or ~~by~~ (ii) a person who is trained to perform electrical work and to maintain electrical equipment and who is working under the direct supervision of a certified person. ~~All~~ Every high-voltage ~~circuits~~ circuit shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the ~~persons~~ person who ~~perform~~ performs electrical or mechanical work on such ~~circuits~~ a circuit or on any equipment connected to the ~~circuits~~; ~~except that~~ circuit. However, ~~in cases where~~ a case in which such locking out is not possible, such devices shall be opened and suitably tagged by such ~~persons~~. ~~Locks and tags~~ person.

Each lock and tag shall be removed only by the ~~persons~~ person who installed ~~them~~ it or, if such ~~persons are~~ person is unavailable, by a certified ~~persons~~ person who is authorized by the operator or his agent. However, ~~employees~~ an employee may, where necessary, repair energized trolley wires if ~~they wear~~ he wears insulated shoes and lineman's gloves.

F. This section does not prohibit a certified electrical ~~repairmen~~ repairman from making checks on or troubleshooting an energized ~~circuits~~ circuit or ~~the performance of an~~ authorized person from performing repairs or maintenance on equipment ~~by authorized persons~~ once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. An organizational change is made in proposed subsection F, and language is updated for modern usage.**

~~§ 45.1-161.281~~ 45.2-xxx. Grounding.

A. ~~All~~ Every ~~metallic sheaths, armors, and conduits~~ sheath, armor, or conduit enclosing a power ~~conductors~~ conductor shall be electrically continuous throughout and shall be grounded effectively.

B. ~~Metallic frames~~ Every metallic frame, casing, ~~and or other enclosures~~ enclosure of stationary electric equipment that can become "alive" electrified through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. When electric equipment is operated from a three-phase alternating current ~~circuits~~ circuit originating in ~~transformers~~ a transformer that is connected to provide a neutral point, a continuous grounding conductor of adequate size shall be installed and connected to the neutral point and to the ~~frames~~ frame of the power-utilizing equipment. Such grounding ~~conductors~~ conductor shall be grounded at the neutral point and at intervals along the conductor, if feasible. A suitable circuit breaker or switching device shall be provided having

a ground-trip coil connected in series with the grounding conductor to provide effective ground-fault tripping.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subsection B, the phrase "become 'alive' through failure" is changed to "become live through failure."**

~~§ 45.1-161.282~~ 45.2-xxx. Circuit breakers and switches.

~~A. Automatic circuit breaking devices or fuses~~ An automatic circuit breaking device or fuse of the correct type and capacity shall be installed so as to protect ~~all~~ every piece of electric equipment and power ~~circuits~~ circuit against excessive overload. ~~Wires or other~~ Wire or another conducting ~~materials~~ material shall not be used as a substitute for a properly designed ~~fuses~~ fuse, and ~~circuit breaking devices~~ every circuit breaking device shall be maintained in safe operating condition.

B. Operating controls, such as switches, starters, ~~and~~ or switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

C. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction, and installation.

~~D. Insulating mats~~ An insulating mat or other electrically nonconductive ~~material~~ material shall be kept in place at each power-control switch and at stationary machinery where ~~a shock hazards exist~~ hazard exists.

E. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every high-voltage ~~installations~~ installation.

~~F. All~~ Every power ~~wires and cables~~ wire or cable shall have adequate current-carrying capacity, ~~shall~~ be guarded from mechanical injury, and be installed in a permanent manner.

G. ~~Power circuits~~ Every power circuit shall be labeled to indicate the unit or circuit ~~they control~~ that it controls.

H. ~~Persons~~ All persons shall stay clear of ~~an~~ any electrically powered shovel or other similar heavy equipment during an electrical storm.

I. ~~All devices~~ Every device that is installed on or after July 1, 2005, ~~which provide that provides~~ either short circuit protection or protection against overload, shall conform to the minimum requirements for protection of electric circuits and equipment of the National ~~Electric~~ Electrical Code in effect at the time of ~~their~~ its installation.

J. ~~All~~ Every electric ~~conductors~~ conductor installed on or after July 1, 2005, shall be sufficient in size to meet the minimum current-carrying capacity provided for in the National ~~Electric~~ Electrical Code in effect at the time of ~~their~~ its installation.

K. ~~All~~ Every trailing ~~cables~~ cable purchased on or after July 1, 2005, shall meet the minimum requirements for ampacity provided in the standards of the Insulated ~~Power~~ Cable Engineers Association—/National ~~Electric~~ Electrical Manufacturers Association in effect at the time such ~~cables are~~ cable is purchased.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The names of the Insulated Cable Engineers Association and the National Electrical Manufacturers Association are updated. Language is updated for modern usage and clarity.**

~~§ 45.1-161.283~~ 45.2-xxx. Electrical trailing cables.

A. ~~Trailing cables~~ Every trailing cable shall be provided with suitable short-circuit protection and a means of disconnecting power from the cable.

B. ~~Temporary splices~~ Any temporary splice in a trailing cables cable shall be made in a workmanlike manner, and shall be mechanically strong, and well-insulated well-insulated.

C. The number of temporary, unvulcanized splices in a trailing cable shall be limited to one.

D. ~~Permanent splices~~ Every permanent splice in a trailing cables cable shall be made as follows:

691 ~~1. Mechanically mechanically~~ strong, with adequate electrical conductivity and  
692 flexibility-

693 ~~2. Effectively, and shall be effectively~~ insulated and sealed so as to exclude moisture.

694 ~~3.~~ The finished splice shall be vulcanized or otherwise treated with suitable materials  
695 to provide flame-resistant properties and good bonding to the outer jacket.

696 ~~E. Trailing cables~~ Every trailing cable shall be protected against mechanical injury.

697 **Drafting note: Technical changes are made, including organizational changes in**  
698 **subsection D and changes pursuant to § 1-227, which states that throughout the Code**  
699 **any word used in the singular includes the plural and vice versa. Language is updated**  
700 **for modern usage.**

701 Article 10.

702 Explosives and Blasting.

703 **Drafting note: Existing Article 10, concerning explosives and blasting, is retained**  
704 **as proposed Article 10.**

705 ~~§ 45.1-161.284~~ 45.2-xxx. Surface storage of explosives and detonators.

706 ~~A. Separate~~ Two or more surface magazines shall be provided for the storage of  
707 explosives and the separate storage of detonators.

708 ~~B. Surface magazines~~ Every surface magazine for storing and distributing explosives  
709 ~~in amounts~~ an amount exceeding 150 pounds shall be:

710 1. Reasonably ~~bulletproof~~ bullet-resistant and constructed of incombustible material or  
711 covered with ~~fire-resistive~~ fire-resistant material. ~~The roofs roof of magazines so a magazine~~  
712 that is located that in such a way as to make it is impossible to fire-bullets a bullet directly  
713 through the roof from the ground, need not be bulletproof, but where bullet-resistant. Where it  
714 is possible to fire-bullets a bullet directly through them, roofs a roof from the ground, such  
715 roof shall be made bullet-resistant by material construction, or by the use of a ceiling that  
716 forms a tray containing not less than a four-inch thickness of sand, or by other methods  
717 another method;

718 2. Provided with doors that are constructed of ~~three-eighth-inch~~ three-eighth-inch steel  
719 plate. Such doors shall be lined with a two-inch thickness of wood, or the equivalent;

720 3. Provided with dry floors made of wood or other nonsparking material and have no  
721 metal exposed inside the magazine;

722 4. Provided with suitable warning signs ~~so~~ located so that a bullet passing directly  
723 through the face of a sign will not strike the magazine;

724 5. Provided with properly screened ventilators;

725 6. Equipped with no openings except for entrance and ventilation openings;

726 7. Kept locked securely when unattended; and

727 8. Electrically bonded and grounded, if constructed of metal.

728 C. ~~Surface magazines~~ A surface magazine for storing detonators need not be  
729 ~~bulletproof~~ bullet-resistant, but ~~they~~ it shall ~~be in accordance~~ comply with other provisions for  
730 storing explosives.

731 D. ~~Explosives in amounts weighing a total of no more than 150 pounds or less, or~~  
732 ~~5,000 detonators numbering 5,000 or less fewer,~~ shall be stored either (i) in accordance with  
733 the preceding standards set forth in subsection A, B, or C or (ii) in a separate locked box-type  
734 magazines magazine. Box-type magazines A box-type magazine may also be used as a  
735 distributing magazines magazine when ~~quantities do~~ the weight of the explosives or the  
736 number of detonators does not exceed ~~those mentioned. Box-type magazines~~ the limits set  
737 forth in this subsection. Every box-type magazine shall be strongly constructed ~~strongly~~ of  
738 two-inch hardwood or the equivalent. ~~Metal magazines~~ Every metal magazine shall be lined  
739 with nonsparking material. No magazine shall be placed (a) in a building containing oil,  
740 grease, gasoline, wastepaper, or other highly flammable material; ~~nor shall a magazine be~~  
741 placed or (b) within twenty 20 feet of a stove, furnace, open fire, or flame.

742 E. ~~The location of magazines~~ No magazine shall be ~~not~~ placed less than 300 feet from  
743 any mine opening. However, ~~in the event that~~ if a magazine cannot be practicably located at  
744 such a distance, ~~the magazine~~ it may be located less than 300 feet from a mine opening, if it is  
745 sufficiently barricaded and is approved by the Chief. Unless approved by the Chief,

~~magazines~~ no magazine shall ~~not~~ be located closer to an occupied ~~buildings~~ building, public roads road, or passenger ~~railways~~ railway than ~~allowed~~ the distance recommended in the "American Table of Distances for Storage of Explosive Materials" published by the Institute of Makers of Explosives.

F. The supply kept in a distribution ~~magazines~~ magazine shall be limited to approximately a ~~forty-eight hour~~ 48-hour supply, and ~~such~~ supplies of explosives and detonators may be distributed from the same magazine, if they are separated by ~~at least a four-inch~~ at least a four-inch substantially fastened hardwood partition at least four inches thick or the equivalent.

G. The area surrounding ~~magazines for not less than twenty-five feet in all directions~~ any magazine shall be kept free of rubbish, dry grass, or other materials of a combustible nature for at least 25 feet in every direction.

H. If ~~the an~~ an explosives magazine is illuminated electrically, ~~the lamps~~ each lamp shall be of vapor-proof type, and installed and wired so as to present ~~minimum~~ a minimal fire ~~and~~ or contact hazards hazard.

I. Only nonmetallic tools shall be used for opening any wooden ~~containers~~ explosives container. Extraneous materials shall not be stored ~~in an~~ with explosives or ~~detonator~~ detonators in an explosives magazine.

J. Smoking, or carrying smokers' articles or open flames ~~shall be~~ is prohibited in or near any magazine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and "bulletproof" is replaced by "bullet-resistant" three times in recognition of the fact that bullet-resistant is the correct descriptive term for practical and technical reasons.**

~~§ 45.1-161.285~~ 45.2-xxx. Misfires.

A. ~~Misfires~~ Every misfire shall be reported promptly to the mine foreman, and no other work shall be performed in the blasting area until the hazard has been corrected. A waiting period of at least ~~fifteen~~ 15 minutes ~~shall elapse~~ is required before anyone ~~returns~~ is

774 ~~allowed to the~~ any misfired ~~holes~~ hole. If explosives are suspected of burning in a hole, ~~all~~  
775 ~~persons~~ every person affected shall move to a safe location for ~~the longer of~~ one hour or until  
776 the danger has passed, whichever time is longer. When such failure involves an electronic  
777 ~~detonators~~ detonator, the blasting cable shall be disconnected from the source of power and  
778 the battery ends short-circuited before ~~electric connections are~~ any electrical connection is  
779 examined.

780 B. Explosives shall be removed by (i) firing a separate charge at least two feet away  
781 from, and parallel to, the misfired charge ~~or by~~, (ii) washing the stemming and the charge  
782 from the borehole with water, or ~~by~~ (iii) inserting and firing a new primer after the stemming  
783 has been washed out.

784 C. A ~~very~~ careful search of the blasting area, and, if necessary, of the coal after it  
785 reaches the tippie shall be made after blasting a misfired hole to recover any undetonated  
786 explosive.

787 D. The handling of a misfired shot shall ~~be~~ occur under the direct supervision of the  
788 foreman or an authorized person designated by him.

789 **Drafting note: Technical changes are made, including changes pursuant to § 1-**  
790 **227, which states that throughout the Code any word used in the singular includes the**  
791 **plural and vice versa. Language is updated for modern usage and clarity.**

792 ~~§ 45.1-161.286~~ 45.2-xxx. Minimum blasting practices.

793 A. ~~When~~ If explosives are in use on the surface and an electrical storm approaches, all  
794 persons shall be removed from ~~such~~ the blast area until the storm has passed.

795 B. In accordance with the standards set forth in ~~§ 45.1-161.255~~ 45.2-xxx, the Chief  
796 shall ~~promulgate~~ adopt regulations regarding the safe storage, transportation, handling, and  
797 use of blasting agents and other explosives.

798 **Drafting note: Technical changes are made for modern usage. The term**  
799 **"promulgate regulations" is changed to "adopt regulations" in keeping with recent title**  
800 **revisions because "adopt" is more widely used and includes the promulgation process.**



Ground Control.

**Drafting note: Existing Article 11, concerning ground control, is retained as proposed Article 11.**

~~§ 45.1-161.287~~ 45.2-xxx. Ground control.

A. ~~All~~ Every surface coal mining ~~operations~~ operation shall establish and follow a ground control plan approved by the Chief to ensure the safety of workers and others affected by the ~~operations~~ operation. The ground control plan shall be consistent with prudent engineering design. Mining methods, including benching, shall ensure wall and bank stability, ~~including benching, in order~~ to obtain a safe overall slope. The ground control plan shall also ensure the safety of ~~persons~~ every person who is (i) located in residences ~~a residence~~ or other occupied ~~buildings~~ building, (ii) working or traveling on any roadway, ~~and or~~ (iii) located in any other area where persons congregate, work, or travel that ~~may could~~ be affected by blasting or by the falling, sliding, or other uncontrolled movement of material. The ground control plan shall identify how residents or occupants of other buildings located down the slope from active workings will be notified when ~~ground disturbing~~ ground-disturbing activities will take place above them and what actions will be taken to protect such residents or occupants from ground control failures during the work.

B. Scaling and removal of loose hazardous material from the ~~tops~~ top of ~~pits and highwalls, banks, walls and benches~~ a pit or from a highwall, wall, bank, or bench shall be completed to ~~assure~~ ensure a safe work area.

C. Employees and other persons, except those involved in correction of the condition, shall be restricted from ~~areas~~ any area where hazardous highwall or pit conditions exist.

D. Unless he is required for the purpose of making repairs, ~~all persons~~ no person shall be ~~restricted from areas~~ allowed in any area that is located between equipment and ~~walls, benches, or banks~~ a highwall, wall, bank, or bench if the equipment ~~may could~~ hinder their escape from falling or sliding material. Special precautions shall be taken when ~~persons are~~ any person is required to perform such repairs.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. References to a highwall, wall, bank, or bench are made consistent.**

Article 12.

Auger and Highwall Mining.

**Drafting note: Existing Article 12, concerning auger and highwall mining, is retained as proposed Article 12.**

~~§ 45.1-161.288~~ 45.2-xxx. Inspection of electric equipment and wiring; checking and testing methane monitors.

Electric equipment and wiring that ~~extend~~ extends to an underground ~~areas~~ area shall be inspected by a certified person at least once a week and more often if necessary to ~~assure~~ ensure safe operating conditions, ~~and any~~. Any hazardous condition found shall be corrected or the equipment or wiring shall be removed from service. ~~This~~ Such surface inspection is also required for any trailing ~~cables~~ cable or circuit ~~breakers~~ breaker used in conjunction with such equipment and wiring.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The first sentence in the section is divided into two sentences for clarity and language is updated for clarity.**

~~§ 45.1-161.289~~ 45.2-xxx. Highwall inspections.

A. ~~The~~ A mine foreman shall inspect the face of all highwalls each highwall, for a distance of 25 feet in both directions from an auger or highwall miner operation, ~~shall be inspected by a mine foreman~~ before any such operation begins and at least once during each coal producing shift.

B. ~~Mine~~ A mine foreman shall examine the face of all highwalls each highwall, for a distance of 25 feet in both directions from an auger or highwall miner ~~operations~~ operation,

856 frequently during ~~periods~~ any period of heavy rainfall or intermittent ~~freezing-thawing~~  
857 freezing and thawing.

858 C. Hazardous conditions shall be corrected and loose material removed from above the  
859 mining area before any work is begun.

860 D. Records shall be kept of the inspection ~~compiled~~ and examination performed  
861 pursuant to subsections A and B. Such records shall be maintained for at least one year.

862 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
863 **throughout the Code any word used in the singular includes the plural and vice versa.**  
864 **Language is updated for modern usage and clarity.**

865 ~~§ 45.1-161.290~~ 45.2-xxx. Penetration of underground mines; testing.

866 A. A qualified person shall test for the presence of methane and for a deficiency of  
867 oxygen<sub>2</sub> using an approved device<sub>2</sub> at the entrance to an auger hole or at a highwall miner  
868 entry when either such entry point penetrates a worked-out area of an underground mine.

869 B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is  
870 found to exist<sub>2</sub> no further work shall be performed until the atmosphere has been made safe.

871 **Drafting note: Language is updated for clarity.**

872 ~~§ 45.1-161.291~~ 45.2-xxx. Safety precautions.

873 A. No person shall enter an auger hole or highwall miner entry without prior approval  
874 from the Chief.

875 B. ~~Auger holes and~~ Every auger hole or highwall miner ~~entries~~ entry shall be blocked  
876 with highwall spoil or other suitable material before it is abandoned.

877 C. ~~Auger and~~ Every auger or highwall mining ~~machines which are~~ machine that is  
878 exposed to any highwall ~~and or~~ explosion ~~hazards~~ hazard shall be provided with worker  
879 protection from falling material and a mine ~~explosions~~ explosion.

880 D. At least one person shall be assigned to observe the highwall for possible  
881 movement while ground personnel are working in ~~high-risk areas~~ a high-risk area in close  
882 proximity to the highwall.

883 E. ~~Persons~~ All persons shall stay clear of any moving auger or highwall miner train,  
884 and no ~~persons~~ person shall pass over or under a moving train unless adequate crossing  
885 facilities are provided.

886 F. The ground control plan shall specify ~~spacing~~ any spacing of holes, any web design,  
887 and any use of alignment control devices.

888 G. The ground control plan shall include other administrative, engineering, and source  
889 controls that are to be provided for safe operations.

890 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**  
891 **throughout the Code any word used in the singular includes the plural and vice versa.**  
892 **Language is updated for modern usage and clarity.**

893 Article 13.

894 Proximity of Mining to Gas, or Oil Wells ~~and~~ or Vertical Ventilation Holes.

895 **Drafting note: Existing Article 13, concerning proximity of mining to gas or oil**  
896 **wells or vertical ventilation holes, is retained as proposed Article 13. Technical changes**  
897 **are made to the name.**

898 ~~§ 45.1-161.292~~ 45.2-xxx. Surface coal mining; distance from wells; requirements.

899 A. Any mine operator who plans to remove coal or extend any workings in any mine  
900 ~~closer to a distance of less than 500 feet to~~ from any gas or oil well that is already drilled or is  
901 in the process of being drilled shall file with the Chief a notice that such mining is taking  
902 place or will take place, together with ~~a copy~~ copies of parts of the maps and plans required  
903 under ~~§ 45.1-161.64 which~~ 45.2-xxx that show the mine workings and projected mine  
904 workings beneath the tract in question and within 500 feet of the well. Such mine operator  
905 shall simultaneously mail copies of such notice, maps, and plans by certified mail, return  
906 receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to the  
907 provisions of § 45.2-xxx [§ 45.1-361.4]. ~~Each notice~~ The mine operator shall certify in each  
908 notice that ~~the mine operator~~ he has complied with the provisions of this subsection.

909 B. Subsequent to the filing of the notice required by subsection A ~~of this section~~, the  
910 mine operator may proceed with surface coal mining operations in accordance with the maps

and plans; ~~however~~. However, without the prior approval of the Chief, ~~he~~ such mine operator shall not remove any coal or extend any workings in any mine ~~closer to a distance of less than~~ 200 feet ~~to from~~ any gas or oil well that is already drilled or is in the process of being drilled.

C. The Chief shall ~~promulgate~~ adopt regulations ~~which that~~ that prescribe the procedure to be followed by a mine operators operator in petitioning the Chief for approval to conduct ~~such~~ activities ~~closer~~ surface coal mining operations to a distance of less than 200 feet ~~to from~~ a well. A petition may include a request to mine through a plugged well or a plugged vertical ventilation hole. ~~A~~ Such petition may also include a request to mine through a well or a vertical ventilation hole and to lower the head of such well or vertical ventilation hole. Each mine operator who files a petition to remove coal or extend any workings ~~closer to a distance of less than~~ 200 feet ~~to from~~ any gas or oil well shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The well operator and the Gas and Oil Inspector ~~and the well operator~~ shall have standing to object to any petition filed under this section. ~~Such objections~~ objection shall be filed within ~~ten~~ 10 days following the date such petition is filed.

**Drafting note: Language is updated for modern usage and clarity and technical changes are made. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Existing subsection B is divided into two subsections for clarity. A cross-reference to the section addressing the appointment of the Gas and Oil Inspector is added.**