SUBTITLE II.

COAL MINING.

Drafting note: Proposed Subtitle II is created to logically organize provisions relating to coal mining and is divided into proposed Parts A (Coal Mines Generally), B (Underground Coal Mines), and C (Surface Coal Mines).

PART A.

COAL MINES GENERALLY.

Drafting note: Proposed Part A is created to logically organize provisions relating to coal mines generally and contains two chapters: Chapter 5, Coal Mine Safety Act; and Chapter 6, Coal Mining Property, Interests, Adjacent Owners, and Dams.

CHAPTER 14.2.

COAL MINE SAFETY ACT.

Drafting note: Existing Chapter 14.2, designated as the Coal Mine Safety Act, is retained as proposed Chapter 5. This chapter is divided into 10 articles, as it currently exists in Chapter 14.2.

Article 1.

General Provisions.

Drafting note: Existing Article 1, relating to general provisions, is retained.

§ 45.1-161.7. Short title.

This chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title shall be known as the "Coal Mine Safety Act."

Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which states that throughout the Code the caption of a subtitle, chapter, or article serves as a short title citation. Existing Chapters 14.3 and 14.4 continue to be incorporated into the Coal Mine Safety Act through the definition of "Coal Mine Safety Act" in proposed § 45.2-xxx [existing § 45.1-161.8].

§ 45.1-161.8 45.2-xxx. Definitions.
As used in this chapter and in Chapters 14.37 (§ 45.1-161.105 et seq.), 8 (§ 45.2-xxx et seq.), and 14.49 (§ 45.1-161.253 et seq.) of this title, unless the context requires a different meaning:

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use, or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or failure of an impoundment, refuse pile, or culm bank; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than 30 minutes; (xii) an event at a mine which causes death or bodily injury to an individual not at a mine at the time the event occurs; and (xiii) the unintentional fall of highwall that entraps equipment for more than 30 minutes.

"Active areas" means all places in a mine that are ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

"Approved" means a device, apparatus, equipment, condition, method, course, or practice approved in writing by the Chief or the Director.
"Authorized person" means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is trained and has demonstrated the ability to perform such duty or duties safely and effectively.

"Auxiliary fan" means a supplemental underground fan installed to increase the volume of air to a specified location for the purpose of controlling dust, methane, or air quality.

"Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

"Certified person" means a person holding a valid certificate from the Board of Coal Mining Examiners authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Coal mine" means a surface coal mine or an underground coal mine.

"Coal Mine Safety Act" or "the Act" shall mean this chapter and Chapters 14.3 10 (§ 45.1-161.105 45.2-xxx et seq.), 11 (§ 45.2-xxx et seq.), and 14.4 12 (§ 45.1-161.253 45.2-xxx et seq.) of this title, and shall include any regulations promulgated thereunder, where applicable.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Experienced surface miner" means a person with more than six months or more of experience working at a surface mine or the surface area of an underground coal mine.

"Experienced underground miner" means a person with more than six months or more of underground coal mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.
"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

"Grounded" means connected to earth or to some connecting body which serves in place of the earth.

"Hazardous condition" means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

"Imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which coal or minerals have not been excavated or processed, or (b) work, other than examinations by a certified person or emergency work to preserve the mine, has not been performed for a period of 30 days at an underground coal mine for a period of 30 days, or for a period of 60 days at a surface mine; (ii) for which a valid license is in effect; and (iii) at which reclamation activities have not been completed.

"Inexperienced underground miner" means a person with less than six months of underground mining experience.

"Intake air" means air that has not passed through the last active working place of the split of any working section or any worked-out area, whether pillared or nonpillared, and by analysis contains not less than nineteen and one half percent oxygen nor and no more than one half of one percent of carbon dioxide, nor and does not contain any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

"Interested persons" means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine, federal Mine Safety and Health Administration employees, mine inspectors, and, to the extent required by this Act, any other person.
"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit from which cross entries, room entries, or rooms are turned.

"Mine" means any underground coal mine or surface coal mine. "Mines" that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a "mine" unless the coal extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes. The area in which coal is excavated under an exemption to the permitting requirements of § 45.1-234 shall not be a "mine."

"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman duly issued by action of the Board of Coal Mining Examiners.

"Mine inspector" means a public employee assigned by the Chief or the Director to make mine inspections as required by this Act, and other applicable laws.

"Miner" means any individual working in a mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Monthly" means, unless otherwise stated, to have occurred any time during the period of the first through the last day of a calendar month.

"Operator" means any person who operates, controls, or supervises a mine or any independent contractor performing services or construction at such a mine.

"Panel entry" means a room entry.

"Permissible" means a device, process, or equipment or method classified heretofore or hereafter as "permissible" by the federal Mine Safety and Health Administration, when such classification is adopted by the Chief or the Director, and includes; unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations,
and conditions attached to such classification by the federal Mine Safety and Health Administration unless otherwise expressly stated in the Act.

"Return air" means air that has passed through (i) the last active working place on each split, or air that has passed through (ii) worked-out areas, whether pillared or nonpillared.

"Room entry" means any entry or set of entries from which rooms are turned.

"Serious personal injury" means any injury which has a reasonable potential to cause death or an injury other than a sprain or strain which requires an admission to a hospital for 24 hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators, and transformers.

"Surface coal mine" means (i) the pit and other active and inactive areas of surface extraction of coal; (ii) on-site preparation plants, shops, tipples, and related facilities appurtenant to the extraction and processing of coal; (iii) surface areas for the transportation and storage of coal extracted at the site; (iv) impoundments, retention dams, tailing ponds, and refuse disposal areas appurtenant to the extraction of coal from the site; (v) equipment, machinery, tools, and other property used in or to be used in the extraction of coal from the site; (vi) private ways and roads appurtenant to such area areas; and (vii) the areas used to prepare a site for surface coal extraction activities. A site shall commence being a surface coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity that does not disturb the surface; and shall cease to be a surface coal mine upon completion of initial reclamation activities.

"Travel way" means a passage, walk, or way regularly used and designated for persons to go from one place to another.

"Underground coal mine" means (i) the working face and other active and inactive areas of underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts, inclines, and tunnels connected to such areas; (iii) on-site preparation plants, shops, tipples, and related facilities appurtenant to the excavation and processing of coal; (iv) on-site surface
areas for the transportation and storage of coal excavated at the site; (v) impoundments, retention dams, and tailing ponds appurtenant to the excavation of coal from the site; (vi) equipment, machinery, tools, and other property, on the surface and underground, used in or to be used in the excavation of coal from the site; (vii) private ways and roads appurtenant to such areas; (viii) the areas used to prepare a site for underground coal excavation activities; and (ix) areas used for the drilling of vertical ventilation holes. A site shall commence being an underground coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and shall cease to be an underground coal mine upon completion of initial reclamation activities.

"Weekly" means, unless otherwise stated, to have occurred any time during the period of Sunday through Saturday of a calendar week.

"Work area," as used in Chapter 14.4 (§ 45.1-161.253 et seq.) of this title, means those areas of a surface coal mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

"Worked-out area" means an area where underground coal mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses, and intake air courses.

"Working face" means any place in a mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground coal mine inby the last open crosscut.

"Working section" means all areas from the loading point of a section to and including the working faces.

Drafting note: In the definition of "authorized person," the words "or duties" and "or locations" are stricken pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In the definitions of "Coal Mine Safety Act" and "Federal mine safety law," the term "promulgated" with regard to regulations is changed to "adopted" in keeping with recent title revisions.
because "adopt" is more widely used and includes the promulgation process. In the definitions of "experienced surface miner" and "experienced underground miner," "more than six months" is changed to "six months or more" because the definition of "inexperienced underground miner" means a person with "less than six months" of experience. The change accounts for exactly six months. The language applying the definition of "work area" to proposed Chapter 9 is stricken as unnecessary because this definitions section already applies specifically to that chapter and there are no uses of the term in other chapters of the Act. Technical changes are made.

§ 45.1-161.9 45.2-xxx. Safety and health.

In safety and health matters, all miners are to be governed by this Act and Chapter 18, Article 4 (§ 45.1-221 45.2-xxx et seq.) of this title Chapter 6, and any other sections of the Code relating to the safety and health of miners and rules and regulations promulgated adopted by the Department.

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, including changes to modernize language.

§ 45.1-161.10 45.2-xxx. Special safety rules.

The operator of every mine shall have the right to adopt special safety rules for the safety and operation of his mine or mines, covering the work pertaining thereto to the mine inside and outside of the same, which, however, such mine. Such special safety rules shall not be in conflict with the provisions of this Act. Such rules and, when established, shall be posted at some conspicuous place about the mines, mine where the rules may be seen by all miners at such mines, mine or in lieu thereof the operator shall furnish a printed copy of such rules to each of his miners.

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.
§ 45.1-161.11. Persons not permitted to work in mines.

A. No person under eighteen years of age shall be permitted to work in or around any mine, and in all cases of doubt, the operator, agent, or mine foreman shall obtain a birth certificate or other documentary evidence from the Registrar of Vital Statistics, or other authentic sources as to the age of such person.

B. No operator, agent, or mine foreman shall make a false statement as to the age of any person under eighteen years of age applying for work in or around any mine.

Drafting note: Catchline is changed to better reflect the subject of the section.

Technical changes are made.

§ 45.1-161.12. Prohibited acts by miners or other persons; miners to comply with law.

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution or a warning sign or barricade; or (vi) disobey any order issued pursuant to the provisions of this Act.

B. Each miner at any mine shall comply fully with the provisions of this Act and other mining laws of the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners, that pertain to his duties.

C. Any individual shall, upon the order of the Chief, complete training that addresses the subject of any violation issued to the individual as a condition for abatement of the violation.

Drafting note: The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth. A reference to a warning sign or barricade is added to clause (v) of subsection A and technical changes are made.

§ 45.1-161.13. Safety materials and supplies.
It shall be the duty of each operator or agent to keep on hand, at all times at each mine, or within convenient distance, of each mine, a sufficient quantity of all materials and supplies required to preserve the safety of the miners, as required by this Act. If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

Drafting note: Technical changes.

§ 45.1-161.14 45.2-xxx. Notifying miners of violations; compliance with Act.

A. The operator and his agent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by this Act, and shall direct that the mine foreman and all other miners employed at the mine to comply with all provisions of this Act, especially when his operator's or his agent's attention is called to any violation of this Act by the Chief, the Director, or a mine inspector.

B. The operator of any mine or his agent shall operate his mines at all times in full conformity with this Act and any other mining law of the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners. This requirement shall not relieve any other person subject to the provisions of this Act from his duty to comply with the requirements of this Act.

C. Nothing in this Act shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of their employees.

D. No operator, agent, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to this Act.

E. The operator or his agent shall fully comply with any action plan required by the Chief to address hazardous conditions or practices.

Drafting note: The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth and technical changes are made.
Article 2.

Chief, Director of the Division of Mines of the Department and Mine Inspectors.

Drafting note: Existing Article 2, relating to the Chief of the Division of Mines of the Department of Mines, Minerals and Energy and mine inspectors, is retained. The reference to the Director is removed from the article title because it does not represent the content of the article. The Director is appointed and his duties are prescribed in proposed Chapter 1.

§ 45.1-161.15 45.2-xxx. Appointment of Chief.

The Chief of the Division of Mines of the Department of Mines, Minerals and Energy shall be appointed by the Governor. The Chief shall be the head of the Division of Mines, and shall be under the direction of and shall report to the Director.

Drafting note: The full name of the Chief is added because this is the appointing language. Technical changes are made.

§ 45.1-161.16 45.2-xxx. Qualification of Chief.

The Chief shall have a thorough knowledge of the various systems of working and ventilating coal mines, the nature and properties of mine gases and methods for their detection and control, the control of mine roof, methods of rescue and recovery work in mine disasters, the application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in mines, and mine haulage. The Chief shall possess such experience or educational background in management as determined necessary by the Governor and shall be not less than thirty at least 30 years of age.

Drafting note: Technical changes.

§ 45.1-161.17 45.2-xxx. Affiliations of Department personnel with labor union, coal company, etc.; interest in coal mine; inspections of mines where inspector previously employed.

A. In addition to compliance with the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), neither the Chief nor any other officer or
employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating coal company, operators' association, or labor union. Neither the Chief nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any coal mine, nor shall the Chief, or any other officer while in office, own any stock in a corporation owning a coal mine either directly or through a subsidiary.

B. Neither the Chief nor any mine inspector shall perform an inspection at any mine site at which that individual was last employed for a period of two years following termination of his employment.

Drafting note: Technical change.

§ 45.1-161.18 Appointment and general qualifications of mine inspectors.

Mine inspectors shall be appointed by the Director.

§ 45.1-161.19 Qualifications of mine inspectors generally.

Each mine inspector shall (i) be not less than twenty-five years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued by the Board of Coal Mining Examiners.

Drafting note: Existing §§ 45.1-161.18 and 45.1-161.19 are combined.

§ 45.1-161.20 Qualifications of inspectors of coal mines.

A. Each mine inspector conducting inspections of underground coal mines shall have a thorough knowledge of the various systems of working and ventilating underground coal mines; the nature and properties of mine gases and methods for their detection and control; the control of mine roof and ground control; methods of rescue and recovery work in mine disasters; the application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in mines; and mine haulage.

B. Each mine inspector conducting inspections of surface coal mines shall have a thorough knowledge of the various systems of working surface coal mines; the nature and
properties of mine gases and methods of their detection and control; ground control; methods of rescue and recovery work in surface mine disasters; the application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in surface facilities on mine property; and mine haulage.

Drafting note: Technical changes.

§ 45.1-161.21 45.2-xxx. Duties of the Chief; penalty.

A. The Chief shall (i) supervise execution and enforcement of all laws, including regulations adopted by the Department or the Board of Coal Mining Examiners, pertaining to the health and safety of persons employed within or at coal mines within the Commonwealth, and the protection of property used in connection therewith, and to (ii) perform all other duties required pursuant to this Act.

B. The Chief shall keep a record of all inspections of coal mines made by him and the mine inspectors. The Chief shall make a comprehensive report to the Director. The Chief shall also keep a permanent record thereof of such inspections properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth.

C. The Chief is authorized to compel individuals to complete training that addresses the subject of a violation issued to the individual as a condition for abatement of the violation.

D. The Chief is authorized to require operators to submit for approval action plans to address hazardous conditions or practices.

E. For the purpose of investigating (i) an accident or (ii) a willful act resulting in a notice of violation or closure order, the Chief shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. Any person who knowingly provides any false statement, representation, or certification during such investigations is guilty of a Class 1 misdemeanor.

F. The Chief shall supervise execution and enforcement of all reciprocal agreements made with responsible officers of other states that implicate any part of the Coal Mine Safety
Drafting note: The citation in subsection F to the Coal Mine Safety Act is shortened because the Act is defined for the chapter in proposed § 45.2-xxx [existing § 45.1-161.8]. Technical changes are made, including organizational changes in subsection A relating to the duties of the Chief, and the regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth.

§ 45.1-161.22. Repealed.


§ 45.1-161.23. Technical specialists.

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation, and other mine specialties. Technical specialists shall have all the qualifications of a mine inspector plus such specialized knowledge in their field as may be required. Technical specialists shall advise the Director and mine operators in the areas of their specialty. Technical specialists shall have the power of an inspector to issue a closure order only in cases of imminent danger.

Drafting note: Technical change.

Article 3.

Certification of Coal Mine Workers.

Drafting note: Existing Article 3, pertaining to the certification of coal mine workers, is retained.

§ 45.1-161.24. The Board of Coal Mining Examiners; purpose.

A. There is hereby created the Board of Coal Mining Examiners which shall consist (the Board) is established as a policy board in the executive branch of state government. The purpose of the Board is to issue certifications authorizing the performance of certain tasks.

Drafting note: Part of the first sentence of existing § 45.1-161.24 is retained as proposed § 45.2-xxx. A statement of the purpose of the Board of Coal Mining Examiners
is added and the board language is updated to reflect current language preferred in the
Code. The remainder of existing § 45.1-161.24 is retained in the following section as
proposed § 45.2-xxx.

§ 45.2-xxx. Board membership; terms; quorum; meetings.

A. The Board of Coal Mining Examiners shall have a total membership of five
members. One member shall be the Chief, and that shall consist of four nonlegislative citizen
members and one ex officio member. The four nonlegislative citizen members shall be
appointed by the Governor. One appointed member shall be as follows: one who is a miner
holding a first-class mine foreman's certificate with at least five years of
experience in underground coal mining and who is employed at an underground coal mine in
the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment.
One appointed member shall be; one who is a miner with at least five years of experience in
surface coal mining and who is employed at a surface coal mine in the Commonwealth in a
nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member
shall be; one who is an individual holding a first-class mine foreman's
certificate with at least five years of experience in the operation of underground coal mines,
who is (i) an operator of an underground coal mine, (ii) an officer or director of a
corporation operating an underground coal mine, (iii) a general partner of a partnership
operating an underground coal mine, or (iv) an employee in a managerial or supervisory
capacity of an operator of an underground coal mine in the Commonwealth at the time of
appointment. One appointed member shall be; and one who is an individual with at least five
years of experience in the operation of surface coal mines, who is (i) an operator of a
surface coal mine, (ii) an officer or director of a corporation operating a surface coal mine,
(iii) a general partner of a partnership operating a surface coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of a surface coal mine in the
Commonwealth at the time of appointment. All appointed Nonlegislative citizen members of
the Board shall be residents of the Commonwealth. The Chief or his designee shall serve ex
officio with voting privileges.
B. The terms of office of the appointed members of the Board shall be as follows: one shall be appointed for an initial term of one year; one shall be appointed for an initial term of two years; one shall be appointed for an initial term of three years; and one shall be appointed for an initial term of four years. Thereafter, the members shall be appointed for terms of four years. The Chief shall serve a term coincident with his term of office. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term. All members may be reappointed.

C. The Chief shall serve as chairman of the Board.

§ 45.1-161.24. Meetings of Board of Coal Mining Examiners; compensation.

D. The Board of Coal Mining Examiners shall meet at least once a year and shall be called by the Chief to meet at such other times as he deems necessary. The Board shall meet at such places and at such times as may be designated by the Chief, and the Board shall remain in session until its work is completed, but no one session of the Board shall continue more than three days.

Drafting note: All but part of the first sentence of existing § 45.1-161.24 [previous section] is retained and is combined with the first two sentences of existing § 45.1-161.25 as proposed § 45.2-xxx. The board language for the Board of Coal Mining Examiners is updated to reflect current language preferred in the Code and obsolete language establishing the initial staggering of terms is proposed for deletion. Technical changes are made. The remaining sentence in existing § 45.1-161.25 is retained as proposed § 45.2-xxx [following section].

§ 45.2-xxx. Board compensation; expenses.

Out of Nonlegislative citizen members of the Board of Coal Mining Examiners shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All such nonlegislative citizen members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of such members shall be provided by the Coal Mining Examiners' Fund, there shall be paid to each member of the Board, except
the established in § 45.2-xxx [§ 45.1-161.31]. The Chief who shall serve without extra pay,
reimbursement for expenses and compensation as is provided by pursuant to § 2.2-2813.

Drafting note: The third sentence in existing § 45.1-161.25 is retained as proposed
§ 45.2-xxx. The board language for the Board of Coal Mining Examiners is updated to
reflect current language preferred in the Code, the cross-reference to the Coal Mining
Examiners' Fund is added, and technical changes are made. The first two sentences of
existing § 45.1-161.25 are retained as proposed § 45.2-xxx [previous section].

§ 45.1-161.26 45.2-xxx. Records of the Board of Coal Mining Examiners.
The Chief shall preserve in his office a record of the meetings and transactions of the
Board of Coal Mining Examiners and of all certificates issued by the Board.

Drafting note: Catchline is shortened.

§ 45.1-161.27 45.2-xxx. Nominations for the Board of Coal Mining Examiners.
Nominations for appointments to the Board of Coal Mining Examiners may be
submitted to the Governor by the Director and each organization of coal miners and coal
industry interests in the Commonwealth. Nominations are to be made to the Governor by June
1 of the year in which the terms of appointments of members expire. In no case shall the
Governor be bound to make any appointment from the nominations submitted.

Drafting note: Catchline is shortened.

§ 45.1-161.28 45.2-xxx. Certification of certain persons employed in coal mines;
powers and duties of the Board of Coal Mining Examiners.
A. The Board of Coal Mining Examiners may require certification of persons who
work in coal mines and persons whose duties and responsibilities in relation to coal mining
require competency, skill, or knowledge in order to perform consistently in a manner
consistent with the preservation of the health and safety of persons and property. The
following certifications shall be issued by the Board, and a person holding who holds such
certification shall be authorized to perform the tasks which this that the Act or any regulation
promulgated adopted by the Board or by the Department requires to be performed by such a
certified person:
1. First class mine foreman;
2. First class shaft or slope foreman;
3. Surface foreman;
4. Preparation plant foreman;
5. Electrical maintenance foreman;
6. Dock foreman;
7. Top person;
8. Underground shot firer;
9. Surface blaster;
10. Hoisting engineer;
11. Electrical repairman;
12. Automatic elevator operator;
13. Mine inspector;
14. Qualified gas detector;
15. Diesel engine mechanic;
16. Diesel engine mechanic instructor;
17. First aid instructor;
18. Advanced first aid;
19. Chief electrician; and
20. General coal miner.

B. Certification shall also be required for such additional tasks as the Board may require by regulation.

C. The Board shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be adopted in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.
D. The Board is authorized to adopt regulations establishing guidelines for on-site examinations of mine foremen conducted by mine inspectors pursuant to § 45.1-161.35 45.2-xxx.

Drafting note: The catchline is shortened and updated to reflect the content of the statute. 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 to modernize language.

§ 45.1-161.29 45.2-xxx. Examinations required for Coal Mining Certifications.

A. The Board of Coal Mining Examiners may require examination of applicants for certification; however, the Board shall require examination of applicants for the mine inspector certification. The Board may require such other information from each applicant as may be necessary to ascertain competency and qualifications for each task. Except as specifically provided by this Act, the Board shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Board shall adopt. Such rules regulations, when adopted, shall (i) be made a part of the permanent record of the Board, shall (ii) be periodically published, and shall (iii) be of uniform application to all applicants.

B. Any certificate issued by the Board shall be valid from the date of issuance unless and until it has been suspended pursuant to § 45.1-161.34, 45.2-xxx or has been revoked by the Board pursuant to § 45.1-161.35 45.2-xxx.

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, including changes to modernize language.

§ 45.1-161.30 45.2-xxx. Performance of certain tasks by uncertified persons; penalty.

A. It shall be unlawful for any person to perform any task requiring certification by the Board of Coal Mining Examiners until he has been certified. It shall also be unlawful...
for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this subsection shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense.

B. A certificate issued by the Board of Examiners prior to July 1, 1994, shall be acceptable as a certificate issued by the Board of Coal Mining Examiners until the Board of Coal Mining Examiners shall provide otherwise by appropriate regulations.

Drafting note: Subsection B is proposed for deletion because it is an obsolete provision. Technical changes are made.

§ 45.1-161.31. Examination fees; 45.2-xxx. Coal Mining Examiners' Fund.

A. A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed $50, shall be paid to the Chief by each person examined before the commencement of examination. There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Mining Examiners' Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All such fees collected pursuant to § 45.2-xxx, together with moneys collected pursuant to §§ 45.1-161.32 45.2-xxx and 45.1-161.34 45.2-xxx, shall be retained by the Department and shall be promptly paid by the Chief into the state treasury and shall constitute credited to the Coal Mining Examiners' Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund

The fund shall be administered by the Chief to cover used solely for the purposes of covering the costs of administering the miner certification, for which purposes such moneys are hereby appropriated.

B. The the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Board in conducting examinations, reviewing examination papers and conducting its other duties pursuant to this article shall also be paid out of the Coal Mining Examiners' Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
The Chief shall keep accounts and records concerning the receipts and expenditures of the Fund as required by the Auditor of Public Accounts.

§ 45.2-xxx. Examination fees.

A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed $50, shall be paid to the Chief by each person examined before the commencement of examination. Fees collected shall be deposited in the Coal Mining Examiners' Fund created by § 45.2-xxx.

Drafting note: Existing § 45.1-161.31 is divided into two proposed sections to separate two distinct topics. The nonreverting fund language for the Coal Mining Examiners' Fund is updated to reflect current language requested by the Department of the Treasurer for nonreverting funds in the Code. Technical changes are made.

§ 45.1-161.32 45.2-xxx. Replacement of lost or destroyed certificates.

If any certificate issued by the Board of Coal Mining Examiners is lost or destroyed, the Chief may supply a copy thereof to the person to whom it was issued, upon the payment of a reasonable fee in an amount set by the Board not to exceed $10, provided that it has been established to his satisfaction that the loss or destruction actually occurred and that the person seeking such copy was the holder of such certificate.

Drafting note: No change.

§ 45.1-161.33 45.2-xxx. Reciprocal acceptances of other certifications.

A. In lieu of an examination prescribed by law or regulation, the Board of Coal Mining Examiners may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in the Commonwealth, provided that (i) the Board finds that the requirements for certification in such state are substantially equivalent to those of Virginia and (ii) holders of certificates issued by the Board are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Board and without additional testing, training, or other requirements not directly related to program administration.
B. If the issuing authority in another state has revoked or suspended a certificate of a person who holds a similar Virginia certificate issued pursuant to this section, the person shall notify the Chief of such action by the other state within 10 days of such action. The Chief shall schedule a hearing of the Board of Coal Mining Examiners to determine whether his Virginia certificate should be revoked or suspended.

Drafting note: Technical changes.

§ 45.1-161.34 45.2-xxx. Continuing education requirements.

A. The Board of Coal Mining Examiners shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications. The Board shall establish (i) the content and amount of continuing education to be required for maintaining certification; (ii) guidelines parameters for the content of continuing education programs; (iii) procedures for approving continuing education programs and sponsors; (iv) distribution to holders of certificates of appropriate information regarding continuing education requirements; (v) provisions allowing surplus hours of continuing education to be carried forward from one period to meet the requirements for the next period; (vi) procedures for determining compliance with continuing education requirements; (vii) requirements for a certificate holder to provide the Board with his current address and such further administrative information as may be reasonable; and (viii) the length of time a certificate may be suspended for failure to comply with continuing education requirements before such certificate shall be revoked. The Board may also establish by regulation a fee to recover the reasonable costs of reissuing certificates or otherwise ascertaining that the requirements of this section have been satisfied.

B. A certification issued by the Board of Coal Mining Examiners shall be suspended if the holder fails to comply with the continuing education requirements established by the Board. The suspension shall be vacated upon compliance with the continuing education requirements. However, if the holder of a certificate does not comply with the continuing education requirements within the period of time established by the Board, the certificate shall be revoked.
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. A technical change is made to modernize language.

§ 45.1-161.35 45.2-xxx. Revocation of certificates.

A. The Board of Coal Mining Examiners may suspend, revoke, or take other action regarding any certificate upon finding that (i) the holder has (i) (a) failed to comply with the continuing education requirements within the period following the suspension of the certificate as provided in § 45.1-161.34 45.2-xxx; (ii) (b) been intoxicated while in duty status; (iii) (c) neglected his duties; (iv) (d) violated any provision of this Act or any other coal mining law of the Commonwealth; (v) or (e) used any controlled substance without the prescription of a licensed prescriber; or (vi) (ii) other sufficient cause exists. The Board shall also suspend, revoke, or take other action regarding the first-class first-class mine foreman certificate of any mine foreman who fails to display a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible for implementing, when examined on-site by a mine inspector in accordance with guidelines promulgated adopted by the Board. In such a case, the Board shall make a determination, based on evidence presented by interested parties, of whether the mine foreman had a thorough knowledge of such plans at the time of his examination by the mine inspector.

B. The Board may act to suspend, revoke, or take other action regarding any certificate upon the presentation of written charges alleging prohibited conduct set forth in subsection A by (i) the Chief or the Director or his designated agent; (ii) the operator of a mine at which such person is employed; or (iii) ten 10 persons employed at the mine at which such person is employed, or, if less fewer than ten 10 persons are employed at the mine, a majority of the employees at the mine. The Board may act on its own initiative to suspend, revoke, or take other action on any certificate for grounds set forth in item clause (i) (a) of subsection A.

C. Any person holding a certification issued by the Board shall report to the Chief, within 30 days of any criminal conviction in any court of competent jurisdiction for
possession or use of any controlled substance without the prescription of a licensed prescriber.

This conviction shall result in the immediate temporary suspension of all certificates held by such person pending a hearing before the Board.

D. Any miner present at any mine shall be deemed to have given consent to reasonable search, at the direction of the Chief by employees of the Department, of his person and his personal property located at the mine. This search shall be limited to the investigation of potential violations of the Coal Mine Safety Act (§ 45.1-161.7 et seq.).

E. All information regarding substance abuse test results of certified persons, written or otherwise, received by the Department or Board, shall be confidential. Any hearing of the Board in which this information is presented shall be conducted as a closed session in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

F. An affirmative vote of a majority of members of the Board who are qualified to vote shall be required for any action to suspend, revoke, or take other action regarding a certificate.

G. Prior to suspending, revoking, or taking other action regarding a certificate, the Board shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing may be conducted by the Board or, in the Board's discretion, by a hearing officer as provided in Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

H. Any hearing conducted after the temporary suspension of a miner's certificate due to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber as provided for in subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to § 45.1-161.78, 45.2-xxx, (iii) a failure to pass a pre-employment substance abuse screening test, (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive test for the use of any controlled substance without the prescription of a licensed prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to complete a substance abuse program pursuant to § 45.1-161.87, 45.2-xxx shall be conducted
within 60 days of the temporary suspension. The Board shall make every effort to hold the
hearing within 40 days of the temporary suspension.

I. Any person who has been aggrieved by a decision of the Board shall be entitled to
judicial review of such decision. Appeals from such decisions shall be in accordance with
Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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, including in
subsection A, where the organization of the list of findings is clarified.

§ 45.1-161.36 45.2-xxx. Reexamination.
The holder of a certificate revoked pursuant to § 45.1-161.35 45.2-xxx shall be
entitled to examination by the Board of Coal Mining Examiners after three months have
elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the
Board that the cause for revocation of his certificate has ceased to exist. However, no person
convicted of violating subsection A of § 45.1-161.177 45.2-xxx or §§ 45.1-161.178 § 45.2-
xxx, 45.1-161.232 45.2-xxx, or § 45.1-161.233 45.2-xxx shall be eligible for examination for
a period of not less than one year nor more than three years following such conviction, such
period to be set by the Board in its discretion at the time of revocation of the certificate.

Drafting note: Technical changes.

§ 45.1-161.37 45.2-xxx. General coal miner certification.

A. Every person working in a coal mine in Virginia shall hold a general coal miner
certificate issued by the Board of Coal Mining Examiners. Any person who has been
employed to work in a coal mine in Virginia prior to January 1, 1996, shall submit a complete
application for certification as a general coal miner by September 30, 2007. The Board of
Coal Mining Examiners shall issue a general coal miner certification upon submittal of a
complete application.

B. Each applicant for a general coal miner certificate who has not been employed to
work in a Virginia coal mine prior to January 1, 1996, shall prove to the Board that he has
knowledge of first aid practices and has a general working knowledge of the provisions of this Act, and applicable regulations, pertaining to coal mining health and safety. Each applicant shall have completed the new miner training requirements of 30 C.F.R. Part 48 or submit proof of at least one year of experience in a coal mine prior to issuance of the General Coal Miner certification.

Drafting note: An obsolete provision is proposed for deletion and technical changes are made.

§ 45.1-161.38 45.2-xxx. First-class mine foreman certification.

A. The operator of any coal mine where three or more persons work during any part of a 24-hour period shall employ a mine foreman. The operator shall employ as a mine foreman only persons holding a first-class mine foreman certificate. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. The holder of a first-class mine foreman certificate shall be authorized to act as foreman for any underground coal mine.

C. Applicants for a first-class mine foreman certificate shall be not less than 23 years of age and shall have had at least five years of experience in a coal mine, of which at least three years shall have been in an underground coal mine. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of practical experience required. If the applicant meets the above requirements, makes 85 percent or more on each of the subjects of the written examination, and passes required map and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written examination shall address, among other relevant topics, the theory and practice of coal mining; the nature and properties of noxious, poisonous, and explosive gases, and methods for their detection and control; the requirements of the coal mining laws of this the...
D. Each candidate for certification as a first-class mine foreman shall complete the course or courses of instruction in first aid as provided in subsection A of § 45.1-161.101 and pass an examination relating thereto, approved by the Board of Coal Mining Examiners.

Drafting note: The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth and technical changes are made.

§ 45.1-161.39. Surface foreman certification.

A. Applicants. An applicant for a surface foreman certificate shall be at least 23 years of age and have had at least five years of experience in a coal mine with, at least three years of such experience which shall have been in a surface coal mine. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of required practical experience. Applicants. Each applicant shall demonstrate to the Board of Coal Mining Examiners a thorough knowledge of the theory and practice of surface coal mining by making 85 percent or more on the written examination. In addition, each applicant shall pass the examination in gas detection. The holder of a surface foreman certificate issued by the Board shall be authorized to act as surface foreman at any surface coal mine.

B. Each candidate for certification as a surface foreman shall complete, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § 45.1-161.101 and pass an examination relating thereto approved by the Board of Coal Mining Examiners. No course or examination shall be required of candidates holding a current higher level of emergency medical certification from the Virginia Department of Health.
C. All holders of a surface foreman certification issued prior to July 1, 2010, except those holding a current higher level of emergency medical certification from the Virginia Department of Health, shall complete by December 31, 2011, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § 45.1-161.101.

Drafting note: An obsolete provision is proposed for deletion and technical changes are made.

§ 45.1-161.40 45.2-xxx. Chief electrician certification.

Each applicant for a chief electrician certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of electricity that pertains to coal mining. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a chief electrician certificate issued by the Board shall be authorized to act as chief electrician in any coal mine.

Drafting note: No change.

§ 45.1-161.41 45.2-xxx. Top person certificate.

Each applicant for a top person certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of shaft and slope mine construction. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a top person certificate issued by the Board shall be authorized to act as top person in any coal mine.

Drafting note: No change.

Article 4.

Certification of Mineral Mine Workers.


45.1-161.42 through 45.1-161.56. [Repealed.]


Article § 4.

Licensing for Operation of Coal Mines.
Drafting note: Existing Article 5, relating to licensing for operation of coal mines, is retained as proposed Article 4. This article and all subsequent articles are renumbered to reflect the repeal of existing Article 4 in 1997. Article title is revised to better reflect the subject of the article.

§ 45.1-161.57 45.2-xxx. License required for operation of a coal mine; term.

A. No person shall engage in the operation of any coal mine within this Commonwealth without first obtaining a license for the operation of a coal mine from the Department. A license for the operation of a coal mine shall be required prior to commencement of the operation of a mine. A separate license is required for each mine operated. Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The license shall not be transferable, and every change in ownership of a mine shall be reported to the Department as provided in subsection B of § 45.1-161.62 45.2-xxx.

B. Licenses Each license for the operation of a coal mine shall be valid for a period of no more than one year following the date of issuance and license renewal shall be obtained annually within fifteen days following the anniversary of the date the mine began operations.

§ 45.1-161.58. Fee to accompany application for license; fund; disposition of fees.

C. Each application for a license for the operation of a coal mine or a renewal or transfer of a license for the operation of a coal mine shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of $180.

Drafting note: Existing § 45.1-161.57 and the first sentence of existing § 45.1-161.58 are combined. License renewal provisions in subsection B are reworded for consistency with § 45.2-xxx [§ 45.1-161.292:30]. The fee amount is updated from $180 to $350 to reflect the current fee as established in the state budget adopted during the 2010 Session of the General Assembly and in each subsequent biennial budget. Technical changes are made.
§ 45.2-xxx. Coal Mine Operator License Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Mine Operator License Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to the provisions of § 45.2-xxx [45.1-161.58] shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for crediting to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of purchasing or commissioning safety equipment, safety training, safety education, or for any expenditure to further the safety program in the mining industry. All expenditures and disbursements from this fund must be approved by the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: Provisions in existing § 45.1-161.58 relating to fee collection and fund expenditures are retained as proposed § 45.2-xxx [previous section] with the nonreverting fund language for the Coal Mine Operator License Fund updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.

§ 45.1-161.59 45.2-xxx. Application for license for the operation of a coal mine.

A. An application for a license for the operation of a coal mine shall be submitted by the person who will be the operator of the mine. No application for a license or a renewal thereof shall be considered complete unless it contains the following:

1. Identity regarding The identity of the operator of the mine.

   a. If the operator is a sole proprietorship, the operator shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety...
at the mine; (v) the federal mine identification numbers of all other mines in which the sole
proprietor has a twenty percent or greater ownership interest; and (vi) the trade name, if
any, and the full name, address of record, and telephone number of the proprietorship.

b. If the operator is a partnership, the operator shall state: (i) the name and address of
the mine and its federal mine identification number; (ii) the name and address of the person
with overall responsibility for operating decisions at the mine; (iii) the name and address of
the person with overall responsibility for health and safety at the mine; (iv) the federal mine
identification numbers of all other mines in which the partnership has a twenty percent or
greater ownership interest; (v) the full names and address of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the
partnership; and (vii) the federal mine identification numbers of all other mines in which any
partner has a twenty percent or greater ownership interest.

c. If the operator is a corporation, the operator shall state: (i) the name and address of
the mine and its federal mine identification number; (ii) the name and address of the person
with overall responsibility for operating decisions at the mine; (iii) the name and address of
the person with overall responsibility for health and safety at the mine; (iv) the federal mine
identification numbers of all other mines in which the corporation has a twenty percent or
greater ownership interest; (v) the full name, address of record, and telephone number of the
corporation and the state of incorporation; (vi) the full name and address of each officer and
director of the corporation; (vii) if the corporation is a subsidiary corporation, the operator
shall state the full name, address, and state of incorporation of the parent corporation if the
corporation is a subsidiary corporation; and (viii) the federal mine identification numbers of
all other mines in which any corporate officer has a twenty percent or greater ownership
interest.

d. If the operator is any organization other than a sole proprietorship, partnership, or
corporation, the operator shall state: (i) the nature and type, or legal identity of the
organization; (ii) the name and address of the mine and its federal mine identification number;
(iii) the name and address of the person with overall responsibility for operating decisions at
the mine; (iv) the name and address of the person with overall responsibility for health and
safety at the mine; (v) the federal mine identification numbers of all other mines in which the
organization has a twenty 20 percent or greater ownership interest; (vi) the full name, address
of record, and telephone number of the organization; (vii) the name and address of each
individual who has an ownership interest in the organization; (viii) the name names and
address addresses of the principal organization officials or members; and (ix) the federal mine
identification numbers of all other mines in which any official or member has a twenty 20
percent or greater ownership interest;

2. The names name and addresses address of any agent of the operator with
responsibility for the business operation of the mine, and of any person with an ownership or
leasehold interest in the coal to be mined;

3. The names and addresses of persons to be contacted in the event of an accident or
other emergency at the mine;

4. Such information required by the Department that is relevant to an assessment of
the safety and health risks likely to be associated with the operation of the mine; and

5. 6. [Repealed.]

7. 5. For any license renewal, the annual report required pursuant to § 45.1-161.62
45.2-xxx. When no change has occurred to the information required by subdivision 1, 2, or 3
of this subsection, the operator of the mine shall only be required to certify that such
information on the current license application is accurate and complete.

B. The application shall be certified as being complete accurate and accurate complete
by the applicant, if an individual; or by the agent of a corporate applicant, or by a general
partner of an applicant that is a partnership. The application shall be submitted on forms
furnished or approved by the Department.

C. Within thirty 30 days after the occurrence of any change in the information required
by subsection A, the operator shall notify the Department, in writing, of such change.
§ 45.1-161.60 45.2-xxx. Denial or revocation of license for the operation of a coal mine.

A. The Chief may deny an application for, or may revoke a license for the operation of a coal mine upon determining that the applicant, the operator, or his agent has committed violations of the mine safety laws of the Commonwealth which demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § 45.1-161.233 45.2-xxx.

C. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of violating subsection A of § 45.1-161.177 45.2-xxx or § 45.1-161.178 45.2-xxx.

D. Any person whose license application is denied or whose license is revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action, the court shall receive the records of the Department with respect to the determination, and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.
Drafting note: Technical changes are made, including changes that make the form of subsection A parallel to that of subsections B and C, and the regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth.

§ 45.1-161.61 45.2-xxx. Operating without license; penalty.
A. In addition to any other power conferred by law, the Chief, or his designated representative, shall have the authority to issue an order closing any coal mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.1-161.91 45.2-xxx.
B. Any person operating an unlicensed mine shall, upon conviction, be guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mine shall constitute a separate offense.

Drafting note: Technical changes.

§ 45.1-161.62 45.2-xxx. Annual reports; condition to issuance of license following transfer of ownership.
A. The operator or his agent of every each mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve 12 months, ending with December 31. Such report shall state: (i) the names of the operator, any agent, and their any officers, of the mine; (ii) the quantity amount of coal mined; and (iii) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.
B. Whenever the owner of a mine transfers transfers the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of coal produced since the January 1 previous to the date of such sale or transfer of such mine. A license will shall not be issued covering such transfer of ownership until the report is furnished.
C. The operator or his agent of every each coal mine or his agent shall annually, by February 15, mail or deliver to the Department (i) an affidavit, certified by the Commissioner
of Revenue commissioner of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-3712, 58.1-3713, and 58.1-3741 due with respect to the coal mining operations have been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations are conducted, stating that all personal property, real estate, and mineral land taxes due with respect to coal mining operations have been paid.

Drafting note: Technical changes are made, including the reconfiguration of the phrase "operator or his agent of every mine" to be consistent with language in existing § 45.1-161.14.

§ 45.1-161.63 45.2-xxx. Notices Discontinuance of the working of a mine; notices to Department; resumption of mining following discontinuance.

A. The operator or his agent shall send notice of his intent to discontinue the working of an underground coal mine for a period of 30 days or a surface mine for a period of 60 days to the Department at least 10 days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine. Unless examinations of the mine are being conducted during the period of discontinued use, all surface openings to the discontinued underground coal mine shall be secured against unauthorized entrance when the activities are discontinued for 30 days or longer. Danger signs shall be posted at each secured entrance.

B. The operator, or his agent, shall send to the Department 10 days' prior notice of intent to resume the working of an inactive mine. The production of coal at such mine shall not resume until a mine inspector has inspected and approved it for resumption of production activities.

C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a mine for hazardous conditions immediately before miners are permitted to work. The operator, or his agent, shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.
D. The operator, or his agent, shall send to the Department 10 days’ prior notice of any change in the name of a mine or in the name of the operator of a mine.

E. The operator, or his agent, shall send to the Department 10 days’ prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name of the mine, the location of the mine, the name of the operator, and the operator's mailing address and email address.

**Drafting note: Catchline is changed to better reflect the content of the section.** Email address is added to the information included on notice required by this proposed section. **Technical changes are made.**

§ 45.1-161.64. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

A. Prior to commencing mining activity, the operator of a coal mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine. Such map shall be submitted to the Chief prior to producing coal at the mine. All maps shall be presented on the Virginia Coordinate System of 1983, South Zone, unless otherwise approved by the Chief. At intervals not to exceed 12 months and when a coal mine is abandoned, the operator shall submit to the Chief copies of an up-to-date map of the entire mine in an electronic format approved by the Chief. The operator shall also submit to the Chief revisions that show directional changes whenever mine projections deviate more than 600 feet from the approved mine map. Only maps in an electronic format will be accepted unless otherwise approved by the Chief. If there are no changes in the information required to be submitted under this section at the time an updated map is due, the operator may submit a notice that there are no changes to the map in lieu of submitting an updated map to the Department.

B. Underground coal mine maps shall show:

1. The active workings;

2. All pillared, worked out, and abandoned areas, except as provided in this section;
3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by arrows, and ventilation controls;
4. Contour lines of all elevations;
5. Dip of the coalbed;
6. Escapeways;
7. The locations that are known or should be known of (i) adjacent mine workings within 1,000 feet, (ii) mines above or below, and (iii) water pools above;
8. Either producing or abandoned oil and gas wells located within 500 feet of such mine and in any underground area of such mine; and
9. Such other information as the Chief may require.

Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned, which are inaccessible, or which cannot be entered safely.

C. Additional information required to be shown on underground coal mine maps shall include:

1. Mine name, company name, mine index number, and name of the person responsible for information on the map;
2. The scale and orientation of the map and symbols used on the map;
3. The property or boundary lines of the mine;
4. All known drill holes that penetrate the coalbed being mined;
5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the coalbed being mined;
6. The location of all surface mine ventilation fans; the location may be designated on the mine map by symbols;
7. The location of railroad tracks and public highways leading to the mine; and mine buildings of a permanent nature with identifying names shown;
8. The location and description of a least two permanent base line points coordinated with the underground and surface mine traverses; and the location and description of at least
two permanent elevation bench marks used in connection with establishing or referencing
mine elevation surveys;

9. The location and elevation of any body of water dammed or held back in any
portion of the mine; provided, however, such bodies of water may be shown on overlays or
tracings attached to the mine maps used to show contour lines as provided under subdivision
12;

10. The elevations of tops and bottoms of shafts and slopes, and the floor at the
entrance to drift and tunnel openings;

11. The elevation of the floor at intervals of not more than 200 feet in (i) at least one
entry of each working section and main and cross entries; (ii) the last line of open crosscuts of
each working section, and main and cross entries before such sections and main and cross
entries that are abandoned; and (iii) rooms advancing toward or adjacent to property or
boundary lines or adjacent mines; and

12. Contour lines passing through whole number elevations of the coalbed being
mined. The spacing of such lines shall not exceed 10-foot elevation levels, except that a
broader spacing of contour lines may be approved by the Chief for steeply-pitching steeply
pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine
maps.

D. Underground coal mine maps submitted to the Chief shall be on a scale of not less
than 100 or more than 500 feet to the inch. Mapping of the underground mine works shall be
completed by a closed loop survey method of traversing or other equally accurate methods of
traversing. All closed loop surveys shall meet a minimum accuracy standard of one part in
5,000. Elevations shall be tied to either the United States Geological Survey or the United
States Coast and National Geodetic Survey benchmark system. A registered
engineer or licensed land surveyor shall certify that the map of the mine workings is accurate.

E. Underground coal mine maps shall be kept up-to-date by temporary notations and
revised and supplemented at intervals not to exceed six months based on a survey made and
certified by a registered engineer or licensed land surveyor who has exercised complete
direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working face of each working place;
2. Pillars mined or other such second mining;
3. Permanent ventilation controls constructed or removed, such as seals, overcasts,
undercasts, regulators, and permanent stoppings, and the direction of air currents indicated;
and
4. Escapeways designated by means of symbols.

F. At underground coal mines, an accurate map of the mine showing clearly all
avenues of ingress and egress in case of fire shall be posted in a place accessible to all miners.

G. Surface coal mine maps shall show:

1. The name and address of the mine;
2. The property or boundary lines of the active areas of the mine;
3. Contour lines passing through whole number elevations of the coalbed being mined.
The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader
spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The
Chief may approve alternate means of delineating seam elevations where multiple seams are
being mined. Contour lines may be placed on overlays or tracings attached to mine maps;
4. The general elevation of the coalbed or coalbeds being mined, and the general
elevation of the surface;
5. Either producing or abandoned oil and gas wells and gas transmission lines located
on the mine property;
6. The location and elevation of any body of water dammed or held back in any
portion of the mine, provided, however, that such bodies of water may be shown on
overlays or tracings attached to the mine maps;
7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the
mine property;
8. All auger and surface mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;

9. All worked out and abandoned areas;

10. The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

11. Underground coal mine workings underlying and within 1,000 feet of the active areas of the mine;

12. The location and description of at least two permanent baseline points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

13. The scale of the map; and

14. Such other information required by the Chief.

H. Surface coal mine maps shall be kept up to date by temporary notations and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working pit or pits;

2. Auger or highwall miner workings; and

3. Other information that may affect the safety of miners, including, but not limited to, updates of gas well or gas line locations.

I. Surface surveys shall originate from at least two permanent survey monuments on the mine property located with a minimum accuracy standard of one part in 10,000. The monuments shall be clearly referenced on the mine map. Elevations shall be tied to either the United States Geological Survey or the United States Coast and National Geodetic Survey benchmark system.

J. The original map, or a true copy thereof, shall be left by the operator at the active mine, open at all reasonable times for the examinations and use of the mine inspector.
K. Such maps may be used by the Department for the evaluation of the coal resources of the Commonwealth.

L. The map shall be filed and preserved among the records of the Department and copies of such maps shall be made available at a reasonable cost.

M. Any person who has conducted mining operations or prepared mine maps and who has a map or surveying data of any worked out or abandoned underground coal mine shall on request make such map or data available to the Department to copy or reproduce such material.

Drafting note: In subsections D and I, the name of the United States Coast and Geodetic Survey is updated to its current name: the National Geodetic Survey. In subdivision H1, language is removed pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subdivision H3, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

§ 45.1-161.65. When the Chief may cause maps to be made; payment of expense by operator.

If the operator, or his agent, of any mine shall neglect or his agent neglects or fail fails to furnish to the Chief a copy of any map or extension thereof, as provided in § 45.1-161.64 45.2-xxx, the Chief is authorized to cause a correct survey and map of such mine, or extension thereof, to be made at the expense of the operator of such mine, the cost of which shall be recovered from the operator as other debts are recoverable by a civil action at law. If at any time the Chief has reason to believe that such map, or extensions thereof, furnished pursuant to § 45.1-161.64 45.2-xxx is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or extension thereof shall be paid by the operator. The expense shall be recovered from the operator as other debts are recoverable by a civil action at law. However, if the map filed by
the operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

Drafting note: Technical changes are made, including the reconfiguration of the phrase "operator or his agent of any mine" to be consistent with language in existing § 45.1-161.14.

§ 45.1-161.66 45.2-xxx. Making false statements; penalty.

A. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this the Act to fail to correctly show, within the limits of error, the data required.

B. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this the Act shall, upon conviction, be guilty of a Class 1 misdemeanor.

Drafting note: Technical changes.

Article 6.5.

Rescue Crews; Mine Rescue Teams.

Drafting note: Existing Article 6, relating to mine rescue teams, is retained as Article 5. The title is changed to better reflect the terminology used in the article.

§ 45.1-161.67 45.2-xxx. Mine rescue and first aid stations.

The Director is hereby authorized to purchase, equip, and operate for the use of the Department, such mine rescue and first aid stations as he may determine necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

Drafting note: Technical changes.

§ 45.1-161.68 45.2-xxx. Mine rescue crews teams.

The Director is hereby authorized to have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth mine rescue crews teams as he may determine necessary. Each member of a mine rescue-crew team shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to
be determined annually based on prevailing wage rates within the industry. For the purposes of workers' compensation coverage during training periods, such crew team members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such crew team members have performed the required service. Upon such certification, the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any crew team member at any time.

Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team." Technical changes are made.

§ 45.1-161.69 45.2-xxx. Duty to train crew team.

It shall be the duty and responsibility of the Department to see that all crews be properly trained by a qualified instructor of the Department or such other persons who have a certificate of training from the Department or the federal Mine Safety and Health Administration.

Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team." Technical changes are made.

§ 45.1-161.70 45.2-xxx. Qualification for crew team membership; direction of crews teams.

A. To qualify for membership in a mine rescue crew, an applicant shall be an experienced miner and shall pass a physical examination by a licensed physician, physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the crew members and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by these crews teams shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of the federal Mine Safety and Health Administration, and representatives of the miners; and all shall be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Chief in his discretion may take full responsibility in
directing such work. Procedures for use of apparatus or equipment shall be guided by the
mine rescue apparatus and auxiliary equipment manuals.

Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team." 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.

§ 45.1-161.71. Crew 45.2-xxx. Team members to be considered employees of the
mine where emergency exists; compensation; workers' compensation.

When engaged in rescue or recovery work during an emergency at a mine, all crew
team members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the operator at the rate established in the area for such work. In no event shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all crew team members shall be deemed to be within the employment of the operator of the mine for the purpose of workers' compensation coverage.

Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team."

§ 45.1-161.72 45.2-xxx. Requirements of recovery work.

A. During recovery work and prior to entering any mine, all mine rescue crews teams conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue crew team performing rescue or recovery work with breathing apparatus shall be provided with a backup crew team of equal strength, stationed at each fresh air base.

C. For every two crews teams performing work underground, one six-member crew team shall be stationed at the mine portal.
D. Two-way communication, life lines, or their equivalent, shall be provided by the fresh air base to all crews, and no crew member shall be permitted to advance beyond such communication system.

E. A mine rescue crew shall immediately return to the fresh air base should any member's breathing apparatus malfunctions or the atmospheric pressure of any apparatus deplete to sixty atmospheres low-oxygen alarm activates.

F. The Director may also assign rescue and recovery work to inspectors, instructors, or other qualified employees of the Department as the Director may determine desirable.

Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and a reference to the depletion of the atmospheric pressure of a breathing apparatus is replaced with a reference to the safety standard currently in use, a low-oxygen alarm. Language is updated for modern usage.

§ 45.1-161.73 45.2-xxx. State-designated mine rescue teams.

The Director may, upon the request of an operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team certified as a mine rescue team by the federal Mine Safety and Health Administration under 30 C.F.R. Part 49 shall be eligible to be a state-designated mine rescue team. Following the designation of any such teams, the Director shall, upon the payment to the Department of an annual fee, set by the Director based on current costs for maintaining mine rescue stations and personnel, assign two or more state-designated mine rescue teams to the operator. An operator who has paid the rescue fee shall be entitled to the rescue services of a state-designated mine rescue team at no additional charge.

Drafting note: Technical changes.

§ 45.1-161.74 45.2-xxx. Mine Rescue Fund.

The Mine Rescue Fund, referred to in this section as "the Fund," is hereby created as a special nonreverting fund in the office of the State Treasurer. The Fund shall be established on the books of the Comptroller. All moneys collected from operators pursuant to agreements entered into by the Director shall be paid into the Mine Rescue state treasury and
credited to the Fund. Moneys in the Mine Rescue Fund shall be used only for mine rescue services under such agreements. No Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Mine Rescue Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

Drafting note: The Mine Rescue Fund statute is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.

§ 45.1-161.75 45.2-xxx. Inspections; Mine Rescue Coordinator.

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times a year; (ii) ensure that all rescue stations are adequately equipped; and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned to him by the Director.

Drafting note: Technical changes.

§ 45.1-161.76 45.2-xxx. Workers' compensation; liability.

A. For the purpose of workers' compensation coverage, during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article or during any training exercise for a state-designated mine rescue team, members of the state-designated team shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is conducted. Additionally, for purposes of workers' compensation coverage, travel by members of a state-designated mine rescue team to and from the mine disaster or training exercise shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is to be or was conducted.

B. Any member of a state-designated mine rescue team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of
such rescue work unless the act or omission was the result of gross negligence or willful
misconduct.

C. Any operator providing personnel to a state-designated mine rescue team to engage
in rescue work at a mine not owned or operated by the operator shall not be liable for any civil
damages for acts or omissions resulting from the rendering of such rescue work.

Drafting note: Technical changes.

Article 7.6.

Mine Explosions; Mine Fires; Accidents.

Drafting note: Existing Article 7, relating to mine explosions, mine fires, and
accidents, is retained as proposed Article 6.

§ 45.1-161.7 45.2-xxx. Reports of explosions and mine fires; procedure.
A. If an explosion or mine fire occurs in a mine, the operator shall notify the
Department by the quickest available means. All facilities of the mine shall be made available
for rescue and recovery operations and firefighting.

B. No work other than rescue and recovery work and firefighting—may shall be
attempted or started until and unless it is authorized by the Department.

C. If an explosion occurs in an underground coal mine, the fan shall not be reversed
except by authority of the officials in charge of rescue and recovery work, and then only after
a study of the effect of reversing the fan on any persons who may have survived the
explosion and are still underground.

D. The Department shall make available all the facilities at its disposal in effecting
rescue and recovery work. The Chief shall act as consultant, or take personal charge, where in
his opinion the circumstances of any mine explosion, fire, or other accident warrant.

E. The orders of the official in charge of rescue and recovery work shall be respected
and obeyed by all persons engaged in rescue and recovery work.

F. The Chief shall maintain an up-to-date rescue and recovery plan for prompt and
adequate employment at any coal mine in the Commonwealth. All employees of the
Department shall be kept fully informed and trained in their respective duties in executing
rescue and recovery plans. The Department's plan shall be reviewed annually. Any changes in
the plan shall be published promptly and made available to all operators of mines.

Drafting note: Technical changes are made, including the replacement of "may"
with "shall" in a directive provision in subsection B, the deletion of redundant elements
from the phrases "attempted or started" and "until and unless" in subsection B, and the
change of plural construction to singular in subsection C pursuant to § 1-227, which
states that throughout the Code any word used in the singular includes the plural and
vice versa.

§ 45.1-161.78 45.2-xxx. Operators' reports of accidents; investigations; reports by
Department.

A. Each operator shall report promptly to the Department the occurrence at any
mine of any accident. The scene of the accident shall not be disturbed pending an
investigation, except to the extent necessary to rescue or recover a person, prevent or
eliminate an imminent danger, prevent destruction of mining equipment, or prevent
suspension of use of a slope, entry, or facility vital to the operation of a section or a mine. In
cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator
shall secure prior approval from the Department before any changes are made.

B. The Chief shall go personally or dispatch one or more mine inspectors to the
scene of such a coal mine accident, investigate causes, and issue such orders as may be
needed to ensure safety of other persons.

C. Representatives of the operator shall render such assistance as may be needed
and act in a consulting capacity in the investigation. An employee, if so designated by the
employees of the mine shall be notified, and as many as three employees, if so
designated as representatives of the employees, may be present at the investigation in a
consulting capacity.

D. The Chief shall require substance abuse testing as part of an inspection or
complaint investigation if there is reasonable cause to suspect a miner's impairment, due to
the presence of intoxicants or any controlled substance not used in accordance with the
prescription of a licensed prescriber, or has been a contributing factor to any accident in which a serious personal injury or death occurs at a mine. The Chief shall require substance abuse testing of any miner killed or seriously injured and of any other person who may have contributed to the accident. Any substance abuse testing required by the Chief will be paid for by the Department. Refusal by any miner to submit to substance abuse testing, or the failure to pass such a test, shall result in the immediate temporary suspension of all certificates, pending a hearing before the Board of Coal Mining Examiners.

E. The Department will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the operator, and one copy to the employee representative when he has been present at the investigation. The Chief shall maintain a complete file of all accident reports for coal mines, and shall give further publicity as may be ordered by the Director in an effort to prevent mine accidents.

Drafting note: Technical changes are made, including the replacement of "will" with "shall" in directive provisions throughout the section.

§ 45.1-161.79 45.2-xxx. Reports of other accidents and injuries.

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident, including any accident which does not result in a lost-time injury. Copies of such accident report shall be given to the person injured or to his designated representative to review the accident such report and verify its accuracy prior to filing such report for the review of state or federal mine inspectors.

Drafting note: Technical changes.

§ 45.1-161.80 45.2-xxx. Duties of mine inspectors.

Each mine inspector shall:
1. Report to his supervisor immediately, and by the quickest available means, any mine fire, mine or explosion, and or any accident involving that results in loss of life or serious personal injury or death to his supervisor;

2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or serious personal injury. He shall make;

3. Make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable; and

4. Provide assistance to mine rescue and recovery operations whenever a mine fire, mine or explosion, or other serious any accident that results in loss of life or serious personal injury occurs, and shall monitor

5. Monitor the reopening of all mines or sections thereof that have been sealed or abandoned on account of mine fire or explosion, serious accident, or any other cause in accordance with a plan approved by the Chief.

Drafting note: Language is updated for clarity and technical changes are made, including the clarification of the list of a mine inspector's duties.

Article 7.

Mine Inspections.

Drafting note: Existing Article 8, relating to mine inspections, is retained as proposed Article 7.

§ 45.1-161.81 45.2-xxx. Frequency of mine inspections.

The Chief shall conduct a complete inspection of every each underground coal mine not less frequently than at least every 180 days, and of every each surface coal mine not less frequently than at least once per year. Additional inspections of coal mines shall be made when deemed appropriate by the Chief based on an evaluation of risks at each mine, or if requested by miners employed at a mine or the operator of a mine.

Drafting note: Technical changes.
§ 45.1-161.82 45.2-xxx. Evaluation of risks at mines.

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made not less frequently than at least annually, of the comparative risks at each underground coal mine and surface coal mine. The Department shall prepare its procedural policy with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables to be included in the risk assessment measures shall include, but not be limited to: (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth, including regulations adopted by the Board of Coal Mining Examiners, at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost.

B. The Chief shall schedule additional inspections at underground coal mines and surface coal mines based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines pursuant to the assessment described in subsection A.

Drafting note: Language is updated for clarity. In subsection A, the phrase "but not be limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth and technical changes are made.

§ 45.1-161.83 45.2-xxx. Review of inspection reports and records.

Prior to commencing an inspection of a coal mine, a mine inspector shall review the most recent available report of inspection by the federal Mine Safety and Health Administration. During the course of a complete inspection of a coal mine, the mine inspector shall comprehensively review the records for the 30-day period preceding the inspection of pre-shift examinations, on-shift exams, daily inspections, and weekly examinations which
are required to be maintained pursuant to the Act, for the 30-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he deems prudent. The during the course of the inspection, the inspector shall review other records relating to safety and health conditions in the mine which are required to be maintained pursuant to the Act during the course of the inspection.

Drafting note: Language is updated for clarity, including deletion of the redundant phrase "but shall not be required to" as it follows "may." Technical changes are made.

§ 45.1-161.84. Advance notice of inspections; confidentiality of trade secrets.

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Chief or the Director.

B. All information reported to or otherwise obtained by the Chief or the Director or his authorized representative in connection with any inspection or proceeding under this title which contains or might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Chief or the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court, the Chief, or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Drafting note: The authority of the Chief to allow advance notice of an inspection is specified in subsection A. Technical changes are made.

§ 45.1-161.85. Scheduling of mine inspections.

A. The Chief and the Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by the federal Mine Safety and Health Administration.
B. The Chief, the Director, and each mine inspector, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

Drafting note: Technical changes.

§ 45.1-161.86 45.2-xxx. Denial of entry.

No person shall deny the Chief or the Director, as applicable, or any mine inspector entry upon or through (i) a mine for the purpose of conducting an inspection or (ii) any office at the site where maps or records relating to the mine are located, pursuant to this in accordance with the Act.

Drafting note: Language is updated for clarity. Technical changes are made.

§ 45.1-161.87 45.2-xxx. Duties of operator.

A. The operator, or his agent, of every mine shall furnish the Chief and any mine inspector proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector or the Chief.

B. The operator of an underground coal mine, or his agent, shall provide a mine inspector or the Chief adequate means for transportation to the active working areas of the mine within a reasonable period of time following the mine inspector's arrival at the mine.

C. The operator or his agent shall, when ordered to do so by a mine inspector or the Chief during the course of his inspection, promptly clear the mine or a section thereof of all persons.

D. The mine operator shall implement a substance abuse screening policy and program for all miners that shall, at a minimum, include:

1. A pre-employment, 10-panel urine test for the following and any other substances as set out in regulation adopted by the Board of Coal Mining Examiners:

   a. Amphetamines;
   b. Cannabinoids/THC;
   c. Cocaine;
d. Opiates,

e. Phencyclidine (PCP),
f. Benzodiazepines,
g. Propoxyphene,
h. Methadone,
i. Barbiturates and
j. Synthetic narcotics.

Samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 CFR Part 40. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. The mine operator may implement a more stringent substance abuse screening policy and program; and

2. Review The review of the substance abuse screening program with all miners each miner at the time of employment and annually thereafter.

E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of any failure of a pre-employment substance abuse screening test and shall provide a record of the test showing such failure or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending a hearing before the Board of Coal Mining Examiners.

F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of (i) discharging a miner due to violation of the company's substance or alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or (iii) a miner testing positive as using any controlled substance without the prescription of a licensed prescriber. An operator having that has a substance abuse program shall not be required to notify the Chief under subdivision clause (iii) unless the miner having tested positive fails to complete the operator's substance abuse program. The notification shall be
accompanied by a record of the test showing such positive results or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending a hearing before the Board of Coal Mining Examiners.

G. The provisions of this chapter shall not be construed to preclude an employer from developing or maintaining a drug substance and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.

Drafting note: Authority of the Chief spelled out in subsections B and C to make those subsections parallel to subsection A. Technical changes are made.

§ 45.1-161.88 45.2-xxx. Duties of inspectors.

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice, or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground coal mine. In mines operating more than one shift in a twenty-four-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

B. The inspector shall make a personal examination of the interior of the mine; and of the outside of the mine where any danger may exist to the miners.

Drafting note: Technical changes.

§ 45.1-161.89. Certificates of inspection 45.2-xxx. Inspection reports.
A. Upon completing a mine inspection, a mine inspector shall complete a certificate
regarding such inspections. The certificate of inspection shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of the Act discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the operator, agent, or mine foreman, and one copy to the employees' safety committee, and shall post one copy at a prominent place on the premises where it can be read conveniently by the miners.

C. With respect to coal mines, the Department shall provide access to certificates of inspection to the federal Mine Safety and Health Administration.

Drafting note: "Certificate of inspection" is replaced by the term currently in use, "inspection report." Technical changes are made.

Article 8.

Enforcement and Penalties; Reports of Violations.

Drafting note: Existing Article 9, relating to enforcement and penalties and reports of violations, is retained as proposed Article 8.

§ 45.1-161.90. Notices of violations.

A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person who is responsible for the violation. Each notice of violation shall describe with particularity the nature of the violation, including a reference to the provision of the Act or the appropriate regulations, and include an order of abatement and fix a reasonable time for abatement of the violation.
B. A copy of the notice of violation shall be delivered to the operator, or his agent, or the mine foreman.

C. Upon a finding by the mine inspector of completion of the action required to abate the violation, the Director, the Chief, or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Chief, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding has been waived, or if it has failed to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

E. If it is finally determined that a notice of violation was not issued in accordance with the provisions of this section, the notice of violation shall be vacated, and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

Drafting note: Language is updated for modern usage. 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.
refusing further entry into the mine of all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of the Act has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, a mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by in violation of § 45.1-161.57; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.1-161.90. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

One copy of the closure order shall be delivered to the operator of the mine or his agent or the mine foreman.

Upon a finding by the mine inspector of abatement of the violation creating the hazardous condition pursuant to which a closure order has been issued as provided in clause (i) of subsection A, or cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A, or abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director, the Chief, or a mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B. C.

The issuance of a closure order shall constitute a final order of the Department, and the owner or operator of the mine shall not be entitled to administrative review of such decision. The owner or operator of any mine or part thereof for which a closure order has been issued may, within ten days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion
thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action, the court shall receive the records of the Department with respect to the issuance of the order, and shall receive any additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department.

F. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

E. G. If it shall be finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated, and the improperly issued closure order shall not be used to the detriment of the owner or operator of the mine for which it was issued.

Drafting note: Language is updated and subsection designations are added for clarity. Technical changes are made.

§ 45.1-161.92 45.2-xxx. Tolling of time for abating violations.

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until (i) the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or until (ii) the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that the appeal pursuant to clause (i) or (ii) was undertaken in good faith and not solely for delay or avoidance of penalties.

Drafting note: Language is updated for clarity. Clause designations are added for clarity. Technical changes are made.

§ 45.1-161.93 45.2-xxx. Injunctive relief.

A. Any person violating or failing, neglecting, or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to
obey such order and to comply with such order by injunction or other appropriate relief.

B. Any person failing to abate any violation of this Act which has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance at the mine operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act or (ii) a history of the issuance of closure orders for the mine operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act.

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. Technical changes are made.

§ 45.1-161.94 45.2-xxx. Violations; penalties. Any person convicted of who willfully violating any provisions of this Act or any regulation promulgated pursuant to this Act, unless otherwise specified in this Act, shall be guilty of a Class 1 misdemeanor.

Drafting note: Technical changes.

§ 45.1-161.95 45.2-xxx. Prosecution of violations. A. It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this Act or on his own initiative to cause proceedings to be prosecuted in such case.
B. If the attorney for the Commonwealth declines to cause proceedings to be
prosecuted in such case, the Director or the Chief may request the Attorney General to
institute proceedings for any violation of the Act on behalf of the Commonwealth; however,
such action shall not preclude the Director or the Chief from pursuing any other applicable
statutory procedures. Upon receiving such a request from the Director or the Chief,
the Attorney General shall have the authority to institute actions and proceedings for
violations described in the request.

Drafting note: Language is updated for clarity. 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.

§ 45.1-161.96 45.2-xxx. Fees and costs.
No fees or costs shall be charged to the Commonwealth by a court or any officer for or
in connection with the filing of any pleading or other papers in any action authorized by this
article.

Drafting note: Language is updated for clarity.

§ 45.1-161.97 45.2-xxx. Reports of violations.
A. Any person aware of a violation of this Act may report the violation to a mine
inspector or to any other employee of the Department, in person, in writing, or by telephone
call, at the mine, at an office of the Department, or at the mine inspector's residence.
B. The operator of every mine, or his agent, shall deliver a copy of this Act to
every miner upon the commencement of his employment at the mine, unless the miner is
already in possession of a copy.

B. Any person aware of a violation of the Act may report the violation to a mine
inspector or to any other employee of the Department, in person, in writing, or by telephone
call, at the mine, at an office of the Department, or at the mine inspector's residence.
C. The operator of every mine, or his agent, shall display on a sign placed at the
mine office, at the bath house, and on a bulletin board at the mine site, a notice containing the
office addresses and office and home telephone numbers of mine inspectors and other
Department personnel, and office addresses, which may be used to report a violation of the Act.

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of the Act which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report, and that of any individuals identified in the alleged violation being omitted or deleted, to the operator of the mine or his agent. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act ($ 2.2-3700 et seq.).

Drafting note: Language is updated and section designations are reordered for clarity. Technical changes are made.

Article 10.

Virginia Coal Mine Safety Board.

Drafting note: Existing Article 10, relating to the Virginia Coal Mine Safety Board, is retained as proposed Article 9.

§ 45.1-161.98. The Virginia Coal Mine Safety Board—continued; membership; appointments; expenses; purpose.

A. The Virginia Mine Safety Board is continued as the Virginia Coal Mine Safety Board (the Board) is established as an advisory board in the executive branch of state government. The purpose of the Board is to advise the Chief on matters relating to the health and safety of persons working in the Virginia coal industry.

Drafting note: A statement of the purpose of the Virginia Coal Mine Safety Board is added to reflect current board language preferred in the Code and obsolete language is removed. The remainder of existing § 45.1-161.98 is retained as proposed § 45.2-xxx [following section].
A. The Virginia Coal Mine Safety Board shall be composed of a total membership of 10 members that shall consist of nine nonlegislative citizen members appointed by the Governor, subject to the confirmation of by the General Assembly, and one ex officio member. Nonlegislative citizen members shall be appointed as follows: three shall to be appointed from a list of individuals nominated by the Virginia Coal and Energy Alliance; three shall to be appointed from a list of individuals nominated by the United Mine Workers of America; and three shall to be appointed from the Commonwealth at large. All Nonlegislative citizen members of the Board shall serve at the pleasure of the Governor and shall be residents of the Commonwealth.

B. The members of the Board shall elect its chairman. Members shall serve for terms of four years and their successors shall be appointed for terms of the same length, but vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Any member may be reappointed for successive terms. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

C. The Virginia Coal Mine Safety Board shall hold meetings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the Board at any time and shall call a meeting of the Board within twenty days of receipt by the chairman of a written request for a meeting by another member of the Board. Notification of each meeting of the Board shall be given in writing to each member by the chairman at least five days in advance of the meeting. The chairman and any four or more members of the Board shall constitute a quorum for the transaction of any business of the Board.

Drafting note: All but the first sentence of existing § 45.1-161.98 [previous section] is retained and is combined with existing § 45.1-161.99 as proposed § 45.2-xxx. The board language for the Virginia Coal Mine Safety Board is updated to reflect
current language preferred in the Code, obsolete language is deleted, and technical changes are made.

§45.1-161.100 45.2-xxx. Powers and duties of the Virginia Coal Mine Safety Board.

The Virginia Coal Mine Safety Board shall have the power to advise and make recommendations to the Chief on matters relating to the health and safety of persons working in the Virginia coal industry. The Board shall serve as the regulatory work committee for the Department on all coal mine health and safety regulations not under the jurisdiction of the Board of Coal Mining Examiners.

Drafting note: Technical change.

Article 10. Miner Training.

Drafting note: Existing Article 11, relating to miner training, is retained as proposed Article 10.

§45.1-161.101 45.2-xxx. First aid training of coal miners.

A. The Chief shall establish specifications for first aid and refresher training programs for miners at coal mines. Such specifications shall be no less than, but may exceed, the minimum requirements of such training programs which underground and surface coal mine operators are required to provide for their employees by the federal mine safety law. 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 operators in making such programs available to their employees.

B. Each operator of a coal mine, upon request, shall make available to every miner employed in such mine the course of first aid training, including refresher training, as is required by pursuant to subsection A.

Drafting note: Technical changes.

§45.1-161.102 45.2-xxx. Training programs.

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing
miners for examinations administered by the Board of Coal Mining Examiners. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this article. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

Drafting note: Technical change.

§ 45.1-161.103 45.2-xxx. Additional coal mining training programs.

The Chief is authorized to implement a voluntary on-site safety awareness training program for coal miners. Such training may be conducted by a mine inspector in conjunction with his inspection of a coal mine or by other Department personnel. Safety awareness training for coal miners may include such methods as job safety analysis and topical talks on safety issues intended to reduce accidents.

Drafting note: Language is updated for modern usage. Technical changes are made.

§ 45.1-161.104. Repealed.


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.

§ 45.1-161.310 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 person 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 coterminous 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 the 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, such person shall be not be entitled to
enter the property more often than once a month. Every owner, tenant, occupant, or agent who
shall refuse 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 (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 to such entry, exploration, and 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 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. Petition to establish a trust for missing coal owners.

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

B. The petition shall:

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

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

2. 3. Include the proposed terms of a lease to be offered to the trust, which 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 identify and locate the present owners of such interests.

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

**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 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 are known, or can be ascertained, or 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 fees, expenses, and court costs.

All attorney's 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

3. Include the proposed terms of a lease to be offered to the each minority owner, 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 owner to lease 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." The implicit requirement that the petition describe the tract of coal at issue is made express in proposed subdivision B 1. 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 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 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 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 Commonwealth endangering the welfare, health, and safety, and welfare of its people and the
enjoyment of the public and private property within its borders, and it shall be the duty of the Governor to forthwith seize and operate the property of any person used in the mining, production and marketing of coal that he deems essential for the protection of the welfare, health and safety of the people of Virginia.

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. 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 any person's property used in the mining, production and marketing of coal for public uses in the manner hereinafter provided.

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

§ 45.1-161.316. 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.

B. The Commission shall be composed 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.
C. Members shall receive such compensation for the performance of their duties as fixed by the Governor. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

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

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

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

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

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

4. To operate, manage, and control any such properties so acquired; to purchase coal, coke and other fuel and to sell the same fuel, either at retail or at wholesale; to enter into contracts; to allocate and provide for the distribution of coal and other fuels so as to assure a distribution deemed most likely to promote the welfare, health and safety of the people of Virginia; and to do any and all
things necessary and incidental to the mining, production and 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.

§ 45.1-161.319. Negotiating purchase or lease of coal properties.

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

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

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 the section's single sentence is divided into two sentences for clarity. Technical changes are made.

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

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

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

C. Upon (i) the filing of said the petition described in subsection B in the office of the clerk of the circuit court to which it is addressed, together with as many copies thereof as there are defendants upon which it is to be served, and (ii) the depositing with the clerk for the custody of the court, and for the benefit of the owners of the properties property taken or affected, such an amount of money as the Commission shall estimate to be just compensation
for the property temporarily taken and the any damage done, if any, the Commission shall thereupon seize and take possession, custody, and control of said 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 owner of the property. Service of said petition upon the defendants shall be made in the manner prescribed by the Rules of 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 Expense of acquiring and operating coal properties; 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 authorization as the Governor may prescribe and shall be credited to the account of the Commission, and all funds and revenues derived from or received as a result of such operations shall be paid into the state treasury and credited to the same account. Any amounts 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, 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.
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.

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

A. Whenever (i) the owner or operator of engaged in the business of mining, production and marketing of coal, whose property has been acquired by the Commission, shall notify the Commission in writing, stating that he is in position to, and can and will resume operation and render normal service, and shall satisfy the Commission of the correctness of such statement, 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 to the 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 issued requiring the Commission to show cause why such possession should not be restored, and the court shall determine the matter as provided in this section.

B. Any such owner or operator shall be entitled to receive reasonable, proper and lawful compensation for the use of the property acquired by the Commonwealth pursuant to this article and shall be paid the same compensation from the state treasury. In the event the Commission has acquired such property by purchase, the owner or operator from whom it was acquired shall, upon reacquisition, 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 may refer to a commissioner such questions as are considered proper and act upon the commissioner's report.
as in any other equity 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.

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.


§ 45.1-221.1. 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 a 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.

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

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

"Dam" means an artificial barrier or obstruction that is designed to impound water, coal slurry, or silt to an elevation of five feet or more above the upstream toe of the structure, and has a storage volume of 20 acre-feet or more, or is designed to impound water, coal slurry, or silt 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.

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

"Water" means liquid or slurry as a result of the processing of coal in mining operations.

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

§ 45.1-222. Design and construction of water, coal slurry, or silt retaining dams or mine refuse piles impounding water impoundment; designs and other data to be submitted to the Chief.
A. New water, coal slurry, or silt retarding dams, dam or mine refuse piles impounding water impoundment, or the modification of an existing water, coal slurry, or silt 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 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 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.


§ 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

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 and ensure that action is taken to eliminate the potentially hazardous conditions disclosed in the records.

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.

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 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.
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;
4. Procedures for removing all persons from the area which that may reasonably be expected to be affected by the potentially hazardous condition;
5. Procedures for eliminating the potentially hazardous condition;
6. Procedures for notifying the Chief and other governing agencies; and
7. Any additional information which 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 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 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 of any surface and or underground coal mines, 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 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.

§ 45.1-225. Repealed.


CHAPTER 14.3.

REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; MINE CONSTRUCTION.

Drafting note: Nine articles of existing Chapter 14.3 are retained as proposed Chapter 7, Requirements Applicable to Underground Coal Mines; Mine Construction. The remainder of existing Chapter 14.3 is designated as proposed Chapter 8. The nine articles in this proposed chapter are as follows: Article 1, General Provisions; Article 2, Additional Duties of Certified Persons and Other Miners; Article 3, Proximity of Mining to Gas or Oil Wells or Abandoned Areas; Article 4, Roof, Face, and Rib Control; Article 5, Explosives and Blasting; Article 6, Mine Openings and Escapeways; Article 7, Hoisting; Article 8, Transportation; and Article 9, Surface Areas.

Article 1.

General Provisions.

Drafting note: Existing Article 1, concerning general provisions, is retained as proposed Article 1.
§ 45.1-161.105. Scope of chapter.

This chapter and Chapter 8 (§ 45.2-xxx et seq.) shall be applicable to the operation of any underground coal mine in the Commonwealth; and shall supplement the provisions of Chapter 14.2 (§ 45.1-161.7 45.2-xxx et seq.).

Drafting note: Language is updated for modern usage and clarity. The provisions of this chapter are made to apply to both portions of existing Chapter 14.3, which is divided into proposed Chapters 7 and 8.

§ 45.1-161.106. Regulations governing conditions and practices at underground coal mines.

A. The Chief shall have authority, after consultation with the Virginia Coal Mine Safety Board, created by Article 9 (§ 45.2-xxx [§ 45.1-161.98] et seq.) of Chapter 5, and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, to promulgate rules and regulations necessary to ensure safe and healthy working conditions in underground coal mines in the Commonwealth. Such rules and regulations governing underground coal mines shall relate to:

1. The maintenance, operation, storage, and transportation of any mechanical or electrical equipment, device, or machinery used for any purpose in the underground mining of coal;

2. Safety and health standards for the protection of the life, health, and property of, and the prevention of injuries to, persons involved in or likely to be affected by any underground coal mining operations. Such standards shall include but not be limited to the control of dust concentration levels; the use of respiratory equipment and ventilating systems; the development and maintenance of roof control systems; the handling of combustible materials and rock dusting; the installation, maintenance, and use of electrical devices, equipment, cables, and wires; fire protection, including equipment, emergency evacuation plans, emergency shelters, and communication facilities; the use and storage of explosives; and the establishment and maintenance of barriers in underground coal mines around gas and oil wells. The Chief is authorized to promulgate regulations setting forth...
specific occupations and conditions for which a miner will be prohibited from working alone underground; and

3. The storage or disposal of any matter or materials (i) extracted or disturbed as the result of an underground coal mining operation or operations or (ii) used in the mining operation or for the refinement or preparation of the materials extracted from the coal mining operation, so that such matter or material does not threaten the health or safety of the miners or the general public.

B. The Chief shall not promulgate any regulation establishing requirements for the operation of, or conditions at, an underground coal mine which are inconsistent with requirements established by the Act.

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, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. A cross-reference to the creation of the Virginia Coal Mine Safety Board is added. In subdivision A 2, "but not be limited to" is removed following the term "include" on the basis of § 1-218, which states that throughout the Code "Includes' means includes, but not limited to."

§ 45.1-161.107 45.2-xxx. Standards for regulations.

In promulgating rules and adopting regulations pursuant to § 45.1-161.106 45.2-xxx, the Chief shall consider:

1. Standards utilized and generally recognized by the coal mining industry;

2. Standards established by recognized professional coal mining organizations and groups;

3. The federal mine safety law;

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 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 endangered by underground coal mines or related operations.

Drafting note: The term "promulgating regulations" is changed to "adopting regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage and clarity.

Article 16.2.

Additional Duties of Certified Persons and Other Miners.

Drafting note: Existing Article 16 of Chapter 14.3, concerning additional duties of certified persons and other miners, is retained as proposed Article 2.

§ 45.1-161.249 45.2-xxx. Duties of mine foreman.

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

B. The mine foreman shall see that every miner employed to work in such mine, before beginning work therein, is aware of all hazardous conditions incident to his work in such mine. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

Drafting note: Technical changes.

§ 45.1-161.250 45.2-xxx. Employment and duties of top persons; plan for excavation of shaft or slope.

A. During the construction or modification of any shaft or slope mine, the person engaged in the actual construction or modification of such mine shall employ one or more certified top persons certified pursuant to § 45.2-xxx [§ 45.1-161.41]. It shall be the duty of such top person to examine for proper and safe practices and materials used during the
construction or modification of a shaft or slope mine. Such duties shall at all times be
performed in the immediate vicinity of the shaft or slope under construction.

B. Prior to commencing the excavation of any shaft or slope, the operator shall submit
to the Department a copy of the plan that includes the following: (i) the name and location of
the mine and slope or shaft or slope; (ii) a description of the work and methods to be used in
the construction of the slope or shaft or slope; (iii) a description of the methods to be used to
ensure wall and roof stability; (iv) a description of the system of ventilation to be used,
including procedures for evacuation of the slope or shaft or slope should a fan stoppage occur;
(v) details of hoisting equipment to be used; and (vi) such other information as may be
required by the Chief requires. The excavation of a such shaft or slope shall not begin until
the plan is approved by the Chief.

Drafting note: Technical changes are made and language is updated for modern
usage and clarity. A cross-reference regarding the certification of top persons is added
in subsection A.

§ 45.1-161.251 45.2-xxx. Employment of inexperienced underground miners.

A. Inexperienced An inexperienced underground miner shall be required to
work with an experienced underground miner for a total of at least six months following the start of underground employment. However, an experienced surface miner shall only
be required to work with an experienced underground miner for a total of at least sixty 60
days following the start of underground employment.

B. No inexperienced underground miner shall be assigned, or allowed, or be required
to perform work alone in any area where there is the potential to endanger his safety unless he can communicate with others, can or be heard, or can be seen.

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.

§ 45.1-161.252 45.2-xxx. Employment of authorized persons.
No miner shall be placed in charge of a cutting, loading, drilling, continuous miner, or timbering machine in any mine who is not an authorized person capable of determining the safety of the roof and ribs of the working place. Such miner shall also be capable of detecting the presence of explosive gas and shall be compelled to undergo examination by a mine inspector or other instructors certified by the Board of Coal Mining Examiners and authorized by the Chief to determine his fitness to detect explosive gas before being permitted to have charge of machines in such mines.

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.

Article 3.

Proximity of Mining to Gas and Oil Wells, and Abandoned Areas.

Drafting note: Existing Article 3, concerning proximity of mining to gas or oil wells or abandoned areas, is retained as proposed Article 3. Technical changes are made to the name.

§ 45.1-161.121 45.2-xxx. Mining in proximity to gas and oil wells.

A. Except as provided in subsection D, an operator who plans to remove coal, drive any passage or entry, or extend any workings in any mine, within 500 feet of any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings shall file with the Chief a notice that mining is taking place or will take place. The notice shall include a copy of parts of the maps and plans required under § 45.1-161.64 which show the mine workings and projected mine workings which are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to § 45.2-xxx [§ 45.1-361.4]. Each notice shall contain a certification made by the operator that he has complied with the provisions of this subsection.
B. Subsequent to the filing of the notice required by subsection A, the operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Chief, he shall not remove any coal, drive any entry, or extend any workings in any mine closer than within 200 feet to of any gas or oil well already drilled or in the process of being drilled into the projected mine workings or in the process of being drilled into the projected mine workings.

C. The Chief shall promulgate regulations which prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities within 200 feet of a gas or oil well or a vertical ventilation hole drilled or in the process of being drilled into the projected mine workings. Each operator who files such a petition 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 Gas and Oil Inspector and the operator of the gas or oil well or vertical ventilation hole shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

D. Procedures for safely mining in proximity to or through a coalbed methane wells or a vertical ventilation holes developed for methane drainage in a mine shall be addressed in the bleeder system plan for that mine required by § 45.2-xxx.

Drafting note: The term "promulgate regulations" is changed in subsection C to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A cross-reference to the section addressing the appointment of the Gas and Oil Inspector is added in subsection A, and technical changes are made.

§ 45.2-xxx. Mining in proximity to abandoned areas.

A. The mine foreman shall ensure that boreholes are drilled in each advancing working place that is (i) within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, (ii) within 200 feet of an abandoned areas in the mine which has not been certified as surveyed, or,
(iii) within 200 feet of any mine workings of an adjacent mine located in the same coal bed unless the adjacent area of the mine has been pre-shift examined pursuant to § 45.1-161.208. The boreholes Each borehole shall be at least 20 feet in depth and shall always be maintained not less than 10 feet in advance of the face, and shall be not more than eight feet apart from an adjacent borehole unless approved by the Chief. One borehole shall also be drilled for each cut on any side of the active workings that are being driven toward, and in proximity to, an abandoned mine or part of a mine which may contain flammable explosive or hazardous gas or which is filled with water.

B. Sufficient holes shall be drilled through to accurately determine whether hazardous quantities of methane, carbon dioxide and other gases or water are present in the abandoned area. Materials shall be available to plug such holes to prevent an inundation of hazardous quantities of gases or water if detected.

C. Mining shall not advance into any abandoned area penetrated by a borehole drilled in accordance with subsection A until a plan has been submitted and approved by the Chief. The plan will include at a minimum: (i) procedures for testing the atmosphere at the back of any borehole drilled into the abandoned area; (ii) the method of ventilation, the ventilation controls, and the air quantities and velocities in the affected working section and working place; (iii) procedures for mining through an abandoned area when hazardous quantities of methane, carbon dioxide, or other hazardous gases cannot be removed; (iv) dewatering procedures to be used if a penetrated area contains hazardous water accumulation; and (v) the procedures and precautions to be followed during mining through a penetration operation. A copy of the plan shall be made available near the site of the penetration operation and the operator shall review the plan with all miners involved in the operation. Failure to comply with the approved plan shall constitute a violation of this section.

D. Any operator, his agent, mine foreman, or miner engaged in drilling or mining into an inaccessible abandoned area shall have upon his person a self-contained self-rescuer.
E. Whenever a mine or section of a mine advances under any body of water that is sufficiently large or in close proximity as to constitute a hazard to miners, the operator shall submit to the Chief a plan meeting the requirements of 30 C.F.R. § 75.1716. The operator shall obtain approval for the submitted plan from the Chief prior to advancing the mine or any section of the mine under the body of water.

F. Prior to penetrating any portion of an active mine with a borehole, ventilation hole, or other hole drilled from the surface or from an overlying or underlying mine, or prior to drilling from into any portion of the same active mine, the operator shall submit a plan to the Chief addressing: (i) the purpose of the hole, (ii) information about any abandoned mine that the hole may penetrate, (iii) procedures for withdrawing or limiting the number of miners from the mine or affected area during penetration, (iv) casing details and procedures to prevent water inflow and air transfer from the hole into the active mine, (v) procedures for grouting or sealing the hole when it is no longer used, and (vi) such other information as the Chief may require. The drilling of such hole shall not begin until the plan is approved by the Chief. The provisions of this section shall not apply to a gas well, coalbed methane well, or vertical ventilation holes.

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. The phrase "flammable gas" in subsection A is replaced with "explosive or hazardous gas" for consistency with the reference in subsection B to "hazardous quantities of" certain gases.
A. All underground active workings and travel ways shall be secured and controlled to protect miners from falls of roof, face, or ribs. Loose roof and any loose or overhanging ribs and faces of face shall be taken down or supported.

B. The mining method of mining followed that the mine operator follows shall not expose miners to a hazardous condition caused by the excessive width of rooms and entries, a room or entry, faulty pillar-recovery method, or any other hazardous mining method or working condition.

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. Language is updated for modern usage and clarity.

§ 45.1-161.109. Roof control plans.

A. Each underground coal mine shall have a roof control plan approved by the Chief. Each plan shall include (i) a minimum standard for adequately controlling the roof, face, and ribs; (ii) a description of mining methods used; (iii) a listing and specification of roof and rib support materials; (iv) instructions for the installation of temporary and permanent roof supports; (v) a description of any pillar recovery methods; (vi) applicable drawings that demonstrate the width of openings, each opening, each roof support installation sequence, and each pillar recovery sequence; and (vii) any additional requirements deemed necessary by the Chief. The initial submission of any roof control plan shall include maps of mine projections, overlying and underlying mine workings, coal contours, and surface contours. If changes are to be made in the mining system that necessitate any change in the roof control plan, the plan shall be revised and approved by the Chief prior to implementing the new mining system.

B. The Chief shall, where he deems necessary, prescribe adequate minimum standards for systematic support of mine roof, suitable to the roof conditions and mining system of each mine. Such standards shall be incorporated into an approved roof control plan for the mine.

This section shall not apply to any roof control system installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face, and ribs.
C. Failure to comply with the approved roof control plan for the mine shall constitute a violation of this section.

D. The approved roof control plan shall be posted conspicuously at the mine and a copy shall be available at each working section of the mine.

E. The minimum standards and plan shall provide for temporary support at all active workings, without regard to natural condition.

F. If the minimum standards do not afford adequate protection, such additional supports as shall be necessary shall be installed as necessary. Such additional supports shall be described in the plan.

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.

§ 45.1-161.110 45.2-xxx. Instruction of miners.

The operator, or his agent, shall instruct all miners in the removal and installation of temporary and permanent roof supports as may be required by the roof control plan.

Drafting note: Technical changes.

§ 45.1-161.111 45.2-xxx. Copies of plan.

The operator, or his agent, shall, upon request, furnish a copy of the roof control plan to any miner engaged in removing or installing a temporary or permanent roof support.

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 reworded for clarity.

§ 45.1-161.112. Repealed.


§ 45.1-161.114 45.2-xxx. Automated temporary roof support systems.

The Chief shall adopt regulations requiring automated temporary roof support systems for the installation of roof bolts.
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.

§ 45.1-161.115 45.2-xxx. Supplies of materials for supports.

A. The operator, or his agent, shall provide at or near the each working place an ample supply of suitable materials of proper size with which to secure all roofs, the roof, ribs face, and faces ribs of such working place in a safe manner. Suitable supply materials shall be provided for variations in seam height. If the operator, or his agent, fails to provide such suitable materials, the mine foreman shall cause the all miners to withdraw from the mine, or the portion thereof affected, until such material materials or supplies are received.

B. Safety posts, jacks, or temporary crossbars shall be set close to the face before other operations are begun and as needed thereafter, if miners go any miner goes in by the last permanent roof support.

C. Unless an automated temporary roof support system is used, safety posts or jacks shall be used to protect the miners when during removal of roof material is being taken down, installation of crossbars are being installed, drilling of roof bolt holes are being drilled, installation of roof bolts are being installed, or when performance of any other work is being performed that would reasonably require roof support to protect the miners involved.

D. The operator, or his agent, shall make immediately available for emergency use at each mine site at least two lifting devices with a combined total of at least 80 tons lifting capacity. Each individual lifting device shall have 20 tons or greater lifting capacity.

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 clarity and terms are reordered for consistency.

§ 45.1-161.116 45.2-xxx. Examination and testing of roof, face, and ribs.

A. The operator, or his agent, shall instruct all miners, every miner on how to make visual examinations visually examine and conduct sound and vibration testing of roof, face, and ribs.
B. Miners Any miner exposed to danger from falls of roof, face, and ribs shall visually examine and, if conditions permit, test the roof, face, and ribs by sounding the roof before starting work or before starting a machine and as frequently needed thereafter as may be necessary to ensure safety. If hazardous conditions are found, miners discovering them shall either correct the conditions immediately by taking down the loose material, by installing proper timbering, or installing proper roof support before work is continued or any other work is done, or shall cause all miners to vacate the place.

C. At least once each shift, or more often if necessary, the mine foreman or other certified person shall examine and test the roof, face, and ribs of each active working section where coal is being produced while one or more miners are working therein. Any place in which a hazardous condition is found by the mine foreman shall be made safe in his presence or under his direction, or all miners shall be withdrawn from such place. Such hazardous conditions and corrective actions taken shall be recorded in the on-shift record book 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.

Language is updated for modern usage and clarity.

§ 45.1-161.117 Mapping of roof falls. Any unplanned roof falls that are required to be reported in accordance with § 45.1-161.78 shall be marked on a map maintained at the mine to indicate the specific location of the fall.

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.

§ 45.1-161.118 Unsafe conditions. A. No person shall work or travel under unsupported roof except to install temporary supports in accordance with the approved roof control plan. Any area inby the breaker line where second mining has been or is being conducted shall be considered unsupported.
B. If roof, face, or rib conditions are found to be unsafe, no person shall start any other work in the area where such conditions exist until the conditions have been corrected by taking down loose material or securely supporting the roof, face, or ribs pursuant to subsection B of § 45.2-xxx [45.1-161.116].

C. A bar of proper length shall be used to pull down any loose material discovered.

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. Language is updated for clarity and a cross-reference is added.

§ 45.1-161.119 45.2-xxx. Removal of supports.
A. No person shall deliberately remove any support in an active area unless equivalent protection is provided.
B. Any person who accidentally knocks out or dislodges a support shall promptly replace the support.

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.

§ 45.1-161.120. Repealed.

Article 5.
Explosives and Blasting.
Drafting note: Existing Article 5, concerning explosives and blasting, is retained as proposed Article 5.

§ 45.1-161.126 45.2-xxx. Surface storage of explosives and detonators.
A. Separate Two or more surface magazines shall be provided for the storage of explosives and the separate storage of detonators.
B. Surface magazines Every surface magazine for storing and distributing explosives in amounts exceeding 150 pounds shall be:
1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistant material. The roofs of magazines so a magazine
that is located in such a way as to make it impossible to fire bullets a bullet directly through the roof from the ground need not be bulletproof, but where bullet-resistant. Where it is possible to fire bullets a bullet directly through them, roofs a roof from the ground, such roof shall be made bullet-resistant by material construction, or by the use of a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods another method:

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

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

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

5. Provided with properly screened ventilators;

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

7. Kept locked securely when unattended; and

8. Electrically bonded and grounded if constructed of metal.

C. Surface magazines A surface magazine for storing detonators need not be bulletproof bullet-resistant, but they it shall conform to comply with the other provisions of subsection B regarding the storage of explosives.

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

E. Magazines No magazine shall be located less than 300 feet from any mine opening. However, in the event that if a magazine cannot be practicably located at such a distance, it may be located less than 300 feet from any mine opening, if it is sufficiently barricaded and approved by the Chief. Unless approved by the Chief, no magazine shall be located closer to an occupied building, public roads, or passenger railways than allowed 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 magazine shall be limited to approximately a 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 substantially fastened hardwood partition at least four inches thick or the equivalent barrier.

G. The area surrounding a magazine for not less than 25 feet in all directions 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 explosives magazine is illuminated electrically, each lamp shall be vapor-proof and installed and wired so as to present minimum fire and contact hazards.

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

J. Smoking or carrying smokers' articles or open flames 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 with "bullet-
resistant" three times in recognition that bullet-resistant is the correct descriptive term.

Proposed subsection J is added to provide applicable law and make provisions in this section parallel to proposed § 45.2-xxx [§ 45.1-161.284] in Chapter 9 [existing Chapter 14.4].

§ 45.1-161.127 45.2-xxx. Underground transportation of explosives and detonators.

A. Explosives Any explosives or detonators carried anywhere underground by any person miner shall be in individual containers. Such containers shall be constructed substantially of nonconductive material, maintained in good condition, and kept closed.

B. Explosives Any explosives or detonators transported underground in a car that is moved by means of a locomotive or rope, or in a shuttle car, shall be in a substantially covered car or in a special substantially covered container used specifically for transporting explosives or detonators or explosives, and only under the following conditions:

1. The bodies and covers of each such car and container shall be constructed or lined with nonconductive material;

2. If explosives and detonators are hauled in the same explosive special explosives car or in the same special container, they shall be separated by at least a four-inch substantially fastened hardwood partition at least four inches thick or the equivalent barrier;

3. Explosives No explosives, detonators, or other blasting devices shall not be transported on the same trip with miners;

4. When If explosives or detonators are transported in a special explosives car or containers in a container in a car, they shall be hauled in special trips specifically for this purpose and not connected to any other trip; however, this provision shall not prohibit the use of such additional cars as needed to lower a rope trip, or to haul supplies, including timbers. Materials No materials so transported shall not project above the top of the car. In no case shall flammable materials such as oil or grease be hauled on the same trip with explosives; and

5. Explosives No explosives or detonators shall not be hauled into or out of a mine within five minutes preceding or following a mantrip or any other trip. If traveling
against the air current, the man-trip shall precede the explosives trip; if traveling with
the air current, the man-trip shall follow the explosives trip.

C. In a low coal seam where it is impractical to comply with the provisions of
subsection B, explosives may be transported in the original and unopened case, or in suitable
individual containers, to the underground distribution magazine.

D. Explosives and detonators shall be transported underground by belt only under the
following conditions:

1. They shall be transported in the original and unopened case, in a special
closed-case constructed of nonconductive material, or in a suitable individual container;

2. Clearance requirements shall be the same as those for transporting miners on belts;

3. Suitable loading and unloading stations with stop controls shall be provided; and

4. Stop controls shall be provided at loading and unloading points, and an authorized person shall supervise the loading and unloading of explosives and detonators.

E. Neither explosives nor detonators shall be transported on a flight or shaking conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, or drill trucks, or on any self-propelled mobile equipment; however, this provision shall not prohibit the transportation of explosives or detonators in special closed containers in a shuttle cars or in equipment designed especially to transport such explosives or detonators.

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. Subdivisions D 3 and 4 are reorganized to group provisions relating to loading and unloading stations together.
magazines magazine shall be located at least twenty-five 25 feet from roadways and any
roadway or power wires, wire and in a reasonably dry, well rock-dusted location protected
from falls of roof. In a pitching beds bed, where it is not possible to comply with the location
requirement, such boxes box shall be placed in niches a niche cut into the solid coal or rock.

B. When If explosives or and detonators are both stored in the section, they shall be
kept in separate boxes or magazines not less than twelve 12 feet apart if feasible; if kept in the
same box or magazine, they shall be separated by at least a four-inch substantially fastened
hardwood partition at least four inches thick or the equivalent. Not more than a forty-eight-
hour 48-hour supply of explosives or detonators shall be stored underground in such boxes
box or magazines magazine.

C. Explosives If explosives and detonators, are kept near the face for the use of
workmen, they shall be kept in separate individual closed containers, in niches in the rib ribs,
ot less than twelve 12 feet apart, and at least fifty 50 feet from the working place and out of
the line of blast. Such containers Each such container shall be constructed of substantial
material and maintained electrically nonconductive. Where it is physically impracticable to
comply with such distance requirements, the explosives and detonator containers shall be
stored in the safest available place places not less than fifteen 15 feet from any pipe, rail,
conveyor, haulage road, or power line, not less than twelve 12 feet apart, and at least fifty 50
feet from the working face and out of the line of blast.

D. Explosives and detonators shall be kept in their containers pursuant to subsection C
until immediately before use at the working faces.

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.

§45.1-161.129 45.2-xxx. Blasting practices; penalty.
A. All explosives shall be of the permissible type except where addressed in the plan
for shaft and slope development required by subsection B of §45.1-161.250 B 45.2-xxx.
B. All explosives shall be used as follows:
1. Explosives shall be fired only with electric detonators of proper strength;

2. Explosives shall be fired with permissible shot-firing units, unless firing is done from the surface when all persons are out of the mine, or in accordance with a plan approved by the Chief;

3. Boreholes Where the coal is cut, no borehole in coal shall be drilled beyond the limits of the cut, nor or into the roof or floor;

4. Boreholes Every borehole shall be cleaned, and shall be checked to ensure that they are placed properly and are of the correct depth in relation to the cut, before being charged;

5. All Every blasting charges in coal shall have a burden of at least eighteen inches in all directions if the height of the coal permits;

6. Boreholes Every borehole shall be stemmed with at least twenty-four inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Chief may approve the use of other stemming devices;

7. Examinations An examination for gas shall be made immediately before firing each shot or group of multiple shots, and after blasting is completed;

8. Shots No shot shall be fired in any place where a methane level of one percent or greater can be detected with a permissible methane detector as directed by the Chief;

9. Without approval, charges exceeding no charge of greater than one and one-half pounds, but not exceeding three pounds, shall be used only if: (i) boreholes are each six feet or more in depth; (ii) the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed; (iii) all cartridges are in contact with each other, with the end cartridges touching the back of the hole and the stemming, respectively; and (iv) permissible explosives pursuant to this article are used. No charge exceeding three pounds shall be used; however, the three-pound limit shall not apply to solid rock work;

10. Any solid shooting shall be done in compliance with conditions prescribed by the Chief;
11. **Shots** Any shot shall be fired by a certified underground shot firer;

12. **Boreholes** No borehole shall not be charged while any other work is being done at the face, and the any shot or shots shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the miners;

13. Only nonmetallic tamping bars, including a nonmetallic tamping bar with a nonsparking metallic scraper on one end, shall be used for charging and tamping boreholes;

14. The leg wires of every electric detonator shall be kept shunted until ready to connect to the firing cable;

15. The roof and faces of each working place shall be tested before and after firing each shot or group of multiple shots;

16. Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all miners are in the clear;

17. All miners Every miner shall be removed to a distance of at least 100 feet from the working place and the any immediately adjoining working places to a distance of at least 100 feet and shall be accounted for before shots are fired;

18. Mixed No mixed types or brands of explosives shall not be charged or fired in any borehole;

19. Adobe (mudcap) No adobe, mudcap, or other open, unconfined shots shall not be fired in any mine except those types a type approved by the federal Mine Safety and Health Administration and the Chief;

20. Power wires and cables Any power wire or cable that could contact blasting cables or leg wires wire shall be de-energized during charging and firing;

21. Firing shots a shot from a properly installed and protected blasting circuit may be permitted by the Chief;

22. No miner shall return, or shall be allowed to return, to the working place after the firing of any shot or shots until the smoke has reasonably cleared away;
23. Before returning any miner returns to work and beginning begins to load coal, slate, or refuse, a such miner shall make a careful examination of the condition of the roof and do what is necessary to make the working place safe; and

24. An examination for fire shall be made of the working area after any blasting.

C. It shall be unlawful for an operator, his agent, or a mine foreman to cause or permit any solid shooting to be done without first having obtained obtaining a written permit from the Chief. It shall be unlawful for any miner to shoot coal from the solid without first obtaining permission to do so from the operator, his agent, or a mine foreman. A violation of this subsection is a Class 1 misdemeanor.

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.

§ 45.1-161.130 45.2-xxx. Blasting cables. Each blasting cable shall be:

1. Well insulated and as long as may be necessary to permit allow the shot firer to get in move to a safe place around a corner;
2. Short-circuited at the battery end until it is ready to attach to the blasting unit;
3. Staggered as to length, or the have its ends kept well separated when attached to the detonator leg wires; and
4. Kept clear of power wires and all other possible sources of active or stray electric currents.

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 clarity.

§ 45.1-161.131 45.2-xxx. Misfires. A. Where misfires occur a misfire occurs with an electric–detonators detonator, a waiting period of at least fifteen 15 minutes shall be is required before a any miner shall be is allowed to return to the shot area. After such failure, the blasting cable shall be
disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

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

C. A very careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be conducted after the coal reaches the tipple made after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall be directly supervised by occur under the direct supervision of the mine foreman or a certified person designated by him.

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. Language is updated for modern usage and clarity. Changes are made to conform the section to existing § 45.1-161.285.

§ 45.1-161.132 45.2-xxx. Explosives and blasting practices in shaft and slope operations.

A. Blasting areas Every blasting area in a shaft or slope operations operation shall be covered with mats or materials when the excavations are too shallow to retain the blasted material.

B. If explosives are in the shaft or slope when an electrical storm approaches, all miners every miner shall be removed from such the working places place until the storm has passed.

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.
Drafting note: Existing Article 8, concerning mine openings and escapeways, is retained as proposed Article 6.

§ 45.1-161.162 45.2-xxx. Mine openings.

A. Except as provided in § 45.1-161.164 45.2-xxx, there shall be at least two travel ways, entries, or openings to the surface from each section of a mine worked. Each longwall panel shall be developed with at least three entries; however, if new technology becomes available pursuant to which two-entry systems may be safely developed, such technology may be used, with the approval of the Chief.

B. One of the required travel ways may be the haulage road.

C. The first opening shall not be made through an adjoining mine. The second opening may be made through an adjoining mine.

D. One of the required travel ways shall be designated as the primary escapeway and shall be in an intake airway.

E. After July 1, 1999, new any surface structures where miners congregate or where the mine map or other official records are kept at the mine shall be offset not less than fifteen feet from the nearest side of any mine opening, or otherwise located to be out of the direct line of possible forces coming out of the mine should danger if an explosion occur, unless otherwise approved by the Chief.

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 obsolete provisions are removed.

§ 45.1-161.163 45.2-xxx. Separation of openings.

A. In a drift or slope mine, openings shall be separated by not less than at least 50 feet of natural strata, unless specifically approved in the roof control plan. All connections between openings not used for the coursing of air, travel, or haulage shall be closed with stoppings of fireproof material.

B. In a shaft mine, openings shall be separated by not less than at least 200 feet of natural strata.
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.

§ 45.1-161.164 45.2-xxx. Number of miners in openings.

Until the two travel ways are made as required by § 45.1-161.162 45.2-xxx, not no more than twenty 20 miners shall work underground in the mine at one time. No additional development shall be permitted until the connection is made to the second opening. In mines where a mine in which final pillar removal operations necessitate closing the second opening, not no more than twenty 20 miners shall be permitted to work in 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. Other technical changes are made and language is updated for modern usage.

§ 45.1-161.165 45.2-xxx. Maintenance of mine openings.

Mine openings Every mine opening that are is used for entering and leaving the mine and every other required travelways travel way shall be kept in good condition and shall at all times 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. Other technical changes are made.

§ 45.1-161.166 45.2-xxx. Signs, life lines, and equipment.

A. Direction signs shall be posted conspicuously at all points where the a travel way to the mine opening, escapeway, or escapement shaft is intercepted by other another travel ways way. The signs shall indicate the direction of the place of exit manways, and escapeways any manway or escapeway.

B. Continuous life lines shall be installed and maintained in accordance with the approved emergency response plan pursuant to subsection A of § 45.1-161.202 45.2-xxx.

C. Escapeways Every escapeway shall be equipped with all necessary stairways, ladders, cleated walkways, or other equipment approved by the Chief. All equipment shall be
installed in such a manner that persons using it in emergencies may do so quickly and without undue hazard.

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.

§ 45.1-161.167 45.2-xxx. Examination of escapeways.
The mine foreman shall examine all escapeways for hazardous conditions at least once per week. The mine foreman shall mark his initials and the date at each examined, and if hazardous conditions are found they shall be reported promptly. A record of these examinations and tests shall be kept 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.

§ 45.1-161.168 45.2-xxx. Longwall escape routes and plan.
A. The operator of any mine which uses longwalls as a method of mining shall maintain an accessible travel route off the tailgate end of the longwall working face. He shall familiarize all miners working on the longwall section with the procedures to follow for escape from the section, and inform these miners at any time during which the travel route is impassable of that fact.
B. The operator shall develop a plan for use if the travel route becomes impassable. The plan shall address (i) the notification of to miners of the fact that the travel way is blocked and of the method and timetable for reestablishment of the travel way, (ii) the re-instruction of miners regarding escapeways and escape procedures in the event of an emergency, (iii) the re-instruction of miners on the availability and use of self-contained self-rescue devices, (iv) the monitoring and evaluation of the air entering the longwall section, (v) the location and effectiveness of the two-way communication systems, and (vi) a means of transportation from the longwall section to the main line. The plan
provisions shall remain in effect until a travel way is reestablished on the tailgate side of a longwall section. Such an operation shall include provisions for such protective devices as fire extinguishers and respirators for miners working on the longwall section.

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

§ 45.1-161.169 45.2-xxx. Fire protection.
A. Shafts. Every shaft, and partitions every partition therein, shall be as nearly fireproof as is practicable.
B. Where there is danger of fire entering the mine, openings every opening shall have adequate protection against a surface fires fire or a hazardous volumes volume of smoke entering 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. Language is updated for modern usage.

§ 45.1-161.170 45.2-xxx. Unused openings.
All Every unused and or abandoned surface openings opening shall be effectively closed or fenced against unauthorized entrance.

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 7.

Hoisting.

Drafting note: Existing Article 7, concerning hoisting, is retained as proposed Article 7.

§ 45.1-161.153 45.2-xxx. Hoisting equipment.
A. All hoists Every hoist used for handling men miners shall be equipped with overspeed, overwind, and automatic stop controls.
B. All Every suspended work decks and platforms deck or platform shall (i) shall operate automatically, (ii) shall be equipped with guardrails capable of protecting men miners
and materials from accidental overturning, and (iii) shall be equipped with safety belts and such other protective devices as the Chief shall require by regulation.

C. Any platform or work deck used for transporting miners or materials shall be equipped with leveling indicators, and such conveyance shall be maintained and operated in a reasonably level position at all times.

D. Every shaft, slope, or surface incline hoist shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft or slope or on the surface incline.

E. An accurate and reliable indicator showing the position of the cage or trip shall be placed so as to be in clear view of the hoisting engineer, unless the position of the cage or trip is clearly visible at all times to the hoisting engineer or other person operating the equipment at all times.

F. Any conveyance used to haul miners or materials within a shaft or slope shall be designed to prevent materials from falling back into the shaft or slope and shall be equipped with a retaining edge of not less than six inches to prevent objects from falling into the shaft or slope.

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, including the use of "miners" instead of "men" consistently throughout the section. The word "car" in subsection E, apparently an error, is corrected to "cage."

§ 45.1-161.154 45.2-xxx. Hoisting ropes.

A. The hoisting rope on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety as described in clauses (i) and (ii). A rope that is used to hoist or lower coal and other materials shall have a factor of safety of not less than five to one; ropes used to hoist or lower miners shall have a factor of safety of not less than 10 to one.
B. **The Each** hoisting rope shall have at least three full turns remaining on the drum when extended to its maximum working length. The rope shall make at least one full turn on the drum shaft, or around the spoke of the drum, in the case of a free drum, and be fastened securely by means of clamps.

C. **The Each** hoisting rope shall be fastened to its load by (i) a spelter-filled socket or by (ii) a thimble and an adequate number of clamps that are properly spaced and installed.

D. Any cage, man-car mancar, or trip used for hoisting or lowering men miners with a single rope shall be provided with two bridle chains or wire ropes connected securely to the rope at least three feet above the socket or thimble and clamps and to the crosspiece of the cage or to the man-car mancar or trip. Multiple hoisting ropes installed pursuant to subsection C may be used in lieu of two bridle chains.

E. When equipment or supplies are being hoisted or lowered in the slope, safety chains or wire ropes shall be provided and connected securely to the hoist rope. In addition, visible or audible warning devices shall be installed in the slope where they may be seen or heard by persons any miner approaching the slope track entry from any access.

**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.

§ 45.1-161.155 45.2-xxx. Hoisting cages.

A. **Cages** Any cage used for hoisting miners shall be of substantial construction and shall have (i) adequate steel bonnets, with enclosed sides; (ii) gates, safety chains, or bars across the ends of the cage when miners are being hoisted or lowered; and (iii) sufficient handholds or chains for all miners on the cage to maintain their balance. A locking device to prevent tilting of the cage shall be used on all self-dumping cages when transporting miners are transported thereon.

B. **The each** cage floor of the each cage shall be constructed so that it will be (i) adequate to carry the load and so that it will be (ii) impossible for a miner's foot or body to enter any opening in the bottom of the cage.
C. Cages Each cage used for hoisting miners shall be equipped with safety catches that act quickly and effectively in case of an emergency. The provisions of this subsection shall not apply to capsules a capsule or buckets bucket that is used for emergency escape or used during shaft or slope or shaft sinking.

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.

§ 45.1-161.156 45.2-xxx. Slope and shaft Shaft and slope conditions.

A. All shafts Every shaft shall be equipped with safety gates at the top and at each landing. Safety gates shall be kept closed except when the cage is being loaded or unloaded.

D. At the bottom of each hoisting shaft and at each intermediate landings landing, a runaround shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than at least five feet in height and three feet in width.

E. Ice shall not be permitted to accumulate excessively in any shaft where miners are hoisted or lowered.

B. Positive-acting stopblocks or derails shall be installed near the top and at intermediate landings of slopes and surface inclines and at the approaches to all shaft landings.

C. Positive-acting stopblocks or derails shall be installed on the haulage track in the slope near the top of the slope. The stopblocks or derails shall be in a position to hold or stop any load, including heavy mining equipment, to be lowered into the mine, including heavy mining equipment, until such time as the equipment is to be lowered into the mine by the hoist.

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. The section is reorganized by moving existing subsections B and C, which deal with slopes or surface inclines, to the end of the section, after shafts.
§ 45.1-161.157 45.2-xxx. Signaling; signal code.

A. Two independent means of signaling shall be provided between the top, bottom, and all every intermediate landings of shafts, slopes, and each shaft, slope, or surface incline and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer or other person operating the equipment. Bell cords shall be installed in each shaft in such a manner as to prevent unnecessary movement of such cords within the shaft.

B. A uniform signal code approved by the Chief shall be in use at each mine and shall be at the cage station designated by the mine foreman.

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.

§ 45.1-161.158 45.2-xxx. Inspections of hoisting equipment.

A. Before hoisting or lowering miners in a shaft, the hoisting engineer shall operate an empty cages cage up and down each shaft for at least one round trip, both at the beginning of each shift and after the hoist has been idle for one hour or more.

B. Before hoisting or lowering miners in any miner by slope and surface incline hoisting, the hoisting engineer shall operate an empty cages cage for at least one round trip, both at the beginning of each shift and after the hoist has been idle for one hour or more.

C. The hoisting engineer, at the time the inspections required by subsections A and or B are performed, shall (i) inspect all cable or rope fastenings at all cages, buckets on every cage, bucket, or slope cars car; (ii) inspect hammer locks and pins, thimbles, and clamps; (iii) inspect safety chains on buckets, every cage, bucket, or slope cars car; (iv) inspect the each braking system for malfunctions; (v) clean all excess oil and extraneous materials from the hoist housing construction; (vi) inspect the overwind, overtravel, and lilly switch or control from stopping at the collar and within 100 feet of the work deck; and (vii) check communications between the top house, work deck, and work deck tugger house.
D. Hoisting. The hoisting engineer shall inspect the hoisting rope on all cages every cage or trips shall be inspected trip at the beginning of each shift by the hoisting engineer.

E. A test of safety catches on cages every cage shall be made by an authorized person designated by the operator at least once each month. A written record shall be kept of such tests, and such record shall be available for inspection by interested persons.

F. Hoisting. An authorized person designated by the operator shall inspect daily the hoisting equipment, including the headgear, cages, ropes, connections, links and chains, shaft guides, shaft walls, and other facilities shall be inspected daily by an authorized person designated by the operator. Such person shall also inspect all every bull-wheel wheel and lighting systems system on the head frame. Such person shall report immediately to the operator, or his agent, any defects found, and any such defect shall be corrected promptly. The person making such examination shall make a daily permanent record of such inspection, which shall be available for inspection by interested persons. If a hoist is used only during a weekly examination of an escapeway, then the inspection required by this subsection shall only be required to be completed weekly before the examination occurs.

G. Subsections A, B, C, and D shall not apply to automatically operated elevators.

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.

§ 45.1-161.159 45.2-xxx. Hoisting engineers.

A. If miners are transported into or out of an underground area of a mine by a hoist or on a surface incline, a certified hoisting engineer shall be either on duty continuously or available within a reasonable time as determined by the Chief, to provide immediate transportation while any person is underground where miners are transported into or out of underground areas of a mine by hoists or on surface inclines.

B. When any miner is being hoisted or lowered in shafts, slopes, a shaft or on a slope or surface inclines incline, the loading and unloading of miners any miner and the movement of the cage, car, or trip shall be under the direction of an authorized person.
C. Subsections A and B shall not apply to automatically operated elevators that can be safely operated by any miner; however, a person qualified as an automatic elevator operator shall be available at any such elevators within a reasonable time, as determined by the Chief.

D. No operator, or his agent, of such operator of any mine worked by shaft, slope, or surface incline shall place a competent and sober hoisting engineer in charge of any engine or drum used for lowering or hoisting miners. No hoisting engineer in charge of such machinery shall allow any person, except those who are designated for such purpose by the operator, or his agent, to interfere with any part of the machinery. No person shall interfere with or intimidate the hoisting engineer or automatic elevator operator who is engaged in the discharge of his duties.

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. Subsections A and D are reorganized for clarity.

§ 45.1-161.160 45.2-xxx. Operations of hoisting equipment.

A. The speed of the cage, car, or trip in shafts, slopes, a shaft or slope or on a surface incline shall not exceed 1,000 feet per minute when miners are being hoisted or lowered.

B. When moving the platform or work deck, all miners traveling thereon shall have a safety belt secured.

C. No person shall ride on a loaded cage.

D. The number of persons riding in any cage or car at one time shall not exceed the maximum prescribed by the manufacturer. The Chief may prescribe a lesser number when necessary to ensure the safety of miners being transported.

E. Any conveyance being lowered into a shaft in which miners are working shall be stopped at least twenty feet above the area where such miners are working.
F. Whenever miners are working at the bottom of a shaft, there shall be an adjustable ladder or chain ladder attached to the work deck to provide an additional means of escape. Such ladder shall be at least twenty feet in length.

G. All chokers and slings used to transport materials within a shaft or slope shall meet specifications established by the United States of America American National Standards Institute.

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. The name "United States of America Standards Institute" is changed to "American National Standards Institute" to reflect the 1969 name change.

§ 45.1-161 45.2-xxx. Maintenance of hoisting equipment.

Hoists, ropes, cages, Every hoist, rope, cage, and other component of any piece of hoisting equipment shall be maintained in a safe operating condition, as directed by the Chief.

Hoisting ropes shall be replaced as soon as there is evidence of possible failure.

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. A reference to the authority of the Chief to determine safe operating conditions is added.

Article 8.

Transportation.

Drafting note: Existing Article 6, concerning transportation, is retained as proposed Article 8.

§ 45.1-161.133 45.2-xxx. Haulage roads.

A. The roadbed, rails, joints, switches, frogs, and other elements of the track of each haulage road shall be constructed, installed, and maintained in a manner that ensures the safe operation of the haulage road. In determining its safety,
consideration shall be given to the speed of equipment and the type of haulage operations conducted on the haulage roads.

B. Haulage tracks shall be kept free of accumulations of coal spillage and debris, and water shall not be allowed to accumulate over the top of the rail.

C. Off-track Every off-track haulage equipment operator shall observe any haulage roads for hazardous conditions during the course of travel and shall promptly correct or report to the mine foreman any hazardous condition observed.

D. Off-track Each off-track haulage roads shall be maintained reasonably free of bottom irregularities, excess spillage, debris, wet or muddy conditions that make controlling off-track haulage equipment difficult, and accumulations any accumulation of water over such areas an area of the haulage roads and in such depths that a depth as to allow water to enter any electrical panels and create a potentially hazardous condition.

E. Uninsulated No uninsulated trolley lines shall be used or installed in any underground coal mines without approval of the Chief.

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.

§ 45.1-161.134 45.2-xxx. Track switches and rails.

A. All Every track switches switch shall be provided with a properly installed throws, throw and properly installed latches, and bridle bars.

B. All Every track switches switch, other than those in rooms and a switch in a room or entry development, shall be equipped with properly installed guardrails.

C. All Every switch throws throw and stands stand shall be installed on the side of the track where clearance is provided.

D. Rails Every rail shall be secured at all joints by plates or welds.

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.
§ 45.1-161.135 45.2-xxx. Clearance on haulage roads.

A. Every track haulage road in entries, rooms, and crosscuts shall have a continuous clearance on one side of at least 24 inches two feet from the farthest projection of moving traffic. The clearance shall be kept free of any obstruction to a height permitted by the height of the coal seam. When it is not possible to maintain such clearance, signs indicating close clearance shall be posted inby and outby the affected area.

B. Every track haulage road in entries, rooms, and crosscuts shall have a continuous clearance, on the side opposite the clearance required by subsection A, of at least six inches from the farthest projection of moving traffic. When it is not possible to maintain such clearance, signs indicating close clearance shall be posted inby and outby the affected area.

C. Each track haulage road where trolley lines are used shall have the clearance required by subsection A on the side of the track opposite the trolley lines. This requirement shall not apply where the trolley lines are 6 1/2 feet or more above the rail.

D. The clearance space on each track haulage road shall be kept free of loose rock, loose coal, loose supplies, and other loose materials. If the clearance space exceeds 24 inches, not more than 24 inches two feet, at least two feet of the clearance space shall be required to be kept free of such materials.

E. All parallel tracks shall be installed so as to provide a clearance of at least 24 inches two feet between the outermost projections of passing traffic.

F. Ample clearance shall be provided (i) at each conveyor loading head, (ii) at each conveyor control panel, and (iii) along each conveyor line.

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

§ 45.1-161.136 45.2-xxx. Conveyor crossings.

Suitable facilities for crossing conveyors shall be provided where it is necessary for miners to cross such conveyor belt regularly.

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.

§ 45.1-161.137 45.2-xxx. Shelter holes.

A. Track Every haulage roads shall have shelter holes at intervals not to exceed the interval permitted by the roof control plan for crosscuts. Except at points where more than six feet of side clearance, measured from the rail, is maintained and at a room switches, a shelter holes shall be provided at each manually operated doors and at each switch throws.

B. Except for shelter holes at an underground slope landings where men miners pass and cars are handled, each shelter hole shall have (i) the depth of shelter holes shall not be less than at least five feet, (ii) the width of shelter holes shall not be greater than at most four feet, unless a room neck or crosscut width exceeding four feet is used as a shelter hole, and (iii) the height of shelter holes shall not be less than at least six feet or, if the height of the traveling space is less than six feet, as high as a height equivalent to that of the traveling space.

C. Shelter holes Every shelter hole at an underground slope landings where men miners pass and cars are handled shall be at least (i) ten feet in depth, (ii) four feet in width, and (iii) six feet in height.

D. Shelter holes Every shelter hole shall be kept free of refuse, loose roof, and other obstructions.

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.
Reference to the roof control plan is inserted to clarify the source of authority for the permitted crosscut interval and language is updated for modern usage and clarity, including by replacing "men" with "miners."

§ 45.1-161.138 45.2-xxx. Refuge from moving traffic.

Upon the approach of moving traffic, miners any miner not engaged in haulage operations shall take refuge in a shelter hole or other places place of safety.

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.

§ 45.1-161.139 45.2-xxx. Inspection of underground equipment.

Once a per week, or more often if necessary, the mine foreman or a certified person shall inspect electrical and diesel transportation equipment to assure ensure its safe operating condition. Such equipment located on the surface shall be inspected as once per month, or more often as if necessary--but at least monthly. Such person shall correct any defect found during the inspection. A record of such examination shall be maintained.

Drafting note: Language is updated for modern usage.

§ 45.1-161.140 45.2-xxx. Maintenance of equipment.

Locomotives—Every locomotive, mine—cars car, shuttle—cars car, supply—cars, conveyors, car, conveyor, piece of self-propelled mobile equipment, and all other piece of equipment shall be maintained in a safe operating 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.

§ 45.1-161.141 45.2-xxx. Self-propelled equipment.

A. Every piece of self-propelled mobile transportation and or haulage equipment for use underground shall be equipped with safe seating facilities for the person operating the equipment unless it is equipped for remote control operation. Where seating facilities are provided on a piece of self-propelled mobile equipment, the person operating such equipment shall be seated before the equipment is put into motion.
B. All **every piece of** track-mounted equipment shall be equipped with proper lifting devices; for the rerailing of such equipment.

C. An audible warning device and headlights shall be provided on each locomotive, shuttle car and any or other **piece of** self-propelled mobile transportation and or haulage equipment.

D. A trip light capable of being seen for at least 300 feet underground shall be used on the rear of **any trip that is** pulled and on the front of **any pushed trips and trips** **trip or trip that is** lowered in slopes on a slope; however, **trip lights a trip light** need not be used where **if locomotives are a locomotive is** used on each end of a trip.

E. Effective means measures, including but not limited to use of a trailing locomotives locomotive, slides, skids, or drags, shall be used taken during track haulage to ensure that safe control is maintained when **grades create a grade creates** a potential hazard.

F. Where block signals are used, procedures shall be established in writing to safely control traffic movement within the system and shall be established in writing and posted and reviewed with all **mine personnel miners**.

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 clarity and modern usage.

§ 45.1-161.142 45.2-xxx. Pushing cars.

Pushing **cars any car** on a main haulage roads shall be **road is** prohibited except (i) where **it is** necessary to push **a car** from **sidetracks a sidetrack that is** located near the working section to the producing **entries and rooms entry or room**, (ii) where **it is** necessary to clear **switches and sidetracks a switch or sidetrack** and (iii) on the approach to **cages, slopes and a cage, slope, or surface inlines incline**. However, where a rail transportation systems are **system is** utilized and it becomes necessary to routinely push cars, the operator shall develop procedures for coordination and control of rail traffic, such as **provisions the provision** of effective trip lights or other warning devices, and other safety precautions specific to the mine. These procedures shall be subject to approval of the Chief.
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.

§ 45.1-161.43. Transportation of material.
A. Equipment or material or supplies being transported shall be loaded in a manner to protect the operator and other personnel from sliding equipment or material or supplies.

B. Materials and equipment, material, or supplies that are not necessary for the operation of a piece of self-propelled mobile equipment shall not be transported on such equipment, except for when the mobile equipment is designed to carry such materials or supplies and a no hazard is not created. Only small hand tools and materials or supplies which do not create hazards may be transported in the same compartment of personnel carriers a mantrip where miners are any miner is seated.

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, including by replacing "personnel carrier" with "mantrip," the term used throughout the title for a specialized personnel carrier in a mine.

§ 45.1-161.144. Securing cars.
A. Standing cars on any track, unless it is held effectively by brakes, shall be properly blocked or spragged to prevent movement.

B. Positive-acting stopblocks or derails shall be used where necessary to protect miners from the hazard of runaway rail equipment. Derails shall be located where grades a grade at the entrance and or any other locations in the mine create a potential collision hazard.

C. Safety chains, steel ropes, or other effective devices capable of holding the load shall be used to prevent a runaway mantrip or other supply-cars car.

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.
§ 45.1-161.145 45.2-xxx. Riding on cars.

A. No person other than the motorman and the trip rider shall ride on a locomotive, unless authorized by the mine foreman.

B. No person shall ride on a loaded or between cars of any trip.

C. No person shall get on or off a moving locomotive or car that is being moved by a locomotive.

D. No person shall be allowed to ride on top of a piece of self-propelled mobile equipment.

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.


Back-poling shall be prohibited except (i) at places where the trolley pole cannot be reversed or (ii) when going up an extremely steep grade. In all such circumstances, back-poling shall occur only at very slow speed.

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.

§ 45.1-161.147 45.2-xxx. Operation of equipment.

A. Operators of self-propelled mobile haulage equipment shall face in the direction of travel except when the equipment is being loaded and is under the boom of the loading equipment.

B. Every track haulage cars which require coupling and uncoupling shall be equipped with automatic couplers or devices designed to allow coupling and uncoupling without exposing miners between such equipment. Specialty cars designed with safe clearance when connecting to other cars are excluded from the provisions of this subsection.
C. Every person operating self-propelled haulage equipment shall sound a warning before starting such equipment and on approaching curves, sidetracks, doors, curtains, any curve, sidetrack, door, curtain, manway crossings, or any other place where persons are likely to be.

D. All rail equipment shall be operated at speeds which are safe for the condition of the rail installation, grades and clearances encountered. When rail equipment is being operated at a normal safe speed, a distance of 300 feet shall be maintained from the rear of other rail equipment in operation, except for a trailing locomotive that is an integral part of the trip.

E. All persons shall stand in the clear during switching operations.

F. No two pieces of self-propelled mobile mining equipment traveling in opposite directions inside a coal mine shall be allowed to pass each other while both are in motion on the same haulage road unless a minimum of 24 inches is maintained between the vehicles.

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.

§ 45.1-161.148. Dispatchers. Where a dispatcher is employed to control trips at a mine, traffic under his jurisdiction shall be moved only at his direction. The dispatcher shall be stationed on the surface at the mine.

Drafting note: Language is updated for clarity.

§ 45.1-161.149. Availability of mantrips. The operator or his agent shall maintain a mantrip or other equipment suitable for providing reasonable access within a reasonable time to any area of the mine where miners are working and where transportation is ordinarily provided. The suitability of the equipment, and the reasonableness of the time required to reach such areas, shall be determined by the Chief.
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, including by replacing "man-trip" with "mantrip," consistent with language in proposed Chapter 9.

§ 45.1-161.150 45.2-xxx. Man-trips Mantrips.

A. Man-trips Each mantrip that is operated by means of locomotives shall be pulled and operated at a safe speed that is consistent with the condition of roads the road and the type of equipment used, and shall be so controlled that it can be stopped within the limits of the operator's visibility.

B. Each mantrip shall be under the charge of an authorized person and shall be operated independently of any loaded trip.

C. Mantrips shall be provided in sufficient number to prevent any mantrip from becoming overloaded.

D. No person shall ride under a trolley wire other than in a suitably covered man-cars mantrip. Covered man-cars A covered mantrip shall not be required under trolley wires that are guarded or positioned in accordance with subsection F of § 45.1-161.187 45.2-xxx.

E. Other than small hand tools carried on the person, no supplies or tools shall not be transported in the same car or cage with miners on any man-trip mantrip, except in a special compartments compartment in such cars car designed for this purpose.

F. Miners No miner shall not board or leave a moving man-trip cars mantrip car. Each miner shall remain seated while in a moving car and shall proceed in an orderly manner to and from a mantrip.

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, including by replacing "man-trip" with "mantrip," consistent with language in proposed Chapter 9.

§ 45.1-161.151 45.2-xxx. Man-trip Mantrip loading and unloading areas.
A. **Areas** Any area used regularly for loading or unloading man-trips or man-cages shall be kept clear of obstructions, and have ample clearance for moving equipment. **Miners** Each miner shall remain in such area until the man-trip or man-cage is ready to load.

B. Trolley and power wires shall be guarded effectively at areas any area where persons regularly load or unload from man-trips or man-cages mantrips or cages and where there is a possibility of any that a person coming in could come into contact with energized electric wiring while boarding or leaving disembarking the man-trip or cage.

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, including by replacing "man-trip" with "mantrip," the term used throughout the title for a specialized personnel carrier in a mine, and "man-cage" with "cage."

§ 45.1-161.152 45.2-xxx. Transporting miners by belts conveyor belt.

A. **When belts are** If a conveyor belt is used for transporting miners, such belts shall be free of loose materials, and maintain a minimum clearance of at least eighteen inches between the belt and the overhead roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring, and other objects. **Belts** Each conveyor belt that is used for transporting miners shall be equipped with emergency stop cords for their entire length.

B. The conveyor belt speed while miners are being transported shall not exceed (i) 250 feet per minute while miners are being transported where if the overhead clearance between the belt and overhead roof or projections maintained pursuant to subsection A is between eighteen more than 18 inches and twenty-four but less than 24 inches and (ii) 300 feet per minute where if the overhead clearance is twenty-four 24 inches or more. The use of conveyor belts to transport miners shall be prohibited if the clearance between the belt and overhead is less than eighteen inches. Such conveyor belt shall be stopped while miners are boarding or leaving disembarking.
C. The space between miners riding on a conveyor belt line shall be at least five feet.

D. Adequate clearance and proper illumination shall be provided where miners board or leave a conveyor belt.

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, including the substitution of "conveyor belt" for "belt" and "disembark" for "leave."

Article 9.

Surface Areas.

Drafting note: Existing Article 15, concerning surface areas, is retained as proposed Article 9.

§ 45.1-161.236. Housekeeping; noxious fumes.

A. Good housekeeping shall be practiced in and around buildings, shafts, slopes, yards and every building, shaft, slope, yard, or other 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 possible falling and rolling materials.

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

C. All surface mine structures, enclosures, and structures, enclosure, or other facilities shall be maintained in good repair.

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.

§ 45.1-161.237. Lighting.

A. Lights shall be provided as needed in or on a surface mine structure, enclosure, or other facility.
B. Roads, paths and walks. Each road, path, or walk outside of structures, enclosure, or other facility shall be kept free from obstructions and shall be well-illuminated, well-illuminated if it is used at night.

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.

§ 45.1-161.238. Flammable or combustible materials.

A. Oil, grease, and any similar flammable material or combustible material shall be kept in a closed container, separate from other materials, so as not to create a fire hazard to nearby buildings or mines. If oil or grease, or any similar flammable material is stored in a building, the building or room in which it is stored shall be of fireproof construction and well-ventilated.

B. Oily rags. Any oily rag, oily waste, and or wastepaper shall be kept in a closed metal container until removed for disposal.

C. The area within 100 feet of all each mine openings opening shall be kept free of flammable or combustible material; however, this provision shall not apply to the temporary storage of not more than a one-day's supply of such materials.

D. All Every oxygen and or acetylene bottles bottle shall be (i) stored with its cap in place in racks designated and a rack constructed and designated for the storage of such bottles with caps in place and (ii) secured when not in use. Any storage of such materials shall be prohibited in any place for where such materials are stored. Signs indicating that smoking is prohibited in the area shall be posted to prohibit smoking.

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.

§ 45.1-161.239. Crane Hazardous operations.

A crane operator shall at all times during any hazardous crane operation maintain visual or auditory communication with all persons involved in the such crane operation.
§ 45.1-161.240 45.2-xxx. Controlling dust at the surface.

A. In each surface structure, structure, enclosure, or facility at any excessively dusty mines, mine, every electric motors, motor, switches, switch, lighting fixtures, fixture, and controls control shall be protected by dust-tight construction.

B. Surface structures Each surface structure and piece of equipment shall be kept free of coal dust accumulations.

C. Where If mining operations raise 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.

Drafting note: Language is updated for modern usage and clarity, including by reorganizing the text in subsection C.

§ 45.1-161.241 45.2-xxx. Scaffolding and overhead protection.

Where Proper scaffolding or proper overhead protection shall be provided (i) where repairs are being made to the plant, a facility or (ii) where equipment or material is being used or transported overhead, proper scaffolding or proper overhead protection shall be provided.

Drafting note: Language is updated for modern usage and clarity, including by reorganizing the text.

§ 45.1-161.242 45.2-xxx. Welding and cutting.

Welding No welding or cutting with arc or flame shall not be done in an excessively dusty atmospheres, atmosphere or dusty locations, location. Fire-fighting Firefighting apparatus shall be readily available when such welding or cutting is performed.

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, including by reorganizing the text.

§ 45.1-161.243 45.2-xxx. Fire prevention and fire control.
The provisions of Article 5 (§ 45.1-161.265 et seq.) of Chapter 14.4 of this title shall apply with respect to requirements for firefighting equipment, duties in the event of a fire, and fire precautions at the surface area of an underground coal 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.

Language is updated for modern usage and clarity.

§ 45.1-161.244. Surface equipment.

The provisions of Article 6 (§ 45.1-161.268 et seq.) of Chapter 14.4 of this title shall apply with respect to equipment at the surface area of an underground coal 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.

§ 45.1-161.245. Travel ways, and loading and haulage areas.

The provisions of Article 7 (§ 45.1-161.275 et seq.) of Chapter 14.4 of this title shall apply with respect to any travel way, loading area, and haulage area at the surface of an underground coal 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.

Language is updated for modern usage and clarity.

§ 45.1-161.246. Electricity.

The provisions of Article 9 (§ 45.1-161.279 et seq.) of Chapter 14.4 of this title shall apply with respect to any power lines, circuits, transformers, and other electric equipment at the surface area of an underground coal 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.

Language is updated for modern usage and clarity.
§ 45.1-161.247 45.2-xxx. Surface blasting.

The provisions of Article 10 XX (§ 45.1-161.284 45.2-xxx et seq.) of Chapter 14.4 of this title shall apply with respect to explosives and or blasting at the surface areas of an underground coal 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. Language is updated for modern usage and clarity.

§ 45.1-161.248 45.2-xxx. Ground control.

The provisions of Article 11 XX (§ 45.1-161.287 45.2-xxx) of Chapter 14.4 of this title shall apply with respect to the pits, highwalls, benches, banks, and walls associated with any coal mining activities conducted at the surface areas of an underground coal 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. Language is updated for modern usage and clarity.

CHAPTER 8.

REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; ELECTRICITY, SAFETY, ETC.

Drafting note: Articles 4, 10, 11, 12, 13, and 14 of existing Chapter 14.3 are retained as Articles 1 through 6 of proposed Chapter 8, Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc. The remainder of existing Chapter 14.3 is organized as proposed Chapter 7. The six articles in this proposed chapter are as follows: Article 1, Mechanical Equipment; Article 2, Electricity; Article 3, Fire Prevention and Fire Control; Article 4, Ventilation, Mine Gases, and Other Hazardous Conditions; Article 5, Personal Safety; Smoking; and Article 6, First Aid Equipment; Medical Care; Emergency Medical Services Providers.

Article 4.1.

Mechanical Equipment.
Drafting note: Existing Article 4 of Chapter 14.3, concerning mechanical equipment, is retained as proposed Article 1.

§ 45.1-161.123 45.2-xxx. Face and other equipment.

A. The cutter chains of any mining machines shall be locked securely by mechanical means or an electrical interlocks while such machines are parked or being trammed.

B. Drilling in rock shall be conducted wet or by other means of dust control used.

C. Electric drills, Each electric drill or other electrically operated rotating tools intended to be held in the hands shall have the electric switch constructed so as to break the circuit when the hand releases the switch, or shall be equipped with a properly adjusted friction or safety clutches.

D. While equipment is in operation or is being trammed, no miner shall position himself or be placed in a pinch point between such equipment and the face or ribs of the mine or another piece of equipment in the mine.

E. Each piece of equipment that is raised for repairs or other work shall be securely blocked prior to positioning where the falling of such equipment could create a hazardous 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.

Language is updated for modern usage.

§ 45.1-161.124 45.2-xxx. Shop and other equipment.

A. The following items of shop and other equipment shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, Any gear, sprocket, pulley, fan blades or propellers, propeller, or friction devices and couplings with protruding bolts or nuts;
2. Shafting and any projecting shaft ends that are within seven feet of the floor or platform level;

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

4. Fly wheels, provided that a fly wheel extending more than seven feet above the floor shall be guarded to a height of at least seven feet;

5. Circular and band saws and planers;

6. Repair pits, provided that guards shall be kept in place including when the pits are not in use;

7. Counterweights; and

8. The mine fan, including the approach to any mine fan shall be guarded.

B. Machinery

No machinery shall not be repaired or serviced while the machinery is in motion; however, this prohibition shall not apply where a safe remote device is used.

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

D. Mechanically operated grinding wheels shall be equipped with (i) safety washers and tool rests; (ii) substantial retaining hoods, the hood opening of which shall not expose more than a 90 degree sector of the wheel; and (iii) eyeshields, unless goggles are worn by the miners. Retaining hoods shall include either a device to control and collect excess rock, metal, or dust particles, or a device providing equivalent protection to the miners operating such machinery.

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

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.


All hydraulic hoses used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For hoses purchased after January 1, 1989, the rated pressure shall be permanently affixed on the outer surface of the hose and repeated at least every two feet. Hoses purchased and installed on an automatic displacement hydraulic systems 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, 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 the 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 11 2.

Electricity.

Drafting note: Existing Article 11 of Chapter 14.3, concerning electricity, is retained as proposed Article 2. Two sections, §§ 45.1-161.172 and 45.1-161.173, in existing Article 9, Illumination, are relocated to this article.
§ 45.1-161.181 45.2-xxx. Surface electrical installations.

A. Overhead Any overhead high-potential power lines shall be (i) placed at least fifteen feet above the ground and twenty feet above driveways, (ii) installed on insulators, and (iii) supported and guarded to prevent contact with other circuits.

B. Surface Any surface transmission lines, including trolley circuits, shall be protected against short circuits and lightning. Each power circuit that leads underground shall be equipped with lightning arrestors within 100 feet of the location at which the circuit enters the mine.

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

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, and language is updated for modern usage.

§ 45.1-161.182 45.2-xxx. Surface transformers.

A. Surface transformers which are not isolated by elevation of being elevated at least eight feet or more above the ground shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The door to the enclosure or the gate to the fence shall be kept locked at all times unless persons authorized to enter the gate or enclosure are present.

B. Surface transformers containing flammable oil and is installed near a mine openings, in or near a combustible buildings, or at any other places where they present such transformer 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.
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, and language is updated for modern usage.

§ 45.1-161.183. Underground transformers.

Every transformer that is used underground shall be air-cooled or filled with nonflammable liquid or inert gas.

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.

§ 45.1-161.184. Stations and substations.

A. Suitable danger warning signs shall be posted conspicuously at every transformer station.

B. All transformer stations, substations, battery-charging stations, pump-stations, and compressor stations shall be kept free of nonessential combustible material and refuse.

C. Reverse-current protection shall be provided at each storage-battery-charging station to prevent the storage batteries from energizing the power circuit in the event of power failure.

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, and language is updated for modern usage.

§ 45.1-161.185. Repealed.

Drafting note: Repealed by Acts 1999, c. 256.

§ 45.1-161.186. Power circuits.

A. All underground power wires and cables shall have adequate current-carrying capacity, be guarded from mechanical injury, and be installed in a permanent manner.

B. Wires and cables that are not encased in armor shall be supported by well-installed insulators and shall not touch any roof, rib, or combustible material or

well-installed insulators and shall not touch any roof, rib, or combustible material.
ribs material; however, this prohibition shall not apply to ground wires, grounded power conductors, and or trailing cables.

C. Power wires and or cables that are installed in a belt-haulage-slopes slope shall be insulated adequately and buried in a trench not less than 12 inches at least one foot below any combustible material, unless such wires or cables are encased in armor or otherwise fully protected against mechanical injury.

D. Splices and repairs Any splice or repair in a power-cables cable shall be made in accordance with the following:

1. Mechanically Be mechanically strong— with and have adequate electrical conductivity;

2. Effectively Be effectively insulated and sealed so as to exclude moisture;

3. If the cable has metallic armor, possess mechanical protection and electrical conductivity equivalent to that of the original armor; and

4. If the cable has metallic shielding around each conductor, then the possess new shielding shall be that is equivalent to that of the original shielding.

E. All Every underground high-voltage transmission-cables cable shall be:

1. Installed only in a regularly inspected airways airway;

2. Covered, buried, or placed on insulators so as to afford protection against damage by derailed equipment if it is installed along the a haulage road;

3. Guarded where if miners regularly work or pass under them such cable, unless they are 6 1/2 it is at least 6.5 feet or more above the floor or rail;

4. Securely anchored, properly insulated, and guarded at its ends; and

5. Covered, insulated, or placed to prevent contact with any trolley-circuits and circuit or other low-voltage-circuits circuit.

F. New Any new high-voltage disconnects disconnect that is installed on all underground electrical equipment shall automatically ground all three power leads when in the open position. All Every high-voltage disconnects disconnect that are is rebuilt or remanufactured after July 1, 2011, shall meet this standard.
G. All power wires and cables shall be insulated adequately where they pass into or out of an electrical compartment and where they pass through doors and stoppings.

H. Where track is used as a power conductor:
1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet;
2. At least one rail on any secondary track shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet;
3. Track switches on entries shall be well bonded.

Drafting note: An obsolete date in subsection F regarding high voltage disconnects is removed. 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, and language is updated for modern usage.

§ 45.1-161. Trolley wires and feeder wires.
A. Trolley wires and trolley feeder wires shall be installed on the side of the entry opposite the clearance space and any shelter holes, except where the wires are guarded or are installed at least 6.5 feet or more above the top of the rail.
B. Trolley-wire hangers shall be so spaced that the wire may become detached from any one hanger without creating a shock hazard.
C. Trolley wires shall be aligned properly and installed on insulated hangers at least six inches outside the rail.
D. Trolley wires and trolley feeder wires shall be provided with cut-out switches at intervals of not more than 1,500 feet and near the beginning of each branch line.
E. Trolley wires and trolley feeder wires shall be kept taut and shall not be permitted to touch the roof, ribs, timbers or any rib, timber, or combustible material.
F. Trolley wires and trolley feeder wires shall be guarded adequately at both sides of doors any door and at all places every place where it is necessary to miners work or pass under them, unless they are more than six and one half at least 6.5 feet above the top of the rail.

G. Trolley or trolley feeder wires shall not extend beyond any open crosscut between an intake and a return airways, and airway. All such wires shall be kept at least 150 feet from any active, open pillar workings.

H. Trolley wires and trolley feeder wires shall be guarded, anchored securely, and insulated properly at the ends.

I. Trolley wires and trolley feeder wires shall be installed only in an intake airway.

J. Trolley wires or other exposed conductors shall not carry more than 300 volts.

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, and language is updated for modern usage. The minimum separation of "more than" six and one-half feet in subsection F is reduced to "at least" 6.5 feet for consistency with subsection A.

§ 45.1-161.188 45.2-xxx. Grounding.

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

B. Metallic frames casing, and or other enclosures of stationary electrical 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. Any three-phase alternating current circuit that is used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit originating...
originates at the grounded side of the grounding resistor; shall extend with the power conductors and serve as the grounding conductor for the frames of all the every piece of electrical equipment that is supplied with power from that circuit. Grounding resistors that are manufactured to meet the extended time rating as set forth in American National standard IEEE Standard 32-1972, formerly AIEE Standard 32, are deemed to meet the requirements of this section. High-voltage circuits extending underground shall be supplied with a grounding resistor of a proper Ohmic value located on the surface to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system. All resistance-grounded alternating circuits used underground shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to ensure the continuity of the ground conductor.

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. An obsolete citation to the former name of the IEEE standard is removed and the current standard is added.

§ 45.1-161.189 45.2-xxx. Circuit breakers and switches.

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect each piece of electrical equipment and each power circuit against excessive overload; however, this requirement shall not apply to locomotives any locomotive that is operated regularly on grades exceeding a grade that exceeds five percent. Wires or other conducting materials shall not be used as a substitute for a properly designed fuse, and every circuit breaking device shall be maintained in safe operating condition.

B. An automatic circuit breaker of the correct type and capacity shall be installed on each resistance grounded circuit used underground. Such circuit breaker shall be located at the
power source and equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

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

D. Disconnecting switches A disconnecting switch shall be installed underground in all each main power circuits circuit within approximately 500 feet of the bottoms bottom of shafts and boreholes, each shaft or borehole and at any other places where place at which a main power circuits enter circuit enters the mine.

E. Electric Each piece of electrical equipment and circuits each circuit shall be provided with switches or other controls of safe design, construction, and installation.

F. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at any piece of stationary machinery where at which a shock hazards exist hazard exists.

G. Circuit breakers Each circuit breaker, disconnecting devices device, and switches shall be marked for identification.

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. Language is updated for modern usage and clarity.
an authorized person who is always on duty when miners are underground can see or hear the facility and respond immediately in the event of an emergency.

B. Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and insulated adequately where they cross power or trolley wires, they shall be insulated adequately.

C. Lightning arrestors shall be provided at the points each point where a telephone circuit enters the mine and at each telephone on the surface. Where the telephone circuit enters a building or structure, the a lightning arrestor is only required where only at the point at which the circuit enters such building or structure.

D. If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, a means shall be provided to permit continued communication in the event the mine electric power fails or is cut off.

E. Communication systems equipped with audible and visual signals that become operative when telephone communication is being established between the phones of the communication station on the surface and the underground working sections shall be provided.

F. The Chief shall promulgate adopt regulations governing any disruption of communication in mines a mine.

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 pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.

§ 45.1-161.192. Repealed.

Drafting note: Repealed by Acts 1999, c. 256.

§ 45.1-161.193 45.2-xxx. Electrical equipment.

A. Electrical equipment that is taken into or used in an intake air shall be airway constitutes permissible equipment.
B. Permissible equipment that is used in areas specified in subsection A shall be maintained in permissible condition.

C. Electrical equipment shall not be taken into or operated in any place where a methane level of one percent or more is detected.

D. Voltage limitations for underground installations of electric equipment using direct or alternating current shall conform to the voltages provided in 30 C.F.R. § 18.47.

E. Electric equipment must be classified as permissible and shall be maintained in a permissible condition when such equipment is located within 150 feet of any pillar workings or longwall faces.

F. Electric conductors and cables installed in or by the last open crosscut, or within 150 feet of any pillar workings or longwall faces, shall be:
   1. Shielded high-voltage cables supplying power to permissible longwall and other equipment;
   2. Interconnecting conductors and cables of permissible longwall equipment;
   3. Conductors and cables of intrinsically safe circuits; or
   4. Cables and conductors supplying power to low and medium voltage permissible equipment.

G. Electric equipment shall be maintained in safe operating condition at all times while it is being used, and any unsafe condition shall be corrected promptly or the equipment shall be removed from service.

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, and language is updated for modern usage and clarity.

§ 45.1-161.194 45.2-xxx. Trailing cables.

A. Trailing cables that are used underground shall be flame-resistant cables.

B. Trailing cables shall be provided with suitable short-circuit protection and some means of disconnecting power from the cable. Power connections Any power connection that
is made in other than an intake-air airway shall be by means of a permissible connector.

C. 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.

D. No more than one temporary, unvulcanized splice shall be allowed in a any trailing cable.

E. Permanent splices Any permanent splice or repairs repair in a trailing cables cable shall be made as follows:

1. They shall be mechanically strong, with adequate electrical conductivity and flexibility;

2. They shall be effectively insulated and sealed so as to exclude moisture;

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

4. If the cable has metallic shielding around each conductor, then the possess new shielding shall be that is equivalent to that of the original shielding.

F. Trailing cables shall be protected against mechanical damage. A trailing cable that is damaged in a manner that exposes the insulated inner power conductors shall be repaired promptly or removed from service.

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, and language is updated for clarity.

§ 45.1-161.195 45.2-xxx. Inspection of electrical equipment and wiring; checking and testing methane monitors.

A. Electrical equipment and wiring shall be inspected by a certified person at least weekly if it is located underground; and at least monthly if it is located on the surface; and Such equipment and wiring shall be inspected more often if doing so is necessary to assure ensure safe operating conditions, and any hazardous condition that is found shall
be promptly corrected or the equipment or wiring shall be removed from service. Records of such examination inspections shall be maintained at the mine for a period of one year.

B. A functional check of methane monitors on electrical face equipment shall be conducted to determine whether such monitors are de-energizing the electrical face equipment properly. Such check shall be (i) made on each production shift and shall be (ii) conducted by the equipment operator in the presence of a mine foreman, and (iii) recorded in the on-shift report of the mine foreman.

C. Weekly calibration tests on To determine the accuracy and operation of methane monitors on electrical face equipment to determine the accuracy and operation of, weekly calibration tests of such monitors shall be conducted with a known mixture of methane at the flow rate recommended by the methane monitor manufacturer. A record of the results shall be maintained.

D. Required methane monitors shall be maintained in permissible and proper operating condition.

Drafting note: Language is updated for modern usage and clarity.

§ 45.1-161.196 45.2-xxx. Repairs to circuits and electric equipment.

A. No electrical work shall be performed on any low-voltage, medium-voltage, or high-voltage distribution circuits or equipment, except by a certified person or by a person who is trained to perform electrical work and to maintain electrical equipment and 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 who perform electrical or mechanical work on such circuits a circuit or piece of equipment connected to the circuits such a circuit, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are unavailable, by a certified persons authorized by the operator or his agent.
However, miners B. A miner may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves.

C. This section does not prohibit a certified electrical repairman from making checks on or troubleshooting energized circuits 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 pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage. The section is divided into subsections for clarity.

§ 45.1-161.172. Underground illumination.

A. Electric-light wires shall be supported by suitable insulators or installed in conduit, shall be fastened securely to the power conductors, and shall not contact any combustible material.

B. Electric lights Every electric light shall be guarded and installed so that they do not contact any combustible material.

Drafting note: This section is relocated from existing Article 9 of Chapter 14.3. 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, and language is updated for modern usage.

§ 45.1-161.173. Inspection of electric illumination equipment.

All lamps, Every lamp, extension lights, and permissible form of portable illumination, such as a cap lamps and flashlights, lamp or flashlight, that are used for personal illumination underground shall be inspected by an authorized person at least once per week, and more often if necessary, to ensure safe operating conditions. Such equipment is located at the surface, it shall be inspected by an authorized person at least once
per month, and more often if necessary, to ensure safe operating conditions. Any defect found
shall be corrected.

Drafting note: This section is relocated from existing Article 9 of Chapter 14.3.
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, and language is
updated for modern usage.

Article 13.3.

Drafting note: Existing Article 13 of Chapter 14.3, concerning fire prevention
and fire control, is retained as proposed Article 3.

§ 45.1-161.200 45.2-xxx. Firefighting equipment; fire prevention.
A. Each mine shall be provided with suitable firefighting equipment, that is adequate
for the size of the mine.
B. The following equipment, at a minimum, shall be immediately available at each
mine:
1. A water car filled with water and provided with hose and pump, or waterlines and
necessary hoses;
2. At least three 20-pound dry chemical fire extinguishers;
3. Ten 50-pound bags of rock dust, which shall be made available at doors or other
strategic places;
4. Bolt cutters which may that can be used to cut trolley wire in an emergency;
5. One pair of rubber gloves to that shall be used with each pair of bolt cutters when
cutting trolley wire;
6. Two sledge hammers; and
7. Five hundred square feet of brattice cloth, nails, and hammer.
C. Clean dry sand, rock dust, or fire extinguishers, that are suitable from a toxic and
shock standpoint, shall be provided and placed at each electrical station, such as substations
including each substation, transformer stations, and permanent pump stations, so as to be out of the smoke in case of a fire in the station.

D. Suitable fire extinguishers shall be provided at all each (i) electrical stations, such as substations, including each substation, transformer stations, and permanent pump stations; (ii) piece of self-propelled mobile equipment; (iii) belt heads and at the inby end of each belt; (iv) areas used for the storage of flammable materials; (v) fueling stations; and (vi) any other areas that may constitute a fire hazard, so as to be on the fresh air side in case of a fire.

E. All firefighting equipment and each fire sensor systems shall be maintained in a useable and operative condition. Chemical extinguishers Each chemical extinguisher shall be examined every six months and the date of the examination shall be indicated on a tag attached to each extinguisher.

F. A sufficient number of approved one-hour, self-contained, self-rescuers shall be readily available, not more than 100 feet away, for the persons involved in the moving or transporting of any unit of off-track mining equipment.

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, and language is updated for modern usage and consistency.

§ 45.2-xxx. Duties in case of fire.

A. In case of a fire, the next inby permanent stopping into the return air course shall be opened, as soon as possible, in order to short circuit the air and permit close access to the fire for extinguishment.

B. When a fire that may could endanger persons underground cannot be extinguished immediately, the such persons shall be withdrawn promptly from the mine.

C. Should If a fire occurs, the person discovering it and any other person in the vicinity of the fire shall make a prompt effort to extinguish it.

Drafting note: Technical changes.

§ 45.2-xxx. Emergency response plans; list of next of kin.
A. Each operator shall develop an emergency response plan for each mine. The plan shall include (i) a mine emergency communication plan, (ii) an evacuation procedure, (iii) the identification of waterlines, (iv) the number system of brattice, (v) the location of each escapeway, and (vi) such other information as the Chief may reasonably require.

B. The operator shall maintain a list of the next of kin of all miners employed at the mine. The list shall be kept at the mine site or at a central facility readily accessible to the mine.

C. Such emergency response plan shall be subject to approval by the Chief or mine inspector. The Chief may require periodic updates to an operator's emergency response plan. Operators shall comply with the requirements of the approved plan.

D. The emergency response plan shall be posted in a conspicuous manner and location readily accessible to all miners, both underground and at the surface of the mine.

E. The operator shall train miners in the implementation of the emergency response plan and shall conduct practice drills. Records of dates and times of practice drills shall be maintained in the emergency response plan.

F. Each miner employed by the operator who goes underground, and each visitor authorized by the operator to enter the mine, shall have available an adequate supply of self-rescue devices, each of which provides at least one hour or longer of protection and is approved by the federal Mine Safety and Health Administration. The training related to self-rescue devices shall be included in the emergency response plan approved by the Chief.

Drafting note: Language is updated for modern usage and clarity. Technical changes are made.

§ 45.1-161.203 Reporting fires; response.

In case of any unplanned fire at a mine that is not extinguished within thirty minutes of discovery, the operator shall report the fire to the Chief by the quickest available means, giving all information known to him. The Chief, based on such information, shall promptly go in person or dispatch a mine inspector to the scene of the fire.
for consultation, and assist assistance in the extinguishing extinguishment 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 the mine inspector shall be final. The decision of the Chief regarding measures to extinguish the fire and protect persons shall have the force of an order issued pursuant to §45.1-161.91 45.2-xxx if it is delivered to the operator in writing.

Drafting note: Technical changes are made.

§ 45.1-161.204 45.2-xxx. Fire prevention in transportation of mining equipment.

A. Prior to moving or transporting any unit piece of off-track mining equipment in areas any area of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit piece of equipment shall be examined by a certified person to ensure that accumulations of coal dust, float coal dust, loose coal, oil, grease, and other combustible materials have been removed from such unit piece of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

B. A record shall be kept of the examinations required pursuant to subsection A and shall be made available, upon request, to the Chief or his authorized representative.

C. Off-track mining equipment shall not be moved or transported in areas any area of the active workings where energized trolley wires or trolley feeder wires are present only unless under the direct supervision of a certified person who shall be is physically present at all times during the moving or transporting of such equipment.

D. The frames frame of any unit of off-track mining equipment that is being moved or transported shall be covered on the top and on the trolley wire side with fire-resistant material.

E. Electrical contact shall be maintained between the mine track and the frames frame of any piece of off-track mining equipment that is being moved in track in a track and trolley entries, except that entry. However, rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.
F. To avoid accidental contact with power lines, the equipment being transported or
trammed shall be insulated or, if necessary, the assemblage shall be removed, if
the clearance to the power lines is six inches or less.

G. Sufficient prior notice shall be given to the Department so that a mine inspector, if
he deems it necessary, may travel the route of the move before the actual move is made, if he
deems it necessary.

H. A minimum vertical clearance of twelve inches one foot shall be maintained
between the farthest projection of the unit piece of equipment which is being moved and
the energized trolley wires or trolley feeder wires at all times during the movement or
transportation of such equipment. If the height of the coal seam does not permit twelve inches
one foot of vertical clearance to be so maintained, the following additional precautions shall
be taken:

1. Electric power shall be supplied to the trolley wires or trolley feeder wires only
from outby the unit piece of equipment being moved or transported. Where direct current
electric power is used and such electric power can be supplied only from inby the equipment
being moved or transported, such power may be supplied from inby such equipment if a
miner with who has the means to cut off the power, and is in direct communication with the
persons actually engaged in the moving or transporting operation, and is stationed outby the
equipment being moved;

2. The settings of automatic circuit interrupting devices used to provide short circuit
protection for the trolley circuit shall be reduced to not more than one-half of the maximum
current that could flow if the equipment being moved or transported were to come into contact
with the trolley wire or trolley feeder wire;

3. At all times when the unit piece of equipment is being moved or transported, a
miner shall be stationed at the first automatic circuit breaker outby the equipment being
moved. Such miner shall be (i) in direct communication with the persons actually engaged in
the moving or transporting operation and (ii) capable of communicating with the authorized
person on the surface who is required to be on duty;
4. Where trolley phones are utilized to satisfy the requirements of subdivision 3 of this subsection, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by (i) the miner who is stationed at the first automatic circuit breaker outby the equipment being moved and (ii) by a miner who is actually engaged in the moving or transporting operation; and

5. No person shall be permitted to be inby the unit piece of equipment being moved or transported, or in the ventilating current of air that is passing over such equipment, except those persons a person who is directly engaged in moving such equipment.

The provisions of this subsection shall not apply to units a piece of mining equipment that are is transported in a mine cars, provided that car if no part of the equipment extends above or over the sides of the mine car.

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

§ 45.1-161.205 45.2-xxx. Storage and use of flammable fluids and materials.

A. Underground Each underground storage places place for oil, grease and flammable hydraulic fluid shall be of fireproof construction.

B. Oil, grease, and flammable hydraulic fluid that is kept underground for current use shall be kept in a closed metal containers container.

C. Provisions shall be made to prevent an accumulation of spilled oil or grease at the any such storage places place or at the locations where any location at which such materials are material is used.

D. Oily rags Any oily rag, oily waste, and or wastepaper shall be kept in a closed metal containers container until it is removed for disposal.

E. No gasoline, benzene, kerosene, or other flammable oils oil shall be used underground in powering machinery.

F. All Every oxygen and or acetylene bottles bottle that is used underground shall be secured while in use. When stored underground, an oxygen and or acetylene bottles bottle
shall be placed in a safe location, protected from physical damage, stored with caps in place where such storage is provided for on the tank, and secured upright or elevated, whichever mine heights allow.

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.

§ 45.1-161.206 Diesel-powered equipment.

Diesel-powered equipment may be utilized underground with the written approval of the Chief. The Chief shall adopt regulations necessary to carry out the provisions of this section. The regulations shall require that the air in each travel way in which diesel equipment is used, and in any active workings connected thereto, be of a quality necessary for a safe, healthful working environment. The minimum quantity of ventilating air that must be supplied for a permissible diesel machine in a given time shall conform to that shown on the approval plate attached to the machine. All diesel machines and machine or piece of equipment shall be maintained in such manner that the exhaust emissions meet the same standards to which the machine or equipment was manufactured.

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 pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.

§ 45.1-161.207 Arcs, sparks, and flames.

A. The intentional creation of any open arc, open spark, or open flame, except as provided in subsection B, is prohibited.

B. Welding and Underground (i) welding or cutting with arc or flame or (ii) soldering underground in other than a fireproof enclosure that is ventilated with intake air, shall be done by or under the direct instruction of a certified foreman or repairman.
A person certified in gas detection shall test for methane before and during such operations in an underground coal mine and shall make a diligent search for fire after such operation in all parts of the mine where such operation occurred. Rock dust or suitable fire extinguishers shall be immediately available during such welding or cutting.

Welding operations A welding operation shall be performed only in well-ventilated areas.

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, and language is updated for clarity.


Drafting note: Existing Article 14 of Chapter 14.3, concerning ventilation, mine gases, and other hazardous conditions, is retained as proposed Article 4.

§ 45.1-161.208 45.2-xxx. Pre-shift examinations.

A. The operator or his agent shall establish eight-hour intervals of time, each of which shall be subject to a required pre-shift examination. Within three hours preceding the beginning of any such eight-hour interval during which any person is scheduled to work or travel underground, a mine foreman shall make a pre-shift examination. No person scheduled to enter the mine during the eight-hour interval, other than the mine foreman who is conducting the examination, shall enter any underground area unless a pre-shift examination has been completed for such established eight-hour interval.

B. During the pre-shift examination, the mine foreman shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split, at the following underground locations which are underground:

1. Track entries and Each track entry or other areas where persons are scheduled to work or travel during the oncoming shift;
2. Belt conveyors. Each belt conveyor that will be used to transport persons during the oncoming shift and the entries entry in which these each such belt conveyors are conveyor is located;

3. Working sections and areas. Any working section or area where mechanized mining equipment is being installed or removed; if anyone a person is being scheduled to work on the section or in the area during the oncoming shift. This Such a working section or area includes each working places, approaches place and each approach to a worked-out areas area, and ventilation controls on these sections each such section or in these areas each such area;

4. Approaches. Each approach to a worked-out areas area along an intake air courses course if intake air passes by the such worked-out area to ventilate any working sections section where anyone a person is scheduled to work during the oncoming shift;

5. Seals. Each seal along an intake air courses course where intake air passes by a such seal to ventilate any working sections section where anyone a person is scheduled to work during the oncoming shift;

6. Entries and rooms. Where intake air passes through or by an entry or room to any working section where a person is scheduled to work during the oncoming shift, each such entry or room that is driven (i) more than 20 feet off an intake air course without a crosscut and without or permanent ventilation controls, or (ii) more than two crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift; and

7. Where unattended diesel equipment is expected to operate or areas where an area in which trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

C. During the pre-shift examination, the mine foreman shall determine the volume of air entering each of the following areas if a miner is scheduled to work in the areas such area during the oncoming shift:
1. In the last open crosscut, which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses, of each set of entries or rooms on each working section and areas where or any area in which mechanized mining equipment is being installed or removed;

2. On each longwall or shortwall in the each intake entry or entries at the intake end of the longwall or shortwall face immediately outby the face and. The mine foreman shall also determine the velocity of air at each end of the face at the locations specified in the approved ventilation plan required by the federal mine safety law; and

3. At the intake end of any pillar line (i) if a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, if a single split of air is used or (ii) if a split system is used, in the intake entries of each split, immediately inby the split point, if a split system is used.

D. A mine foreman shall make a pre-shift examination of the surface areas of an underground coal mines in accordance with the requirements for pre-shift examinations at surface coal mines as provided in § 45.1-161.256 45.2-xxx.

E. The Chief may require the mine foreman to examine other areas of the mine or to examine for other hazards during the pre-shift examination.

F. Any area of the mine where hazardous conditions are found shall be posted with a conspicuous danger sign located where anyone entering the area would pass. Only persons a person designated by the operator, or his agent, to correct or evaluate the condition may shall enter this such posted area.

G. At each working place examined, the mine foreman shall certify by initials, date, and time, that the examination was made. In areas any area to be examined outby a working section, the mine foreman shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

H. Idle and worked-out areas underground shall be inspected for gas and other hazardous conditions by a mine foreman; immediately before miners are permitted to enter or work in such places. A certified person shall supervise the correction of
conditions any condition that create creates an imminent danger. The mine operator, or his agent, may not pass beyond the danger signal only in cases of necessity. I. Where persons have not been working underground before an established eight-hour interval, no person other than the mine foreman conducting a pre-shift examination may enter the mine until the examination has been completed and the mine foreman reports that the mine is clear of danger; however, miners may enter under the direction of a mine foreman for the purpose of making the mine safe. The Chief may, in certain mines, in his discretion, to authorize man-trips to proceed to a designated station underground, from which they may not pass no mantrip shall leave until the mine foreman reports that the remainder of the areas of the mine are clear of danger.

J. Miners who are regularly employed on a shift during which a pre-shift examination is being conducted shall be permitted to leave or enter the mine in the performance of their duties.

K. In multiple shift operations, certified persons may be used to make the pre-shift examination for the next or succeeding shift.

L. Areas immediately before any miner is permitted to enter an area of an inactive underground coal mine in order to take emergency actions to preserve the mine, a mine foreman shall be examined for gas and other hazardous conditions by a mine foreman immediately before miners are permitted to enter such areas to take emergency actions to preserve a mine.

M. In the performance of his duties under this section, the mine foreman shall have no superior officer, and all miners shall be subordinate to him.

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. Language is updated for modern usage and clarity. The text defining "last open crosscut" is moved to the definitions section for Subtitle II, in proposed Chapter 5.
§ 45.1-161.209 45.2-xxx. On-shift examinations.

A. At least once during each shift, and more often if necessary, a certified person shall examine each underground section where coal is produced and any other area where mechanized mining equipment is being installed or removed during the shift. The certified person shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split. Any hazardous condition shall be corrected immediately or the miners shall be withdrawn and the affected area plainly marked with "danger" signs.

B. During each shift in which coal is produced, a certified person shall examine for hazardous conditions along each underground belt conveyor entry where a belt conveyor is operated. This examination may be conducted at the same time as the pre-shift examination of the belt conveyors and the belt conveyor entries, if the examination is conducted within three hours before the established eight-hour interval. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

C. Persons conducting the on-shift examination shall determine at the following underground locations which are underground:

1. The volume of air in the last open crosscut, which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses, of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed;

2. The volume of air on a longwall or shortwall, including areas where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall;

3. The velocity of air at each end of the longwall or shortwall face at each location specified in the approved ventilation plan required pursuant to the federal mine safety law; and
4. The volume of air at the intake end of any pillar line (i) where a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, if a single split of air is used or (ii) if a split system is used, in the intake entries of each split, immediately inby the split point, if a split system is used.

D. A test shall be made for methane before (i) any electrically powered equipment is taken inby the last open crosscut, before (ii) any blasting takes place, and before (iii) work is resumed after blasting. When a longwall or shortwall mining systems are system is used, these such methane tests test shall be made from under permanent roof support at the shearer, the plow, or the cutting head. These Such methane tests test shall be made at least once every 20 minutes or more often as necessary for safety while such equipment is in operation. When mining has been stopped for more than 20 minutes, a methane tests test shall be conducted prior to the start-up start-up of equipment.

E. Idle Each idle or worked-out areas area underground, including a section belts belt that have has been idle for a period of 24 hours or more, shall be examined by a certified person immediately before miners are permitted to enter or work in such areas area. The person conducting the examination shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

F. Daily and on-shift examinations of surface areas of underground coal mines shall be made in accordance with the requirements for daily and on-shift examinations at surface coal mines as provided in § 45.1-161.256 45.2-xxx.

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. Language is updated for modern usage and clarity. The text defining "last open crosscut" is moved to the definitions section for Subtitle II, in proposed Chapter 5.

§ 45.1-161.210 45.2-xxx. Weekly examinations.
A. At least once every seven days, a mine foreman shall examine each unsealed worked-out areas where no pillars have been recovered.

B. At least once every seven days, a mine foreman shall evaluate the effectiveness of each bleeder systems used under pursuant to §45.1-161.220 45.2-xxx.

C. At least once every seven days, a mine foreman shall examine each of the following locations for hazardous conditions:

1. In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

2. In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

3. In each longwall or shortwall travel way, in its entirety, so that the entire travel way is traveled.

4. At each seal along each return and or bleeder air courses and at each seal along each intake air courses not examined under pursuant to §45.1-161.208 45.2-xxx.

5. In each escapeway, in its entirety, so that the entire escapeway is traveled.

6. On each working section not examined under pursuant to §45.1-161.208 45.2-xxx during the previous seven days.

D. At least once every seven days, a certified person shall:

1. Determine the volume of air entering the each main intakes intake and in each intake split;

2. Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms. Such determination and test shall be conducted in the return of each split of air immediately before it enters the main returns and where the air leaves the main returns; and

3. Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.
E. Hazardous conditions

Any hazardous condition shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons necessary to correct the hazardous condition shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

F. Weekly examination

No weekly examination is required during any seven-day period in which no person enters any underground area of the mine. If a mine is idled or is in a nonproducing status with entry only for maintenance of the mine, weekly examinations may be conducted in accordance with a plan approved by the Chief.

G. Weekly examinations

Except for certified persons required to make examinations, no person shall enter any underground area of a coal mine if the weekly examination has not been completed within the preceding seven days. The weekly examination may be conducted at the same time as the pre-shift examination.

H. Weekly examinations

The person making the weekly examinations shall certify completion of the examination by initials, date, and time that the examination was made. Certifications and time shall appear at enough locations to show that the entire area has been examined.

I. Examinations of fans

Any examination of surface areas of underground coal mines shall be made in accordance with the requirements for weekly examinations at surface coal mines as provided in § 45.1-161.256 45.2-xxx.

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, and the text of subsection H is conformed to similar certification provisions in other sections.

§ 45.1-161.211 45.2-xxx. Examinations of fans.

A. An authorized person shall conduct a daily inspection of all main fans and of the machinery connected therewith by an authorized person. The person making the examination shall make a record of the same examination in a book prescribed for this purpose or by other adequate facilities provided to
permanently record the performance of the main fan and to give warning of an interruption to
a fan. No such daily examination is required on any day in which no person goes
underground, except that the examination shall be completed prior to any person entering the
mine if no examination was made on the previous day's examination has not been made day.

B. Places Any place ventilated by means of a blower fan shall be examined for
methane by a certified person before the fan is started at the beginning of the shift and after
any interruption of fan operation that lasts for five minutes or more during the shift.

C. Each blower fan and its tubing shall be inspected at least twice during each
working shift by a certified person.

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,
and language is updated for modern usage and clarity.

A. Any hazardous condition found by the mine foreman or other certified
persons designated by the operator for the purposes of conducting
examinations under Article 14 (§ 45.1-161.208 et seq.) of this chapter shall be (i)
corrected immediately, or the affected area shall be dangered off (ii) posted with conspicuous
danger signs until the condition is corrected. If the hazardous condition creates an imminent
danger, all persons except those required to perform work to correct the imminent danger
shall be withdrawn from the affected area. A record of the hazardous condition found and
the corrective actions taken shall be made in a book maintained for this purpose on
the surface at the mine. The record shall be made by the completion of the shift on which the
hazardous condition is found.

B. Upon completing the pre-shift examination, the mine foreman shall return to the
surface or a designated station underground and report in person to an authorized person
before any other miner enters the mine. Immediately upon reaching the
surface, the mine foreman shall record in ink or indelible pencil the result of his inspection in
a book kept for this purpose on the surface for that purpose at the mine.
C. At the completion of any shift during which a portion of a weekly examination is made, a record of each hazardous conditions, their locations condition, its location, the corrective action taken, and the results result and location of each air and methane measurements measurement shall be made. The Such record shall be made by the person mine foreman making the examination or by a another certified person designated by the operator. If the record is made by a person other than the examiner person making the examination, the examiner person making the examination shall verify the record by initials and date.

D. The actual level of methane detected in any examination shall be recorded in the book.

E. A mine foreman or other certified person conducting a required examination shall record the results of his examination in ink or indelible pencil in a book kept maintained for this purpose on the surface for that purpose at the mine. Similar records may be kept at designated stations or offices underground.

F. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose a hazardous condition, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control the each hazardous conditions condition have been taken. Where such records do not disclose no hazardous conditions condition, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another 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 and ensure that action is taken to eliminate the each hazardous conditions condition disclosed in the records.

G. All records of examination shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.
Drafting note: 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, including by rephrasing the requirement in subsection A that an area "be	dangered off."

§ 45.1-161.213. Repealed.


§ 45.1-161.214 45.2-xxx. Notice of hazardous conditions.

The mine foreman shall give prompt attention to the removal of each hazardous condition reported to him by any person working in the mine. If it is impracticable to remove the hazardous condition at once, the mine foreman shall notify every person whose safety is threatened by such hazardous condition to remain away from the portion of the mine where the hazardous condition exists.

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, and language is updated for modern usage.

§ 45.1-161.215 45.2-xxx. Notice of monitor tampering prohibition.

The operator or agent, shall display, in bold-faced type, on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, the following notice:

NOTICE: IT IS UNLAWFUL TO DISTURB, DISCONNECT, BYPASS, IMPAIR, OR OTHERWISE TAMPER WITH METHANE MONITORS OR OTHER DEVICES CAPABLE OF DETECTING THE PRESENCE OF EXPLOSIVE GASES IN AN UNDERGROUND COAL MINE. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY.

Drafting note: Technical changes.

§ 45.1-161.216 45.2-xxx. Main fans.

A. The active workings of a mine shall be ventilated by means of main fans.
B. Unless otherwise approved by the Chief, each fan shall be (i) provided with pressure-recording gauges, (ii) installed on the surface in a fireproof housing, and (iii) equipped with fireproof air ducts.

C. In addition to the requirements of subsection B, each main fan shall either:

1. Be equipped with ample means of pressure relief and be offset not less than 15 feet from the nearest side of the mine opening; or

2. Be directly in front of, or over, the mine opening; however, the such opening shall not be in direct line with possible forces coming out of the mine should an explosion were to occur, and there shall be another opening, having, equipped with a weak-wall stopping or with explosion doors that would be in direct line with the forces coming out of the mine should an explosion occur, such opening to be, that is located not less than 15 feet nor or more than 100 feet from the fan opening and in direct line with the forces coming out of the mine if an explosion were to occur; and

3. In mines ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.

D. Each main mine fan shall be provided with an automatic device to give alarm when the fan slows down or stops. Unless otherwise approved by the Chief, this device shall be placed so that it will be seen or heard by an authorized person.

E. Each main fan shall be on a separate power circuit, independent of the mine circuit.

F. The area surrounding a main fan installation shall be kept free of combustible material for at least 100 feet in all directions where physical conditions permit.

G. Each mine fan shall be operated continuously, except when no miner is underground and such mine fan is intentionally stopped for necessary testing, adjustment, maintenance, or repairs while no miners are underground, or as otherwise approved by the Chief. If the main fan is intentionally stopped for testing, adjustment, maintenance, or repairs,
the mine operator shall comply with the requirements set forth in the approved fan stoppage plan for that mine. If the main fan is stopped after all miners are out of the mine, the fan shall be operated for a period specified in the approved fan stoppage plan for that mine, prepared pursuant to § 45.2-xxx [§ 45.1-161.217], before any miner is allowed underground.

H. Where electric power is available, no main mine fans shall not be powered by means of an internal combustion engines; however, where engine. However, if electric power is not available or the fan is employed for emergency use, a main mine fans may be powered with an internal combustion engines if, unless engine. Unless otherwise approved by the Chief, (i) the such fan shall be operated exhausting, and (ii) the engine operating the such fan shall be offset at least 10 feet from the fan and housed in a separate fireproof structure.

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, and language is updated for modern usage.

§ 45.1-161.217 45.2-xxx. Fan stoppage plan.

A fan stoppage plan shall be prepared for each mine, which plan shall be subject to approval by the Chief or his designated representative. Failure to comply with any requirement set forth in the approved plan will be a violation of this section. Fan Each fan stoppage plans shall require the following:

1. When the main fan fails or stops, the power shall be cut off from the mine and miners shall be withdrawn from the all face areas.

2. Miners shall be withdrawn from the underground areas if the ventilation is not restored within a reasonable time determined by the Chief, which period of time shall not to exceed fifteen 15 minutes. In determining the such reasonable time period, the Chief shall consider, among other things factors, the size and number of fans; and the methane liberation rate of the mine.

3. If ventilation is restored within the time period established in the plan, the each face areas and any other-areas where methane is likely to accumulate shall be
examined by a certified person, and if all areas are found to be free of explosive or
harmful gases, power may be restored and work resumed.

4. If ventilation is not restored within the time period established in the plan and the
miners are evacuated from the mine, the main fan shall be operated for a period of time
specified in the plan. Such period of time shall not be less than fifteen minutes.
Thereafter, the mine shall be examined by a certified person before any miner is permitted underground or energizing any power circuits.

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, and language is updated for modern usage and clarity.

§ 45.1-161.218. Auxiliary fans.
A. The installation or use of an auxiliary fan in any mine shall be prohibited, without the prior written approval of the Chief.

B. Machine-mounted scrubbers. A machine-mounted scrubber and spray fan systems may be used for control of coal dust and to enhance ventilation. Such installations are not considered an auxiliary fan.

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, and language is updated for modern usage.

§ 45.1-161.219. Volume Quantity of air.
A. The quantity of air passing through the last open crosscut shall be not less than at least 9,000 cubic feet per minute; provided, however, that the quantity of air reaching the last open crosscut in a pillar-recovery section may be less than 9,000 cubic feet per minute, if at least 9,000 cubic feet of air per minute is being delivered to the intake end of the pillar line.

B. The air current at a working face shall, under all conditions, have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases and dust.
C. In a longwall and or shortwall mining systems:

1. The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face, unless otherwise approved by the Chief; and

2. The velocity of air provided to control dust at designated locations on the longwall or shortwall face shall be maintained in accordance with the provisions of the mine ventilation plan approved by the federal Mine Safety and Health Administration.

D. Ventilation shall be maintained during the installation and or removal of mechanized mining equipment.

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, and language is updated for clarity.

§ 45.1-161.220 45.2-xxx. Bleeder systems.

A. All mines Every mine shall have a system, which has been approved by the Chief, of bleeder openings of air courses designed to provide positive movement of air through or around worked-out areas, which is. Such system shall be sufficient to prevent a hazardous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure. Operators Each operator shall submit a bleeder system plans which comply plan that complies with requirements developed by the Chief.

B. The system requirements developed by the Chief shall, at a minimum, address standards for (i) supplemental roof supports, (ii) water accumulation, (iii) continuous movement of gases from gob areas, (iv) methane content, (v) the use and operation of degasification systems, (vi) air flow direction, and content, and (vii) ventilation controls. The Chief shall not approve a plan which provides for a methane content exceeding four and one half 4.5 percent in bleeder air courses. Failure to comply with an approved plan will be a violation of this section.

C. This section shall not prohibit the sealing of worked-out areas in accordance with § 45.1-161.228 45.2-xxx.
B. The mine map requirements of § 45.1-161.64, 45.2-xxx may be used to depict bleed system standards specified in this section.

D. Failure to comply with an approved plan is a violation of this section.

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, and organizational changes are made that separate the provisions addressing the requirements to be developed by the Chief and place the violation provision at the end of the section.

§ 45.1-161.221, 45.2-xxx. Coursing of air.

A. The main intake and return air currents of drifts or slope mine shall not be in a single partitioned opening.

B. All entries driven in coal shall be in sets of two or more entries.

C. underground transformer station, battery-charging station, substations, rectifiers station, substation, rectifier, and water pumps shall be housed in noncombustible structures or areas or be equipped with an approved fire suppression system. These installations shall be ventilated with intake air that is coursed into a return air course or to the surface, and that is not used to ventilate any working place. This requirement does not apply to: (i) rectifiers, rectifier, battery-charging station, or power center with transformers that are either dry type or contain nonflammable liquid, or battery-charging stations, if they are located at or near the working section and are moved as the working section advances or retreats; (ii) submersible pumps; (iii) permissible pumps and associated permissible switch gear; (iv) pumps located at or near the working section that are moved as the working section advances or retreats, and; or (v) small portable pumps. Such equipment shall be installed and operated only in a well-ventilated location.
D. Any change in ventilation that materially affects the main air current or any split thereof shall be made when the mine is not in operation and there are no miners in the mine other than those engaged in changing the ventilation.

E. Each section in a mine shall be ventilated by a separate split of air.

F. Air used to ventilate a belt haulage entry shall not be used to ventilate any working place unless approved by the Chief.

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, and language is updated for modern usage.

§ 45.1-161.222 45.2-xxx. Actions for excessive methane.

A. Tests for methane concentration under this section shall be made by certified or qualified persons trained in the use of an approved detecting device which is properly maintained and calibrated. Tests shall be made at least twelve inches one foot from the roof, face, ribs, and floor.

B. If a methane concentration of one percent or more is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mining equipment is being installed or removed, work shall cease and electrical power shall be de-energized in the affected working place at the equipment, except for any intrinsically safe atmospheric monitoring system (AMS) which need not be de-energized. Changes or adjustments shall be made to the ventilation system to reduce the methane concentration to below one percent. Only work to reduce the methane concentration of methane to below one percent shall be permitted. This limitation does not apply to other faces in the entry or slope in which work can be safely continued.

C. If a methane concentration of 1.5 percent or more is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mining equipment is being installed or removed, only work necessary to reduce the methane concentration to less than one and one-half percent is permitted.
will be permitted, and all other personnel miners except those required to perform such necessary work shall be withdrawn from the affected area. Electrically powered equipment in the affected area shall be de-energized and other mechanized equipment in the affected area shall be shut off, except for any intrinsically safe atmospheric monitoring systems (AMS). D. When a methane concentration of one percent or more methane is present in a return or split between the last working place on a working section and where that the location at which such split of air meets another split of air, or the location at which the such split is used to ventilate seals a seal or worked-out areas, changes or adjustments shall be made to the ventilation system to reduce the methane concentration of methane in the return air to less than one percent.

E. When one and one-half percent more methane is present in a return air split between the last working place on a working section and where the location at which such split of air meets another split of air, or the location where the such split is used to ventilate seals a seal or worked-out areas, everyone area, all miners except those persons required to perform necessary work to correct the problem shall be withdrawn from the affected area. Other than an intrinsically safe atmospheric monitoring systems (AMS), all equipment in the affected area shall be de-energized at the source. No other work shall be permitted in the affected area until the methane concentration of methane in the return air is less than one percent.

F. An alternative methane level up to one and one-half concentration of as much as 1.5 percent may be allowed in the return air split where if the following precautions conditions are met: (i) the quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut; (ii) the methane content of the air concentration in the split is continuously monitored during mining operations by an intrinsically safe atmospheric monitoring system (AMS) that gives a visual and audible signal on the working section when the methane concentration in the return air reaches one and one-half 1.5 percent; and (iii) rock dust is continuously applied with a mechanical duster.
to the return air course during coal production at a location in the air course that is immediately outby the most inby monitoring point or inby such point provided if the mechanical duster is maintained in a permissible condition and does not adversely affect the AMS. When one and one-half If a methane concentration of 1.5 percent or more methane is present where at the location at which a return air alternative is applied, all persons shall be withdrawn, except those necessary to improve ventilation, and changes or adjustments shall be made to reduce the methane concentration of methane in the return air to below one and one-half 1.5 percent as set forth in subsection E.

G. The methane concentration of methane in a bleeder split of air immediately before the air in the such split joins another split of air, or in a return air course other than described in subsections D and E, shall not exceed two percent.

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, and language is updated for modern usage and clarity.

§ 45.1-161.223 45.2-xxx. Crosscuts.

A. Crosscuts shall be made between entries and between rooms as provided in the approved roof control plan.

B. Crosscuts Every crosscut between an intake and a return air course shall be closed, except the one nearest the face. Crosscuts A crosscut between rooms shall be closed where necessary to provide adequate ventilation at the working face.

C. Where practicable, a crosscut shall be provided at or near the face of each entry or room before the place is abandoned.

D. Entries No entry or rooms room shall not be started off an entry beyond the last open crosscut.

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.

§ 45.1-161.224 45.2-xxx. Permanent stoppings.

A. Permanent stoppings shall be built and maintained:
1. Between each intake and return air course, except that temporary controls may be used in any room that are 600 feet or less from the centerline of the entry from which the room was developed. Unless otherwise approved by the Chief, such stoppings shall be maintained to and including inclusive of the third connecting crosscut out by the working face.

2. To separate each belt conveyor haulageways haulage entry from any return air courses course, except where a belt entries entry is used as a return air courses course.

3. To separate the primary escapeway from any belt and or trolley haulage entries entry, unless otherwise approved by the Chief.

4. In each return air courses course to direct air into adjacent worked-out areas.

B. Permanent stoppings shall be built of substantial, incombustible material such as concrete, concrete blocks block, brick, tile, or other approved material; however, where physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to skin" may be used.

C. The use of an air lock in the permanent intake stopping line near the section loading point shall be permitted to access the belt and transport supplies.

D. Stoppings shall be maintained to serve the purpose for which they were built and shall be reasonably airtight.

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, and language is updated for modern usage.

§ 45.1-161.225. Ventilation controls.

A. Ventilation shall be so arranged by means of air locks, overcasts, or undercasts that the passage of a haulage trips trip or persons person along the entries will not cause no interruption of the air current. Air locks Each air lock shall be ventilated sufficiently to prevent accumulations an accumulation of methane therein.

B. Air lock doors that are used in lieu of permanent stoppings or to control ventilation within an air course shall be (i) made of noncombustible incombustible material or coated on
all accessible surfaces with flame-retardant material having a flame spread index of 25 or less
as tested under ASTM E162-187 and (ii) of sufficient strength to serve their intended
purpose of maintaining separation and permitting travel between or within air courses or
entries.

C. To provide easy access between the return, belt, and intake escapeway entries,
substantially constructed man-doors that are properly marked so as to be readily detected shall
be installed in at least every fifth crosscut in the stopping lines separating such entries.

D. Doors shall be kept closed except when miners or piece of equipment is
passing through the doorways. Any motor crew or other miners who open doors shall see that the doors are closed before leaving them.

E. Overcasts, undercasts, and regulators shall be well-constructed; of
incombustible material, such as masonry, concrete, or prefabricated metal. They shall be of sufficient strength to withstand possible falls from the roof, (ii) be of ample area to pass the required quantity of air, and (iii) be kept clear of obstructions.

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,
and language is updated for modern usage and clarity. A reference to an ASTM
standard is corrected and updated.

§ 45.1-161.226. Line brattice.

A. Substantially constructed line brattice shall be used from the last open crosscut of
an entry or room when necessary to provide adequate ventilation for the miners and to remove
gases. Any line brattice damaged by falls or otherwise shall be repaired promptly.

B. The space between the line brattice and the rib shall be large enough to permit the
flow of a sufficient volume of air to keep the working face clear of flammable and noxious
gases.

C. Brattice cloth used underground shall be of flame-resistant material.

D. Accumulations of methane shall be moved only by means of
properly installed line brattice; or other approved method.
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, and language is updated for modern usage.

§ 45.1-161.227. Ventilation with air from certain areas.

Active face workings shall not be ventilated with air that has passed through a worked-out area or has been used to ventilate a pillar line. This section shall not apply to air which is being used to ventilate an active pillar line and rooms which are necessary to establish and maintain the pillar line.

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, and language is updated for modern usage.

§ 45.1-161.228. Worked-out areas.

A. All worked-out areas shall be either sealed or ventilated.

B. Where the practice is to seal worked-out areas, the sealing shall be done in accordance with sealing provisions of the approved bleeder plan.

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

§ 45.1-161.229. Air quality.

A. All active workings shall be ventilated by a current of air containing not less than at least 19.5 volume percent of oxygen and no harmful quantities of other noxious or poisonous gases.

B. The volume and velocity of the current of air in all active workings shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases and dust, smoke, and explosive fumes.

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, and language is updated for modern usage.
§ 45.1-161.230. Repealed.  

Drafting note: Repealed by Acts 1999, c. 256.

§ 45.1-161.231. Examination of mines for explosive gas and other hazardous conditions.

A. Certified persons  

Every certified person whose regular duties require them to inspect working places in any mine for hazardous conditions shall have in their possession, and shall use, when underground, a permissible methane detector or other permissible device capable of detecting methane and oxygen deficiency.

B. A sufficient number of permissible methane detectors or other permissible devices capable of detecting methane shall be kept at each mine inby the last open crosscut. All miners shall be trained in the operation of the such device. Any miners working inby the last open crosscut shall be certified by the Board of Coal Mining Examiners pursuant to § 45.2-xxx [45.1-161.28] to conduct gas testing. Methane detectors or indicators shall be maintained in permissible condition.

C. Methane detectors or indicators  

Every methane detector shall be calibrated at least monthly in accordance with the manufacturer's recommendations. A record of such calibration shall be made in a book for this purpose kept at a surface location at the mine and maintained for one year.

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. Outdated references to methane indicators are removed as duplicative of references to methane detectors.

§ 45.1-161.232. Tampering with methane monitoring devices prohibited; penalty.

A. No person shall intentionally disturb, disconnect, bypass, impair, or otherwise tamper with any methane monitors or other devices capable of detecting the presence of explosive gases used in an underground coal mine. If the such methane monitor or device is installed on a face cutting machine, a continuous miner,
longwall face equipment, a loading machine, or other mechanized equipment used to extract or load coal, as required pursuant to 30 CFR Part 75.342, and the such monitor, device, or the equipment malfunctions, the such monitor or device may be disconnected or bypassed for the purposes of removing the monitor or the equipment in order to make necessary repairs to the monitor or the equipment. Any methane monitor or device not otherwise required by law may be disconnected, bypassed, or removed.

B. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

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, and language is updated for modern usage. The final sentence in subsection A, which allows any other methane monitor to be disconnected, is clarified to refer only to such a monitor when it is not required by law.

§ 45.1-161.233. Allowing persons to work in mine where methane monitoring equipment disconnected; penalty.

An operator, agent, or mine foreman shall not knowingly permit any miner to work in any area of the underground coal mine where such operator, agent, or mine foreman has knowledge that a methane monitor or other device capable of detecting the presence of explosive gases has been impaired, disturbed, disconnected, or bypassed in violation of § 45.1-161.232. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

Drafting note: Technical changes are made, including a change 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.

§ 45.1-161.233:1. Intentionally bypassing a safety device; prohibition.

A. No person shall intentionally bypass, bridge, or otherwise impair an electrical or hydraulic circuit that affects the safe operation of electrical or mechanical equipment. This

Drafting note: Technical changes are made, including a change 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.
B. The provisions of subsection A shall not prohibit (i) a certified electrical repairman from by-passing an energized circuit for troubleshooting; (ii) an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion except where motion is necessary to make adjustment or to move the equipment to a safe location; (iii) an authorized person from bypassing a hydraulic circuit for the purpose of troubleshooting or moving equipment to a safe location in order to make necessary repairs or be taken out of service; or (iv) an authorized person from activating an override feature that is designed by the machine manufacturer to allow the machine to be moved to a safe location in order to make necessary repairs or be taken out of service.

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 subsection designations are added for clarity. An erroneous reference to a certified electrical "repairmen" in the second sentence is corrected.

§ 45.1-161.234 45.2-xxx. Control of coal dust.

A. Coal dust shall not be permitted to accumulate excessively in any part of the active areas, including any active workings that are soon to be worked-out.

B. Where an underground mining operation creates an excessive amount of coal dust into the air, any coal dust on the ribs, roof, or floor shall undergo an application of water or water with an added wetting agent, or other another effective method of controlling dust, approved by the Chief, or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor of controlling dust to reduce dispersibility and to minimize the hazard risk of explosion. Such application or method shall occur within forty feet from any active workings or such other areas as the Chief or his authorized representative shall require.
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, and language is updated for modern usage and clarity.

§ 45.1-161.235 45.2-xxx. Rock dusting.

A. All underground areas of a mine, except those areas where the coal dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Chief, or his authorized representative, permits an exception upon his finding that such exception does not pose a hazard to the miners. All crosscuts shall also be rock dusted.

B. All other areas of a mine shall be rock dusted if conditions are found by a proper inspection to be so dusty as to constitute a hazard. If such conditions are found to exist, the Chief, or his authorized representative, shall require the necessary rock dusting to make the areas of the mine safe.

C. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and shall not be permitted to accumulate excessively in active workings, or on electric equipment therein.

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, and language is updated for modern usage.

Article 10.

Personal Safety; Smoking.

Drafting note: Existing Article 10 of Chapter 14.3, concerning personal safety and smoking, is retained as proposed Article 5.

§ 45.1-161.174 45.2-xxx. Checking system; tracking system.
A. Each mine shall have a personnel checking system containing the following requirements:

1. Every person underground shall have on his person a means of positive identification bearing a number recorded by the operator; and

2. An accurate record of the persons in the mine shall be kept on the surface in a place that will not be affected by an explosion;

3. The record shall consist of a written record, check board, lamp check, or time-clock record; and

4. The record shall bear a number identical to that carried by the person underground.

B. Mine-wide tracking systems shall be maintained in useable and operative condition.

Drafting note: Technical changes are made, including organizational changes in subsection A and changes 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.

§ 45.1-161.175 45.2-xxx. Protective clothing.

A. All miners shall wear protective hats while underground and while in those areas on the surface where there is a danger of injury from falling objects.

B. Every person assigned to or performing duties on the surface of an underground coal mine, or any person entering the underground portion of the mine, shall wear reflective materials adequate to be visible from all sides. The reflective material shall be placed on a hard hat and at least one other item of outer clothing such as belts, suspenders, jackets, coats, coveralls, shirts, pants, or vests.

C. Protective footwear shall be worn by miners while on duty in and around a mine where falling objects may cause injury.
D. All employees _Every employee_ inside or outside of mines _a mine_ shall wear
approved-type _an approved type of_ goggles or shields where there is a hazard from flying
particles.

E. Welders _Every welder_ and _helper helper_ shall use proper _shields or goggles or_
shields to protect _their his_ eyes.

F. Miners _Any miner_ engaged in haulage operations _and miners or_ employed around
moving equipment on the surface _and or_ underground shall wear snug-fitting clothing.

G. Gloves _Every employee_ shall _be worn wear gloves_ when _handling material which_
that may injure the hands _is handled_. Gloves _or when handling energized cables. No gloves_
with gauntlet cuffs shall _not be worn around moving equipment. Gloves shall be worn when_
handling energized cables.

H. Miners _Any miner who may be_ exposed for short periods to hazards from
inhalation of gas, dust, fumes, _and or_ mist shall wear approved respiratory equipment. When
the exposure is for _a prolonged periods period_, adequate approved measures to protect _miners_
such miner or to reduce the hazard shall be taken.

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,
and language is updated for modern usage.

§ 45.1-161.176 45.2-xxx. Noise levels and ear protection.

Approved _Each mine operator shall provide approved_ hearing protection _shall be_
provided to miners _by the mine operator_. _Miners Every miner_ shall wear approved hearing
protection in _areas any area_ of excess noise levels in accordance with the mine's hearing
conservation program approved under 30 CFR Part 62.

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,
and language is updated for modern usage.

§ 45.1-161.177 45.2-xxx. Smoking materials prohibited; penalty.
A. No miner or other person shall smoke or carry or possess underground any smoker's articles or matches, lighters or similar materials generally used for igniting smoker's articles. Any person convicted of a violation of this subsection shall be guilty of is a Class 6 felony.

B. Each operator shall institute a smoker search program, approved by the Chief, to ensure that no person entering the underground area of the mine does not carry any smoking materials, matches, material, match, or lighter.

C. Any person entering or present in any underground area of a coal mine shall, by his entry into the such underground area of the mine, be subject to a search of his person, including any personal property as may be in any underground area of the mine at any time he is underground, or both. Such search shall be conducted at the direction of the Chief by employees of the Department. It shall be limited in scope to the person and property of the person present underground at the time of the search and shall be for the purpose of enforcing the provisions of this section.

D. This section shall not prohibit the possession of equipment used solely for the operation of a flame safety lamp or for welding or cutting.

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, and language is updated for modern usage.

§ 45.1-161.178 45.2-xxx. Allowing persons to work in a mine with smoker's articles; penalty.

A. No operator, agent, or mine foreman shall knowingly permit any person in an underground coal mine to smoke, carry, or possess any smoker's articles or materials used for igniting smoker's articles.

B. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

Drafting note: Language is updated for modern usage.

§ 45.1-161.179 45.2-xxx. Posting of notice.
The operator, or his agent, shall display, in bold-faced type, on a sign placed at the
mine office, bath house, and on a bulletin board at the mine site, the following notice:

NOTICE

IT IS UNLAWFUL FOR A MINER OR OTHER PERSON IN AN
UNDERGROUND COAL MINE TO SMOKE OR CARRY OR POSSESS
UNDERGROUND ANY SMOKER'S ARTICLES OR MATCHES, LIGHTERS, OR
SIMILAR MATERIALS GENERALLY USED FOR IGNITING SMOKER'S ARTICLES. A
VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY. ANY PERSON ENTERING OR
PRESENT IN THE UNDERGROUND AREA OF ANY COAL MINE IS SUBJECT TO A
SEARCH OF HIS PERSON AND PROPERTY BY OFFICIALS OF THE DEPARTMENT
OF MINES, MINERALS AND ENERGY FOR SUCH PROHIBITED SMOKER
MATERIALS AT ANY TIME WHILE UNDERGROUND.

Drafting note: Technical changes.

§ 45.1-161.180 45.2-xxx. Smoking in surface and other areas.
A. No miner or other person shall smoke, carry, or possess any smoker's articles, or
carry an open flame, in or near any magazine for the storage of explosive materials.
B. No miner or other person shall smoke in or around any oil houses, tipples, and
house, tipple, or other surface areas where such practice may cause a fire or explosion.

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 9.
Illumination.

Drafting note: The first section of existing Article 9 of Chapter 14.3 is relocated
to this proposed article, while the remaining two sections of existing Article 9 are
relocated to proposed Article 2 of this chapter.

§ 45.1-161.171 45.2-xxx. Portable illumination.
A. All miners for portable illumination underground, every miner shall use only a
permissible electric cap lamp that are worn on the person for portable illumination.
B. Light bulbs on extension cables shall be guarded adequately.

C. The requirement of subsection A shall not preclude the use of any other type of permissible electric lamps, permissible flashlights, permissible safety lamps, or any other permissible portable illumination device.

Drafting note: Technical changes are made, including organizational changes that condense subsection A and move subsection B to the end of the section for clarity, and changes 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.

Article 12.6.

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

Drafting note: Existing Article 12 of Chapter 14.3, concerning first aid equipment, medical care, and emergency medical services providers, is retained as proposed Article 6.

§ 45.1-161.197. First aid equipment.

Each mine shall have an adequate supply of first aid equipment as determined by the Chief. Such supplies shall be located on the surface, at the bottom of each shaft and slope, and at other strategic locations near the working faces, as shall be prescribed by the Chief. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof. The supplies shall be available for use of all persons employed in the mine. No first aid material 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, and language is updated for modern usage.

§ 45.1-161.198. Attention to injured persons.
A. When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and adequate facilities shall be made available for transporting such injured persons to a hospital if necessary.

B. Safe transportation shall be provided to carry an injured person from the site where the injury occurred to the surface of the mine.

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

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.

§ 45.1-161.199 45.2-xxx. Certified emergency medical services providers.

A. At each mine, the mine operator shall station at least one person who is a working coal miner and who holds a valid certificate as an emergency medical services provider issued by the Commissioner of the Department of Health shall be located pursuant to § 32.1-111.5 so as to be make such person available for duty at each mine during any time when miners are working at that mine. Such emergency medical services operator shall utilize enough such providers shall be utilized in sufficient numbers to assure that workers in any mine location can be reached by them within such a reasonable time as is determined by the Chief. Emergency medical services providers Each provider shall have available to him at all times the necessary equipment, as specified by the Chief, for prompt response to emergencies. In the event that at any time there is at any mine telephone facilities or their equivalent shall be installed to provide two-way voice communication between such provider and medical personnel outside the mine.

B. If an insufficient number of qualified miners volunteering at a particular mine volunteer to serve as emergency medical services providers as provided for in this section, the operator may elect to utilize the services of first aid trainees, in such numbers as the Chief determines to be appropriate. Telephone or equivalent facilities shall be installed to
provide two-way voice communication between the emergency medical services providers and medical personnel outside 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. Language is updated, subsection designations are added, and the provision referring to telephone facilities is moved for clarity. A cross-reference to the emergency medical services provider certification is added.

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.

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 to the operation of any surface coal mine in the Commonwealth, and shall supplement 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. 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 rules and adopt 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:

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

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

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

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

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. In subdivision A 1, the phrase "but not limited
to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The word "property" is added to subdivision A 2 for consistency with subdivision A 1. 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 to modernize language.

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

In promulgating the rules and adopting 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 the Act and other mine safety laws; and
5. Such other criteria as 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, 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, shall be conducted by a certified person once every 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, as defined in § 45.2-xxx [§ 45.1-221.1], shall be examined daily by an authorized person on any day on which a person works at such location.

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

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

G. Examinations At least one examination for methane shall be conducted for each production shift in each installation, enclosure, or other facility in which coal is handled or stored. Such areas shall also be tested for methane before any activity involving welding, cutting, or an open flame. 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 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.

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

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

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

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

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

D. Records Each record shall be countersigned by the supervisor of the examiner creating the records record. Where such records disclose record discloses a 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 records were record was completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions condition have been taken.
Where such records do not disclose a hazardous condition, the countersigning shall be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person with authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

E. All records of inspections shall be open for inspection by any interested 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 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 hazardous conditions 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.
§ 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.

4. 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 fall or roll.

B. Every surface mine structure, enclosure, and other facilities 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. 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. First aid equipment.

Each surface coal mine shall have an adequate supply 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 equipment shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture proof. In addition to the supplies in the cases, blankets, splints, and properly constructed stretchers in good 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. First aid training.
A. Surface foremen Each surface foreman shall have completed complete and passed 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 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.

§ 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 equipment that is adequate for the size of the mine and shall include 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 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, such as substations, transformer stations, or permanent pump stations; (ii) piece of self-propelled mobile equipment; (iii) belt heads; (iv) areas used for the storage of flammable materials; (v) fueling stations; and (vi) other areas that may 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 a fire occur, 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 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 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 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 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.

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

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

C. Any area surrounding a flammable liquid storage tanks, tank or electrical substations and transformers shall be kept free of combustible material for at least twenty-five 25 feet in all directions. Such storage tanks, substations and transformers shall be posted with readily visible fire hazard warning signs.

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

E. Every fuel line shall be equipped with a shut-off valve at the sources. Such valves shall be readily accessible and maintained in good operating condition.

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

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

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

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

J. Precautions shall be taken to ensure that sparks or other hot materials do not result in a fire when welding or cutting. Welding or cutting with an arc or flame shall not be done in excessively dusty atmospheres or locations. Fire-fighting 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 acetylene bottles 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 other flammable material.

M. Oxygen and acetylene gauges and regulators shall be kept clean and free of oil, grease, and other combustible materials.

N. Belt conveyors shall be equipped with a control 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. The area surrounding every main fan installation or other mine openings shall be kept free from grass, weeds, underbrush, and other combustible materials for twenty-five feet in all directions.

P. Internal combustion engines 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.

A. All mobile equipment shall be maintained in a safe operating condition.

B. Positive-acting stopblocks shall be used where necessary to protect persons from danger of moving or runaway haulage equipment.

C. Where it is necessary for persons to cross conveyors regularly, suitable crossing facilities shall be provided.

D. Persons shall not get on or off moving equipment.

E. When the equipment operator is present, persons shall notify him before any person getting on or off mobile equipment shall notify the operator before doing so.

F. Mobile equipment shall not be left unattended unless the brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall either be blocked or turned into a bank unless the lowering of the bucket or blade to the ground will prevent movement and such bucket or blade is lowered.

G. Persons shall not work on or from a piece of mobile equipment in a raised position unless the equipment is specifically designed to lift persons.

H. Water, debris, or spilled materials which may create hazards to moving equipment shall be removed.

I. Where seating facilities are provided on self-propelled mobile equipment, the operator shall be seated before such equipment is moved. No person shall be allowed to ride on top of self-propelled mobile equipment.
J. Operators The operator of a piece of self-propelled haulage equipment shall sound a warning before starting such equipment and as approaching any place where persons are likely to be.

K. Each mantrip shall be operated independently under the charge of an authorized person, and operated independently.

L. Operator provided mantrips Each mantrip shall be maintained in safe operating condition, and enough of them. Mantrips shall be provided in sufficient number to prevent their being overloaded.

M. Employees No employee shall board or leave a moving mantrip. Each employee shall remain seated while in a moving car and shall proceed in an orderly manner to and from a mantrip.

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 unnecessary phrase "Operator provided" is removed from subsection L to make the subsection parallel to subsection C of § 45.1-161.150 in proposed chapter 7.

§ 45.1-161.269 45.2-xxx. Equipment operation.

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

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

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

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

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

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

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

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

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

E. Tires Any tire shall be deflated before repairs on them are started, and adequate means shall be provided to prevent wheel-locking rims from creating a hazard during tire inflation.

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

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

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

The cross-reference to the Code of Federal Regulations in subsection A is updated to

Language is updated for modern usage.

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

No person shall be permitted to ride or be otherwise transported (i) on or in: (i) dippers, shovels, buckets, forks and clamshells; (ii) on or in the cargo space of a dump truck; (iii) outside cabs or beds; or (iv) on or in a chain, belt, or bucket conveyor, unless such items described in clauses (i) through (iv) are specifically designed to transport 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.

B. Roads, paths, and walks outside of surface structures shall be kept free from obstructions and shall be 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 fly wheel 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.
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6. Repair pits. Guards shall be kept in place when the pits are not in use.

7. Counterweights.

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

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

B. Machinery No machinery shall be repaired or oiled while in motion; provided, however, that this shall not apply unless a safe remote oiling 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.

D. Mechanically operated grinding wheels shall be equipped with:

1. Safety washers and tool rests;

2. A substantial retaining hood, the hood opening of which shall not expose more than a 90-degree sector of the wheel. Each such hood shall include a device to control and collect excess rock, metal, or dust particles, or if no such device is provided, equivalent protection shall be provided to each employee operating such machinery; and

3. Eyeshields, unless goggles are worn by the operator.

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

§ 45.1-161.274 45.2-xxx. Hydraulic hoses.

All hydraulic hoses used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For hoses purchased after January 1, 1989, the rated pressure shall be permanently affixed on the outer surface of the hose and repeated at least every two feet. Hoses purchased and hose 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 (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 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.

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

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

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

E. Haulage roads Every haulage road constructed on or after July 1, 2005, shall be constructed at least one and one-half times the width of the widest equipment in use, and those any haulage roads road that is used for passing shall be constructed at least three times the width of the widest equipment in use. In areas where this may any area in which it is not possible to construct the haulage road to at least the applicable minimum width, the foreman shall establish procedures for safe travel of haulage vehicles.
F. Traffic rules, signals, and warning signs shall be standardized at each mine and shall be posted. Such rules, signals, and signs shall include, but not be limited to, rules for the travel of on-road vehicles operating near off-road haulers in work areas.

G. Dumping stations where Every dumping station at which material is dumped over an embankment shall be designed to minimize backing and, where conditions permit, to provide for perpendicular travel to allow the equipment operator to observe the dumping station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other available means shall be used to clearly indicate each dumping location. This subsection shall not apply to a dumping station (i) that is moved after each dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are dumped short and pushed over the embankment. Dump stations Any dumping station that may could interfere with haulroads a haulage road or work areas 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 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 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 prevent the obstruction of visibility of any equipment operators.

F. Dippers, buckets, loading booms, or other heavy loads shall not be swung over 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 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

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

A. Where mining operations raise 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 effective methods shall be used to allay such dust at its sources.

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 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 transformer is isolated by elevation ( to a height of eight feet or more above the ground ), they 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 shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times; unless an authorized person is present.

B. Surface transformers containing flammable oil and is installed where they present 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 station on the surface.
D. **Every** transformer 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 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. **Every** high-voltage circuits shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the persons who perform electrical or mechanical work on such circuits or on any equipment connected to the circuits, except that circuit. However, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are unavailable, by a certified person authorized by the operator or his agent. However, employees may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves.

F. This section does not prohibit a certified electrical repairman from making checks on or troubleshooting an energized circuits 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. **Every** metallic sheaths, armors, and conduits enclosing a power conductor shall be electrically continuous throughout and shall be grounded effectively.
B. Metallic frames. Every metallic frame, casing, and or other enclosures 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 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 frame of the power-utilizing equipment. Such grounding conductors 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 electrified 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 against excessive overload. Wires or other wire or another conducting materials shall not be used as a substitute for a properly designed fuse, and 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 shall be kept in place at each power-control switch and at stationary machinery where a shock hazard exists.

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

F. All 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.

H. Persons All persons shall stay clear of 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 Code in effect at the time of their installation.

J. All 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 Code in effect at the time of their installation.

K. All 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 Manufacturers Association in effect at the time such cables are 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. 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 cable shall be made in a workmanlike manner, and shall be mechanically strong, and 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 cable shall be made as follows:

1. Mechanically strong, with adequate electrical conductivity and flexibility.

2. Effectively insulated and sealed so as to exclude moisture.

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

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

Drafting note: Technical changes are made, including organizational changes in subsection D and changes 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.

Article 10.

Explosives and Blasting.

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

§ 45.1-161.284. Surface storage of explosives and detonators.

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

B. Surface magazines. Every surface magazine for storing and distributing explosives in amounts exceeding 150 pounds shall be:
1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistant material. The roof of a magazine that is located in such a way as to make it impossible to fire a bullet directly through the roof from the ground, need not be bulletproof, but where bullet-resistant. Where it is possible to fire a bullet directly through them, roofs shall be made bullet-resistant by material construction, or by the use of a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by another method;

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

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

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

5. Provided with properly screened ventilators;

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

7. Kept locked securely when unattended; and

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

C. Surface magazines

A surface magazine for storing detonators need not be bulletproof, but it shall be in accordance with other provisions for storing explosives.

D. Explosives

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

E. The location of magazines No magazine shall be placed less than 300 feet from any mine opening. However, if a magazine cannot be practicably located at such a distance, it may be located less than 300 feet from a mine opening, if it is sufficiently barricaded and approved by the Chief. Unless approved by the Chief, no magazine shall not be located closer to an occupied building, public roads, or passenger railways 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 magazine shall be limited to approximately a forty-eight 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 substantially fastened hardwood partition or the equivalent.

G. The area surrounding 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 explosives magazine is illuminated electrically, each lamp shall be of vapor-proof type, and installed and wired so as to present minimal fire and contact hazards.

I. Only nonmetallic tools shall be used for opening any wooden containers of explosives. Extraneous materials shall not be stored in an explosives magazine.

J. Smoking, or carrying smokers' articles or open flames shall be 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 for consistency.

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

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

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

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

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. Language is updated for modern usage and clarity.

§ 45.1-161.286 45.2-xxx. Minimum blasting practices.
A. When explosives are in use on the surface and an electrical storm approaches, all persons shall be removed from the blast area until the storm has passed.

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

Drafting note: Technical changes are made for modern usage. 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.

Article 11.

Ground Control.

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

§45.1-161.287. Ground control.

A. All surface coal mining operations shall establish and follow a ground control plan approved by the Chief to ensure the safety of workers and others affected by the operations. 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 or other occupied buildings, (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 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, 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 and 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.
§ 45.1-161.289 45.2-xxx. Highwall inspections.
A. The 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 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 operation, frequently during any period of heavy rainfall or intermittent freezing-thawing.
C. Hazardous conditions shall be corrected and loose material removed from above the mining area before any work is begun.
D. Records shall be kept of the inspection compiled and examination performed pursuant to subsections A and B. Such records shall be maintained for at least one year.

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.

§ 45.1-161.290 45.2-xxx. Penetration of underground mines; testing.
A. A qualified person shall test for the presence of methane and for a deficiency of oxygen, using an approved device, at the entrance to an auger hole or at a highwall miner entry when either such entry point penetrates a worked-out area of an underground mine.
B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is found to exist, no further work shall be performed until the atmosphere has been made safe.

Drafting note: Language is updated for clarity.

§ 45.1-161.291 45.2-xxx. Safety precautions.
A. No person shall enter an auger hole or highwall miner entry without prior approval from the Chief.
B. Auger holes and Every auger hole or highwall miner entries entry shall be blocked with highwall spoil or other suitable material before it is abandoned.

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

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

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

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

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

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.

Article 13.

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

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

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

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

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

CHAPTER 10.

VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979.

Drafting note: Existing Chapter 19 is retained as proposed Chapter 10, consisting of five articles: Article 1, General and Administrative Provisions; Article 2, Regulation of Mining Activity; Article 3, Miscellaneous Provisions; Article 4, Abandoned Mine Reclamation; and Article 5, Coal Surface Mining Reclamation Fund.

Article 1.

General and Administrative Provisions.

Drafting note: Existing Article 1, concerning general and administrative provisions, is retained as proposed Article 1.

§ 45.1-226. Short title.

This chapter shall be known as the "Virginia Coal Surface Mining Control and Reclamation Act of 1979."

Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which states that throughout the Code the caption of a subtitle, chapter, or article serves as a short title citation.

§ 45.1-227. Findings and policy.

A. The General Assembly finds and declares that federal enforcement and administration of the regulatory program established by the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), would not be in the best interests of the Commonwealth. It is the objective of the General Assembly to preclude, or minimize the adverse effects of federal enforcement, and to allow the regulation of coal surface mining to remain within the powers of the Commonwealth, to the fullest extent possible.

It is the purpose of this chapter to enable the Commonwealth through its own instrumentalities, to enforce and administer the provisions of the federal program, in order to lessen federal enforcement and administration thereof.
Nothing in this chapter, however, is intended, nor shall be construed, as expressing the
Commonwealth's approval of or satisfaction with the standards or provisions contained in the
regulatory program of the federal act, so as to limit or affect any suit, action or other
proceeding brought by the Commonwealth or any person, to invalidate, set aside or modify, in
whole or part, the federal act or regulations promulgated thereunder.

B. The proper control of surface mining of coal so as to minimize or prevent adverse
disruptions and the injurious effects thereof requires thorough planning in the selection of
appropriate coal surface mining sites, methods of coal surface mining, and the nature and
extent and the incorporation and use of control techniques and reclamation actions as an
integral and simultaneous part of coal surface mining;

C. Because the Commonwealth's administrative agencies, through their experience of
regulating coal surface mining, have developed a special expertise in the characteristics of
coal surface mining in Virginia, as well as physical conditions in Virginia's coal mining areas,
and because coal mining is such an important and integral element in the economy and culture
of Virginia, it is in the best interest of the Commonwealth that the development,
administration and enforcement of the provisions of the federal Surface Mining Control and
Reclamation Act of 1977 be carried out by State officials and instrumentalities pursuant to a
permanent State regulatory program and a State abandoned mine reclamation program
approved by the Secretary of the Interior of the United States.

Drafting note: This section, which is currently not set out, is deleted as an
unnecessary and nonstatutory policy statement in accordance with policies of the Code
Commission. In addition, the interest of the General Assembly in providing that
Virginia agencies administer and enforce requirements related to the federal Surface
Mining Control and Reclamation Act of 1977 are now in place and incorporated into
Title 45.1 (Mines and Mining).

§ 45.1-229 45.2-xxx. Definitions.
The following words and phrases when used in this chapter shall have the meaning respectively ascribed to them in this section except where the context clearly requires a different meaning; the Director shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter.:

"Approximate original contour" means that the surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Director determines that they are in compliance with the applicable performance standards promulgated pursuant to this chapter.

"Coal surface mining and reclamation operations" means a surface mining operations and all activities necessary and incidental to the reclamation of such operations after March 20, 1979 operation.

"Coal surface mining operations" means the following:

1. Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243, any surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include (i) excavation for the purpose of obtaining coal, including by such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; (ii) the use of explosives and blasting; and (iii) in situ distillation or retorting, leaching, or other chemical or physical processing; and (iv) the cleaning, concentrating, or other processing or preparation, and loading of coal for interstate commerce at or near the mine site; however, such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 and two-thirds percent of the tonnage of
minerals removed for purposes of commercial use or sale, or coal explorations, exploration subject to § 45.1-233 of this chapter; and

2. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include (i) any adjacent land whose use of which is incidental to any such activities, activity; (ii) all lands affected by the construction of any new roads or the improvement or use of any existing roads to gain access to the site of such activities and for haulage, and excavations (iii) any excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, stockpile, overburden, piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures or other property or materials on the surface, resulting from or incident to such activities.

"Division" means the Division of Mined Land Reclamation.


"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a coal surface mining and reclamation operation, which condition, practice or violation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of substantial physical harm, including death or serious injury, before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.
"Operator" means any person engaging in a coal surface mining operation whether or not such coal is sold within or without the Commonwealth.

"Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Permit" means a permit issued by the Director pursuant to the approved state regulatory program regulations.

"Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by § 45.1-241 and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding any of the following permits issued by the Director: (i) a permit for coal surface mining pursuant to § 45.1-234, (ii) a permit for coal exploration pursuant to § 45.1-233, or (iii) a national pollutant discharge elimination system permit pursuant to § 45.1-254.

"Person" means any individual, partnership, association, joint venture, trust, company, firm, joint stock company, corporation, or any other group or combination acting as a unit, or any other legal entity.

"Secretary" means the U.S. Secretary of the Interior of the United States.

"State or local agency" means any department, agency, or instrumentality of the Commonwealth; or any public authority, municipal corporation, local governmental unit, or political subdivision of the Commonwealth; or any department, agency, or instrumentality of any public authority, municipal corporation, local governmental unit, or political subdivision of the Commonwealth, or two or more of any of the aforementioned.

"State regulatory program regulations" or "means the permanent state regulatory program established by this chapter meeting the requirements of the
federal act for the regulation of coal surface mining and reclamation operations within the
Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

"Unwarranted failure to comply" means the failure of a permittee (i) to prevent the
occurrence of any violation of his permit or any requirement of this chapter due to
indifference, lack of diligence, or lack of reasonable care, or the failure (ii) to abate any
violation of such permit or the requirement of this chapter due to indifference, lack of
diligence, or lack of reasonable care.

Drafting note: The section, because it contains definitions, is relocated to the
beginning of the chapter. The provision in the first sentence authorizing certain
regulations is retained as a part of subsection A in proposed § 45.2-xxx [§ 45.1-230].
Technical changes are made, including the reordering of definitions into alphabetical
order. An obsolete provision in the definition of "coal surface mining and reclamation
operations" is proposed for deletion and an obsolete reference to a future "permanent
state regulatory program" is proposed for deletion because it has been adopted.

§ 45.1-228 45.2-xxx. Purpose and policy of chapter.
A. It is the purpose and policy of this chapter is to do the following:
1. Provide for the implementation and enforcement, by the Commonwealth, of the
federal Surface Mining Control and Reclamation Act of 1977, act and the regulations of the
United States U.S. Secretary of the Interior promulgated adopted thereunder, and amendments
thereto, as the same may be or become effective at any time or from time to time.
2. Promote the reclamation of coal-mined areas, and areas which that have been
affected by such mining which and that were not adequately reclaimed, or were abandoned,
prior to the enactment of the federal Surface Mining Control and Reclamation Act of 1977,
act and which that, in their unreclaimed condition, continue to substantially degrade the
quality of the environment, prevent or damage the beneficial use of land or water resources, or
endanger the public health or safety;
3. Exercise the police power of the Commonwealth in a coordinated statewide program to effectively control present and future problems associated with coal surface mining and provide for the reclamation of disturbed lands to ensure the protection of the public welfare and safety; and

4. Authorize and enable the Department to submit, and obtain approval of, a permanent state regulatory program and abandoned mine reclamation program, pursuant to the federal Surface Mining Control and Reclamation Act of 1977 act.

B. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any person in any dispute involving property rights, including interests in water resources, or the right of any person to seek damages or other relief on account of injury to persons or property, including interests in water resources, and to maintain any action or other appropriate proceeding therefor, except as is otherwise specifically provided in this chapter; nor is intended or shall be construed to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

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. Language is updated for clarity and modern usage and the single sentence of subsection B is divided into two sentences for clarity.

§ 45.1-253 45.2-xxx. Certain mining operations exempt from this chapter.

The provisions of this chapter shall not apply to any of the following activities the extraction of coal:

1. The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and or

2. The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Director.
Drafting note: The section is relocated from existing Article 3. Technical changes are made.

§ 45.1-259. Applicability of chapter to public agencies, utilities, and corporations.

Any agency, unit, or instrumentality of the Commonwealth, or of federal or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in coal surface mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter.

Drafting note: The section is relocated from existing Article 3. Technical changes are made.

§ 45.1-230. Authority and duties of Director.

A. The authority to publish and promulgate such regulations as may be necessary to carry out the purposes and provisions of this chapter is hereby vested in the Director. Regulations shall be consistent with regulations promulgated adopted by the Secretary pursuant to the federal act or in conformity to any court ruling construing such act. The Director may adopt by regulation definitions other than those provided in § 45.2-xxx [§ 45.1-229] as necessary to carry out the intent of this chapter. In promulgating such regulations, unless otherwise directed by law, in adopting regulations, the Director shall provide an opportunity for public comment, both oral and written, and shall give public notice of proposed regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory, or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be...
provided solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code.

B. C. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director. In administering and enforcing the provisions of this chapter, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter; to make investigations and inspections necessary to insure compliance with this chapter; to conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; to issue orders and notices of violation; to review and vacate or modify or approve orders and decisions; and to order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions provision of this chapter or any rules and regulations regulation adopted thereunder hereunder;

2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (§ 45.1-260 45.2-xxx et seq.) of this chapter;

3. To encourage and conduct investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to coal surface mining and reclamation of lands and waters affected by coal surface mining;

4. To receive any federal—or state—funds, or any other funds, and to enter into any contracts for which funds are available to carry out the purposes of this chapter; and

5. To enter into cooperative agreements with the Secretary to regulate coal surface mining on federal lands.

C. D. The Division of Mined Land Reclamation shall have the responsibilities provided under this chapter and such duties and responsibilities as the Director may assign, or as may be provided for in regulations promulgated adopted by the Director.
Drafting note: A provision of existing § 45.1-229 regarding definitions is relocated to proposed subsection A because it authorizes certain regulations. 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. The proviso "unless otherwise directed by law" is added to the Administrative Process Act and Virginia Register Act compliance requirement in subsection A to accommodate any future exception contained in this Title. Language is updated for modern usage 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.

§ 45.1-256 45.2-xxx. Training and certification of blasters.

A. In order to ensure that explosives are used only in accordance with applicable state and federal laws, the Director is authorized to adopt regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use, storage, and handling of explosives in coal surface mining operations.

B. The Division shall assume primary responsibility for conducting the examinations and issuing the certificates for such persons in accordance with the regulations adopted pursuant to subdivision A of this section.

Drafting note: The section is relocated from existing Article 3. 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.

§ 45.1-231 45.2-xxx. Conflicts of interest prohibited.

B–A. For the purposes of this section, "financial interest" shall include includes a pecuniary interest accruing to an employee or to his the employee’s spouse, minor children or other relatives relative living in the same household.

A–B. No employee of the Department performing any function or duty under this chapter, shall have a financial interest in any underground or surface coal mining operation.
C. The Director shall promulgate regulations by which for the monitoring and enforcement of the provisions of this section will be monitored and enforced, including provisions for the filing and review of statements and supplements by employees concerning any financial interest which may be affected by this section; (ii) for the hiring, transfer, and removal of employees consistent with the prohibition of this section; (iii) for the resolution of prohibited interests; (iv) for the confidentiality, protection, and disclosure to enforcement authorities of reporting statements; and (v) for such exemptions from the provisions of this section as may be consistent with federal law.

D. [Repealed.]

E. Judicial proceedings to enforce the provisions of this section may be brought by the Attorney General at the request of the Director.

E. Nothing in this article section shall be construed as repealing or amending any other provisions of law pertaining to conflicts of interest except that in cases of conflict, the provisions of this article section shall control.

Drafting note: Existing subsection B is relocated as subsection A in keeping with Code style that definitions are provided at the beginning of a section. The term "promulgate regulations" in subsection C is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage 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. In proposed subsection E, two references to "this article" are replaced with "this section" because this is the only section in this article that pertains to conflicts of interest.

§ 45.1-257. Impeding Resisting, etc., Director or agents a misdemeanor

It shall be a misdemeanor, punishable by a fine of not more than $5,000 or by confinement in jail for not more than one year, or both, for any person, except as permitted by
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law, to willfully resist, prevent, impede, or interfere with the Director or any of his agents in the performance of duties pursuant to this chapter.

Drafting note: The section is relocated from existing Article 3. Language is updated for modern usage.


Drafting note: Repealed by Acts 1984, c. 590.

§ 45.2-xxx. Coal Surface Mining Regulatory Fund created.

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Surface Mining Regulatory Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to § 45.2-xxx [§ 45.1-235] or another provision of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for administering coal surface mining state regulations. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: This section, with its nonreverting fund language for the Coal Surface Mining Regulatory Fund, is proposed to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. This section formally establishes the special fund referenced in proposed § 45.2-xxx [§ 45.1-235] in Article 2.

Drafting note: Existing Article 2, concerning regulation of mining activity, is retained as proposed Article 2.

§ 45.1-233. Coal exploration operations.
A. Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations promulgated by the Director. Such regulations shall include, at a minimum, (i) the requirement that any person, prior to conducting any exploration under this section, must file with the Director notice of intention to explore and such notice shall include a description of the exploration area and the proposed period of supposed exploration; and (ii) include provisions for the reclamation, in accordance with the performance standards established pursuant to § 45.1-242, of all lands disturbed in exploration, including all excavations, roads, and drill holes, and for the removal of necessary facilities and equipment.

B. Information submitted to the Director pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be available for public examination.

C. Any person who conducts any coal exploration activities substantially disturbs the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of § 45.1-246.

D. No person shall remove more than 250 tons of coal while engaged in coal exploration operations without a specific written coal exploration permit issued by the Director.

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 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. A cross-reference to the Virginia Freedom of Information Act is added in subsection B and the prohibition on making information...
available is replaced with a prohibition on disclosure for clarity. Language is updated for modern usage.

§ 45.1-234. Permits. Permit required for coal surface mining operation; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc.

A. On and after eight months from the date on which a permanent state regulatory program is approved for the Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in such operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 19 (§ 45.1-226 et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247, 45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing those sections.

B. No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.

C. Each coal surface mining permit issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under such permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with regulations promulgated by him. The Director shall also promulgate
adopt regulations, meeting the requirements of § 506 of the federal act, for longer permit
terms, successors in interest to the permittee, termination of the permit for failure to
commence operations, right of and procedure for permit renewal, and extension of
boundaries of a mining operation.

Drafting note: Obsolete provisions regarding the future adoption of a regulatory
program, which has occurred, and the grandfathering of mining operations that existed
prior to the adoption of the regulatory program are proposed for deletion.

§ 45.1-235. Form and contents of permit application; fee.
A. Application for a surface mining permit shall be made to the Division in the format
required by the Director and shall be signed and verified under oath by the person, or his legal
representative, intending to engage in the surface mining of coal, or the person's legal
representative.
B. The application shall contain such information as shall be required by
regulations adopted by the Director, including, but not limited to, the information required
under the provisions of § 507(b) of the federal act.
C. To the extent that funds are available from the federal Office of Surface Mining
Reclamation and Enforcement, the Director shall provide for permit application assistance to
small operators as provided in § 507(c) and (h) of the federal act. Such assistance shall
be provided in accordance with regulations adopted by the Director.
D. Each applicant for a permit shall be required to submit to the Division as part of the
permit application an operations plan and a reclamation plan which shall meet
the requirements of this chapter and regulations promulgated by the Director.
E. Each application for a coal surface mining permit issued under this chapter shall be
accompanied by a fee of $26 per acre for the area of land to be affected by the total operation
for which plans have been submitted. An anniversary A payment of $13 per acre for any
area disturbed under the permit shall be payable annually on the anniversary date of the
permit. All fees collected under the provisions of this chapter section shall be paid into a
special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose. The Coal Surface Mining Regulatory Fund created pursuant to § 45.2-xxx.

F. Each applicant for a coal surface mining permit shall file a copy of his application for public inspection at an appropriate public office approved by the Director where the mining is proposed to occur. However, information which pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential upon request of the applicant and not made a matter of public record.

G. Each applicant for a coal surface mining permit shall be required to submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount, that is not less than that specified in regulations adopted by the Director, and is adequate to compensate any person who is injured or whose property is damaged as a result of a surface coal mining and reclamation operations, including by the use of explosives, and who is entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, and including the length of all reclamation operations. The Director is authorized to promulgate regulations which provide for the submission by the applicant of evidence of self-insurance, meeting the requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

Drafting note: In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsection C, the name of the federal Office of Surface Mining Reclamation and Enforcement is updated. In subsection E, reference to a special fund is...
changed to specify the Coal Surface Mining Regulatory Program Fund created in proposed § 45.2-xxx. 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. Language is updated for clarity and modern usage.

§ 45.1-236 45.2-xxx. Operations and reclamation plans.

Each application for a coal surface mining permit pursuant to the approved state regulatory program shall include an operations plan and a reclamation plan, in such form and containing such information as the Director shall require and meeting the requirements of this chapter and regulations adopted by the Director, including but not limited to the information required under § 508(a) of the federal act, and meeting the requirements of this chapter and regulations adopted by the Director. Operations plans shall not include underground workings. The operations plan and a reclamation plan, as approved by the Director, shall be an integral part of the terms and conditions of the coal surface mining permit.

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 phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language is updated for modern usage.

§ 45.1-237 45.2-xxx. Revision of permits.

A. 1. During the term of a permit, the permittee may submit an application for a revision of the permit, together with a revised operations plan and reclamation plan, to the Director.

2. An application for a revision of a permit shall not be approved unless the Director finds that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the revised reclamation plan. The Director shall establish, by regulation, the period of time within which the revision shall be approved.
or disapproved, as well as **guidelines parameters** for a determination of the scale or extent of a
revision request for which all permit application information requirements and procedures,
including notice and hearings, shall apply; however, any revisions—**which that** propose
significant alterations in the **operations operation** plan and reclamation plan shall, at a
minimum, be subject to notice and hearing requirements.

3. Any extension to the area covered by the permit, except an insignificant boundary
revisions revision must be made by application for another permit.

B. The Director shall, within a time limit prescribed in regulations—promulgated
adopted by him, review each outstanding permits permit and may require reasonable revision
or modification of the permit provisions during the term of—such any permit; however, such
revision or modification shall be based upon a written finding and subject to notice and
hearing requirements.

**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 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. Language is updated for modern usage.**

§ 45.1-238 45.2-xxx. Approval or denial of permit.

A. Upon the basis of a complete mining application and reclamation plan or a revision
or renewal thereof, as required by the federal act and pursuant to—the approved permanent
state regulatory program regulations, including public notification and opportunity for public
hearing, the Director shall grant, require modification of, or deny the application for a permit
in a reasonable time established by regulation and shall notify the applicant in writing. The
applicant shall have the burden of establishing that the application is in compliance with all of
the requirements of the permanent state regulatory program regulations. Within—ten 10 days
after the granting of a permit, the Director shall notify the government officials in the city or
section or city in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

B. No permit or revision application shall be approved unless the application affirmatively demonstrates, and the Director finds in writing on the basis of the information set forth in the application or from information otherwise available, which will be documented in the approval and made available to the applicant, that:

1. The permit application is accurate and complete and that all the requirements of the federal act and the permanent state regulatory program regulations have been complied with;

2. The applicant has demonstrated that reclamation as required by the federal act and the permanent state regulatory program regulations can be accomplished under the reclamation plan contained in the permit application;

3. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Director in accordance with regulation, and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

4. The area proposed to be mined is not included within an area designated as unsuitable for coal surface mining pursuant to this chapter nor is it located within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter, unless in such an area as to which an administrative proceeding has commenced, the applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit; and

5. In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Director:

   a. The written consent of the surface owner to the extraction of coal by surface mining methods; or

   b. A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, evidence that the surface-subsurface legal relationship shall be determined in accordance with the laws of this Commonwealth; provided, however, that nothing herein shall be construed to authorize the Director to adjudicate any property rights dispute.

C. The applicant shall file with each permit application a schedule listing any and all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the United States or of this Commonwealth, or of any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the authority, department, or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the Director following an opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled any mining operation with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

D. If the Director finds an application in compliance with subsection B of this section, the area proposed to be mined contains prime farmland pursuant to § 507 (b) (16) of the federal act, the Director shall comply with...
Drafting note: Changes are made for clarity, including the insertion of the word "evidence" and the substitution of "will" for "shall" in subdivision B 5 c, the division of the last sentence in subsection C into two sentences, and the rephrasing of subsection D to avoid the implication that the Director is required to find an application in compliance with subsection B. In subdivision B 4, an obsolete provision regarding the grandfathering of a mining operation in an unsuitable area for which the applicant made legal and financial commitments prior to 1977 is proposed for deletion. Technical changes are made, including the replacement of "guidelines" with "parameters" and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ 45.1-239 45.2-xxx. Public participation in process of issuing or revising permits.

A. The Director shall establish, by regulation, procedures for the notification of and participation by the public and appropriate federal, state, and local governmental authorities in the process for issuing or revising coal surface mining permits, in accordance with § 513 of the federal act.

B. Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for a coal surface mining operation with the Director within thirty days after the last publication of the applicant's notice required by the regulation pursuant to subsection A hereof. If no written objections are filed and an informal hearing is requested, the Director shall then hold an informal hearing in the manner and location prescribed by regulation, unless all the parties requesting the informal hearing stipulate agreement prior to the requested informal hearing and withdraw their request therefor.
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 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. Language is updated for modern usage.

§ 45.1-240. Decision of Director upon permit application; hearing; appeal.

A. The Director shall notify the each applicant for a permit within a reasonable time, as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and such written objections as may have been filed, of his written decision to approve or disapprove the application, in whole or in part, except that if an informal hearing has been held pursuant to § 45.1-239, the Director shall issue to the applicant and the parties to the hearing his written decision within sixty days of such hearings.

B. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the Director on the such permit application, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final determination. The Director shall hold a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and within thirty days thereafter shall issue to the applicant and all persons who participated in the hearing the written decision of the Director granting or denying the permit in whole or in part and stating the reasons therefor. No person who presided at an informal hearing under § 45.1-239 shall preside at the formal adjudicatory hearing or participate in the decision therein or any administrative appeal therefrom.
C. Where a hearing is requested pursuant to subsection B herein, the Director, under such conditions as he may prescribe, may grant such temporary relief as he deems appropriate pending final determination of the proceedings if:

1. All parties to the proceeding have been notified and given an opportunity to be heard on any request for temporary relief;

2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

D. Any (i) applicant, or any (ii) person with who has an interest which is or may be adversely affected and who has participated in the formal hearing as an objector, who is aggrieved by the decision of the Director or by the failure of the Director to act within the time limits specified in this chapter shall have, has a right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Drafting note: Language is updated for clarity and modern usage.


A. After a coal surface mining permit application has been approved, but before such permit is issued, the applicant shall file with the Director, on a form prescribed and furnished by the Director, a bond for performance payable to the Commonwealth and conditioned upon the faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will plans to initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As each succeeding increments of coal surface mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the Director an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall be determined by the Director and shall (i) depend upon the reclamation requirements of the approved...
permit shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Director in the event of forfeiture, but in no case shall the bond for the entire area under one permit be less than $10,000.

B. Liability under the performance bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations promulgated adopted pursuant to § 45.1-242. The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or of the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. D. Cash or securities so deposited pursuant to subsection B shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

D. The Director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, and unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. Such letter of credit shall be provided on a form and in a format established by the Director. Nothing in this section shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

E. The issuer of the letter of credit pursuant to subsection D shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the
insolvency or bankruptcy of the issuer, or alleging any violation of a regulatory
requirements which could result in the suspension or revocation of the
issuer's charter or license to do business. In the event the issuer becomes unable to fulfill any
of its obligations under the letter of credit for any reason, the issuer shall immediately notify
the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy,
insolvency, or the suspension or revocation of its charter or license, the permittee shall be
deemed to be without proper performance bond coverage and shall promptly notify the
Department. The Department shall then issue a notice to the permittee specifying a
reasonable period, which shall not exceed ninety days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to
conduct reclamation operations in accordance with the reclamation plan. No coal extraction and or coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until an acceptable bond is posted. The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

The Director is further authorized to develop and promulgate an alternative system that will achieve the objectives and purposes of the bonding program established under this section.

The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the Director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Drafting note: The section is proposed for reorganization by placing the text of subsection D after the subsection to which it refers, subsection B; by moving general provisions regarding the letter of credit from the end of subsection C to the beginning of
that subsection, where such letters are addressed; by separating provisions regarding  
the failure of a letter of credit in proposed subsection D; and by separating a provision  
authorizing alternative systems in proposed subsection E. 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. Language is updated for modern  
usage.

§ 45.1-242 45.2-xxx. Performance standards.

A. The Director shall, by regulation, establish performance standards meeting that  
meet the requirement of § 515 of the federal act and are consistent with regulations adopted  
thereunder by the Secretary which shall be, and are applicable to all coal surface  
mining and reclamation operations; except as otherwise provided in this chapter.

B. Any permit issued pursuant to this chapter to conduct a coal surface mining  
operation shall require that such operation meets all applicable  
performance standards established by the Director.

C. The Director shall include, in his such regulations, special procedures and  
standards, consistent with regulations promulgated adopted by the Secretary, for the issuance  
of permits for mountaintop removal operations, without regard to requirements  
to restore to approximate original contour, and for variances from such requirements for  
steep-slope operations.

D. Because of the diversity in terrain, climate, biologic, chemical and other physical  
conditions in Virginia, the primary governmental responsibility for developing, authorizing,  
issuing and enforcing regulations for coal surface mining and reclamation operations should  
est with the Commonwealth, and accordingly, the Director is encouraged and authorized  
to develop and promulgate may adopt, with the approval of the Secretary, alternative  
performance standards and procedures for administering and enforcing the program created  
pursuant to this chapter.
E. The Director, with the approval of the Secretary, may authorize departures on an experimental basis from the environmental protection performance standards adopted under this section and § 45.1-243 45.2-xxx.

Drafting note: The superfluous and nonstatutory policy text of subsection D is proposed for deletion because it is obsolete, referring to future regulations that have been adopted. 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, including changes 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.

§ 45.1-243 45.2-xxx. Surface effects of underground coal mining operations.

A. The Director shall adopt regulations directed toward the surface effects of underground coal mining operations and embodying the requirements of §§ 516 and 720(a)(1) of the federal act. The provisions of this chapter relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to any surface operations and operation or surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference differences between surface and underground coal mining. Nothing in § 720(a)(1) of the federal act shall be construed to prohibit or interrupt any underground coal mining operations operation.

B. The Director's regulations adopted by the Director shall require that each permit applicants applicant submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings.

C. In order to protect the stability of the land, the Director shall suspend underground coal mining under any elementary and or secondary schools school, institutions institution of higher education, urbanized areas area, cities city, towns and communities town.
Drafting note: Subsection C is rephrased to clarify that any danger to people caused by coal mining under or adjacent to certain locations is cause for suspension of underground coal mining. 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. Language is updated for modern usage.

§ 45.1-244 45.2-xxx. Inspections and monitoring.

A. For the purpose of administering and enforcing any permit issued under this chapter or of determining whether any person is in violation of any requirement of this chapter or any regulation promulgated adopted hereunder:

1. The Director shall require any permittee to (i) establish and maintain appropriate records, (ii) make monthly reports to the Division, (iii) install, use, and maintain any necessary monitoring equipment or methods, (iv) evaluate results in accordance with such methods, at such locations, and intervals, and in such manner as the Director shall prescribe, and (v) provide such other information relative to a coal surface mining and reclamation operations operation as the Director deems reasonable and necessary;

2. For those any coal surface mining and reclamation operations which remove operation that removes or disturb disturbs strata that serve as aquifers which and thereby significantly insure ensure the hydrologic balance of water use, either on or off the mining site, the Director shall specify those (i) monitoring sites to at which the permittee shall record (i) the quantity and quality of surface drainage above and below the mine site as well as and in the potential zone of influence, and to record (ii) the level, amount, and characteristics of samples of groundwater and aquifers that are potentially affected by mining,
and also or are located directly below the deepest coal seam to be mined; and to record (iii) amount of precipitation; and (ii) The Director shall specify certain records of well logs and borehole data to be maintained. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth in regulations promulgated adopted by the Director in order to assure their reliability and validity; and

3. The Any authorized representatives representative of the Director, without advance notice and upon presentation of appropriate credentials, (i) shall have (i) the right of entry to, upon, or through any coal surface mining and reclamation operation; and (ii) shall have the right to inspect any monitoring equipment, any method of exploration, any method of operation, or any records required by this chapter; and shall have the right to copy any such records.

No search warrant shall be required for any entry or inspection under this subsection, except with respect to entry into a building.

B. The inspections Inspections by the Director shall (i) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal surface mining and reclamation operations operation covered by each permit; (ii) occur without prior notice to the permittee or his agents any agent or employees employee of the permittee except for necessary on-site meetings with the permittee; and (iii) include the filing of inspection reports adequate to enforce the requirements of this chapter and to carry out its terms and purposes of this chapter.

C. Each permittee shall conspicuously maintain at the entrance to the each coal surface mining and reclamation operation a clearly visible sign setting forth such information as shall be is prescribed by regulation.

D. Each inspector, upon detection of each a violation of any requirement of this chapter or of the regulations promulgated a regulation adopted hereunder, shall forthwith promptly inform the operator in writing and shall report in writing any such violation to the Director in writing.
E. Copies of any records, reports, inspection materials, or information obtained by the Director under this article shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in such areas; however, information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Drafting note: Subdivision A 2 is reorganized for clarity, including by dividing the first sentence into two sentences. A cross-reference to the Freedom of Information Act is added 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. 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. Language is updated for modern usage.

§ 45.1-245 45.2-xxx. Enforcement of chapter generally.

A. Whenever the Director or his authorized representative determines that any condition or practices exist, practice or that any violation by a permittee is in violation of any requirement of this chapter or of any, regulation promulgated adopted hereunder, of any permit condition, which condition, practice or violation also (i) creates an imminent danger to the health or safety of the public, or (ii) is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Director or his authorized representative shall immediately order a cessation of the coal surface mining and reclamation operation or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the condition, practice, or violation has been abated, or until such order is modified, vacated, or terminated by the Director or his authorized representative. Whenever
the Director or his authorized representative finds that the ordered cessation of coal surface
mining and reclamation operations, or any portion thereof, will not be expected to completely
abate the imminent danger to health or safety of the public or the significant imminent
environmental harm to land, air, or water resources, the Director shall, in addition to ordering
the cessation of the operation, impose affirmative obligations on the operator and require him such operator to take whatever steps the Director or his authorized representative
determines necessary to abate the imminent danger or the significant environmental harm.

B. Whenever the Director or his authorized representative determines that any permittee is in violation of any requirement of this chapter or, any regulation thereunder adopted hereunder, or any permit condition, but such violation does not create an imminent
danger to the health or safety of the public; or cannot reasonably be expected to cause
significant, imminent environmental harm to land, air, or water resources, the Director or his
authorized representative shall issue a notice of violation to the permittee or his agent setting a
reasonable time but period of not more than ninety 90 days for the abatement of the violation
and shall provide an opportunity for public hearing. If, upon

C. Upon expiration of the period of time as originally set pursuant to subsection B or
subsequently extended for good cause shown upon the written finding of the Director or his
authorized representative, if the Director or his authorized representative finds that a violation
has not been abated, he shall immediately order a cessation of coal surface mining and
reclamation operations or the portion thereof relevant to the violation. Such cessation order
shall remain in effect until the Director or his authorized representative determines that the
violation has been abated, or until such order is modified, vacated, or terminated by the
Director or his authorized representative pursuant to subsection D of this section E. The
Director or his authorized representative shall include in the cessation order the necessary
measures to abate the violation in the most expeditious manner possible.

C. D. Whenever the Director or his authorized representative determines that a pattern
of violations of the requirements of this chapter, or regulations promulgated thereunder any
regulation adopted hereunder, or any permit conditions exist or have existed, and if the Director or his authorized representative also finds that such violations are
(i) caused by the unwarranted failure of the permittee to comply with any such requirements;
or that such violations are (ii) willfully caused by the permittee, the Director or his authorized
representative shall forthwith promptly issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a formal public hearing. If a hearing is requested, the Director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Director or his authorized representative shall forthwith promptly suspend or revoke the permit.

D. Notices and orders. Each notice or order issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or order applies. Each notice or order shall be given promptly to the permittee or his agent by the Director or his authorized representative issuing such notice or order, and all such notices and orders shall be in writing and signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Director or his authorized representative. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless an informal public hearing, unless waived by the operator, is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing. Such informal public hearing may be waived by the operator.

E. The Director may institute a civil action for injunctive or other relief in any court of competent jurisdiction whenever any permittee or his agent, or any other person:

1. Violates, or fails or refuses to comply with any order or decision issued by the Director; or
2. Interferes with, hinders, or delays the Director in carrying out the provisions of this chapter or the regulations thereunder; or

3. Refuses to admit such authorized representative the Director to the mine; or

4. Refuses to permit inspection of the mine; or

5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations thereunder; or

6. Refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this chapter or the regulations thereunder; or

7. Conducts any coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit.

Drafting note: Changes are proposed for clarity, including the reorganization of existing subsection A and the addition of subsection designation C to the second paragraph of existing subsection B. The phrase "or his authorized representative" is proposed for deletion because such agent will be proposed for inclusion in the definition of "Director" in § 45.2-xxx in Chapter 1 [existing § 45.1-161.1 in Chapter 14.1]. Language is updated for clarity and modern usage 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. 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.

§ 45.1-246 45.2-xxx. Civil and criminal penalties.

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations thereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed $5,000 for each violation except that
if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed $70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. Where After such a public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty, which is warranted, incorporating therein, when appropriate, an order requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A of this section has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. The permittee charged with the penalty shall then have, within 30 days of being so informed, pay the proposed penalty in full or, if the permittee wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the State Treasurer's office. Failure to forward the money to the
Director within 30 days constitutes a waiver of all legal rights to contest the violation or the amount of the penalty. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should will be reduced, the Director shall within 30 days of that such determination remit the appropriate amount to the permittee with accrued interest thereon. Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. If a permittee who is required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is sent shall record it such final order, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon. Upon such recording and indexing, there shall be a lien in favor of the Commonwealth on the property of the permittee within such county or city in the amount of the penalty. The Director may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into a special fund in the State Treasurer's office state treasury to be used by the Director for enhancing conservation and recreational opportunities in the coal-producing counties of the Commonwealth. The Director shall transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic Development Authority, created pursuant to Chapter 60 (§ 15.2-6000 et seq.) of Title 15.2, for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the Virginia Coalfield Regional Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts any coal surface mining or coal exploration operation without first obtaining a permit, or after a permit has
lapsed, or after suspension or revocation of a permit; or (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, or fails or refuses to comply with the regulations or orders promulgated or order issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B of this section, shall, upon conviction, be punished by a fine of not more than $10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, or fails, or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and confinement in jail that to which a person may be imposed upon a person subject under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any required statement, representation, or certification, in any application, objection, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, the regulations promulgated thereunder, any regulation adopted hereunder, or any order or decision issued by the Director under this chapter shall, upon conviction thereof, be punished by a fine of not more than $10,000, or by confinement in jail for not more than 12 months, or both.

H. Any operator who fails to correct a violation for which a notice or order has been issued within the period permitted for the correction of such violation shall be assessed a civil penalty of not less than $750 for each day during which such failure or violation occurs. Such period permitted for its correction, which period of a violation shall not end until the entry of (i) a final order by the Director, in the case of any review proceedings initiated by the operator wherein the Director orders, after an expedited hearing, the suspension of the abatement requirements of the notice or order after determining that the
operator will be likely to suffer irreparable loss or damage from the application of those requirements, or until entry of (ii) an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements, shall be assessed a civil penalty of not less than $750 for each day during which such failure or violation occurs.

Drafting note: Organizational changes are proposed for clarity, including the moving of the last sentence in subsection C to a different location within that subsection and the moving of the last phrase in subsection H to a different location within that subsection. Language is updated for modern usage.

§ 45.1-246.1 45.2-xxx. Citizen suits; rights of citizens to accompany inspectors.

A. Except as provided in subsections B or C of this section, any person having an interest which that is or may could be adversely affected may, in order to compel compliance with the provisions of this chapter, commence a civil action on his own behalf against:

1. The United States or, any other governmental instrumentality or agency, or any other person that is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order, or permit issued pursuant thereto; or

2. The Director, when there is alleged a failure of the Director to perform any act or duty under this chapter which that is not a discretionary with act on the part of the Director.

B. No action may shall be commenced under subdivision A 1 of this section:

1. Prior to sixty days after the plaintiff has given written notice of the violation to (i) the Secretary, (ii) the Director, and (iii) any alleged violator; or

2. If the Commonwealth of Virginia or the Secretary of the Interior has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or this the Commonwealth to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, provided, however, that in any
such action in a court of the Commonwealth, any person may is entitled to intervene as a matter of right in any such action in a court of the Commonwealth;

C. No action may shall be commenced under subdivision A 2 of this section prior to sixty 60 days after the plaintiff has given written notice of such action to the Director, in such a manner as shall be prescribed by regulation, provided, however, that, however, such action may be brought immediately after such notification in any case in which it is alleged that a violation or order would constitute an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

D. Any action with respect to a violation of this chapter or the regulations thereunder a regulation adopted hereunder may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. In any such action commenced under the provisions of this section, the Director may intervene as a matter of right, whether or not he the Director is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A of this section, may award costs of litigation, including attorney and expert witness fees, to any party, provided that if the court determines such award is appropriate. If a preliminary injunction is sought, the court may require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

F. Nothing in this section shall restrict any common-law or statutory right which of any person or class of persons may have to seek enforcement of any of the provisions provision of this chapter and the regulations thereunder, adopted hereunder or to seek any other relief, including relief against the Director.

G. Any person who as a result of the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter, suffers injury to his person or property may bring an action for damages, including reasonable attorney and expert witness fees. Such action may shall be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the
rights established by or limits imposed under Title 65.2, the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

H. Whenever information provided to the Director by any person results in any inspection, the Director shall notify such person of the time at which the inspection is scheduled to occur, and such person shall be allowed to accompany the inspector during the inspection.

Drafting note: Language is updated for modern usage 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.

§ 45.1-247. Forfeiture or release of performance bond.

A. The Director shall promulgate regulations, consistent with regulations promulgated by the Secretary, establishing procedures, conditions, criteria, and schedules for the forfeiture or release of performance bonds or deposits required under this chapter; however, no bond shall be fully released until all reclamation requirements of this chapter and the regulations thereunder are fully met.

B. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond by the Director within thirty days after the last publication of notice, as required by regulation. If a written objections are filed, and a hearing requested, the Director shall inform all interested parties of the time and place of the hearing and hold a public hearing, either in the locality of the coal surface mining operation proposed for bond release, or in Richmond, at the option of the objector, within thirty days of the request for such hearing.
C. Without prejudice to the rights of the objectors, any objector, the applicant, or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations promulgated adopted pursuant to § 45.1-239 B 45.2-xxx, to resolve written objections.

D. For the purpose of such the hearing specified in subsection B, the Director is authorized to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including but not limited to inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made and a transcript shall be made available on the motion of any party or by order of the Director.

Drafting note: In subsection D, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language is updated for clarity and modern usage 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.

§ 45.1-248 45.2-xxx. Performance of reclamation operations by Director.

In the event of forfeiture of a performance bond, in whole or in part, the Director shall deposit the proceeds in the State Treasurer's office state treasury in a special fund to be used by the Director to complete the reclamation plan and other regulatory requirements pertaining to the operation for which the forfeited bond had been posted. The Director may use the resources and facilities of the Division or he may enter into contracts for performance of such reclamation with any individual, corporation, partnership, association, or any other legal entity, any soil conservation district, or any agency of the state or federal government. After completion of the reclamation and payment of all costs and administrative expenses associated with the completion of reclamation, any additional funds from the forfeiture of the bond shall be returned.
Drafting note: Language is updated for modern usage and technical changes are made.

§ 45.1-249 45.2-xxx. Administrative review of notice or order issued under § 45.1-245 45.2-xxx.

A. A permittee who is issued a notice or order pursuant to § 45.1-245 45.2-xxx, or any person having an interest which that is or may could be adversely affected by such notice or order by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of the such notice or order within thirty 30 days of the receipt thereof or within thirty 30 days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate, which Such investigation shall include an opportunity for a public formal hearing, at the request of the applicant or the person having an interest which that is or may could be adversely affected, include a public formal hearing to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. Upon receiving the report of such investigation, the Director shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order complained of. Such order shall incorporate his the Director's findings therein of fact. When If the application for review concerns an order for cessation of coal surface mining and reclamation operations issued pursuant to the provisions of subsection A or B of § 45.1-245 45.2-xxx, the Director shall issue the written decision within thirty 30 days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C of this section or by a court pursuant to § 45.1-254 45.2-xxx.

C. Pending completion of the hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or
order issued under §45.1-245 45.2-xxx, together with a detailed statement giving reasons for
granting such relief. The Director shall issue an order granting or denying such relief
expeditiously. Where the applicant requests relief from an order for cessation of coal
surface mining and reclamation operations issued pursuant to subsection A or B of §45.1-245
45.2-xxx, the order on such a request shall be issued within five days of its receipt. The
Director may grant such relief, under such conditions as the Director prescribes, if:

1. A hearing has been held in the locality of the permit area on the request for
temporary relief in which all parties were given an opportunity to be heard;
2. The applicant shows that there is substantial likelihood that the decision of the
Director will be favorable to the applicant; and
3. Such relief will not adversely affect the health or safety of the public or cause
significant imminent environmental harm to land, air, or water resources.

D. Following the issuance of an order to show cause as to why a permit should not be
suspended or revoked pursuant to §45.1-245 45.2-xxx, the Director shall hold a public formal
hearing, unless waived by the permittee, after giving written notice of the time, place, and
date thereof. Within sixty 60 days following the formal hearing, the Director shall issue and
furnish to the permittee and all other parties to the hearing a written decision
concerning suspension or revocation of the permit and reasons therefor. If the Director
revokes the permit, the permittee shall immediately cease coal surface mining operations on
the permit area and shall complete reclamation within a period specified by the Director, or
the Director shall declare as forfeited the performance bonds for the operation.

E. The Director is authorized to promulgate regulations providing for the
award of costs and expenses, including attorney fees, to any party to any administrative
proceedings under this chapter, incurred by such person in connection with his participation in
such proceedings, and to assess such costs and expenses against any other party.
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. Language is updated for clarity and modern usage 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.

§ 45.1-250 45.2-xxx. Hearings.

A. [Repealed.]

B. All formal hearings shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings. When a hearings officer presides, such officer shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless the Director provides for the making of findings and an initial decision by such hearings officer subject to review and reconsideration by the Director on appeal as of right or on the Director's own motion. Such regulations shall also provide for a reasonable time in which such appeals shall be acted upon, which shall be in addition to the period required for the making of the initial decision.

Drafting note: Language is updated for modern usage 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.

§ 45.1-251 45.2-xxx. Judicial review of final order or decision for entry upon property pursuant to § 45.1-263 45.2-xxx, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, shall have the right to the judicial review thereof in the circuit court of the county or city in which the land is at issue or a major
portion thereof is located. In all other respects, judicial review shall be in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4020 et seq.).

B. The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Director. The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

1. All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

C. To any proceeding under this section, the court may award costs and expenses, including attorneys' fees, to any party to any proceeding under this section and to may assess such costs and expenses against any other party as the court deems proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers, or employees.

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

§ 45.1-252. Designating areas unsuitable for coal surface mining.

A. 1. The Director shall establish a planning process enabling objective decisions, based on competent and scientifically sound data and information as to regarding which, if any, land areas of the Commonwealth, if any, are unsuitable for all or certain types of coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 of this subsection but such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.
2. Upon petition pursuant to subsection C of this section, the Director shall designate an area as unsuitable for all or certain types of coal surface mining operations if he determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

3. Upon petition pursuant to subsection C of this section, the Director may designate a surface area as unsuitable for certain types of coal surface mining operations if such operations will (i) be incompatible with existing land use plans or programs; or (ii) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and or natural systems; or (iii) affect renewable resource lands, including aquifers and aquifer recharge areas, in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (iv) affect natural hazard lands, including areas subject to frequent flooding and areas of unstable geology, in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

4. Determinations. Any determination of the unsuitability of an area for coal surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

5. The requirements of this section shall not apply to lands where (i) on which a coal surface mining operation was being conducted on August 3, 1977, or (ii) on which a coal surface mining operation was being conducted under a permit issued pursuant to the provisions of the federal act, or (iii) where substantial legal and financial commitments in either such operation were in existence prior to January 4, 1977.

B. Prior to designating any area as unsuitable for a coal surface mining operation, the Director shall cause to be prepared a detailed statement on (i) the
potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of
such designation on the environment, the economy, and the supply of coal.

C. Any person having an interest which that is or may could be adversely affected
shall have has the right to petition the Director to have an area designated as unsuitable for
coal surface mining operations, or to have such a designation terminated. Such a petition shall
contain allegations of facts with supporting evidence which that would tend to establish the allegations. Within ten 10 months after receipt of the petition, the Department shall hold a
public hearing in the locality of in which the affected area is located, after appropriate notice
and publication of the date, time, and location of the hearing. After a person having an interest
which that is or may could be adversely affected has filed a petition and but before the
hearing as required by this subsection, any person may intervene by filing allegations of facts
with supporting evidence which that would tend to establish the allegations. The Director
shall issue and furnish to the petitioner and any other party to the hearing, within sixty 60
days after such hearing, a written decision regarding the petition and the reasons therefor. In
the event that all petitioners stipulate agreement prior to the hearing and withdraw their
request requests, such hearing need not be held.

D. On and after March 20, 1979, and subject to valid existing rights, no coal
surface mining operations, except those which were existing an operation that
existed on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of any unit of the National Park System,
the National Wildlife Refuge System, the National Trails System, the National Wilderness Preservation System, or the Wild and Scenic Rivers System, including study rivers designated under § 5(a) of the Wild and Scenic Rivers Act and any National Recreation Areas designated by act of Congress or any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;
2. Which will adversely affect any publicly owned park or places included any site listed in the National Register of Historic Sites Places unless approved jointly by the Director and the federal, state, or local agency with jurisdiction over the park or historic site;

3. Within 100 feet of the outside right-of-way line of any public road, except where a mine access roads road or haulage roads join road joins such right-of-way line and except that the. However, the Director may permit such roads mine access or haulage road to be relocated or the area affected to lie within 100 feet of such public road; if, after public notice and opportunity for hearing in the locality, a written finding is made that the interests of the public and landowners affected thereby will be protected; or

4. Within 300 feet from of any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, or public park, or within 100 feet of a cemetery.

Drafting note: The names of the National Trails System and the National Register of Historic Places are corrected and the meaning of subdivision A 5 is clarified as referring to, among others, any land area on which a coal surface mining operation was being conducted under federal permit. An obsolete reference to March 20, 1979, is proposed for deletion from subsection D. References to January 4 and August 3, 1977, are retained because they could apply to current operations established earlier. Language is updated for modern usage 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 3.

Miscellaneous Provisions National Pollutant Discharge Elimination System Permit; Replacement of Water Supply.

Drafting note: Existing Article 3, concerning miscellaneous provisions, is retained as proposed Article 3. Existing §§ 45.1-253, 45.1-256, 45.1-257, and 45.1-259 are relocated.
§ 45.1-254. National Pollutant Discharge Elimination System (NPDES) permits.

H. A. For the purpose of this section, the terms "sewage," "Board" means the State Water Control Board.

"Industri Industrial wastes" and means the same as that term is defined in § 62.1-44.3.

"NPDES" means the National Pollutant Discharge Elimination System.

"Other wastes" shall have means the same as that term is defined in § 62.1-44.3.

"Sewage" means the meanings ascribed to them same as that term is defined in § 62.1-44.3.

A. B. The authority to issue, amend, revoke, and enforce national pollutant discharge elimination system National Pollutant Discharge Elimination System permits under the State Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes, and other wastes from coal surface mining operations, to the extent delegated by the U.S. Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-500, as amended, is vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein in this section. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders, and regulations issued by the Director in accordance with this section.

C. D. The Director shall transmit to the State Water Control Board a copy of each application for a national pollutant discharge elimination system national pollutant discharge elimination system permit received by the Director, and provide written notice to the State Water Control Board of every action related to the consideration of such permit application.

C. D. Prior to the issuance or reissuance of a permit, each applicant shall submit an application on a form approved by the Director and a fee of $300 for each discharge outfall point under the such permit. If an application is approved, the permittee shall, on the anniversary of the permit approval for each year of the permit term, submit $300 for each
discharge outfall point under the permit. Each permit shall remain valid for five years.

All fees provided for under this section shall be in addition to any other fees levied pursuant to this chapter.

D. No national pollutant discharge elimination system NPDES permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system NPDES permit, the State Water Control Board objects in writing to the issuance of such permit. Whenever the State Water Control Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the State Water Control Board.

E. An applicant who is aggrieved by an objection made under subsection D of this section shall have the right to a hearing before the State Water Control Board pursuant to § 62.1-44.25. If the State Water Control Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant aggrieved by a final decision of the State Water Control Board made pursuant to this subsection shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

F. Whenever, on the basis of any information available to it, the State Water Control Board finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system NPDES permit issued by the Director, it shall notify the person allegedly in violation and the Director. If the thirty day following notification by the State Water Control Board, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.
The Director shall promulgate such regulations as deemed necessary for the issuance, administration, monitoring, and enforcement of National Pollutant Discharge Elimination System (NPDES) permits for coal surface mining operations.

I. The Director, by examining the available and relevant data, shall determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard.

J. If a total maximum daily load (TMDL) has been established by the State Water Control Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. If the receiving water body does not have a TMDL established, the Director may consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. The Director may require whole effluent toxicity testing if he determines that the discharge adversely affects the biological condition of the receiving water body.

Drafting note: Subsection H, which contains definitions, is moved to the beginning of the section and the frequently recurring phrases National Pollutant Discharge Elimination System and State Water Control Board are given short references. Language is updated for modern usage 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.

Drafting note: Repealed by Acts 1984, c. 714.
Drafting note: Repealed by Acts 1988, c. 489.

§ 45.1-258. Replacement of water supply.

A. The operator of any coal surface mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such coal surface mining operation.

B. Underground coal mining operations conducted after October 24, 1992, shall promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Until amendments to the regulations governing the permanent state regulatory program implementing the provisions of this subsection are effective, the Director shall issue guidelines in accordance with subsection A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection.

Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining operations.

C. Each operator of an underground coal mine shall record the daily progress of mining operations on one or more mine maps maintained at the mine site or in the company office. The Such maps shall, at a minimum, include information on the daily progress of mining operations conducted after October 24, 1992, and be maintained until the completion of the mining. The operator shall provide the such maps to the Division upon completion of mining and upon request of the Director.

D. If the Director has ordered replacement of a water supply under subsection B of this section and the operator subject to the order has failed to provide the required maps in accordance with subsection C of this section, then the Director's replacement order shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion
of an investigation, if the Director does not order replacement under the provisions of subsection B of this section and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.

E. Each operator of an underground coal mine shall provide a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the operator has a public liability insurance policy in force for the underground coal mining operation which shall provide for protection in an amount adequate to replace any water supply as required by subsection B of this section. The policy shall be maintained in full force during the term of the permit, including any renewal thereof, and including the liability period necessary to complete all reclamation operations under this chapter. The provisions of this subsection shall expire on the date the amendments to the regulations governing the permanent state regulatory program implementing the provisions of subsection B of this section are approved for the Commonwealth by the Secretary of the Interior of the United States.

Drafting note: Obsolete pre-1992 provisions are proposed for deletion from subsections B and C, and subsection E is proposed for deletion because it expired when state primacy was approved by the federal government on December 15, 1981. 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 4.

Abandoned Mine Reclamation.

Drafting note: Existing Article 4, concerning abandoned mine reclamation, is retained as proposed Article 4.

§ 45.1-260 45.2-xxx. State Reclamation Program.
A. The Commonwealth's program for the reclamation of land and water adversely affected by past mining shall include the State Reclamation Plan and fund and annual reclamation projects, as provided for in this article.

B. The Director is authorized to develop and submit to the Secretary for his approval a State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of this article. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the programmatic capability of the Division to perform such work, and shall include such regulations, policies, and procedures as may be necessary to establish and implement the plan and annual reclamation projects, and to carry out the provisions of this article. The Director may from time to time develop and submit to the Secretary amendments and revisions to the plan, consistent with this article.

C. The Director is authorized to:

1. prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;

2. enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices;

3. administer the State Reclamation Plan and the annual reclamation projects and to receive and administer grants from the Secretary therefor; and

4. prepare and submit such information and reports as the Secretary may request.

D. The Director and the Department, in carrying out the functions of preparing and revising the State Reclamation Plan and developing annual reclamation projects, shall provide appropriate opportunities for public involvement.

Drafting note: Technical changes are made.

A. There is hereby created in the State Treasurer's office a special nonreverting fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as the fund, which shall be established on the books of the Comptroller and shall be administered by the Director.

B. The fund shall consist of deposits, made from time to time, of:

1. Amounts granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects;

2. Use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted;

3. Moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article;

4. Moneys recovered from sale of lands acquired by the Director pursuant to this article; and

5. Donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes shall be paid into the state treasury and credited to the Fund.

C. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

D. Moneys deposited in the Fund shall be used solely for the purpose of carrying out the State Reclamation Program as approved by the Secretary. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: The nonreverting fund language for the Abandoned Mine Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.
§ 45.1-261.1 45.2-xxx. Operators may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator shall be eligible to bid on contracts to conduct reclamation projects under the State Reclamation Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ 45.1-270.1 45.2-xxx et seq.), provided if the Director finds that the following conditions have been met: (i) the operator has had at least three years of relevant mining experience in the Commonwealth pursuant to Chapter 19 (§ 45.1-226 et seq.) this chapter and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11 (§ 11-1 et seq.), the Director may adjust the amount of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall promulgate regulations to implement this section.

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, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ 45.1-262 45.2-xxx. Eligible lands and water; priorities for expenditures.

A. Lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were (i) mined for coal or which were (ii) affected by such coal mining, waste banks, coal processing, or other coal mining processes, and were abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under state or federal laws.

B. The Director shall establish priorities in the State Reclamation Plan for the expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

Drafting note: Technical changes are made.
§ 45.1-263. Right of entry, acquisition, disposition, and reclamation of land adversely affected by past coal mining practices.

A. The Director shall take all reasonable actions to obtain written consent from the owner or owners of record of the land or property to be entered upon to perform an inspection for purposes of reclamation or for conducting studies or exploratory work pertaining to the need for and feasibility of reclamation, prior to such entry.

B. If the provisions of subsection C shall apply if the Director, pursuant to an approved state program, makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining practices;

2. The adverse effects are at a state where significant enough that, in the public interest, action to restore, reclaim, abate, control, or prevent such effects should be taken; and

3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

4. The owners will not give permission for the Director or his agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

C. Upon making the findings of fact required by subsection B and giving notice by certified mail to the owners if known or, if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county or city in which the land lies, the Director, his agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

The moneys expended for such work and the benefits accruing to any such premises so
entered upon shall be chargeable against such land to the extent provided in § 45.1-264, 45.2-
xxx and shall mitigate or offset any claim in or any action brought by any owner of any
interest in such premises for any alleged damages by virtue of such entry; provided, however,
that this provision regarding the mitigation or offsetting of a claim or action by an
owner is not intended to create new rights of action or eliminate the existing sovereign
immunity of the Commonwealth and its agents and employees.

C. The Director, and his agents, employees, or contractors shall have the right to
enter upon any property for the purpose of conducting studies or exploratory work to
determine the existence of adverse effects of past coal mining practices and to determine the
feasibility of restoration, reclamation, abatement, control, or prevention of such adverse
effects. Such entry shall be construed as an exercise of the police power for the protection of
public health, safety, and general welfare and shall not be construed as an act of
condemnation of property nor or trespass thereon.

D. The Director, pursuant to an approved state program, may acquire title in the
name of the Commonwealth to any land or interest therein by purchase, donation, or
condemnation, if such land or interest is adversely affected by past coal mining practices,
after approval of the Secretary and upon a determination that acquisition of
such land is necessary for successful reclamation, and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention
of the adverse effects of past coal mining practices, will serve recreation and historic purposes
recreational, historical, conservation, or reclamation purposes or provide open space
benefits; and

2. Permanent facilities, such as a treatment plant or a relocated
stream channel, will be constructed on the land for the restoration, reclamation, abatement,
control, or prevention of the adverse effects of past coal mining practices; or
3. **Acquisition** (b) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

F. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

E–G. The Director, with the approval of the Secretary, and in accordance with the State Reclamation Plan, may:

1. Transfer the administrative responsibility for land acquired under this section to any state, regional, or local agency, department, or institution, with or without cost, upon such terms as will ensure that the use of the land is consistent with the authorization under which the land was acquired;

2. Sell land acquired under this section which is suitable for industrial, commercial, residential, or recreational development, by public sale under a system of competitive bidding, at not less than fair market value and under such regulations promulgated to ensure that such lands are put to proper use consistent with local, state, or federal land use plans, if any, for the area in which the land is located; and

3. Transfer land acquired under this section to the United States to be reclaimed by the Secretary and after reclamation is completed, any state, regional, or local agency, department, or institution may purchase such land from the Secretary for governmental, educational, recreational, historical, open-space, or other public purposes upon such terms as the Secretary may require.

F–H. Prior to the disposition of any land acquired under this section, the Director, pursuant to the State Reclamation Plan, when requested and after appropriate public notice, shall hold a public hearing in the city or county or cities where the land is located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or
disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

G-1. The Director may authorize the use, pending disposition, of land acquired under this section, for any lawful purpose that is not inconsistent with the reclamation and post-reclamation uses for which the land was acquired. The Director shall charge any user of the land a reasonable use fee, which shall go toward the purpose of operating and maintaining improvement of the land, and any excess thereof shall be deposited in the State Reclamation Fund. The Director may waive the fee if he finds in writing that a waiver is in the public interest.

H-1. Any state, regional, or local agency, department, or institution may purchase or otherwise acquire and develop lands the Secretary is authorized to dispose of pursuant to § 407(h) of the federal act.

Drafting note: Language is updated for modern usage 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. Proposed subsection E is reorganized for clarity.

§ 45.1-264. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as hereinafter provided in § 45.2-xxx, on land reclaimed by the Director pursuant to this article for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that. However, no such lien shall attach to or be filed against the property of any person who owned the surface of the land prior to May 2, 1977, and who did not consent to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed under this article, nor shall any such lien attach to or be filed against any property if the Director waives the lien as hereinafter provided in § 45.2-xxx [§ 45.1-265].
Drafting note: Changes are proposed for clarity, including the division of the section's single sentence into three sentences and, to avoid ambiguity, the replacement of "hereinafter" with a more specific description in the first sentence and the last sentence.

Language is updated for modern usage.

§ 45.1-265 45.2-xxx. Perfection of lien; waiver of lien.

A. The Director shall perfect the lien given under the provisions of § 45.1-264, 45.2-xxx by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is situate located, a statement consisting of the names name of the owner or owners of record of the property sought to be charged, an itemized account of moneys expended for the reclamation work, and, notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work, and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that the direct and indirect costs of filing such lien exceed the increase in fair market value resulting from reclamation, or that the reclamation primarily benefits health, safety, or environmental values of the community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence, the Director shall waive a lien if he determines that the reclamation will not result in a significant increase in the market value of the land.

Drafting note: Language is updated for modern usage and technical changes are made by dividing the single sentence of subsection B into two sentences for clarity and a change made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ 45.1-266 45.2-xxx. Recordation and indexing of lien; notice.

It shall be is the duty of the clerk in whose office the statement described in § 45.1-265 45.2-xxx is filed to record the same such statement in the deed books of such office, and to index the same such recording in the general index of deeds. Such indexing shall be made
Drafting note: Language is updated for modern usage and technical changes are made.


Liens. Any lien acquired under this article shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

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.

§ 45.1-268. Hearing to determine amount of lien.

Any party having an interest in the real property against which a lien has been filed may, within sixty days of such filing, petition the circuit court of equity having jurisdiction wherein the property or some portion thereof is located to hold a hearing to determine the increase in the market value of the land as a result of reclamation. After reasonable notice to the Director, the court shall hold a hearing to determine such increase. If the court determines such increase to be erroneously excessive, it shall determine the proper amount and order that the lien and the record be amended to show this amount.

Drafting note: The reference to a court of equity is updated to refer to a circuit court and technical changes are made.

§ 45.1-269. Satisfaction of lien.

Liens. Any lien acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided herein, the Director may proceed to enforce the lien by a bill filed in a circuit court of equity having jurisdiction wherein the property or some portion thereof is located.
Drafting note: The reference to a court of equity is updated to refer to a circuit court and technical changes are made, including a change made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ 45.1-270. Miscellaneous powers of Director.

A. In addition to any other remedies provided for in this chapter, the Director may petition any court of competent jurisdiction for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work pursuant to this chapter.

B. The Director is authorized, to the extent of funds available for the purposes herein, to construct and operate plants for the control and treatment of water pollution resulting from mine drainage. Such plants may include major intercepters and other facilities appurtenant to the each plant. No such control or treatment shall in any way be less than that required under the federal Clean Water Pollution Control Act.

C. The Director may transfer funds to other appropriate state or local agencies in order to carry out the reclamation authorized by this article.

Drafting note: The name of the Clean Water Act is updated and a technical change is made.

Article 5.

Coal Surface Mining Reclamation Fund.

Drafting note: Existing Article 5, concerning the Coal Surface Mining Reclamation Fund, is retained as proposed Article 5.

§ 45.1-270.1. Creation of Coal Surface Mining Reclamation Fund.

There is hereby created in the office of the State Treasurer a special nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, referred to in this article as "the Fund, which shall be administered as set forth in this article."

The Fund shall consist of all payments made into the Fund in accordance with the provisions of this article, as well as all interest
Drafting note: The nonreverting fund language for the Coal Surface Mining Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.

§ 45.1-270.2 Participation in Fund.

A. Participation in the Fund shall be open to all operators or any operator applying for a permit under Chapter 19 (§ 45.1-226 et seq.) of this title, who can demonstrate to the Director a history of at least three consecutive three-year history years of compliance under this act or any other comparable state or federal act.

B. Participation in the Fund is optional as to each permit application, and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § 45.1-241 and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing herein in this article shall preclude compliance with § 45.1-241 in lieu of participation in the Fund, prior to commencement of such participation. Commencement of participation in the Fund, as to the applicable permit, shall constitute an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For any mining operations bonded under this article, the total cumulative amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall

shall be paid into the state treasury and credited to the Fund. Interest earned on money contained in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: The nonreverting fund language for the Coal Surface Mining Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.

§ 45.1-270.2 Participation in Fund.

A. Participation in the Fund shall be open to all operators or any operator applying for a permit under Chapter 19 (§ 45.1-226 et seq.) of this title, who can demonstrate to the Director a history of at least three consecutive three-year history years of compliance under this act or any other comparable state or federal act.

B. Participation in the Fund is optional as to each permit application, and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § 45.1-241 and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing herein in this article shall preclude compliance with § 45.1-241 in lieu of participation in the Fund, prior to commencement of such participation. Commencement of participation in the Fund, as to the applicable permit, shall constitute an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For any mining operations bonded under this article, the total cumulative amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall
be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and grading.

D. The Director may allow extended distances for rough backfilling and grading beyond those established in this section—provided if (i) the applicant can demonstrate to the Director a history of at least a seven consecutive years of compliance with this act chapter or with any other comparable state or federal act, or (ii) the applicant submits a bond for the proposed additional area. The additional bond shall be equal to the ratio of the extended distance to the distance specified in subsection C above, times an approved cost estimate of reclamation prepared for the permit.

Drafting note: Language is updated for modern usage 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.

§ 45.1-270.3 45.2-xxx. Initial payments into Fund; renewal payments; bonds.

A. Operators Any operator filing a permit application for a coal surface mining operation participating in the pool fund shall be required to pay into the Fund, as an entrance fee, a sum equal to $1,000 for each applicable permit application. An entrance fee of $5,000 shall be required of all operators each operator who elects to participate in the Fund when the Director has determined that the total balance of the Fund is less than $1,750,000 $1.75 million. The entrance fee shall be reduced to $1,000 when the total Fund balance is greater than $2 million. A renewal fee of $1,000 shall be required of all permittees each permittee in the Fund at permit renewal.

1. For the purposes of this section, all planned expenditures shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures any forfeiture on which engineering cost estimates have been prepared, but no money from the Fund has actually been expended from the Fund.
2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

B. In addition to the initial payments into the Fund described in subsection A of this section, all operators that participate, every operator who participates in the Fund shall furnish to the Fund a bond which meets the criteria of § 45.1-241 45.2-xxx and regulations issued pursuant thereto as follows:

1. For underground mining operations participating in the Fund prior to July 1, 1991, the amount of $1,000 per acre covered by each permit. In no event shall such total bond be less than $40,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than $10,000.

2. For underground mining operations entering the Fund on or after July 1, 1991, and for any additional acreage bonded on or after July 1, 1991, the amount of $3,000 per acre. In no event shall the total bond for such underground operations entering the Fund on or after July 1, 1991, be less than $40,000.

3. For any other coal mining operations participating in the Fund prior to July 1, 1991, the amount of $1,500 per acre covered by each permit. In no event shall such total bond be less than $100,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than $25,000.

4. For any other coal mining operations entering the Fund on or after July 1, 1991, and for any additional acreage bonded on or after July 1, 1991, the amount of $3,000 per acre. In no event shall the total bond for such operations entering the Fund on or after July 1, 1991, be less than $100,000.
C. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § 45.1-235 or any other payments required in compliance with this chapter.

D. Each Fund participant shall be allowed to post incremental bonds as set forth in § 45.1-241. Such bonds shall be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.

E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within 90 days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation for six months or less as of July 1, 1991, shall within 90 days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, provided if the permittee has posted bond pursuant to subsection B of this section.

Drafting note: Language is updated for modern usage 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.

§ 45.1-270.3:1. Repealed.

§ 45.1-270.4. Assessment of reclamation tax revenues for Fund.

A. There is hereby levied a reclamation tax upon the production of coal by each operator participating in the Fund under a permit issued under this chapter as set forth herein in this article.

B. Thirty days after the end of each calendar quarter during which the total balance of the Fund, including interest thereon, is less than $20 million, all operators shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter;

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter; and

3. One and one-half cents per clean ton of coal processed or loaded by a preparation or loading facility permitted under this chapter.

C. At the end of each calendar quarter during which the total balance in the Fund, including interest thereon, exceeds $20 million, payments under this section shall cease until again required pursuant to subsection B.

D. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator. In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally surface-mined by that operator or in excess of four and one-half cents per ton on coal originally deep-mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

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.
§ 45.1-270.5  45.2-xxx. Collection of reclamation tax and penalties for nonpayment.

A. Payment of taxes under this section shall be made no later than thirty 30 days after the end of each calendar quarter when taxes are applicable in accordance with § 45.1-270.4 45.2-xxx. The Division shall notify each operator holding a permit under Chapter 19 (§ 45.1-226 et seq.) of this title this chapter of those periods during which the taxes are applicable, and shall provide forms for reporting coal production figures subject to taxes, and shall collect all taxes for the Fund.

B. Pursuant to regulations promulgated adopted by the Director, and consistent with the provisions of § 45.1-248 45.2-xxx, all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to § 45.1-236 45.2-xxx. From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also promulgate adopt regulations for the implementation of this article and for the collection of taxes hereunder.

C. The Division, upon advance written request to an operator, may audit the relevant books and records of the operator upon which taxes paid under this section are based. Failure to consent to a reasonable request for the audit shall be deemed a violation of this article by the operator.

D. Upon the failure of an operator to pay taxes when due under this section, the Division shall issue a notice of violation pursuant to subsection B of § 45.1-245-B 45.2-xxx. The notice of violation shall state that upon failure of payment within fifteen 15 days thereafter, the Division shall issue a cessation order to the operator for failure to abate the notice of violation. Upon the issuance of the cessation order, the enforcement procedures set forth in § 45.1-245 et seq. Article 2 shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.
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.

§ 45.1-270.5:1 45.2-xxx. Forfeiture of bonds on operations participating in the Fund; alternative remedies.

A. Forfeiture of bonds of an operation participating in the Fund shall be accomplished as set forth in § 45.1-247 45.2-xxx and the regulations promulgated adopted by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of a surface coal mining operation under the provisions of subsection E of § 45.1-245 E, 45.2-xxx by filing a civil action for injunctive or other relief in any court of competent jurisdiction to compel the permittee to perform the reclamation work in full compliance with this chapter, the regulations, and the approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm and no bond shall be required.

C. Proceedings under either subsection A or subsection B shall not constitute a waiver by the Director to proceed under the other subsection, nor shall the commencement of action under one subsection constitute an election to proceed solely under that subsection.

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.

§ 45.1-270.6 45.2-xxx. Reinstatement to the Fund; recovery of Fund expenditures.

A. An operator who has defaulted on any reclamation obligation and has thereby caused the Fund to incur reclamation expenses as a result thereof shall not be eligible to participate in the Fund thereafter until restitution for such default has been made. Compliance with this requirement shall be a prerequisite to the filing by the operator of any new permit
application under this chapter but shall not affect the operator's need obligation to comply with all other requirements of this chapter in applying for a permit.

B. The Director may file a motion for judgment in any court of competent jurisdiction against the permittee to recover all moneys expended by the Fund to accomplish reclamation. Such expenditures shall include construction costs, engineering costs, administrative costs, and legal costs. In any action to recover these costs, the defendant may not relitigate the facts giving rise to the forfeiture nor may the defendant or defend by claiming the forfeiture was improper.

Drafting note: Language is updated for modern usage and technical changes are made. In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "Includes' means includes, but not limited to."

§ 45.1-270.7. Coal Surface Mining Reclamation Fund Advisory Committee continued as Coal Surface Mining Reclamation Fund Advisory Board.

A. The Coal Surface Mining Reclamation Fund Advisory Committee is continued and shall hereafter be known as the Coal Surface Mining Reclamation Fund Advisory Board (the Advisory Board) is established as an advisory board in the executive branch of state government. The purpose of the Advisory Board is to formulate recommendations for the Director concerning oversight of the general operation of the Fund.

B. The Reclamation Fund Advisory Board shall have a total membership of eight members that shall consist of seven nonlegislative citizen members and one ex officio member. Nonlegislative citizen members shall be appointed by the Governor and subject to confirmation by the General Assembly, as follows: at least four of whom shall represent the coal industry, one of whom shall be a representative of the Director, and two of whom shall represent conservation interests and such any other public and or private interests as may be appropriate in accordance with Article V of the Interstate Mining Compact (§ 45.1-271.45.2-xxx). The Director of the Division or his designee shall be a continuing serve ex officio with nonvoting member of the Reclamation Fund Advisory Board privileges and shall serve
as Secretary thereto to the Advisory Board. Nonlegislative citizen members of the Advisory Board shall be citizens of the Commonwealth.

C. The ex officio member of the Advisory Board shall serve a term coincident with his term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

B. D. The voting nonlegislative citizen members of the Reclamation Fund Advisory Board shall initially be appointed for terms of one, two, three, four, and five years, such terms to be assigned by lot. Thereafter, all members shall be appointed for five-year staggered terms. No person shall serve more than two consecutive terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

C. E. The Reclamation Fund Advisory Board shall annually elect a chairman and vice-chairman from among its membership and shall formulate rules for its organization and procedure. A majority of the members shall constitute a quorum.

D. F. The voting nonlegislative citizen members of the Reclamation Fund Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

E. G. The Reclamation Fund Advisory Board shall meet not less than twice each year for the purpose of formulating recommendations to the Director concerning oversight of the general operation of the Fund, with such meetings held at the call of the chairman or whenever the majority of the members so request.

H. The Reclamation Fund Advisory Board shall report have the following powers and duties:

1. Report biannually to the Director and to the Governor on the status of the Fund and shall recommend...
2. **Recommend** to the Director regulations or changes **thereto** to the **Fund** for the administration or operation of the Fund.

I. The Department shall provide staff support to the Advisory Board. All agencies of the Commonwealth shall provide assistance to the Advisory Board, upon request.

J. The Director, in his discretion, may adopt the recommendations of the Reclamation Fund Advisory Board through regulatory action from time to time in accordance with the provisions of Chapter 19 (§ 45.1-226 et seq.) this chapter and otherwise in accordance with law.

F-K. The Reclamation Fund Advisory Board shall serve as the advisory body required by Article V of the Interstate Mining Compact (§ 45.1-271 45.2-xxx).

Drafting note: The membership and activity language for the Coal Surface Mining Reclamation Fund Advisory Board is updated to reflect preferred Code style. An obsolete reference to the Coal Surface Mining Reclamation Fund Advisory Committee is removed. Language is updated for modern usage and technical changes are made.