

1 SUBTITLE II.

2 COAL MINING.

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

6 PART A.

7 COAL MINES GENERALLY.

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

11 ~~CHAPTER 14.2~~ 5.

12 COAL MINE SAFETY ACT.

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

16 Article 1.

17 General Provisions.

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

19 ~~§ 45.1-161.7. Short title.~~

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

22 **Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which**
23 **states that throughout the Code the caption of a subtitle, chapter, or article serves as a**
24 **short title citation. Existing Chapters 14.3 and 14.4 continue to be incorporated into the**
25 **Coal Mine Safety Act through the definition of "Coal Mine Safety Act" in proposed §**
26 **45.2-xxx [existing § 45.1-161.8].**

27 ~~§ 45.1-161.8~~ 45.2-xxx. Definitions.

28 As used in this chapter and in Chapters ~~14.3~~ 7 (§ ~~45.1-161.105~~ 45.2-xxx et seq.), 8 (§
29 45.2-xxx et seq.), and ~~14.4~~ 9 (§ ~~45.1-161.253~~ 45.2-xxx et seq.) ~~of this title~~, unless the context
30 requires a different meaning:

31 "Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury;
32 (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of
33 a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an
34 unplanned fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or
35 explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the
36 anchorage zone in active workings where roof bolts are in use₂; or an unplanned roof or rib
37 fall in active workings that impairs ventilation or impedes passage; (ix) a coal or rock outburst
38 that causes withdrawal of miners or ~~which~~ that disrupts regular mining activity for more than
39 one hour; (x) an unstable condition at an impoundment, refuse pile, or culm bank ~~which~~ that
40 requires emergency action in order to prevent failure₂; or ~~which~~ that causes individuals to
41 evacuate an area₂; or₂ failure of an impoundment, refuse pile₂ or culm bank; (xi) damage to
42 hoisting equipment in a shaft or slope ~~which~~ that endangers an individual or ~~which~~ that
43 interferes with use of the equipment for more than 30 minutes; (xii) an event at a mine ~~which~~
44 that causes death or bodily injury to an individual not at a mine at the time the event occurs;
45 and (xiii) the unintentional fall of highwall that entraps equipment for more than 30 minutes.

46 "Active areas" means all places in a mine that are ventilated₂; if underground₂; and
47 examined regularly.

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

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

52 "Approved" means a device, apparatus, equipment, condition, method, course₂ or
53 practice approved in writing by the Chief or the Director.

54 "Authorized person" means a person assigned by the operator or agent to perform a
55 specific type of duty ~~or duties~~ or to be at a specific location ~~or locations~~ in the mine who is
56 trained and has demonstrated the ability to perform such duty ~~or duties~~ safely and effectively.

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

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

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

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

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

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

69 "Coal Mine Safety Act" or "the Act" ~~shall mean~~ means this chapter and Chapters ~~14.3~~
70 10 (§ ~~45.1-161.105~~ 45.2-xxx et seq.), 11 (§ 45.2-xxx et seq.), and ~~14.4~~ 12 (§ ~~45.1-161.253~~
71 45.2-xxx et seq.) ~~of this title~~, and ~~shall include~~ includes any regulations ~~promulgated~~ adopted
72 thereunder, where applicable.

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

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

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

79 "Federal mine safety law" means the Federal Mine Safety and Health Act of 1977
80 (P.L. 95-164), and regulations ~~promulgated~~ adopted thereunder.

81 "Fuse" means an overcurrent protective device with a circuit-opening fusible member
82 directly heated and destroyed by the passage of overcurrent through it.

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

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

87 "Hazardous condition" means ~~conditions~~ a condition that ~~are~~ is likely to cause death or
88 serious personal injury to persons exposed to such ~~conditions~~ condition.

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

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

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

100 "Intake air" means air that has not passed through the last active working place of the
101 split of any working section or any worked-out area, whether pillared or nonpillared, and by
102 analysis contains ~~not less than nineteen and one-half~~ at least 19.5 percent oxygen ~~nor~~ and no
103 more than ~~one-half of one~~ 0.5 percent ~~of~~ carbon dioxide, ~~nor~~ and does not contain any
104 hazardous quantities of flammable gas ~~nor~~ or any harmful amounts of poisonous gas.

105 "Interested persons" means members of the ~~Mine Safety Committee~~ mine safety
106 committee and other duly authorized representatives of the employees at a mine; federal
107 Mine Safety and Health Administration employees; mine inspectors; and, to the extent
108 required by ~~this~~ the Act, any other person.

109 "Main entry" means the principal entry or set of entries driven through the coal bed or
110 mineral deposit from which cross entries, room entries, or rooms are turned.

111 "Mine" means any underground coal mine or surface coal mine. "Mines" that are
112 adjacent to each other and under the same management and ~~which that~~ are administered as
113 distinct units ~~shall be~~ are considered ~~as~~ separate mines. A site ~~shall is~~ is not ~~be~~ a "mine" unless
114 the coal extracted or excavated ~~therefrom~~ from it is offered for sale or exchange, or used for
115 any other commercial purposes. The area in which coal is excavated under an exemption to
116 the permitting requirements of § ~~45.1-234 shall~~ 45.2-xxx is not ~~be~~ a "mine."

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

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

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

122 "Miner" means any individual working in a mine.

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

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

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

131 "Panel entry" means a room entry.

132 "Permissible" means a device, process, ~~or~~ equipment, or method ~~heretofore or~~
133 ~~hereafter~~ classified ~~by such term as~~ "permissible" by the federal Mine Safety and Health
134 Administration, when such classification is adopted by the Chief or the Director, and includes,
135 ~~unless otherwise herein expressly stated,~~ all requirements, restrictions, exceptions, limitations,

136 and conditions attached to such classification by the federal Mine Safety and Health
137 Administration unless otherwise expressly stated in the Act.

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

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

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

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

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

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

160 "Underground coal mine" means (i) the working face and other active and inactive
161 areas of underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts,
162 inclines, and tunnels connected to such areas; (iii) on-site preparation plants, shops, tipples,
163 and related facilities appurtenant to the excavation and processing of coal; (iv) on-site surface

164 areas for the transportation and storage of coal excavated at the site; (v) impoundments,
165 retention dams, and tailing ponds appurtenant to the excavation of coal from the site; (vi)
166 equipment, machinery, tools, and other property, on the surface and underground, used in, or
167 to be used in, the excavation of coal from the site; (vii) private ways and roads appurtenant to
168 such ~~area~~ areas; (viii) the areas used to prepare a site for underground coal excavation
169 activities; and (ix) areas used for the drilling of vertical ventilation holes. A site ~~shall~~
170 ~~commence~~ commences being an underground coal mine upon the beginning of any site
171 preparation activity other than exploratory drilling or other exploration activity, and ~~shall~~
172 ~~cease~~ ceases to be an underground coal mine upon completion of initial reclamation activities.

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

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

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

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

183 "Working place" means the area of an underground coal mine in by the last open
184 crosscut.

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

187 **Drafting note: In the definition of "authorized person," the words "or duties"**
188 **and "or locations" are stricken pursuant to § 1-227, which states that throughout the**
189 **Code any word used in the singular includes the plural and vice versa. In the definitions**
190 **of "Coal Mine Safety Act" and "Federal mine safety law," the term "promulgated"**
191 **with regard to regulations is changed to "adopted" in keeping with recent title revisions**

192 because "adopt" is more widely used and includes the promulgation process. In the
193 definitions of "experienced surface miner" and "experienced underground miner,"
194 "more than six months" is changed to "six months or more" because the definition of
195 "inexperienced underground miner" means a person with "less than six months" of
196 experience. The change accounts for exactly six months. The language applying the
197 definition of "work area" to proposed Chapter 9 is stricken as unnecessary because this
198 definitions section already applies specifically to that chapter and there are no uses of
199 the term in other chapters of the Act. Technical changes are made.

200 § ~~45.1-161.9~~ 45.2-xxx. Safety and health.

201 In safety and health matters, all miners are to be governed by ~~this the~~ Act ~~and Chapter~~
202 ~~18, Article 4~~ (§ ~~45.1-221~~ 45.2-xxx et seq.) of ~~this title~~ Chapter 6, and any other sections of the
203 Code relating to the safety and health of miners and ~~rules and~~ regulations ~~promulgated~~
204 adopted by the Department.

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

209 § ~~45.1-161.10~~ 45.2-xxx. Special safety rules.

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

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

220 § ~~45.1-161.11. Persons not permitted~~ [45.2-xxx. Age requirement](#) to work in mines.

221 A. No person under ~~eighteen~~ [18](#) years of age shall be permitted to work in or around
222 any mine, and in all cases of doubt, the operator, agent₂, or mine foreman shall obtain a birth
223 certificate or other documentary evidence₇, from the Registrar of Vital Statistics₇, or other
224 authentic ~~sources~~ [source](#) as to the age of such person.

225 B. No operator, agent₂, or mine foreman shall make a false statement as to the age of
226 any person under ~~eighteen~~ [18](#) years of age applying for work in or around any mine.

227 **Drafting note: Catchline is changed to better reflect the subject of the section.**
228 **Technical changes are made.**

229 § ~~45.1-161.12~~ [45.2-xxx](#). Prohibited acts by miners or other persons; miners to comply
230 with law.

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

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

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

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

247 § ~~45.1-161.13~~ [45.2-xxx](#). Safety materials and supplies.

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

254 **Drafting note: Technical changes.**

255 § ~~45.1-161.14~~ 45.2-xxx. Notifying miners of violations; compliance with Act.

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

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

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

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

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

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

276 Article 2.

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

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

283 § ~~45.1-161.15~~ 45.2-xxx. Appointment of Chief.

284 The Chief of the Division of Mines of the Department of Mines, Minerals and Energy
285 shall be appointed by the Governor. The Chief ~~shall be~~ is the head of the Division of Mines,
286 and ~~shall be~~ is under the direction of and ~~shall report~~ reports to the Director.

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

289 § ~~45.1-161.16~~ 45.2-xxx. Qualification of Chief.

290 The Chief shall have a thorough knowledge of the various systems of working and
291 ventilating coal mines, the nature and properties of mine gases and methods for their detection
292 and control, the control of mine roof, methods of rescue and recovery work in mine disasters,
293 the application of electricity and mechanical loading in mining operations, equipment and
294 explosives used in mining, methods for preventing gas and dust explosions in mines, and
295 mine haulage. The Chief shall possess such experience or educational background in
296 management as determined necessary by the Governor and shall be ~~not less than thirty at least~~
297 30 years of age.

298 **Drafting note: Technical changes.**

299 § ~~45.1-161.17~~ 45.2-xxx. Affiliations of Department personnel with labor union, coal
300 company, etc.; interest in coal mine; inspections of mines where inspector previously
301 employed.

302 A. In addition to compliance with the provisions of the State and Local Government
303 Conflict of Interests Act (§ 2.2-3100 et seq.), neither the Chief nor any other officer or

304 employee of the Department shall, upon taking office or being employed, or at any other time
305 during the term of his office or employment, have any affiliation with any operating coal
306 company, operators' association, or labor union. Neither the Chief nor any other officer while
307 in office shall be directly or indirectly interested as owner, partner, proprietor, lessor,
308 operator, superintendent, or engineer of any coal mine, nor shall the Chief, or any other
309 officer while in office, own any stock in a corporation ~~owning that owns~~ a coal mine either
310 directly or through a subsidiary.

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

314 **Drafting note: Technical change.**

315 § ~~45.1-161.18~~ 45.2-xxx. Appointment and general qualifications of mine inspectors.

316 Mine inspectors shall be appointed by the Director.

317 ~~§ 45.1-161.19. Qualifications of mine inspectors generally.~~

318 Each mine inspector shall (i) be ~~not less than twenty five~~ at least 25 years of age; (ii)
319 be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman;
320 and (iv) hold a certificate as a mine inspector issued by the Board of Coal Mining Examiners.

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

322 § ~~45.1-161.20~~ 45.2-xxx. Qualifications of inspectors of coal mines.

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

330 B. Each mine inspector conducting inspections of surface coal mines shall have a
331 thorough knowledge of the various systems of working surface coal mines; the nature and

332 properties of mine gases and methods of their detection and control; ground control; methods
333 of rescue and recovery work in surface mine disasters; the application of electricity and
334 mechanical loading in mining operations; equipment and explosives used in mining; methods
335 for preventing gas and dust explosions in surface facilities on mine property; and mine
336 haulage.

337 **Drafting note: Technical changes.**

338 § ~~45.1-161.21~~ 45.2-xxx. Duties of the Chief; penalty.

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

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

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

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

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

357 F. The Chief shall supervise execution and enforcement of all reciprocal agreements
358 made with responsible officers of other states that implicate any part of the ~~Coal Mine Safety~~

359 Act, ~~Chapters 14.2 (§ 45.1-161.7 et seq.), 14.3 (§ 45.1-161.105 et seq.), and 14.4 (§ 45.1-~~
360 ~~161.253 et seq.) of Title 45.1.~~

361 **Drafting note:** The citation in subsection F to the Coal Mine Safety Act is
362 shortened because the Act is defined for the chapter in proposed § 45.2-xxx [existing §
363 45.1-161.8]. Technical changes are made, including organizational changes in subsection
364 A relating to the duties of the Chief, and the regulations of the Board of Coal Mining
365 Examiners are included in the reference to the mining laws of the Commonwealth.

366 ~~§ 45.1-161.22. Repealed.~~

367 **Drafting note:** Repealed by Acts 1997, c. 390.

368 ~~§ 45.1-161.23~~ 45.2-xxx. Technical specialists.

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

375 **Drafting note:** Technical change.

376 Article 3.

377 Certification of Coal Mine Workers.

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

380 ~~§ 45.1-161.24.~~ 45.2-xxx. The Board of Coal Mining Examiners; purpose.

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

385 **Drafting note:** Part of the first sentence of existing § 45.1-161.24 is retained as
386 proposed § 45.2-xxx. A statement of the purpose of the Board of Coal Mining Examiners

387 is added and the board language is updated to reflect current language preferred in the
388 Code. The remainder of existing § 45.1-161.24 is retained in the following section as
389 proposed § 45.2-xxx.

390 § 45.2-xxx. Board membership; terms; quorum; meetings.

391 A. The Board of Coal Mining Examiners shall have a total membership of five
392 members.~~One member shall be the Chief, and~~ that shall consist of four nonlegislative citizen
393 members and one ex officio member. The four nonlegislative citizen members shall be
394 appointed by the Governor.~~One appointed member shall be~~ as follows: one who is a miner
395 holding who holds a ~~first-class~~ first-class mine foreman's certificate with at least five years of
396 experience in underground coal mining and ~~who~~ is employed at an underground coal mine in
397 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
398 surface coal mining ~~and~~ who is employed at a surface coal mine in the Commonwealth in a
399 nonmanagerial, nonsupervisory capacity at the time of appointment.~~One appointed member shall be;~~ one who is an individual ~~holding who holds~~ a ~~first-class~~ first-class mine foreman's
400 certificate with at least five years of experience in the operation of underground coal mines;
401 ~~who and~~ is (i) an operator of an underground coal mine, (ii) an officer or director of a
402 corporation operating an underground coal mine, (iii) a general partner of a partnership
403 operating an underground coal mine, or (iv) an employee in a managerial or supervisory
404 capacity of an operator of an underground coal mine in the Commonwealth at the time of
405 appointment.~~One appointed member shall be; and one who is~~ an individual with at least five
406 years of experience in the operation of surface coal mines; who is ~~(i)~~ (a) an operator of a
407 surface coal mine, ~~(ii)~~ (b) an officer or director of a corporation operating a surface coal mine,
408 ~~(iii)~~ (c) a general partner of a partnership operating a surface coal mine, or ~~(iv)~~ (d) an
409 employee in a managerial or supervisory capacity of an operator of a surface coal mine in the
410 Commonwealth at the time of appointment.~~All appointed~~ Nonlegislative citizen members of
411 the Board shall be residents of the Commonwealth. The Chief or his designee shall serve ex
412 officio with voting privileges.

415 B. ~~The terms of office of the appointed members~~ Members of the Board shall be ~~as~~
416 ~~follows: one shall be appointed for an initial term of one year; one shall be appointed for an~~
417 ~~initial term of two years; one shall be appointed for an initial term of three years; and one~~
418 ~~shall be appointed for an initial term of four years. Thereafter, the members shall be~~ appointed
419 for terms of four years. The Chief shall serve a term coincident with his term of office.
420 Vacancies occurring on the Board among appointed members shall be filled by the Governor
421 for the unexpired term. All members may be reappointed.

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

423 ~~§ 45.1-161.25. Meetings of Board of Coal Mining Examiners; compensation.~~

424 D. The Board ~~of Coal Mining Examiners~~ shall meet at least once a year and shall be
425 called by the Chief to meet at such other times as he deems necessary. The Board shall meet
426 at such place ~~or places~~ and at such times as may be designated by the Chief; and the Board
427 shall remain in session until its work is completed; ~~2~~ but no one session of the Board shall
428 continue more than three days.

429 **Drafting note: All but part of the first sentence of existing § 45.1-161.24 [previous**
430 **section] is retained and is combined with the first two sentences of existing § 45.1-161.25**
431 **as proposed § 45.2-xxx. The board language for the Board of Coal Mining Examiners is**
432 **updated to reflect current language preferred in the Code and obsolete language**
433 **establishing the initial staggering of terms is proposed for deletion. Technical changes**
434 **are made. The remaining sentence in existing § 45.1-161.25 is retained as proposed §**
435 **45.2-xxx [following section].**

436 § 45.2-xxx. Board compensation; expenses.

437 ~~Out of~~ Nonlegislative citizen members of the Board of Coal Mining Examiners shall
438 receive such compensation for the performance of their duties as provided in § 2.2-2813. All
439 such nonlegislative citizen members shall be reimbursed for all reasonable and necessary
440 expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.
441 Funding for the costs of compensation and expenses of such members shall be provided by
442 the Coal Mining Examiners' Fund, ~~there shall be paid to each member of the Board, except~~

443 ~~the~~ established in § 45.2-xxx [§ 45.1-161.31]. The Chief ~~who~~ shall serve without extra pay,
444 ~~reimbursement for expenses and compensation as is provided by pursuant to § 2.2-2813.~~

445 **Drafting note: The third sentence in existing § 45.1-161.25 is retained as proposed**
446 **§ 45.2-xxx. The board language for the Board of Coal Mining Examiners is updated to**
447 **reflect current language preferred in the Code, the cross-reference to the Coal Mining**
448 **Examiners' Fund is added, and technical changes are made. The first two sentences of**
449 **existing § 45.1-161.25 are retained as proposed § 45.2-xxx [previous section].**

450 ~~§ 45.1-161.26~~ 45.2-xxx. Records of the Board ~~of Coal Mining Examiners.~~

451 The Chief shall preserve in his office a record of the meetings and transactions of the
452 Board of Coal Mining Examiners and of all certificates issued by the Board.

453 **Drafting note: Catchline is shortened.**

454 ~~§ 45.1-161.27~~ 45.2-xxx. Nominations for the Board ~~of Coal Mining Examiners.~~

455 Nominations for appointments to the Board of Coal Mining Examiners may be
456 submitted to the Governor by the Director and each organization of coal miners and coal
457 industry interests in the Commonwealth. Nominations are to be made to the Governor by June
458 1 of the year in which the terms of appointments of members expire. In no case shall the
459 Governor be bound to make any appointment from the nominations submitted.

460 **Drafting note: Catchline is shortened.**

461 ~~§ 45.1-161.28~~ 45.2-xxx. Certification of certain persons employed in coal mines;
462 powers and duties of the Board ~~of Coal Mining Examiners.~~

463 A. The Board of Coal Mining Examiners may require certification of persons who
464 work in coal mines and persons whose duties and responsibilities in relation to coal mining
465 require competency, skill, or knowledge in order to perform ~~consistently~~ in a manner
466 consistent with the preservation of the health and safety of persons and property. The
467 following certifications shall be issued by the Board, and a person ~~holding~~ who holds such
468 certification shall be authorized to perform the tasks ~~which this~~ that the Act or any regulation
469 ~~promulgated~~ adopted by the Board or by the Department requires to be performed by such ~~a~~
470 certified person:

- 471 1. ~~First-class~~ First-class mine foreman;
- 472 2. ~~First-class~~ First-class shaft or slope foreman;
- 473 3. Surface foreman;
- 474 4. Preparation plant foreman;
- 475 5. Electrical maintenance foreman;
- 476 6. Dock foreman;
- 477 7. Top person;
- 478 8. Underground shot firer;
- 479 9. Surface blaster;
- 480 10. Hoisting engineer;
- 481 11. Electrical repairman;
- 482 12. Automatic elevator operator;
- 483 13. Mine inspector;
- 484 14. Qualified gas detector;
- 485 15. Diesel engine mechanic;
- 486 16. Diesel engine mechanic instructor;
- 487 17. First aid instructor;
- 488 18. Advanced first aid;
- 489 19. Chief electrician; and
- 490 20. General coal miner.
- 491 B. Certification shall also be required for such additional tasks as the Board may
- 492 require by regulation.
- 493 C. The Board shall have the power to ~~promulgate~~ adopt regulations necessary or
- 494 incidental to the performance of duties or execution of powers conferred under this title,
- 495 which regulations shall be ~~promulgated~~ adopted in accordance with the provisions of Article 2
- 496 (§ 2.2-4006 et seq.) of the Administrative Process Act.

497 D. The Board is authorized to ~~promulgate~~ adopt regulations ~~establishing guidelines for~~
498 regarding on-site examinations of mine foremen conducted by mine inspectors pursuant to §
499 ~~45.1-161.35~~ 45.2-xxx.

500 **Drafting note: The catchline is shortened and updated to reflect the content of**
501 **the statute. The term "promulgate regulations" is changed to "adopt regulations" in**
502 **keeping with recent title revisions because "adopt" is more widely used and includes the**
503 **promulgation process. Technical changes are made to modernize language.**

504 § ~~45.1-161.29~~ 45.2-xxx. Examinations required for Coal Mining Certifications.

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

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

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

522 § ~~45.1-161.30~~ 45.2-xxx. Performance of certain tasks by uncertified persons; penalty.

523 ~~A. It shall be~~ is unlawful for any person to perform any task requiring certification by
524 the Board of Coal Mining Examiners until he has been certified. It ~~shall~~ is also ~~be~~ unlawful

525 for an operator or his agent to permit any uncertified person to perform such tasks. A violation
526 of this ~~subsection shall constitute~~ section constitutes a Class 1 misdemeanor. Each day of
527 operation without a required certification ~~shall constitute~~ constitutes a separate offense.

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

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

533 ~~§ 45.1-161.31. Examination fees;~~ 45.2-xxx. Coal Mining Examiners' Fund.

534 ~~A. A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to~~
535 ~~exceed \$50, shall be paid to the Chief by each person examined before the commencement of~~
536 ~~examination.~~ There is hereby created in the state treasury a special nonreverting fund to be
537 known as the Coal Mining Examiners' Fund, referred to in this section as "the Fund." The
538 Fund shall be established on the books of the Comptroller. All ~~such~~ fees collected pursuant to
539 § 45.2-xxx, together with moneys collected pursuant to §§ ~~45.1-161.32~~ 45.2-xxx and ~~45.1-~~
540 ~~161.34~~ 45.2-xxx, shall be ~~retained by the Department and shall be promptly~~ paid by the Chief
541 into the state treasury and ~~shall constitute~~ credited to the ~~Coal Mining Examiners'~~ Fund.
542 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
543 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall
544 not revert to the general fund but shall remain in the Fund. Moneys in the Fund

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

548 ~~B. The~~ the cost of printing certificates and other necessary forms; and the incidental
549 expenses incurred by the Board in conducting examinations, reviewing examination papers,
550 and conducting its other duties pursuant to this article ~~shall also be paid out of the Coal~~
551 ~~Mining Examiners' Fund.~~ Expenditures and disbursements from the Fund shall be made by
552 the State Treasurer on warrants issued by the Comptroller upon written request signed by the

553 [Chief](#). The Chief shall keep accounts and records concerning the receipts and expenditures of
554 the ~~fund~~ [Fund](#) as required by the Auditor of Public Accounts.

555 [§ 45.2-xxx. Examination fees.](#)

556 [A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to](#)
557 [exceed \\$50, shall be paid to the Chief by each person examined before the commencement of](#)
558 [examination. Fees collected shall be deposited in the Coal Mining Examiners' Fund created by](#)
559 [§ 45.2-xxx.](#)

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

564 ~~§ 45.1-161.32~~ [45.2-xxx](#). Replacement of lost or destroyed certificates.

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

570 **Drafting note: No change.**

571 ~~§ 45.1-161.33~~ [45.2-xxx](#). Reciprocal acceptances of other certifications.

572 A. In lieu of an examination prescribed by law or regulation, the Board of Coal
573 Mining Examiners may issue to any person holding a certificate issued by another state a
574 certificate permitting him to perform similar tasks in the Commonwealth, provided that (i) the
575 Board finds that the requirements for certification in such state are substantially equivalent to
576 those of Virginia and (ii) holders of certificates issued by the Board are permitted to perform
577 similar tasks in such state, and obtain similar certification from such state if required, upon
578 presentation of the certificate issued by the Board and without additional testing, training, or
579 other requirements not directly related to program administration.

580 B. If the issuing authority in another state has revoked or suspended a certificate of a
581 person who holds a similar Virginia certificate issued pursuant to this section, the person shall
582 notify the Chief of such action by the other state within 10 days of such action. The Chief
583 shall schedule a hearing of the Board ~~of Coal Mining Examiners~~ to determine whether his
584 Virginia certificate ~~should~~ shall be revoked or suspended.

585 **Drafting note: Technical changes.**

586 § ~~45.1-161.34~~ 45.2-xxx. Continuing education requirements.

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

602 B. A certification issued by the Board of Coal Mining Examiners shall be suspended if
603 the holder fails to comply with the continuing education requirements established by the
604 Board. The suspension shall be vacated upon compliance with the continuing education
605 requirements. However, if the holder of a certificate does not comply with the continuing
606 education requirements within the period of time established by the Board, the certificate shall
607 be revoked.

608 **Drafting note: The term "promulgate regulations" is changed to "adopt**
609 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
610 **and includes the promulgation process. A technical change is made to modernize**
611 **language.**

612 § ~~45.1-161.35~~ 45.2-xxx. Revocation of certificates.

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

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

634 C. Any person holding a certification issued by the Board shall report to the Chief;
635 within 30 days of any criminal conviction in any court of competent jurisdiction for

636 possession or use of any controlled substance without the prescription of a licensed prescriber.
637 This conviction shall result in the immediate temporary suspension of all certificates held by
638 such person pending a hearing before the Board.

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

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

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

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

655 H. Any hearing conducted after the temporary suspension of a miner's certificate due
656 to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any
657 controlled substance without the prescription of a licensed prescriber as provided for in
658 subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to §
659 ~~45.1-161.78~~ 45.2-xxx, (iii) a failure to pass a pre-employment substance abuse screening test,
660 (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a
661 positive test for the use of any controlled substance without the prescription of a licensed
662 prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to
663 complete a substance abuse program pursuant to § ~~45.1-161.87~~, 45.2-xxx shall be conducted

664 within 60 days of the temporary suspension. The Board shall make every effort to hold the
665 hearing within 40 days of the temporary suspension.

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

669 **Drafting note: The term "promulgate regulations" is changed to "adopt**
670 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
671 **and includes the promulgation process. Technical changes are made, including in**
672 **subsection A, where the organization of the list of findings is clarified.**

673 § ~~45.1-161.36~~ 45.2-xxx. Reexamination.

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

682 **Drafting note: Technical changes.**

683 § ~~45.1-161.37~~ 45.2-xxx. General coal miner certification.

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

690 B. Each applicant for a general coal miner certificate who has not been employed to
691 work in a Virginia coal mine prior to January 1, 1996, shall prove to the Board that he has

692 knowledge of first aid practices and has a general working knowledge of the provisions of ~~this~~
693 the Act, and applicable regulations, pertaining to coal mining health and safety. Each
694 applicant shall have completed the ~~new~~ miner training requirements of 30-~~CFR~~ C.F.R. Part 48
695 or submit proof of at least one year of experience in a coal mine prior to issuance of the
696 General Coal Miner certification.

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

699 § ~~45.1-161.38~~ 45.2-xxx. First-class mine foreman certification.

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

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

708 C. ~~Applicants~~ An applicant for a first-class mine foreman certificate shall be not less
709 than 23 years of age and shall have had at least five years of experience in a coal mine ~~(, at~~
710 least three years of which shall have been in an underground coal mine). A graduate of an
711 approved course in mining engineering at a baccalaureate institution of higher education shall
712 be given credit for three of the five years of practical experience required. An applicant who
713 possesses a degree in mining technology shall be given credit for two of the five years of
714 practical experience required. If the applicant meets the above requirements, makes 85
715 percent or more on each of the subjects of the written examination, and passes required map
716 and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written
717 examination shall address, among other relevant topics, the theory and practice of coal
718 mining; the nature and properties of noxious, poisonous, and explosive gases, and methods for
719 their detection and control; the requirements of the coal mining laws of ~~this~~ the

720 Commonwealth, [including regulations adopted by the Department or the Board of Coal](#)
721 [Mining Examiners](#); and [the](#) responsibilities and duties of a mine foreman under state law.

722 D. Each candidate for certification as a first-class mine foreman shall complete the
723 course or courses of instruction in first aid as provided in subsection A of § ~~45.1-161.101~~
724 [45.2-xxx](#) and pass an examination relating thereto, approved by the Board of Coal Mining
725 Examiners.

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

729 § ~~45.1-161.39~~ [45.2-xxx](#). Surface foreman certification.

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

741 B. Each candidate for certification as a surface foreman shall complete, at a minimum,
742 a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid
743 instructor in accordance with subsection A of § ~~45.1-161.101~~, [45.2-xxx](#) and pass an
744 examination relating thereto approved by the Board ~~of Coal Mining Examiners~~. No course or
745 examination shall be required of ~~candidates~~ [a candidate](#) holding a current higher level of
746 emergency medical certification from the Virginia Department of Health.

747 ~~C. All holders of a surface foreman certification issued prior to July 1, 2010, except~~
748 ~~those holding a current higher level of emergency medical certification from the Virginia~~
749 ~~Department of Health, shall complete by December 31, 2011, at a minimum, a 24-hour course~~
750 ~~of instruction in advanced first aid taught by a certified advanced first aid instructor in~~
751 ~~accordance with subsection A of § 45.1-161.101.~~

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

754 § ~~45.1-161.40~~ [45.2-xxx](#). Chief electrician certification.

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

760 **Drafting note: No change.**

761 § ~~45.1-161.41~~ [45.2-xxx](#). Top person certificate.

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

767 **Drafting note: No change.**

768 ~~Article 4.~~

769 ~~Certification of Mineral Mine Workers.~~

770 **Drafting note: Repealed by Acts 1997, c. 390.**

771 ~~45.1-161.42 through 45.1-161.56. [Repealed.]~~

772 **Drafting note: Repealed by Acts 1997, c. 390.**

773 ~~Article 5~~ [4](#).

774 Licensing [for Operation](#) of [Coal](#) Mines.

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

779 § ~~45.1-161.57~~ 45.2-xxx. License required for operation of ~~coal mines~~ a coal mine;
780 term.

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

789 B. ~~Licenses~~ Each license for the operation of a coal mines mine shall be valid for a
790 period of no more than one year following the date of issuance ~~and~~. License renewal shall be
791 renewed obtained annually ~~within fifteen days following by~~ the anniversary of the date ~~the~~
792 ~~mine began operations~~ of issuance.

793 § ~~45.1-161.58. Fee to accompany application for license; fund; disposition of fees.~~

794 C. Each application for a license for the operation of a coal mine or a renewal or
795 transfer of a license for the operation of a coal mine shall be submitted to the Department,
796 accompanied by a fee, payable to the State Treasurer, ~~in the amount of \$180~~ \$350.

797 **Drafting note: Existing § 45.1-161.57 and the first sentence of existing § 45.1-**
798 **161.58 are combined. License renewal provisions in subsection B are reworded for**
799 **consistency with § 45.2-xxx [§ 45.1-161.292:30]. The fee amount is updated from \$180 to**
800 **\$350 to reflect the current fee as established in the state budget adopted during the 2010**
801 **Session of the General Assembly and in each subsequent biennial budget. Technical**
802 **changes are made.**

803 § 45.2-xxx. Coal Mine Operator License Fund.
804 There is hereby created in the state treasury a special nonreverting fund to be known
805 as the Coal Mine Operator License Fund, referred to in this section as "the Fund." The Fund
806 shall be established on the books of the Comptroller. All-~~such~~ fees collected pursuant to the
807 provisions of § 45.2-xxx [45.1-161.58] shall be ~~retained by the Department and~~ paid into the
808 state treasury and ~~shall constitute a fund under the control of the Director. Expenditures from~~
809 ~~this fund may be made by the Department for~~ credited to the Fund. Interest earned on moneys
810 in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
811 including interest thereon, at the end of each fiscal year shall not revert to the general fund but
812 shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of
813 purchasing or commissioning safety equipment, safety training, safety education, or ~~for~~ any
814 expenditure to further the safety program in the mining industry. All expenditures and
815 disbursements from ~~this fund must be approved~~ the Fund shall be made by the State Treasurer
816 on warrants issued by the Comptroller upon written request signed by the Director.

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

822 ~~§ 45.1-161.59~~ 45.2-xxx. Application for license for the operation of a coal mine.

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

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

827 a. If the operator is a sole proprietorship, the operator shall state: (i) his full name and
828 address; (ii) the name and address of the mine and its federal mine identification number; (iii)
829 the name and address of the person with overall responsibility for operating decisions at the
830 mine; (iv) the name and address of the person with overall responsibility for health and safety

831 at the mine; (v) the federal mine identification numbers of all other mines in which the sole
832 proprietor has a ~~twenty~~ 20 percent or greater ownership interest; and (vi) the trade name, if
833 any, and the full name, address of record, and telephone number of the proprietorship.

834 b. If the operator is a partnership, the operator shall state: (i) the name and address of
835 the mine and its federal mine identification number; (ii) the name and address of the person
836 with overall responsibility for operating decisions at the mine; (iii) the name and address of
837 the person with overall responsibility for health and safety at the mine; (iv) the federal mine
838 identification numbers of all other mines in which the partnership has a ~~twenty~~ 20 percent or
839 greater ownership interest; (v) the full ~~name~~ names and ~~address~~ addresses of all partners; (vi)
840 the trade name, if any, and the full name and address of record and telephone number of the
841 partnership; and (vii) the federal mine identification numbers of all other mines in which any
842 partner has a ~~twenty~~ 20 percent or greater ownership interest.

843 c. If the operator is a corporation, the operator shall state: (i) the name and address of
844 the mine and its federal mine identification number; (ii) the name and address of the person
845 with overall responsibility for operating decisions at the mine; (iii) the name and address of
846 the person with overall responsibility for health and safety at the mine; (iv) the federal mine
847 identification numbers of all other mines in which the corporation has a ~~twenty~~ 20 percent or
848 greater ownership interest; (v) the full name, address of record, and telephone number of the
849 corporation and the state of incorporation; (vi) the full name and address of each officer and
850 director of the corporation; (vii) ~~if the corporation is a subsidiary corporation, the operator~~
851 ~~shall state~~ the full name, address, and state of incorporation of the parent corporation if the
852 corporation is a subsidiary corporation; and (viii) the federal mine identification numbers of
853 all other mines in which any corporate officer has a ~~twenty~~ 20 percent or greater ownership
854 interest.

855 d. If the operator is any organization other than a sole proprietorship, partnership, or
856 corporation, the operator shall state: (i) the nature and type, or legal identity of the
857 organization; (ii) the name and address of the mine and its federal mine identification number;
858 (iii) the name and address of the person with overall responsibility for operating decisions at

859 the mine; (iv) the name and address of the person with overall responsibility for health and
860 safety at the mine; (v) the federal mine identification numbers of all other mines in which the
861 organization has a ~~twenty~~ 20 percent or greater ownership interest; (vi) the full name, address
862 of record, and telephone number of the organization; (vii) the name and address of each
863 individual who has an ownership interest in the organization; (viii) the ~~name~~ names and
864 ~~address~~ addresses of the principal organization officials or members; and (ix) the federal mine
865 identification numbers of all other mines in which any official or member has a ~~twenty~~ 20
866 percent or greater ownership interest;

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

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

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

874 ~~5, 6. [Repealed.]~~

875 ~~7. 5.~~ For any license renewal, the annual report required pursuant to § ~~45.1-161.62~~
876 45.2-xxx. When no change has occurred to the information required by subdivision 1, 2, or 3
877 ~~of this subsection~~, the operator of the mine shall only be required to certify that such
878 information on the current license application is accurate and complete.

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

883 C. Within ~~thirty~~ 30 days after the occurrence of any change in the information required
884 by subsection A, the operator shall notify the Department, in writing, of such change.

885 **Drafting note: Technical changes.**

886 § ~~45.1-161.60~~ 45.2-xxx. Denial or revocation of license for the operation of a coal
887 mine.

888 A. The Chief may ~~deny an application for, or may~~ revoke a license for the operation of
889 a coal mine or deny an application for the issuance of a license for the operation of a coal
890 mine upon determining that the applicant, the operator, or ~~his~~ the operator's agent has
891 committed violations of the mine safety laws of the Commonwealth ~~which, including~~
892 regulations adopted by the Department or the Board of Coal Mining Examiners, that
893 demonstrate a pattern of willful violations resulting in an imminent danger to miners.

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

900 C. The Chief may revoke every license issued to any person for the operation of a coal
901 mine and may deny every application by a person for the issuance of a license for the
902 operation of a coal mine who has been convicted of violating subsection A of § ~~45.1-161.177~~
903 45.2-xxx or ~~§ 45.1-161.178~~ 45.2-xxx.

904 D. Any person whose license application is denied or whose license is revoked
905 pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or
906 county in which the mine is located for review of the decision. The commencement of such a
907 proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision.
908 The court shall promptly hear and determine the matters raised by the aggrieved party. In any
909 such action, the court shall receive the records of the Department with respect to the
910 determination, and shall receive additional evidence at the request of any party. The court,
911 basing its decision on the preponderance of the evidence, shall grant such relief as the court
912 determines appropriate.

913 **Drafting note: Technical changes are made, including changes that make the**
914 **form of subsection A parallel to that of subsections B and C, and the regulations of the**
915 **Board of Coal Mining Examiners are included in the reference to the mining laws of the**
916 **Commonwealth.**

917 § ~~45.1-161.61~~ 45.2-xxx. Operating without license; penalty.

918 A. In addition to any other power conferred by law, the Chief, or his designated
919 representative, shall have the authority to issue an order closing any coal mine ~~which~~ that is
920 operating without a license. The procedure for issuing a closure order shall be as provided in §
921 ~~45.1-161.91~~ 45.2-xxx.

922 B. Any person operating an unlicensed mine ~~shall, upon conviction, be~~ is guilty of a
923 Class 3 misdemeanor. Each day any person operates an unlicensed mine shall constitute a
924 separate offense.

925 **Drafting note: Technical changes.**

926 § ~~45.1-161.62~~ 45.2-xxx. Annual reports; condition to issuance of license following
927 transfer of ownership.

928 A. The operator ~~or his agent~~ of ~~every~~ each mine or his agent shall annually, by
929 February 15, mail or deliver to the Department a report for the preceding ~~twelve~~ 12 months,
930 ending with December 31. Such report shall state: (i) the names of the operator, any agent,
931 and ~~their~~ any officers, of the mine; (ii) the ~~quantity~~ amount of coal mined; and (iii) such other
932 information, not of a private nature, as may from time to time be required by the Department
933 on ~~blank~~ forms furnished or approved by the Department.

934 B. Whenever the owner of a mine ~~shall transfer~~ transfers the ownership of such mine
935 to another person, the person transferring such ownership shall submit a report to the
936 Department of such change and a statement of the tons of coal produced since the January 1
937 previous to the date of such sale or transfer of such mine. A license ~~will~~ shall not be issued
938 covering such transfer of ownership until the report is furnished.

939 C. The operator ~~or his agent~~ of ~~every~~ each coal mine or his agent shall annually, by
940 February 15, mail or deliver to the Department (i) an affidavit, certified by the ~~Commissioner~~

941 ~~of Revenue~~ commissioner of the revenue of the locality in which the coal mining operations
942 are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703,
943 58.1-3712, 58.1-3713, and 58.1-3741 due with respect to the coal mining operations have
944 been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which the coal
945 mining operations are conducted, stating that all personal property, real estate, and mineral
946 land taxes due with respect to coal mining operations have been paid.

947 **Drafting note: Technical changes are made, including the reconfiguration of the**
948 **phrase "operator or his agent of every mine" to be consistent with language in existing §**
949 **45.1-161.14.**

950 § ~~45.1-161.63~~ 45.2-xxx. Notices Discontinuance of the working of a mine; notices to
951 Department; resumption of mining following discontinuance.

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

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

964 C. Emergency actions necessary to preserve a mine may be undertaken without the
965 prior notice of intent and advance inspection required by subsection B. In such event, a mine
966 foreman shall examine a mine for hazardous conditions immediately before miners are
967 permitted to work. The operator, or his agent, shall notify the Department as soon as possible
968 after commencing emergency action necessary to preserve the mine.

969 D. The operator, or his agent, shall send to the Department 10 days' prior notice of any
970 change in the name of a mine or in the name of the operator of a mine.

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

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

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

979 § ~~45.1-161.64~~ 45.2-xxx. Maps of mines required to be made; contents; extension and
980 preservation; use by Department; release; posting of map.

981 A. Prior to commencing mining activity, the operator of a coal mine, or his agent, shall
982 make, or cause to be made, unless already made and filed, an accurate map of such mine.
983 Such map shall be submitted to the Chief prior to producing coal at the mine. All maps shall
984 be presented on the Virginia Coordinate System of 1983, South Zone, unless otherwise
985 approved by the Chief. At intervals not to exceed 12 months and when a coal mine is
986 abandoned, the operator shall submit to the Chief copies of an up-to-date map of the entire
987 mine in an electronic format approved by the Chief. The operator shall also submit to the
988 Chief revisions that show directional changes whenever mine projections deviate more than
989 600 feet from the approved mine map. Only maps in an electronic format ~~will~~ shall be
990 accepted unless otherwise approved by the Chief. If there are no changes in the information
991 required to be submitted ~~under~~ pursuant to this section at the time an updated map is due, the
992 operator may submit a notice that there are no changes to the map in lieu of submitting an
993 updated map to the Department.

994 B. Underground coal mine maps shall show:

995 1. The active workings;

996 2. All pillared, worked out, and abandoned areas, except as provided in this section;

997 3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by
998 arrows, and ventilation controls;

999 4. Contour lines of all elevations;

1000 5. Dip of the coalbed;

1001 6. Escapeways;

1002 7. The locations that are known or should be known of (i) adjacent mine workings
1003 within 1,000 feet, (ii) mines above or below, and (iii) water pools above;

1004 8. Either producing or abandoned oil and gas wells located within 500 feet of such
1005 mine and in any underground area of such mine; and

1006 9. Such other information as the Chief may require.

1007 Such map shall identify those areas of the mine ~~which~~ that have been pillared, worked
1008 out, or abandoned, ~~which~~ that are inaccessible, or that cannot be entered safely.

1009 C. Additional information required to be shown on underground coal mine maps shall
1010 include:

1011 1. ~~Mine~~ The mine name, company name, mine index number, and name of the person
1012 responsible for information on the map;

1013 2. The scale and orientation of the map and symbols used on the map;

1014 3. The property or boundary lines of the mine;

1015 4. All known drill holes that penetrate the coalbed being mined;

1016 5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the
1017 coalbed being mined;

1018 6. The location of all surface mine ventilation fans; ~~the~~ The location may be
1019 designated on the mine map by symbols;

1020 7. The location of railroad tracks and public highways leading to the mine, and mine
1021 buildings of a permanent nature with identifying names shown;

1022 8. The location and description of a least two permanent base line points coordinated
1023 with the underground and surface mine traverses, and the location and description of at least

1024 two permanent elevation bench marks used in connection with establishing or referencing
1025 mine elevation surveys;

1026 9. The location and elevation of any body of water dammed or held back in any
1027 portion of the mine; ~~provided,~~ however, such bodies of water may be shown on overlays or
1028 tracings attached to the mine maps used to show contour lines as provided under subdivision
1029 12;

1030 10. The elevations of tops and bottoms of shafts and slopes, and the floor at the
1031 entrance to drift and tunnel openings;

1032 11. The elevation of the floor at intervals of not more than 200 feet in (i) at least one
1033 entry of each working section and main and cross entries; (ii) the last line of open crosscuts of
1034 each working section, and main and cross entries before such sections and main and cross
1035 entries that are abandoned; and (iii) rooms advancing toward or adjacent to property or
1036 boundary lines or adjacent mines; and

1037 12. Contour lines passing through whole number elevations of the coalbed being
1038 mined. The spacing of such lines shall not exceed 10-foot elevation levels, except that a
1039 broader spacing of contour lines may be approved by the Chief for ~~steeply pitching~~ steeply
1040 pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine
1041 maps.

1042 D. Underground coal mine maps submitted to the Chief shall be on a scale of not less
1043 than 100 or more than 500 feet to the inch. Mapping of the underground mine works shall be
1044 completed by a closed loop survey method of traversing or other equally accurate methods of
1045 traversing. All closed loop surveys shall meet a minimum accuracy standard of one part in
1046 5,000. Elevations shall be tied to either the United States Geological Survey or the ~~United~~
1047 ~~States Coast and~~ National Geodetic Survey ~~benchmark~~ bench mark system. A registered
1048 engineer or licensed land surveyor shall certify that the map of the mine workings is accurate.

1049 E. Underground coal mine maps shall be kept up-to-date by temporary notations and
1050 revised and supplemented at intervals not to exceed six months based on a survey made and

1051 certified by a registered engineer or licensed land surveyor who has exercised complete
1052 direction and control over the work to which it is affixed. Temporary notations shall include:

1053 1. The location of each working face of each working place;

1054 2. Pillars mined or other such second mining;

1055 3. Permanent ventilation controls constructed or removed, such as seals, overcasts,
1056 undercasts, regulators, and permanent stoppings, and the direction of air currents indicated;

1057 and

1058 4. Escapeways designated by means of symbols.

1059 F. At underground coal mines, an accurate map of the mine showing clearly all
1060 avenues of ingress and egress in case of fire shall be posted in a place accessible to all miners.

1061 G. Surface coal mine maps shall show:

1062 1. ~~Name~~ The name and address of the mine;

1063 2. The property or boundary lines of the active areas of the mine;

1064 3. Contour lines passing through whole number elevations of the coalbed being mined.

1065 The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader
1066 spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The

1067 Chief may approve alternate means of delineating seam elevations where multiple seams are
1068 being mined. Contour lines may be placed on overlays or tracings attached to mine maps;

1069 4. The general elevation of the coalbed or coalbeds being mined; and the general
1070 elevation of the surface;

1071 5. Either producing or abandoned oil and gas wells and gas transmission lines located
1072 on the mine property;

1073 6. The location and elevation of any body of water dammed or held back in any
1074 portion of the mine; provided, however, that such ~~bodies~~ body of water may be shown on
1075 overlays or tracings attached to the mine maps;

1076 7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the
1077 mine property;

1078 8. All auger and surface mined areas of the coalbed or coalbeds being mined on the
1079 mine property together with the line of maximum depth of holes drilled during auger mining
1080 operations;

1081 9. All worked out and abandoned areas;

1082 10. The location of railroad tracks and public highways leading to the mine; and mine
1083 buildings of a permanent nature with identifying names shown;

1084 11. Underground coal mine workings underlying and within 1,000 feet of the active
1085 areas of the mine;

1086 12. The location and description of at least two permanent baseline points; and the
1087 location and description of at least two permanent elevation bench marks used in connection
1088 with establishing or referencing mine elevation surveys;

1089 13. The scale of the map; and

1090 14. Such other information required by the Chief.

1091 H. Surface coal mine maps shall be kept up to date by temporary notations and revised
1092 and supplemented at intervals not to exceed six months based on a survey made and certified
1093 by a registered engineer or licensed land surveyor who has exercised complete direction and
1094 control over the work to which it is affixed. Temporary notations shall include:

1095 1. The location of each working pit ~~or pits~~;

1096 2. Auger or highwall miner workings; and

1097 3. Other information that may affect the safety of miners, including, ~~but not limited to,~~
1098 updates of gas well or gas line locations.

1099 I. Surface surveys shall originate from at least two permanent survey monuments on
1100 the mine property located with a minimum accuracy standard of one part in 10,000. The
1101 monuments shall be clearly referenced on the mine map. Elevations shall be tied to either the
1102 United States Geological Survey or the ~~United States Coast and~~ National Geodetic ~~benchmark~~
1103 Survey bench mark system.

1104 J. The original map, or a true copy thereof, shall be left by the operator at the active
1105 mine, open at all reasonable times for the examinations and use of the mine inspector.

1106 K. Such maps may be used by the Department for the evaluation of the coal resources
1107 of the Commonwealth.

1108 L. The map shall be filed and preserved among the records of the Department and
1109 copies of such maps shall be made available at a reasonable cost.

1110 M. Any person who has conducted mining operations or prepared mine maps and who
1111 has a map or surveying data of any worked out or abandoned underground coal mine shall on
1112 request make such map or data available to the Department to copy or reproduce such
1113 material.

1114 **Drafting note: In subsections D and I, the name of the United States Coast and**
1115 **Geodetic Survey is updated to its current name: the National Geodetic Survey. In**
1116 **subdivision H 1, language is removed pursuant to § 1-227, which states that throughout**
1117 **the Code any word used in the singular includes the plural and vice versa. In subdivision**
1118 **H 3, the phrase "but not limited to" is removed pursuant to § 1-218, which states that**
1119 **throughout the Code "'Includes' means includes, but not limited to." Technical changes**
1120 **are made.**

1121 § ~~45.1-161.65~~ 45.2-xxx. When the Chief may cause maps to be made; payment ~~of~~
1122 ~~expense~~ by operator.

1123 If the operator, ~~or his agent~~, of any mine ~~shall neglect~~ or his agent neglects ~~or fail~~ fails
1124 to furnish to the Chief a copy of any map or extension thereof, as provided in § ~~45.1-161.64~~
1125 45.2-xxx, the Chief is authorized to cause a correct survey and map of ~~said~~ such mine, or
1126 extension ~~thereof~~ of the map, to be made at the expense of the operator of ~~such~~ the mine, the
1127 cost of which shall be recovered from the operator as other debts are recoverable by a civil
1128 action at law. If at any time the Chief has reason to believe that such map, or ~~extensions~~
1129 extension thereof, furnished pursuant to § ~~45.1-161.64~~ 45.2-xxx is substantially incorrect, or
1130 will not serve the purpose for which it is intended, he may have a survey and map or
1131 extension thereof made, or corrected. The expense of making such survey and map or
1132 extension thereof shall be paid by the operator. The expense shall be recovered from the
1133 operator as other debts are recoverable by a civil action at law. However, if the map filed by

1134 the operator is found to be substantially correct, the expense shall be paid by the
1135 Commonwealth.

1136 **Drafting note: Technical changes are made, including the reconfiguration of the**
1137 **phrase "operator or his agent of any mine" to be consistent with language in existing §**
1138 **45.1-161.14.**

1139 § ~~45.1-161.66~~ 45.2-xxx. Making false statements; penalty.

1140 A. It ~~shall be~~ is unlawful for any person charged with the making of maps or other
1141 data to be furnished as provided in ~~this~~ the Act to fail to correctly show, within the limits of
1142 error, the data required.

1143 B. Any person who knowingly makes any false statement, representation, or
1144 certification in any application, record, report, plan, or other document filed or required to be
1145 maintained under ~~this~~ the Act ~~shall, upon conviction, be~~ is guilty of a Class 1 misdemeanor.

1146 **Drafting note: Technical changes.**

1147 Article ~~6~~ 5.

1148 ~~Rescue Crews;~~ Mine Rescue Teams.

1149 **Drafting note: Existing Article 6, relating to mine rescue teams, is retained as**
1150 **Article 5. The title is changed to better reflect the terminology used in the article.**

1151 § ~~45.1-161.67~~ 45.2-xxx. Mine rescue and first aid stations.

1152 The Director is hereby authorized to purchase, equip, and operate for the use of the
1153 Department, such mine rescue and first aid stations as he may determine necessary for the
1154 adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

1155 **Drafting note: Technical changes.**

1156 § ~~45.1-161.68~~ 45.2-xxx. Mine rescue ~~crews~~ teams.

1157 The Director is ~~hereby~~ authorized to have trained and employed at the mine rescue and
1158 first aid stations operated by the Department ~~within the Commonwealth~~ mine rescue ~~crews~~
1159 teams as he may determine necessary. Each member of a mine rescue ~~crew~~ team shall devote
1160 four hours each month for training purposes and shall be available at all times to assist in
1161 rescue work. Members shall receive compensation for services at a rate set by the Director, to

1162 be determined annually based on prevailing wage rates within the industry. For the purposes
1163 of workers' compensation coverage during training periods, such ~~crew~~ team members shall be
1164 deemed to be within the scope of their regular employment. The Director shall certify to the
1165 Comptroller of the Commonwealth that such ~~crew~~ team members have performed the
1166 required service. Upon such certification, the Comptroller shall issue a warrant upon the state
1167 treasury for their compensation. The Director may remove any ~~crew~~ team member at any
1168 time.

1169 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1170 **"mine rescue team." Technical changes are made.**

1171 § ~~45.1-161.69~~ 45.2-xxx. Duty to train ~~crew~~ team.

1172 It ~~shall be~~ is the duty and responsibility of the Department to see that all ~~crews be~~
1173 teams are properly trained by a qualified instructor of the Department or such other ~~persons~~
1174 person who ~~have~~ has a certificate of training from the Department or the federal Mine Safety
1175 and Health Administration.

1176 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1177 **"mine rescue team." Technical changes are made.**

1178 § ~~45.1-161.70~~ 45.2-xxx. Qualification for ~~crew~~ team membership; direction of ~~crews~~
1179 teams.

1180 A. To qualify for membership in a mine rescue ~~crews~~ team, an applicant shall be an
1181 experienced miner and shall pass a physical examination by a licensed physician, physician
1182 assistant, or licensed nurse practitioner at least annually. A record that such examination was
1183 taken shall be kept on file by the operator who employs the ~~crew members~~ team member and
1184 a copy shall be furnished to the Director.

1185 B. All rescue or recovery work performed by these ~~crews~~ teams shall be under the
1186 jurisdiction of the Department. The Department shall consult with company officials,
1187 representatives of the federal Mine Safety and Health Administration, and representatives of
1188 the miners, and all ~~should~~ shall be in agreement as far as possible on the proper procedure for
1189 rescue and recovery; however, the Chief in his discretion may take full responsibility in

1190 directing such work. Procedures for use of apparatus or equipment shall be guided by the
1191 mine rescue apparatus and auxiliary equipment manuals.

1192 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1193 **"mine rescue team." Technical changes are made pursuant to § 1-227, which states that**
1194 **throughout the Code any word used in the singular includes the plural and vice versa.**

1195 § ~~45.1-161.71. Crew~~ 45.2-xxx. Team members to be considered employees of the
1196 mine where emergency exists; compensation; workers' compensation.

1197 When engaged in rescue or recovery work during an emergency at a mine, all ~~crew~~
1198 team members assigned to the work shall be considered, during the period of their work,
1199 employees of the mine where the emergency exists and shall be compensated by the operator
1200 at the rate established in the area for such work. In no event shall this rate be less than the
1201 prevailing wage rate in the industry for the most skilled class of inside mine labor. During the
1202 period of their emergency employment, all ~~crew~~ team members shall be deemed to be within
1203 the employment of the operator of the mine for the purpose of workers' compensation
1204 coverage.

1205 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1206 **"mine rescue team."**

1207 § ~~45.1-161.72~~ 45.2-xxx. Requirements of recovery work.

1208 A. During recovery work and prior to entering any mine, all mine rescue ~~crews~~ teams
1209 conducting recovery work shall be properly informed of existing conditions by the operator or
1210 his agent in charge.

1211 B. Each mine rescue ~~crew~~ team performing rescue or recovery work with breathing
1212 apparatus shall be provided with a backup ~~crew~~ team of equal strength, stationed at each fresh
1213 air base.

1214 C. For every two ~~crews~~ teams performing work underground, one six-member ~~crew~~
1215 team shall be stationed at the mine portal.

1216 D. Two-way communication, life lines₂ or their equivalent₂ shall be provided by the
1217 fresh air base to all ~~crews~~ teams, and no ~~crew~~ team member shall be permitted to advance
1218 beyond such communication system.

1219 E. A mine rescue ~~crew~~ team shall immediately return to the fresh air base ~~should if~~
1220 any ~~crew~~ team member's breathing apparatus ~~malfunction~~ malfunxions or the ~~atmospheric~~
1221 ~~pressure of any apparatus deplete to sixty 60 atmospheres~~ low-oxygen alarm activates.

1222 F. The Director may also assign rescue and recovery work to inspectors, instructors₂ or
1223 other qualified employees of the Department as the Director may determine desirable.

1224 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1225 **"mine rescue team," and a reference to the depletion of the atmospheric pressure of a**
1226 **breathing apparatus is replaced with a reference to the safety standard currently in use,**
1227 **a low-oxygen alarm. Language is updated for modern usage.**

1228 § ~~45.1-161.73~~ 45.2-xxx. State-designated mine rescue teams.

1229 The Director may, upon the request of an operator or agent who employs a mine
1230 rescue team, designate two or more mine rescue teams as "state-designated mine rescue
1231 teams." Any team ~~which~~ that is certified as a mine rescue team by the federal Mine Safety and
1232 Health Administration under 30-~~CFR~~ C.F.R. Part 49 shall be eligible to be a state-designated
1233 mine rescue team. Following the designation of any such teams, the Director shall, upon the
1234 payment to the Department of an annual fee₇, set by the Director based on current costs for
1235 maintaining mine rescue stations and personnel, assign two or more state-designated mine
1236 rescue teams to the operator. An operator who has paid the rescue fee ~~shall be~~ is entitled to the
1237 rescue services of a state-designated mine rescue team at no additional charge.

1238 **Drafting note: Technical changes.**

1239 § ~~45.1-161.74~~ 45.2-xxx. Mine Rescue Fund.

1240 The Mine Rescue Fund, referred to in this section as "the Fund," is hereby created as a
1241 special nonreverting fund in the ~~office of the State Treasurer~~ state treasury. The Fund shall be
1242 established on the books of the Comptroller. All moneys collected from operators pursuant to
1243 agreements entered into by the Director shall be paid into the ~~Mine Rescue~~ state treasury and

1244 credited to the Fund. Moneys in the ~~Mine-Rescue~~ Fund shall be used only for mine rescue
1245 services under such agreements. ~~No~~ Interest earned on moneys in the Fund shall remain in the
1246 Fund and be credited to it. Any moneys remaining in the ~~Mine-Rescue~~ Fund, including
1247 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
1248 remain in the Fund.

1249 **Drafting note: The Mine Rescue Fund statute is updated to reflect current**
1250 **language requested by the Department of the Treasury for nonreverting funds in the**
1251 **Code.**

1252 § ~~45.1-161.75~~ 45.2-xxx. Inspections; Mine Rescue Coordinator.

1253 A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each
1254 state-designated mine rescue team four times a year; (ii) ensure that all rescue stations are
1255 adequately equipped; and (iii) ensure that all team members are adequately trained.

1256 B. The Director shall designate an employee of the Department as the Mine Rescue
1257 Coordinator, who shall perform the duties assigned to him by the Director.

1258 **Drafting note: Technical changes.**

1259 § ~~45.1-161.76~~ 45.2-xxx. Workers' compensation; liability.

1260 A. For the purpose of workers' compensation coverage, during any mine disaster to
1261 which a state-designated mine rescue team responds under the provisions of this article or
1262 during any training exercise for a state-designated mine rescue team, members of the state-
1263 designated team shall be deemed to be within the employment of the operator of the mine at
1264 which the disaster occurred or the training exercise is conducted. Additionally, for purposes of
1265 workers' compensation coverage, travel by members of a state-designated mine rescue team to
1266 and from the mine disaster or training exercise shall be deemed to be within the employment
1267 of the operator of the mine at which the disaster occurred or the training exercise is ~~to be or~~
1268 ~~was~~ conducted.

1269 B. Any member of a state-designated mine rescue team engaging in rescue work at a
1270 mine shall not be liable for civil damages for acts or omissions resulting from the rendering of

1271 such rescue work unless the act or omission was the result of gross negligence or willful
1272 misconduct.

1273 C. Any operator providing personnel to a state-designated mine rescue team to engage
1274 in rescue work at a mine not owned or operated by the operator shall not be liable for any civil
1275 damages for acts or omissions resulting from the rendering of such rescue work.

1276 **Drafting note: Technical changes.**

1277 Article ~~7~~ 6.

1278 Mine Explosions; Mine Fires; Accidents.

1279 **Drafting note: Existing Article 7, relating to mine explosions, mine fires, and**
1280 **accidents, is retained as proposed Article 6.**

1281 § ~~45.1-161.77~~ 45.2-xxx. Reports of explosions and mine fires; procedure.

1282 A. If an explosion or mine fire occurs in a mine, the operator shall notify the
1283 Department by the quickest available means. All facilities of the mine shall be made available
1284 for rescue and recovery operations and firefighting.

1285 B. No work other than rescue and recovery work and firefighting ~~may~~ shall be
1286 attempted ~~or started until and~~ unless ~~it is~~ authorized by the Department.

1287 C. If an explosion occurs in an underground coal mine, the fan shall not be reversed
1288 except by authority of the officials in charge of rescue and recovery work, and then only after
1289 a study of the effect of reversing the fan on any ~~persons~~ person who may have survived the
1290 explosion and ~~are~~ is still underground.

1291 D. The Department shall make available all the facilities at its disposal in effecting
1292 rescue and recovery work. The Chief shall act as consultant, or take personal charge, where in
1293 his opinion the circumstances of any mine explosion, fire, or other accident warrant.

1294 E. The orders of the official in charge of rescue and recovery work shall be respected
1295 and obeyed by all persons engaged in rescue and recovery work.

1296 F. The Chief shall maintain an up-to-date rescue and recovery plan for prompt and
1297 adequate employment at any coal mine in the Commonwealth. All employees of the
1298 Department shall be kept fully informed and trained in their respective duties in executing

1299 rescue and recovery plans. The Department's plan shall be reviewed annually. Any changes in
1300 the plan shall be published promptly and made available to all operators of mines.

1301 **Drafting note: Technical changes are made, including the replacement of "may"**
1302 **with "shall" in a directive provision in subsection B, the deletion of redundant elements**
1303 **from the phrases "attempted or started" and "until and unless" in subsection B, and the**
1304 **change of plural construction to singular in subsection C pursuant to § 1-227, which**
1305 **states that throughout the Code any word used in the singular includes the plural and**
1306 **vice versa.**

1307 § ~~45.1-161.78~~ 45.2-xxx. Operators' reports of accidents; investigations; reports by
1308 Department.

1309 A. Each operator ~~will~~ shall report promptly to the Department the occurrence at any
1310 mine of any accident. The scene of the accident shall not be disturbed pending an
1311 investigation, except to the extent necessary to rescue or recover a person, prevent or
1312 eliminate an imminent danger, prevent destruction of mining equipment, or prevent
1313 suspension of use of a slope, entry, or facility vital to the operation of a section or a mine. In
1314 cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator
1315 ~~will~~ shall secure prior approval from the Department before any changes are made.

1316 B. The Chief ~~will~~ shall go personally or dispatch one or more mine inspectors to the
1317 scene of such a coal mine accident, investigate causes, and issue such orders as may be
1318 needed to ensure safety of other persons.

1319 C. Representatives of the operator ~~will~~ shall render such assistance as may be needed
1320 and act in a consulting capacity in the investigation. An employee, if so designated by the
1321 employees of the mine ~~will~~, shall be notified, and as many as three employees, if so
1322 designated as representatives of the employees, may be present at the investigation in a
1323 consulting capacity.

1324 D. The Chief shall require substance abuse testing as part of an inspection or
1325 complaint investigation if there is reasonable cause to suspect a miner's impairment, due to
1326 the presence of intoxicants or any controlled substance not used in accordance with the

1327 prescription of a licensed prescriber, ~~or~~ has been a contributing factor to any accident in
1328 which a serious personal injury or death ~~occurs~~ has occurred at a mine. The Chief shall
1329 require substance abuse testing of any miner killed or seriously injured and of any other
1330 person who may have contributed to the accident. Any substance abuse testing required by the
1331 Chief ~~will~~ shall be paid for by the Department. Refusal by any miner to submit to substance
1332 abuse testing, or the failure to pass such a test, shall result in the immediate temporary
1333 suspension of all certificates, pending a hearing before the Board of Coal Mining Examiners.

1334 E. The Department ~~will~~ shall render a complete report of circumstances and causes of
1335 each accident investigated, and make recommendations for the prevention of similar
1336 accidents. The Department ~~will~~ shall furnish one copy of the report to the operator, and one
1337 copy to ~~the~~ an employee representative ~~when he has been~~ if one was present at the
1338 investigation. The Chief shall maintain a complete file of all accident reports for coal mines,
1339 and ~~shall give such~~ provide further ~~publicity dissemination~~ as may be ordered by the Director
1340 in an effort to prevent mine accidents.

1341 **Drafting note: Technical changes are made, including the replacement of "will"**
1342 **with "shall" in directive provisions throughout the section.**

1343 § ~~45.1-161.79~~ 45.2-xxx. Reports of other accidents and injuries.

1344 A. Each miner employed at a mine shall promptly notify his supervisor of any injury
1345 received during the course of his employment.

1346 B. Each operator shall keep on file a report of each accident, including any accident
1347 ~~which~~ that does not result in a lost-time injury. Copies of ~~such~~ an accident report shall be
1348 given to the person injured or to his designated representative to review ~~the accident~~ such
1349 report and verify its accuracy prior to filing ~~such report~~ it for ~~the~~ review ~~of~~ by state or federal
1350 mine inspectors.

1351 **Drafting note: Technical changes.**

1352 § ~~45.1-161.80~~ 45.2-xxx. Duties of mine inspectors.

1353 Each mine inspector shall:

1354 1. Report to his supervisor immediately, ~~and~~ by the quickest available means, any
1355 mine fire, ~~mine or~~ explosion, ~~and or~~ any accident involving that results in loss of life or
1356 serious personal injury ~~or death to his supervisor~~;

1357 2. Proceed immediately to the scene of any accident at any mine under his jurisdiction
1358 that results in loss of life or serious personal injury, and to the scene of any mine fire or
1359 explosion regardless of whether there is loss of life or serious personal injury. ~~He shall make;~~

1360 3. Make such investigation and suggestions and render such assistance as he deems
1361 necessary for the future safety of the employees, and make a complete report to his supervisor
1362 as soon as practicable; ~~and~~

1363 ~~3-4.~~ Provide assistance to mine rescue and recovery operations whenever a mine fire,
1364 mine or explosion, or ~~other serious~~ any accident that results in loss of life or serious personal
1365 injury occurs; ~~and shall monitor~~

1366 5. Monitor the reopening of all mines or sections thereof that have been sealed or
1367 abandoned on account of mine fire or explosion, serious accident, or any other cause in
1368 accordance with a plan approved by the Chief.

1369 **Drafting note: Language is updated for clarity and technical changes are made,**
1370 **including the clarification of the list of a mine inspector's duties.**

1371 Article ~~8~~ 7.

1372 Mine Inspections.

1373 **Drafting note: Existing Article 8, relating to mine inspections, is retained as**
1374 **proposed Article 7.**

1375 § ~~45.1-161.81~~ 45.2-xxx. Frequency of mine inspections.

1376 The Chief shall conduct a complete inspection of ~~every~~ each underground coal mine
1377 ~~not less frequently than~~ at least every 180 days, and of ~~every~~ each surface coal mine ~~not less~~
1378 ~~frequently than~~ at least once per year. Additional inspections of coal mines shall be made
1379 when deemed appropriate by the Chief based on an evaluation of risks at each mine, or if
1380 requested by miners employed at a mine or the operator of a mine.

1381 **Drafting note: Technical changes.**

1382 § ~~45.1-161.82~~ 45.2-xxx. Evaluation of risks at mines.

1383 A. For the purpose of allocating the resources of the Department to be used for
1384 conducting additional inspections, the Department shall develop a procedural policy of
1385 scheduling such inspections based on an assessment, to be made ~~not less frequently than at~~
1386 least annually, of the comparative risks at each underground coal mine and surface coal mine.
1387 The ~~Department's~~ Department shall prepare its procedural policy ~~shall be prepared~~ with the
1388 assistance of working groups consisting of persons knowledgeable in mine safety issues. The
1389 issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the
1390 Administrative Process Act. Variables to be included in the risk assessment measures shall
1391 include, ~~but not be limited to~~: (i) fatality and serious accident rates at the mine; (ii) the rates of
1392 issuance of closure orders and notices of violations of the mine safety laws of the
1393 Commonwealth, including regulations adopted by the Department or the Board of Coal
1394 Mining Examiners, at the mine; and (iii) the frequency rates for nonserious accidents or
1395 nonfatal days lost.

1396 B. The Chief shall schedule additional inspections at underground coal mines and
1397 surface coal mines based on the rating assigned to a mine reflecting the assessment of its risks
1398 compared to other such mines pursuant to the assessment described in subsection A.

1399 **Drafting note: Language is updated for clarity. In subsection A, the phrase "but**
1400 **not be limited to" is removed pursuant to § 1-218, which states that throughout the Code**
1401 **"'Includes' means includes, but not limited to." The regulations of the Board of Coal**
1402 **Mining Examiners are included in the reference to the mining laws of the**
1403 **Commonwealth and technical changes are made.**

1404 § ~~45.1-161.83~~ 45.2-xxx. Review of inspection reports and records.

1405 Prior to commencing an inspection of a coal mine, a mine inspector shall review the
1406 most recent available report of inspection by the federal Mine Safety and Health
1407 Administration. During the course of a complete inspection of a coal mine, the mine inspector
1408 shall comprehensively review the records for the 30-day period preceding the inspection of
1409 pre-shift examinations, on-shift exams, daily inspections, and weekly examinations ~~which that~~

1410 are required to be maintained pursuant to ~~this the~~ Act, ~~for the 30-day period preceding the~~
1411 ~~inspection~~. The mine inspector may, ~~but shall not be required to~~, review the records for such
1412 additional period as he ~~may deem~~ deems prudent. ~~The~~ During the course of the inspection, the
1413 inspector shall review other records relating to safety and health conditions in the mine ~~which~~
1414 that are required to be maintained pursuant to ~~this the~~ Act ~~during the course of the inspection~~.

1415 **Drafting note: Language is updated for clarity, including deletion of the**
1416 **redundant phrase "but shall not be required to" as it follows "may." Technical changes**
1417 **are made.**

1418 § ~~45.1-161.84~~ 45.2-xxx. Advance notice of inspections; confidentiality of trade
1419 secrets.

1420 A. No person shall give advance notice of any mine inspection conducted under the
1421 provisions of this title without authorization from the Chief or the Director.

1422 B. All information reported to or otherwise obtained by the Chief or the Director or his
1423 authorized representative in connection with any inspection or proceeding under this title
1424 ~~which that~~ contains or might reveal a trade secret referred to in ~~§ 1905 of Title 18 of the~~
1425 ~~United States Code~~ U.S.C. § 1905 shall be considered confidential for the purpose of that
1426 section, except that such information may be disclosed to the Chief or the Director or his
1427 authorized representative concerned with carrying out any provisions of this title or any
1428 proceeding hereunder. In any such proceeding, the court, the Chief, or the Director shall issue
1429 such orders as may be appropriate to protect the confidentiality of trade secrets.

1430 **Drafting note: The authority of the Chief to allow advance notice of an inspection**
1431 **is specified in subsection A. Technical changes are made.**

1432 § ~~45.1-161.85~~ 45.2-xxx. Scheduling of mine inspections.

1433 A. The Chief and the Director shall schedule the inspections of mines under this
1434 article, to the extent deemed reasonable and prudent, in order to reduce their chronological
1435 proximity to inspections conducted by the federal Mine Safety and Health Administration.

1436 B. The Chief, the Director, and each mine ~~inspectors~~ inspector, to the extent deemed
1437 reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of
1438 the day and days of the week, including evening and night shifts, weekends, and holidays.

1439 **Drafting note: Technical changes.**

1440 § ~~45.1-161.86~~ 45.2-xxx. Denial of entry.

1441 No person shall deny the Chief ~~or~~, the Director, ~~as applicable~~, or any mine inspector
1442 entry upon or through (i) a mine for the purpose of conducting an inspection or (ii) any office
1443 at the site where maps or records relating to the mine are located, ~~pursuant to this~~ in
1444 accordance with the Act.

1445 **Drafting note: Language is updated for clarity. Technical changes are made.**

1446 § ~~45.1-161.87~~ 45.2-xxx. Duties of operator.

1447 A. The operator, or his agent, of ~~every~~ each mine shall furnish the Chief and any mine
1448 ~~inspectors~~ inspector proper facilities for entering such mine and making examinations or
1449 obtaining information and shall furnish any data or information not of a confidential nature
1450 requested by such inspector or the Chief.

1451 B. The operator of an underground coal mine, or his agent, shall provide a mine
1452 inspector or the Chief adequate means for transportation to the active working areas of the
1453 mine within a reasonable period of time following the mine inspector's arrival at the mine.

1454 C. The operator or his agent shall, when ordered to do so by a mine inspector or the
1455 Chief during the course of his inspection, promptly clear the mine or a section thereof of all
1456 persons.

1457 D. The mine operator shall implement a substance abuse screening policy and program
1458 for all miners that shall, at a minimum, include:

1459 1. A pre-employment, 10-panel urine test for the following and any other substances
1460 as set out in regulation adopted by the Board of Coal Mining Examiners:

1461 a. Amphetamines;₂

1462 b. Cannabinoids/THC;₂

1463 c. Cocaine;₂

- 1464 d. Opiates^{7.2};
1465 e. Phencyclidine (PCP)^{7.2};
1466 f. Benzodiazepines^{7.2};
1467 g. Propoxyphene^{7.2};
1468 h. Methadone^{7.2};
1469 i. Barbiturates^{7.2}; and
1470 j. Synthetic narcotics.

1471 Samples shall be collected by providers who are certified as complying with standards
1472 and procedures set out in the ~~United States~~ U.S. Department of Transportation's rule, 49-~~CFR~~
1473 C.F.R. Part 40. Collected samples shall be tested by laboratories certified by the ~~United States~~
1474 ~~Department of Health and Human Services~~, Substance Abuse and Mental Health Services
1475 Administration (SAMHSA) of the U.S. Department of Health and Human Services for
1476 collection and testing. The mine operator may implement a more stringent substance abuse
1477 screening policy and program; and

1478 2. ~~Review~~ The review of the substance abuse screening program with ~~all miners~~ each
1479 miner at the time of employment and annually thereafter.

1480 E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief,
1481 within seven days of any failure of a pre-employment substance abuse screening test and shall
1482 provide a record of the test showing such failure or violation. Notice shall result in the
1483 immediate temporary suspension of all certificates held by the applicant, pending a hearing
1484 before the Board of Coal Mining Examiners.

1485 F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief,
1486 within seven days of (i) discharging a miner due to violation of the company's substance or
1487 alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or
1488 (iii) a miner testing positive as using any controlled substance without the prescription of a
1489 licensed prescriber. An operator ~~having that has~~ a substance abuse program shall not be
1490 required to notify the Chief under ~~subdivision~~ clause (iii) unless the miner having tested
1491 positive fails to complete the operator's substance abuse program. The notification shall be

1492 accompanied by a record of the test showing such positive results or violation. Notice shall
1493 result in the immediate temporary suspension of all certificates held by the applicant, pending
1494 [a](#) hearing before the Board of Coal Mining Examiners.

1495 G. The provisions of this chapter shall not be construed to preclude an employer from
1496 developing or maintaining a ~~drug~~ [substance](#) and alcohol abuse policy, testing program, or
1497 substance abuse program that exceeds the minimum requirements set forth in this section.

1498 **Drafting note: Authority of the Chief spelled out in subsections B and C to make**
1499 **those subsections parallel to subsection A. Technical changes are made.**

1500 § ~~45.1-161.88~~ [45.2-xxx](#). Duties of inspectors.

1501 A. During a complete inspection of a mine, other than an inactive mine, the mine
1502 inspector shall inspect, where applicable, the surface plant; all active workings; all active
1503 travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least
1504 one entry of each intake and return airway in its entirety; escapeways and other places where
1505 miners work or travel or where hazardous conditions may exist; electric installations and
1506 equipment; haulage facilities; ~~first-aid~~ [first aid](#) equipment; ventilation facilities;
1507 communication installations; roof and rib conditions; roof-support practices; blasting
1508 practices; haulage practices and equipment; and any other condition, practice, or equipment
1509 pertaining to the health and safety of the miners. The mine inspector shall make tests for the
1510 quantity of air flows, and for gas and oxygen deficiency, in each place ~~which~~ [that](#) he is
1511 required to inspect in an underground [coal](#) mine. In mines operating more than one shift in a
1512 ~~twenty-four hour~~ [24-hour](#) period, the mine inspector shall devote sufficient time on the
1513 second and third shifts to determine conditions and practices relating to the health and safety
1514 of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine
1515 where persons may work or travel during the period the mine is an inactive mine.

1516 B. The inspector shall make a personal examination of the interior of the mine, and of
1517 the outside of the mine where any danger may exist to the miners.

1518 **Drafting note: Technical changes.**

1519 § ~~45.1-161.89. Certificates of inspection~~ [45.2-xxx. Inspection reports.](#)

1520 A. Upon completing a mine inspection, a mine inspector shall complete a ~~certificate~~
1521 report regarding such ~~inspections~~ inspection. The ~~certificate of~~ inspection report shall show
1522 the date of inspection, the condition in which the mine is found, a statement regarding any
1523 violations of ~~this~~ the Act discovered during the inspection, the progress made in the
1524 improvement of the mine as such progress relates to health and safety, the number of
1525 accidents and injuries occurring in and about the mine since the previous inspection, and all
1526 other facts and information of public interest concerning the condition of the mine as may be
1527 useful and proper.

1528 B. The mine inspector shall (i) deliver one copy of the ~~certificate of~~ inspection report
1529 to the operator, agent₂ or mine foreman₇, and one copy to the employees' safety committee₂,
1530 where applicable₂; and ~~shall~~ (ii) post one copy at a prominent place on the premises of the
1531 mine where it can be read conveniently by the miners.

1532 C. With respect to coal mines, the Department shall provide access to ~~certificates of~~
1533 inspection reports to the federal Mine Safety and Health Administration.

1534 **Drafting note: "Certificate of inspection" is replaced by the term currently in**
1535 **use, "inspection report." Technical changes are made.**

1536 Article ~~9~~ 8.

1537 Enforcement and Penalties; Reports of Violations.

1538 **Drafting note: Existing Article 9, relating to enforcement and penalties and**
1539 **reports of violations, is retained as proposed Article 8.**

1540 § ~~45.1-161.90~~ 45.2-xxx. Notices of violations.

1541 A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a
1542 violation of the Act has occurred, he shall with reasonable promptness issue a notice of
1543 violation to the person who is responsible for the violation. Each notice of violation shall be in
1544 writing ~~and shall~~₂ describe with particularity the nature of the violation ~~or violations~~,
1545 including a reference to the provision of ~~this~~ the Act or the appropriate ~~regulations~~ regulation
1546 violated, ~~and shall~~₂ include an order of abatement₂; and fix a reasonable time for abatement of
1547 the violation.

1548 B. A copy of the notice of violation shall be delivered to the operator; or his agent; or
1549 the mine foreman.

1550 C. Upon a finding by the mine inspector of completion of the action required to abate
1551 the violation, the Director, the Chief, or the mine inspector shall issue a notice of correction, a
1552 copy of which shall be delivered as provided in subsection B.

1553 D. The notice of violation shall be deemed to be the final order of the Department and
1554 not subject to review by any court or agency unless; within ~~twenty~~ 20 days following its
1555 issuance; the person to whom the notice of violation has been issued appeals its issuance by
1556 notifying the Department in writing that he intends to contest its issuance. The Department
1557 shall conduct informal conference or consultation proceedings, presided over by the Chief,
1558 pursuant to § 2.2-4019, unless the person and the Department agree to waive such a
1559 conference or proceeding to go directly to a formal hearing. If such a conference or
1560 proceeding has been waived, or if it has failed to dispose of the case by consent, the
1561 Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall
1562 be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings
1563 and an initial decision, which shall be subject to review and approval by the Director. Any
1564 party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial
1565 review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

1566 E. If it ~~shall be~~ is finally determined that a notice of violation was not issued in
1567 accordance with the provisions of this section, the notice of violation shall be vacated; and the
1568 improperly issued notice of violation shall not be used to the detriment of the person or the
1569 operator to whom it was issued.

1570 **Drafting note: Language is updated for modern usage. Technical changes are**
1571 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
1572 **word used in the singular includes the plural and vice versa.**

1573 § ~~45.1-161.91~~ 45.2-xxx. Closure orders.

1574 A. The Director, the Chief, or a mine inspector shall issue a closure order requiring
1575 any mine or section thereof cleared of all persons, or equipment removed from use, and

1576 refusing further entry into the mine ~~of~~ by all persons except those necessary to correct or
1577 eliminate a hazardous condition, when (i) a violation of ~~this~~ the Act has occurred, ~~which that~~
1578 creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, a mine
1579 explosion, or other serious accident has occurred at the mine, as may be necessary to preserve
1580 the scene of such accident during the investigation of the accident; (iii) a mine is operating
1581 without a license, ~~as provided by~~ in violation of § ~~45.1-161.57~~ 45.2-xxx; or (iv) an operator to
1582 whom a notice of violation was issued has failed to abate the violation cited therein within the
1583 time period provided in such notice for its abatement; however, a closure order shall not be
1584 issued for failure to abate a violation during the pendency of an administrative appeal of the
1585 issuance of the notice of violation as provided in subsection D of § ~~45.1-161.90~~ 45.1-xxx. ~~In~~
1586 ~~addition, a~~

1587 B. A technical specialist may issue a closure order upon discovering a violation
1588 creating an imminent danger.

1589 ~~B. C.~~ One copy of ~~the~~ a closure order shall be delivered to the operator of the mine or
1590 his agent or the mine foreman.

1591 ~~C. D.~~ Upon a finding by the mine inspector of abatement of the violation creating the
1592 hazardous condition pursuant to which a closure order has been issued as provided in clause
1593 (i) of subsection A, or cessation of the need to preserve an accident scene as provided in
1594 clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was
1595 issued as provided in clause (iii) of subsection A, or abatement of the violation for which the
1596 notice of violation was issued as provided in clause (iv) of subsection A, the Director, the
1597 Chief, or a mine inspector shall issue a notice of correction, ~~copies~~ a copy of which shall be
1598 delivered as provided in subsection ~~B. C.~~

1599 ~~D. E.~~ The issuance of a closure order shall constitute a final order of the Department,
1600 and the owner or operator of the mine shall not be entitled to administrative review of such
1601 decision. The owner or operator of any mine or part thereof for which a closure order has
1602 been issued may, within ~~ten~~ 10 days following the issuance of the order, bring a civil action in
1603 the circuit court of the ~~city or county~~ county or city in which the mine, or the greater portion

1604 thereof, is located for review of the decision. The commencement of such a proceeding shall
1605 not, unless specifically ordered by the court, operate as a stay of the closure order. The court
1606 shall promptly hear and determine the matters raised by the owner or operator. In any such
1607 action, the court shall receive the records of the Department with respect to the issuance of the
1608 order, and ~~shall receive~~ any additional evidence at the request of any party. In any proceeding
1609 under this section, the Attorney General or the attorney for the Commonwealth for the
1610 jurisdiction where the mine is located, upon the request of the Director, shall represent the
1611 Department.

1612 F. The court shall vacate the closure order if the preponderance of the evidence
1613 establishes that the order was not issued in accordance with the provisions of this section.

1614 ~~E.-G.~~ E. If it ~~shall be~~ is finally determined that a closure order was ~~not~~ issued not in
1615 accordance with the provisions of this section, the closure order shall be vacated, and the
1616 improperly issued closure order shall not be used to the detriment of the owner or operator of
1617 the mine for which it was issued.

1618 **Drafting note: Language is updated and subsection designations are added for**
1619 **clarity. Technical changes are made.**

1620 ~~§ 45.1-161.92~~ 45.2-xxx. Tolling of time for abating violations.

1621 The period of time specified in a notice of violation for the abatement of the violation
1622 shall not begin to run until (i) the final decision of the Department is issued, if an
1623 administrative appeal of its issuance is pursued, or ~~until~~ (ii) the final order of the circuit court
1624 is rendered, if an appeal of its issuance is taken to circuit court, ~~provided that the~~ and if such
1625 appeal pursuant to clause (i) or (ii) was undertaken in good faith and not solely for delay or
1626 avoidance of penalties.

1627 **Drafting note: Language is updated for clarity. Clause designations are added for**
1628 **clarity. Technical changes are made.**

1629 ~~§ 45.1-161.93~~ 45.2-xxx. Injunctive relief.

1630 A. Any person violating or failing, neglecting, or refusing to obey any closure order
1631 may be compelled in a proceeding instituted by the Director in any appropriate circuit court to

1632 obey ~~same~~ such order and to comply ~~therewith~~ with such order by injunction or other
1633 appropriate relief.

1634 B. Any person failing to abate any violation of ~~this~~ the Act ~~which~~ that has been cited
1635 in a notice of violation within the time period provided in such notice for its abatement may
1636 be compelled in a proceeding instituted by the Director in any appropriate circuit court to
1637 abate such violation as provided in such notice, and to cease the operation of the mine at
1638 which such violation exists until the violation has been abated, by injunction or other
1639 appropriate remedy.

1640 C. The Director may file a bill of complaint with any appropriate circuit court asking
1641 the court to temporarily or permanently enjoin a person from operating a mine ~~or mines~~ in the
1642 Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a
1643 history of noncompliance at the mine ~~or mines~~ operated by the person demonstrates that he is
1644 not able or willing to operate a mine in compliance with the provisions of ~~this~~ the Act or (ii) a
1645 history of the issuance of closure orders for the mine ~~or mines~~ operated by the person
1646 demonstrates that he is not able or willing to operate a mine in compliance with the provisions
1647 of ~~this~~ the Act.

1648 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1649 **throughout the Code any word used in the singular includes the plural and vice versa.**
1650 **Language is updated for modern usage. Technical changes are made.**

1651 § ~~45.1-161.94~~ 45.2-xxx. Violations; penalties.

1652 Any person ~~convicted of~~ who willfully ~~violating~~ violates any ~~provisions~~ provision of
1653 ~~this~~ the Act or any regulation ~~promulgated~~ adopted pursuant to ~~this~~ the Act, unless otherwise
1654 specified in ~~this~~ the Act, ~~shall be~~ is guilty of a Class 1 misdemeanor.

1655 **Drafting note: Technical changes.**

1656 § ~~45.1-161.95~~ 45.2-xxx. Prosecution of violations.

1657 A. It ~~shall be~~ is the duty of every attorney for the Commonwealth to whom the
1658 Director or his authorized representative has reported any violation of ~~this~~ the Act or on his
1659 own initiative to cause proceedings to be prosecuted in such ~~cases~~ case.

1660 B. If the attorney for the Commonwealth declines to cause proceedings to be
1661 prosecuted in such ~~cases~~ case, the Director or the Chief may request the Attorney General to
1662 institute proceedings for any violation of the Act on behalf of the Commonwealth; however,
1663 such action shall not preclude the Director or the Chief from pursuing any other applicable
1664 statutory ~~procedures~~ procedure. Upon receiving such a request from the Director or the Chief,
1665 the Attorney General shall have the authority to institute actions and proceedings for
1666 violations described in the request.

1667 **Drafting note: Language is updated for clarity. Technical changes are made**
1668 **pursuant to § 1-227, which states that throughout the Code any word used in the**
1669 **singular includes the plural and vice versa.**

1670 § ~~45.1-161.96~~ 45.2-xxx. Fees and costs.

1671 No fees or costs shall be charged to the Commonwealth by a court or any officer for or
1672 in connection with the filing of any pleading or other papers in any action authorized by this
1673 article.

1674 **Drafting note: Language is updated for clarity.**

1675 § ~~45.1-161.97~~ 45.2-xxx. Reports of violations.

1676 A. ~~Any person aware of a violation of this Act may report the violation to a mine~~
1677 ~~inspector or to any other employee of the Department, in person, in writing, or by telephone~~
1678 ~~call, at the mine, at an office of the Department, or at the mine inspector's residence.~~

1679 B. ~~The operator of every~~ each mine, or his agent, shall deliver a copy of ~~this~~ the Act to
1680 ~~every~~ each miner upon the commencement of his employment at the mine, unless the miner is
1681 already in possession of a copy.

1682 B. Any person aware of a violation of the Act may report the violation to a mine
1683 inspector or to any other employee of the Department, in person, in writing, or by telephone
1684 call, at the mine, at an office of the Department, or at the mine inspector's residence.

1685 C. The operator of ~~every~~ each mine, or his agent, shall display on a sign placed at the
1686 mine office, at the bath house, and on a bulletin board at the mine site, a notice containing the
1687 office addresses and office and home telephone numbers of mine inspectors and other

1688 Department personnel, ~~and office addresses, which may be used to report~~ for the purpose of
1689 reporting any violation of ~~this~~ the Act.

1690 D. The Department shall keep a record, on a form prepared for such purpose, of every
1691 alleged violation of ~~this~~ the Act ~~which~~ that is reported and the results of any investigation.
1692 The Department shall give a copy of the complaint form, with the identity of the person
1693 making the report, and that of any ~~individuals~~ individual identified in the alleged violation
1694 being omitted or deleted, to the operator of the mine or his agent. The Department shall not
1695 disclose the identity of any person who reports an alleged violation to the owner or operator
1696 of the mine or his agent, or to any other person or entity. Information regarding the identity of
1697 the person reporting the violation shall be excluded from access under the provisions of the
1698 Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1699 **Drafting note: Language is updated and section designations are reordered for**
1700 **clarity. Technical changes are made.**

1701 Article ~~10~~ 9.

1702 Virginia Coal Mine Safety Board.

1703 **Drafting note: Existing Article 10, relating to the Virginia Coal Mine Safety**
1704 **Board, is retained as proposed Article 9.**

1705 § ~~45.1-161.98~~, 45.2-xxx. The Virginia Coal Mine Safety Board ~~continued;~~
1706 ~~membership; appointments; expenses;~~ purpose.

1707 ~~A. The Virginia Mine Safety Board is continued as the~~ Virginia Coal Mine Safety
1708 Board (the Board) is established as an advisory board in the executive branch of state
1709 government. The purpose of the Board is to advise the Chief on matters relating to the health
1710 and safety of persons working in the Virginia coal industry.

1711 **Drafting note: A statement of the purpose of the Virginia Coal Mine Safety**
1712 **Board is added to reflect current board language preferred in the Code and obsolete**
1713 **language is removed. The remainder of existing § 45.1-161.98 is retained as proposed §**
1714 **45.2-xxx [following section].**

1715 § 45.2-xxx. Membership; terms; compensation; quorum; meetings.

1716 A. The Virginia Coal Mine Safety Board shall ~~be composed~~ have a total membership
1717 of 10 members that shall consist of nine nonlegislative citizen members appointed by the
1718 Governor, subject to ~~the~~ confirmation ~~of~~ by the General Assembly, and one ex officio
1719 member. Nonlegislative citizen members shall be appointed as follows: three ~~shall to~~ be
1720 appointed from a list of individuals nominated by the Virginia Coal and Energy Alliance;
1721 three ~~shall to~~ be appointed from a list of individuals nominated by the United Mine Workers
1722 of America;
1723 and three ~~shall to~~ be appointed from the Commonwealth at large. ~~All~~
1724 Nonlegislative citizen members of the Board shall serve at the pleasure of the Governor and
~~shall~~ be residents of the Commonwealth.

1725 B. The members of the Board shall elect its chairman. Members shall serve for terms
1726 of four years and their successors shall be appointed for terms of the same length, but
1727 vacancies occurring other than by expiration of a term shall be filled for the unexpired term.
1728 Any member may be reappointed for successive terms. Members shall receive no
1729 compensation for their services but shall ~~receive reimbursement~~ be reimbursed for ~~actual~~ all
1730 reasonable and necessary expenses incurred in the performance of their duties as provided in
1731 §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the
1732 members shall be provided by the Department.

1733 ~~§ 45.1-161.99. Meetings of the Virginia Coal Mine Safety Board; notices; quorum.~~

1734 C. The ~~Virginia Coal Mine Safety~~ Board shall hold meetings at such times and places
1735 as shall be designated by the chairman. The chairman may call a meeting of the Board at any
1736 time and shall call a meeting of the Board within ~~twenty~~ 20 days of receipt by the chairman of
1737 a written request for a meeting by another member of the Board. Notification of each meeting
1738 of the Board shall be given in writing to each member by the chairman at least five days in
1739 advance of the meeting. The chairman and any four or more members of the Board shall
1740 constitute a quorum for the transaction of any business of the Board.

1741 **Drafting note: All but the first sentence of existing § 45.1-161.98 [previous**
1742 **section] is retained and is combined with existing § 45.1-161.99 as proposed § 45.2-xxx.**
1743 **The board language for the Virginia Coal Mine Safety Board is updated to reflect**

1744 **current language preferred in the Code, obsolete language is deleted, and technical**
1745 **changes are made.**

1746 § ~~45.1-161.100~~ 45.2-xxx. Powers and duties of the Virginia Coal Mine Safety Board.

1747 The Virginia Coal Mine Safety Board ~~shall have~~ has the power to advise and make
1748 recommendations to the Chief on matters relating to the health and safety of persons working
1749 in the Virginia coal industry. The Board shall serve as the regulatory work committee for the
1750 Department on all coal mine health and safety regulations not under the jurisdiction of the
1751 Board of Coal Mining Examiners.

1752 **Drafting note: Technical change.**

1753 Article ~~11~~ 10.

1754 Miner Training.

1755 **Drafting note: Existing Article 11, relating to miner training, is retained as**
1756 **proposed Article 10.**

1757 § ~~45.1-161.101~~ 45.2-xxx. First aid training of coal miners.

1758 A. The Chief shall establish specifications for first aid and refresher training programs
1759 for miners at coal mines. Such specifications shall be no less than, but may exceed, the
1760 minimum requirements of such training programs ~~which~~ that underground and surface coal
1761 mine operators are required to provide ~~for~~ to their employees by the federal mine safety law.
1762 The Chief is authorized to utilize the Department's educational and training facilities in the
1763 conduct of such training programs and may require the cooperation of operators in making
1764 such programs available to their employees.

1765 B. Each operator of a coal mine, upon request, shall make available to every miner
1766 employed in such mine the course of first aid training, including refresher training, as is
1767 required ~~by~~ pursuant to subsection A.

1768 **Drafting note: Technical changes.**

1769 § ~~45.1-161.102~~ 45.2-xxx. Training programs.

1770 A. The Department may administer training programs for the purpose of (i) assisting
1771 with the provision of selected requirements of the federal mine safety law and (ii) preparing

1772 miners for examinations administered by the Board of Coal Mining Examiners. The Director
1773 shall establish the curriculum and teaching materials for the training programs, which shall be
1774 consistent with the requirements of the federal mine safety law where feasible.

1775 B. The Department is authorized to charge persons attending the training programs
1776 reasonable fees to cover the costs of administering such programs. The Director may exempt
1777 certain persons from any required fees for refresher training programs, based on the person's
1778 employment status or such other criteria as the Director deems appropriate. The Director shall
1779 not be required to allocate more of the Department's resources to training programs than are
1780 appropriated or otherwise made available for such purpose, or are collected from fees charged
1781 to attendees.

1782 C. No miner, operator, or other person shall be required to participate in any training
1783 program established under this article. Nothing contained herein shall prevent an operator or
1784 any other person from administering a state-approved training program.

1785 **Drafting note: Technical change.**

1786 § ~~45.1-161.103~~ [45.2-xxx](#). Additional coal mining training programs.

1787 The Chief is authorized to implement a voluntary on-site safety awareness training
1788 program for coal ~~mines~~ [miners](#). Such training may be conducted by a mine inspector in
1789 conjunction with his inspection of a coal mine or [by](#) other Department personnel. Safety
1790 awareness training for coal miners may include such methods as job safety analysis and
1791 topical talks on safety issues [intended](#) to reduce accidents.

1792 **Drafting note: Language is updated for modern usage. Technical changes are**
1793 **made.**

1794 ~~§ 45.1-161.104. Repealed.~~

1795 **Drafting note: Repealed by Acts 1997, c. 390.**

1796 [CHAPTER 6.](#)

1797 [COAL MINING PROPERTY, INTERESTS, ADJACENT OWNERS, AND DAMS.](#)

1798 **Drafting note: Proposed Chapter 6, Coal Mining Property, Interests, Adjacent**
1799 **Owners, and Dams, retains existing Chapters 14.7, Rights of Owners of Land Adjacent**

1800 to Coal Mines; 14.7:2, Trust for Coal Interests; 14.8, Emergency Seizure of Coal
1801 Properties by Commonwealth; and 18, Coal Mining Refuse Piles, Water and Silt
1802 Retaining Dams, as Articles 1 through 4, respectively.

1803 ~~CHAPTER 14.7.~~

1804 ~~RIGHTS OF OWNERS OF LAND ADJACENT TO COAL MINES.~~

1805 Article 1.

1806 Rights of Owners of Land Adjacent to Coal Mines.

1807 **Drafting note: Existing Chapter 14.7, Rights of Owners of Land Adjacent to Coal**
1808 **Mines, is retained as proposed Article 1 of Chapter 6.**

1809 § ~~45.1-161.310~~ 45.2-xxx. Consent required before working mine near land of another.

1810 No owner or tenant of any land containing coal within the Commonwealth, shall open
1811 or sink, dig, excavate, or work in any mine on such land within five feet of the line dividing
1812 such land from that of another person, without the written consent, ~~in writing~~, of every person
1813 interested in or having title to such adjoining lands or mineral rights in possession, reversion,
1814 or remainder, or of the guardian of any such person ~~that may be~~ if the person is under a
1815 disability. ~~If any~~ Any person who violates this section, ~~he~~ shall forfeit \$500 to any person
1816 injured by such activity and to anyone whose consent is required but not obtained.

1817 **Drafting note: Technical changes are made.**

1818 § ~~45.1-161.311~~ 45.2-xxx. Adjacent owner to be permitted to survey mine; proceedings
1819 to compel entry for survey.

1820 A. The owner, tenant, or occupant of any land or coal, on or in which a mine is opened
1821 and worked, or his agent, shall permit any person interested in or having title to any land or
1822 mineral rights coterminal with that in which such mine is located, to have ingress and egress
1823 with surveyors and assistants to explore and survey such mine at his own expense if ~~he~~ such
1824 person has reason to believe his property is being trespassed, ~~to have ingress and egress with~~
1825 ~~surveyors and assistants to explore and survey such mine at his own expense, for the~~ upon.
1826 The purpose of ~~ascertaining~~ such survey shall be to ascertain whether a violation of § ~~45.1-~~
1827 ~~161.310~~ 45.2-xxx has occurred; ~~however.~~ However, such person ~~shall~~ is not ~~be~~ entitled to

1828 enter the property more often than once a month. Every owner, tenant, occupant, or agent who
1829 ~~shall refuse~~ refuses such permission, exploration, or survey, shall forfeit ~~twenty dollars~~ \$20
1830 for each refusal, to the person so refused.

1831 B. The judge of the general district court of the county or city in which such mine is
1832 located, before whom any complaint of such refusal shall be made, may issue a summons to
1833 such owner, tenant, occupant, or agent, to answer such complaint. On the return of the
1834 summons executed, and proof that (i) the complainant has a right of entry, and ~~that it~~ (ii) such
1835 right has been refused without sufficient cause, the judge shall designate an early and
1836 convenient time for such entry to be made, and issue ~~his~~ a warrant, commanding the sheriff of
1837 the county or city to attend and prevent ~~obstructions and impediments~~ any obstruction or
1838 impediment to such entry, exploration ~~and, or~~ survey. The costs of such summons, and a fee
1839 of ~~three dollars~~ \$3 to the sheriff executing the warrant, shall be paid by the person whose
1840 refusal caused the complaint. If the court dismisses the complaint, the costs shall be paid by
1841 the party making the complaint.

1842 **Drafting note: Technical changes are made and language is updated for modern**
1843 **usage.**

1844 ~~CHAPTER 14.7:2.~~

1845 ~~TRUST FOR COAL INTERESTS.~~

1846 ~~Article 1~~ 2.

1847 ~~Unknown Trusts for Coal Owners Interests.~~

1848 **Drafting note: Existing Chapter 14.7:2, Trust for Coal Interests, is renamed and**
1849 **retained as proposed Article 2, Trusts for Coal Interests, of Chapter 6. The two existing**
1850 **articles of existing Chapter 14.7:2 are combined to form this article.**

1851 § ~~45.1-161.311:3~~ 45.2-xxx. Petition to establish a trust for missing coal owners.

1852 A. Any ~~person or persons~~ coal owner or lessee ~~with greater~~ who (i) has more than a 50
1853 percent interest in the coal on a particular tract, ~~who is seeking~~ and (ii) seeks to impress a trust
1854 upon unknown or missing owners of such tract of coal, may petition the circuit court in the

1855 county or city containing the majority of the tract of coal to establish a trust to protect the
1856 interests of all coal owners and lessees.

1857 B. The petition shall:

1858 1. Describe the particular tract of coal at issue;

1859 2. List all known-~~owners~~, missing-~~owners~~, and unknown owners of interests in such
1860 tract of coal and set forth the efforts to locate and identify the-~~unknown-or~~ missing or
1861 unknown owners of the interests ~~in the tract of coal~~ and ~~such~~ provide any other information
1862 known to the petitioner that ~~may~~ could be helpful in identifying or locating ~~the~~ every present
1863 ~~owners~~ owner thereof; and

1864 ~~2-3.~~ 3. Include the proposed terms of a lease to be offered to the trust, ~~which.~~ Such lease
1865 shall be typical of other arm's-length leases in the area.

1866 C. The petitioner shall establish to the satisfaction of the court that a diligent effort has
1867 been made to identify and locate the present owners of such interests.

1868 **Drafting note: Amendments are made for consistent use of "owners" and**
1869 **"lessees" and of "known," "missing," and "unknown" owners. The requirement that**
1870 **the petition describe the tract of coal at issue, implied in the following section, proposed**
1871 **§ 45.2-xxx [45.1-161.311:4], is made express in proposed subdivision B 1.**

1872 ~~§ 45.1-161.311:4~~ 45.2-xxx. Advertisement upon filing of petition.

1873 Immediately upon filing ~~of~~ the petition pursuant to § 45.2-xxx [§ 45.1-161.311:3], the
1874 petitioner shall advertise a notice of the pending action, including a statement that the action
1875 is brought for the purpose of impressing a trust authorizing the execution of a valid and
1876 present coal lease for the development of a tract of coal described in the petition pursuant to
1877 the provisions of subsection B of § 45.2-xxx [45.1-161.311:3]. Such notice shall appear in a
1878 local newspaper of general circulation at least once a week for two consecutive weeks.

1879 **Drafting note: Technical changes are made and a cross-reference to the prior**
1880 **section, proposed § 45.2-xxx [45.1-161.311:3], is added.**

1881 ~~§ 45.1-161.311:5~~ 45.2-xxx. Court may declare trust; trustee sale of lease.

1882 A. If, upon presentation of a petition pursuant to § 45.2-xxx [§ 45.1-161.311:3] to the
1883 circuit court ~~of the petition~~ in the county or city containing the majority of the tract of coal, it
1884 appears to the court that development of the interests in ~~the~~ such tract of coal will be
1885 advantageous to the unknown or missing owners, the court shall declare a trust in the coal
1886 interests, and ~~shall~~ appoint a trustee for such interests. The court shall authorize the trustee to
1887 execute a lease covering the coal interests in the identified tract of coal. The order of the court
1888 shall provide for all the terms and provisions of the lease that the trustee is authorized to
1889 make.

1890 B. The trustee shall proceed in compliance with the provisions of the order to execute
1891 the lease, and after executing the lease shall submit a report thereof to the court.

1892 C. The court shall not authorize a trustee's lease upon the coal interests of any owner
1893 whose identity and ~~whereabouts is~~ location are known, ~~or~~ can be ascertained, or ~~is~~ are
1894 discovered as a result of the action brought under this article. Any such owner may intervene
1895 as a matter of right at any time prior to the judgment approving the trustee's lease, for the
1896 purpose of establishing his title to the coal interests. If ~~the~~ such coal owner's claim is
1897 established to the satisfaction of the court, the court shall dismiss the action at the plaintiff's
1898 cost.

1899 **Drafting note: Technical changes are made and language is updated for modern**
1900 **usage.**

1901 § ~~45.1-161.311:6~~ 45.2-xxx. Duty of trustee; sale of lease; distribution of funds.

1902 A. The trustee shall collect the proceeds from the sale of the lease and hold and invest
1903 such proceeds for the use and benefit of the unknown or missing owners. The court may
1904 authorize the trustee to expend an amount not to exceed 10 percent of the funds collected by
1905 the trustee for the purpose of searching for the unknown or missing owners.

1906 B. Five years after the date of first commercial production of the coal interests, the
1907 proceeds in the trust shall be disposed of pursuant to the Virginia Disposition of Unclaimed
1908 Property Act (§ 55.1-2500 et seq.).

1909 **Drafting note: No change.**

1910 § ~~45.1-161.311:7~~ 45.2-xxx. Payment of ~~attorney's~~ attorney fees, expenses, and court
1911 costs.

1912 All ~~attorney's~~ attorney fees, expenses, and court costs incident to the original
1913 proceedings shall be paid by the lessee if a lease is executed, and by the plaintiff if for any
1914 reason no lease is executed. Subsequent to entry of judgment, all allowable attorney fees,
1915 expenses, and court costs shall be paid out of funds controlled by the trustee.

1916 **Drafting note: Technical changes.**

1917 ~~Article 2.~~

1918 ~~Known Coal Owners.~~

1919 **Drafting note: Article 2 of existing Chapter 14.7:2 is combined with Article 1 of**
1920 **existing Chapter 14.7:2 to form proposed Article 2 of Chapter 6.**

1921 § ~~45.1-161.311:8~~ 45.2-xxx. Production of coal by majority interest owner; petition to
1922 establish trust for known coal owners.

1923 A. Any ~~person or persons~~ coal owner or lessee ~~with~~ who (i) has at least a two-thirds
1924 interest in the coal on a particular tract of land, ~~who is seeking and (ii) seeks~~ to extract such
1925 coal, may petition the circuit court in the county or city containing the majority of the tract of
1926 coal to establish a trust for known coal owners and lessees.

1927 B. The petition shall:

1928 1. Describe the particular tract of coal at issue;

1929 2. List all known owners of interests in the tract of coal; and

1930 2-3. Include the proposed terms of a lease to be offered to ~~the each~~ minority ~~owners,~~
1931 which owner. Such lease shall be typical of other arm's-length leases in the area.

1932 C. The petitioner shall establish to the satisfaction of the court that a diligent effort has
1933 been made to obtain the consent of each minority ~~owners' consent~~ owner to lease ~~their~~ his
1934 interest in the coal. The petitioner shall demonstrate to the court that (i) the production of the
1935 coal by the petitioner's lessee is of economic benefit to all parties; (ii) if the coal is not
1936 produced, ~~then~~ the economic value of the coal is lost and the economic benefit of owning the

1937 coal is decreased; and (iii) there is no practical method for dividing such coal among the
1938 owners without extracting the coal.

1939 D. Immediately upon filing the petition, the petitioner shall send by registered or
1940 certified mail, with a return receipt requested, notice of the petition to the party subject to the
1941 petition.

1942 E. The court may appoint a trustee and authorize the trustee to execute a lease
1943 pursuant to ~~§ 45.1-161.311:5~~ [45.2-xxx](#).

1944 F. The court shall escrow or direct the trustee to escrow the proceeds of the lease
1945 attributable to [each of](#) the minority interests until such time as ~~the~~ [such](#) minority owner's
1946 claim is established to the satisfaction of the court.

1947 **Drafting note: Amendments are made in subsection A for consistent use of**
1948 **"owners" and "lessees." The implicit requirement that the petition describe the tract of**
1949 **coal at issue is made express in proposed subdivision B 1. Technical changes are made,**
1950 **including changes made pursuant to § 1-227, which states that throughout the Code any**
1951 **word used in the singular includes the plural and vice versa.**

1952 ~~CHAPTER 14.8.~~

1953 ~~EMERGENCY SEIZURE OF COAL PROPERTIES BY COMMONWEALTH.~~

1954 [Article 3.](#)

1955 [Emergency Seizure of Coal Property by the Commonwealth.](#)

1956 **Drafting note: Existing Chapter 14.8, Emergency Seizure of Coal Properties by**
1957 **Commonwealth, is renamed and retained as proposed Article 3, Emergency Seizure of**
1958 **Coal Property by the Commonwealth, of Chapter 6.**

1959 ~~§ 45.1-161.313~~ [45.2-xxx](#). ~~"Public uses" defined; declaration~~ [Declaration](#) of policy.

1960 ~~A. As used in this chapter, "public uses" means the mining, production and marketing~~
1961 ~~of coal for the purpose of providing and furnishing heat and power to the people of Virginia.~~

1962 ~~B. Any~~ [substantial interruption or](#) imminent threat of substantial interruption ~~or~~
1963 ~~existing substantial interruption of such service~~ [the mining, production, or marketing of coal](#)
1964 [for the purpose of providing and furnishing heat or power to the people of the Commonwealth](#)

1965 is hereby declared to be contrary to the public policy of the Commonwealth,~~and it.~~ It is the
1966 duty of the government of the Commonwealth to exercise all available means and every
1967 power at its command to prevent~~the same~~ such interruption so as to protect its citizens from
1968 any dangers, perils, calamities, or catastrophes~~which that~~ which that would result therefrom.

1969 **Drafting note: The definition of "public uses" is relocated to the following**
1970 **section, proposed § 45.2-xxx [45.1-161.312]. Technical changes are made.**

1971 § ~~45.1-161.312~~ 45.2-xxx. ~~Mining,~~ "Public uses" defined; mining, etc., of coal essential
1972 business; subject to seizure by Commonwealth.

1973 A. As used in this article, "public uses" means the mining, production, or marketing of
1974 coal for the purpose of providing and furnishing heat or power to the people of the
1975 Commonwealth.

1976 B. Any person engaged in the business of the mining, production~~and,~~ or marketing of
1977 coal, any portion of which is customarily used in the manufacture of heat~~and~~ or power, is
1978 hereby declared to be engaged in a business essential to the~~welfare,~~ health~~and,~~ safety, and
1979 welfare of the people of ~~Virginia, and, under~~ the Commonwealth. Under the conditions and in
1980 the manner~~hereinafter~~ set forth in this article, such business may be seized and operated by
1981 the Commonwealth~~of Virginia,~~ or any agency created and organized for such purpose, for
1982 public uses.

1983 **Drafting note: The definition of "public uses" is relocated from existing § 45.1-**
1984 **161.313 as proposed subsection A, and proposed subsection B is divided into two**
1985 **sentences for clarity. The phrase "such business" is substituted for the implied "any**
1986 **person" as the entity subject to seizure. Technical changes are made.**

1987 § ~~45.1-161.314~~ 45.2-xxx. Interruption of public uses; proclamation of emergency;
1988 seizure.

1989 When in the judgment of the Governor there ~~is~~ exists a substantial interruption or an
1990 imminent threat of a substantial interruption~~or there exists a substantial interruption~~ of ~~the~~
1991 public uses, he shall proclaim that an emergency exists in~~this~~ the Commonwealth
1992 endangering that endangers the~~welfare,~~ health, ~~and~~ safety, and welfare of its people and the

1993 enjoyment of the public and private property within its borders, ~~and it.~~ It shall then be the duty
1994 of the Governor to ~~forthwith~~ seize and operate the property of any person used in the mining,
1995 production ~~and,~~ or marketing of coal that ~~he~~ the Governor deems essential for the protection
1996 of the ~~welfare,~~ health ~~and,~~ safety, and welfare of the people of ~~Virginia~~ the Commonwealth.

1997 **Drafting note: References to "interruption" and "threat of interruption" are**
1998 **reordered to match the first section in this article. Language is updated for modern**
1999 **usage and the section's single sentence is divided into two sentences for clarity. Technical**
2000 **changes are made.**

2001 § ~~45.1-161.315~~ 45.2-xxx. Additional powers of Governor to operate seized properties.

2002 The Governor ~~shall, in addition to his inherent power as Governor, have and~~ may
2003 exercise the powers and authority to possess and operate ~~properties of~~ for public uses any
2004 ~~person~~ person's property used in the mining, production ~~and,~~ or marketing of coal ~~for public~~
2005 ~~uses~~ in the manner ~~hereinafter~~ provided in this article.

2006 **Drafting note: Language is simplified and updated for modern usage.**

2007 § ~~45.1-161.316~~ 45.2-xxx. Virginia Fuel Commission; purpose; membership;
2008 compensation; staff; powers and duties; report.

2009 ~~To~~ A. The Virginia Fuel Commission (the Commission) may be established by the
2010 Governor as a supervisory commission in the executive branch of state government. The
2011 purpose of the Commission is to act for and on behalf of the Governor in the enforcement of
2012 the powers and duties set forth in this ~~chapter, the Governor may appoint a commission,~~
2013 ~~known and designated as the Virginia Fuel Commission, hereafter the Commission~~ article.

2014 B. The Commission shall ~~be composed~~ have a total membership of three
2015 nonlegislative citizen members who are residents of the Commonwealth, ~~one of whom.~~ Each
2016 member of the Commission shall be appointed to serve at the pleasure of the Governor, and
2017 any vacancy shall be filled in the same manner as the original appointment. One member of
2018 the Commission shall be designated by the Governor as chairman. A majority of the members
2019 shall constitute a quorum. The meetings of the Commission shall be held at the call of the
2020 Governor or the chairman.

2021 C. Members shall receive such compensation for the performance of their duties as
2022 fixed by the Governor. Funding for the costs of compensation and expenses of the members
2023 shall be provided by the Department.

2024 D. The Department shall provide staff support to the Commission. All agencies of the
2025 Commonwealth shall provide assistance to the Commission, upon request.

2026 E. The Commission, subject to the approval of the Governor, shall have, in addition to
2027 such powers and duties incident ~~hereto~~ to this article as the Governor ~~may have and shall~~
2028 ~~delegate delegates~~ to it, the ~~following powers~~ power and ~~duties~~ duty to:

2029 1. ~~To promulgate~~ Adopt such ~~rules and~~ regulations and ~~to~~ issue such orders as ~~may~~
2030 are, in the judgment of the Commission ~~be~~, necessary to accomplish in full the purposes of
2031 this ~~chapter, which~~ article. Such regulations and orders shall have the force and effect of law,
2032 and the violation thereof ~~shall be~~ is punishable as a Class 1 misdemeanor;

2033 2. ~~To appoint~~ Appoint and employ such officers and personnel as are, in its judgment
2034 ~~may be~~, required to carry out the provisions of this ~~chapter and to~~ article; remove, in its
2035 discretion, any and all persons serving thereunder; ~~and to~~ fix, subject to approval by the
2036 Governor, the remuneration of all such officers and other personnel. Such personnel shall
2037 work subject to such safety provisions as are in force on the property at the time of
2038 acquisition;

2039 3. ~~To acquire~~ Acquire under the power of eminent domain, or by purchase, lease, or
2040 otherwise, all of the property of any person used in the business of the mining, production
2041 ~~and, or~~ marketing of coal, including all lands, tipples, mines, ores, rights-of-way, leaseholds,
2042 and every character and type of equipment deemed by the Commission necessary ~~and or~~
2043 incidental to the continuous mining and production of coal; ~~and~~

2044 4. ~~To operate~~ Operate, manage, and control any ~~such properties~~ property so acquired;
2045 ~~to~~ purchase coal, coke ~~and, or~~ other fuel and ~~to~~ sell ~~the same~~ such fuel, either at retail or at
2046 wholesale; ~~to~~ enter into contracts; ~~to~~ allocate and provide for the distribution of coal and other
2047 fuels so as to ~~assure~~ ensure a distribution deemed most likely to promote the ~~welfare~~, health
2048 ~~and~~, safety, and welfare of the people of ~~Virginia~~ the Commonwealth; and ~~to~~ do any and all

2049 things necessary ~~and incident~~ and incidental to the mining, production ~~and, or~~ marketing of
2050 coal; and

2051 5. In any year in which the Commission meets, submit an annual report to the
2052 Governor and the General Assembly for publication as a report document as provided in the
2053 procedures of the Division of Legislative Automated Systems for the processing of legislative
2054 documents and reports. In any year in which the Commission meets, the chairman shall
2055 submit to the Governor and the General Assembly an annual executive summary of the
2056 interim activity and work of the Commission no later than the first day of the next regular
2057 session of the General Assembly. The executive summary shall be submitted as a report
2058 document as provided in the procedures of the Division of Legislative Automated Systems for
2059 the processing of legislative documents and reports and shall be posted on the General
2060 Assembly's website.

2061 **Drafting note: The language that provides the Governor the option to establish**
2062 **the Virginia Fuel Commission is updated to reflect current language preferred in the**
2063 **Code for commissions, boards, and councils. The provisions of existing § 45.1-161.317,**
2064 **which relate to appointment and compensation of board members, are relocated to**
2065 **subsections B and C. Technical changes are made.**

2066 ~~§ 45.1-161.317. Terms and compensation of members of Commission.~~

2067 ~~Members of the Commission shall be appointed to serve at the pleasure of the~~
2068 ~~Governor at a compensation fixed by the Governor.~~

2069 **Drafting note: The provisions of this section are relocated to proposed § 45.2-xxx**
2070 **[§ 45.1-161.316].**

2071 ~~§ 45.1-161.319~~ 45.2-xxx. Negotiating purchase or lease of coal properties.

2072 Whenever the Governor ~~shall have proclaimed~~ proclaims that an emergency exists
2073 under this ~~chapter, article~~ and ~~the Governor has appointed~~ appoints the Virginia Fuel
2074 Commission pursuant to § 45.2-xxx [§ 45.1-161.316], the Commission shall ~~forthwith~~ make a
2075 bona fide attempt to negotiate the purchase or lease of the coal ~~properties~~ property of ~~such~~
2076 ~~persons~~ any person engaged in the mining, production ~~and, or~~ marketing of coal as the

2077 Commission deems necessary to accomplish the purposes of this ~~chapter~~ except article.
2078 However, where such negotiations cannot be promptly made due to the incapacity of the
2079 ~~owners, or one or more of them,~~ owner of the property, or for any other reason, ~~no the~~
2080 Commission is not required to attempt to negotiate for the acquisition of such property ~~need~~
2081 ~~be made.~~

2082 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2083 **throughout the Code any word used in the singular includes the plural and vice versa.**
2084 **Language is updated for modern usage and the section's single sentence is divided into**
2085 **two sentences for clarity. Technical changes are made.**

2086 § ~~45.1-161.320~~ 45.2-xxx. Proceedings for condemnation.

2087 A. Proceedings for condemnation ~~hereunder~~ pursuant to this article shall be instituted
2088 and conducted in the name of the Commission, and the procedure shall, except ~~insofar~~ as
2089 altered ~~herein~~ by the provisions of this article, be carried out as provided in Chapter 3 (§ 25.1-
2090 300 et seq.) of Title 25.1.

2091 B. The proceedings for condemnation shall be by petition to the circuit court of the
2092 county or city in which the land, property ~~and,~~ or property ~~rights~~ right, or the major portion
2093 thereof sought to be temporarily acquired ~~are,~~ is located, ~~which.~~ The petition shall set forth
2094 with reasonable particularity a description and designation of the ~~interests, rights and~~ interest,
2095 right, or property intended to be temporarily taken, the name ~~or names~~ of the ~~owners~~ owner of
2096 the interest, right, or property ~~which that~~ is to be taken or affected, and such other facts, ~~if~~
2097 ~~any,~~ as ~~may be deemed~~ the Commission deems necessary ~~by the Commission, in order~~ to give
2098 adequate information to the court and all persons in interest, ~~which.~~ The petition shall be
2099 verified by oath by a member of the Commission.

2100 C. Upon (i) the filing of ~~said the~~ petition described in subsection B in the office of the
2101 clerk of the circuit court to which it is addressed, together with as many copies thereof as
2102 there are defendants upon which it is to be served, and (ii) the depositing with the clerk for the
2103 custody of the court, and for the benefit of the owners of the ~~properties~~ property taken or
2104 affected, such an amount of money as the Commission shall estimate to be just compensation

2105 for the property temporarily taken and ~~the~~ any damage done, ~~if any~~, the Commission shall
2106 thereupon seize and take possession, custody, and control of ~~said the~~ property ~~or properties~~.
2107 The amount of money ~~so~~ deposited pursuant to clause (ii) shall not limit the amount of just
2108 compensation to be allowed to the ~~owners~~ owner of the property. ~~Service of said~~ The service
2109 of such petition upon the ~~defendants~~ defendant shall be made in the manner prescribed by the
2110 Rules of ~~the~~ Supreme Court of Virginia with respect to Practice and Procedure in Civil
2111 Actions at Law in effect at the time the petition is filed.

2112 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2113 **throughout the Code any word used in the singular includes the plural and vice versa.**
2114 **Language is updated for modern usage, the new designation of subsection C is added in**
2115 **existing subsection B for clarity, and the title of the relevant section of the Rules of**
2116 **Supreme Court of Virginia is updated.**

2117 § ~~45.1-161.321~~ 45.2-xxx. Expense of acquiring and operating coal ~~properties~~ property;
2118 funds derived from operation.

2119 The expense of acquiring and operating any property ~~or properties~~ acquired under this
2120 ~~chapter~~ article shall be paid out of moneys transferred from the general fund ~~of the~~
2121 ~~Commonwealth~~ that are not otherwise appropriated. Such transfer shall be made upon such
2122 ~~authorizations~~ authorization as the Governor ~~may prescribe~~ prescribes and shall be credited to
2123 the account of the Commission, and all funds and revenues derived from or received as a
2124 result of ~~said~~ such operations shall be paid into the state treasury and credited to the same
2125 account. Any ~~amounts~~ amount transferred upon authorization of the Governor from the
2126 general fund ~~of the Commonwealth~~ shall be ~~known and~~ designated as the "Capital Account"
2127 of the Commission, ~~which~~. Such amount, or the residue thereof, together with any surplus that
2128 ~~may accrue~~ accrues, shall be returned to the general fund ~~of the Commonwealth~~ in the event
2129 of liquidation or, in the absence of liquidation, in such installments and at such times as the
2130 Governor ~~may prescribe~~ prescribes.

2131 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2132 **throughout the Code any word used in the singular includes the plural and vice versa.**
2133 **Language is updated for modern usage.**

2134 § ~~45.1-161.322~~ 45.2-xxx. Restoration of property to owner or operator.

2135 A. Whenever (i) the owner or operator ~~of engaged in~~ the business of the mining,
2136 production ~~and, or~~ marketing of coal, whose property has been acquired by the Commission,
2137 ~~shall notify~~ notifies the Commission in writing, ~~stating~~ that he ~~is in position to, and~~ can and
2138 will resume operation and render normal service, and ~~shall satisfy~~ satisfies the Commission of
2139 the correctness of such ~~statement~~ notice, or ~~whenever (ii)~~ in the judgment of the Governor, the
2140 emergency declared by him no longer exists, the Commission shall restore the possession of
2141 the property so acquired by ~~them~~ it to ~~the~~ such owner or operator upon his request. In the
2142 event the Commission refuses such restoration of possession, the owner or operator shall have
2143 the right to have a ~~rule~~ ruling issued requiring the Commission to show cause why such
2144 possession ~~should~~ shall not be restored, and the court shall determine the matter as provided
2145 in this section ~~provided~~.

2146 B. Any such owner or operator shall be entitled to receive reasonable, proper, and
2147 lawful compensation for the use of the ~~properties so~~ property acquired by the Commonwealth
2148 pursuant to this article and shall be paid ~~the same~~ such compensation out of the state treasury.
2149 In the event the Commission has acquired such property by purchase, the ~~owners~~ owner or
2150 operator from whom it was acquired shall, upon reacquisition ~~shall~~, repay the purchase price
2151 less fair compensation for the use of such property. In the event the Commission and the
2152 owner or operator are unable to agree upon the amount of such compensation, either party in
2153 interest may file a petition in the circuit court for the county or city in which the majority of
2154 the property is located for the purpose of having the ~~same~~ amount of compensation judicially
2155 determined. The court shall, without a jury, hear such evidence and argument of counsel as
2156 may be deemed appropriate and (i) render judgment thereon or ~~may~~ (ii) refer to a
2157 commissioner such questions as are considered proper and act upon the commissioner's report

2158 as in any other equity ~~proceedings~~ proceeding. An appeal shall lie to the Supreme Court from
2159 any final judgment of the court rendered upon the provisions of this ~~chapter~~ article.

2160 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2161 **throughout the Code any word used in the singular includes the plural and vice versa.**
2162 **Other technical changes are made and language is updated for modern usage.**

2163 § ~~45.1-161.318~~ 45.2-xxx. ~~Chapter~~ Article subject to provisions of general law.

2164 ~~This chapter shall be~~ The provisions of this article are subject to all of the provisions
2165 of general law applicable to coal mining operations.

2166 **Drafting note: Technical changes.**

2167 ~~CHAPTER 18.~~

2168 ~~COAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS.~~

2169 Article 4.

2170 Coal Mine Refuse Impoundments and Retaining Dams.

2171 **Drafting note: Existing Chapter 18, Coal Mining Refuse Piles, Water and Silt**
2172 **Retaining Dams, is renamed and retained as proposed Article 4, Coal Mine Refuse**
2173 **Impoundments and Retaining Dams, of Chapter 6.**

2174 ~~§ 45.1-221. Repealed.~~

2175 **Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

2176 § ~~45.1-221.1~~ 45.2-xxx. Definitions.

2177 As used in this ~~chapter~~ article, unless the context requires a different meaning:

2178 "Coal refuse" means waste material resulting from the mining and screening or
2179 processing of coal.

2180 "Coal slurry" means waste water and impurities produced as the result of coal washing
2181 and preparation of coal for market, containing a combination of coal, shale, claystone,
2182 siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed
2183 of from underground workings.

2184 ~~"Impounding water" means to impound-~~ "Mine refuse impoundment" means a mine
2185 refuse pile that retains water that has been used in carrying out any part of the process
2186 necessary in the production or preparation of coal.

2187 ~~"Refuse pile"~~ "Mine refuse pile" means a pile of coarse or fine coal refuse that is a
2188 result of the mining or screening process that may be stacked, spread, or graded and covers ~~a~~
2189 ~~minimum of~~ 20 acre-feet or more.

2190 "Operator" means any person who operates, controls, or supervises a ~~water, coal~~
2191 ~~slurry, or silt~~ retaining dam or a mine refuse ~~pile impounding water~~ impoundment.

2192 ~~"Dam"~~ "Retaining dam" means an artificial barrier or obstruction that is designed to
2193 impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream
2194 toe of the structure, and has a storage volume of 20 acre-feet or more, ~~or is designed to~~
2195 ~~impound water, coal slurry, or silt~~ (ii) to an elevation of 20 feet or more measured at the open
2196 channel spillway or from the crest of the dam in a closed system, regardless of storage
2197 volume.

2198 "Silt" means fine particles resulting from a mining operation, suspended in or
2199 deposited by water.

2200 "Water" means liquid or slurry ~~as a result of~~ that results from the processing of coal in
2201 mining operations.

2202 **Drafting note: The term "dam" is renamed as "retaining dam" and moved into**
2203 **alphabetical order and the definition is clarified and shortened to reduce redundant**
2204 **text. The adjective phrase "impounding water," which is used in the existing article only**
2205 **to modify "mine refuse pile," is changed to the term "mine refuse impoundment" and**
2206 **incorporates "mine refuse pile" in its definition. The term "refuse pile" is renamed as**
2207 **"mine refuse pile" and moved into alphabetical order. Technical changes are made and**
2208 **language is updated for modern usage.**

2209 § ~~45.1-222~~ 45.2-xxx. Design and construction of ~~water, coal slurry, or silt~~ a retaining
2210 ~~dams~~ dam or mine refuse ~~piles impounding water~~ impoundment; designs and other data to be
2211 submitted to ~~the~~ Chief.

2212 A. ~~New water, coal slurry, or silt~~ Any new retaining ~~dams, dam~~ or mine refuse ~~piles~~
2213 ~~impounding water~~ impoundment, or the modification of an existing ~~water, coal slurry, or silt~~
2214 retaining ~~dams~~ dam or mine refuse ~~piles~~ impounding water impoundment, shall be designed
2215 and constructed by, or under the direction of, a licensed professional engineer, ~~if such~~
2216 ~~retaining dam or~~. Such requirement shall only apply to a mine refuse pile:

2217 1. ~~Is~~ impoundment if it is designed to impound water, coal slurry, or silt (i) to an
2218 elevation of five feet or more above the upstream toe of the structure; and

2219 2. ~~Has~~ has a storage volume of 20 acre-feet or more; or

2220 3. ~~Is designed to impound water or silt~~ (ii) to an elevation of 20 feet or more measured
2221 at the open channel spillway or from the crest of the dam in a closed system, regardless of
2222 storage volume.

2223 The design, construction specifications, and other related data, including final
2224 abandonment plans for such retaining dam or mine refuse impoundment, shall be certified by
2225 the licensed professional engineer.

2226 B. No person shall place, construct, enlarge, alter, repair, remove, or abandon such
2227 ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile~~ impounding water impoundment
2228 until the operator has filed an application for and received approval from the Chief for such
2229 construction or modification. However, routine repairs that do not affect the engineering
2230 design criteria ~~and or~~ safety of an approved ~~water, coal slurry, or silt~~ retaining dam or mine
2231 refuse ~~pile~~ impounding water impoundment are not subject to the application and approval
2232 requirements.

2233 **Drafting note: Language is updated for clarity and technical changes are made.**
2234 **The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles**
2235 **impounding water are shortened to correspond to the changes made to the definitions of**
2236 **"retaining dam" and "mine refuse impoundment" in proposed § 45.2-xxx [§ 45.1-221.1].**
2237 **Requirements that control whether a new or modified impoundment shall be**
2238 **constructed under the direction of a licensed professional engineer are removed as**

2239 **redundant for retaining dams because, as defined, "retaining dam" includes only those**
2240 **structures that already meet the requirements.**

2241 ~~§ 45.1-223. Repealed.~~

2242 **Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

2243 ~~§ 45.1-224 45.2-xxx.~~ Examination of ~~water, coal slurry, or silt~~ retaining ~~dams~~ dam or
2244 mine refuse ~~piles impounding water~~ impoundment; potentially hazardous ~~conditions~~
2245 condition; plans to be submitted by operators.

2246 A. ~~All water, coal slurry, or silt~~ Each retaining ~~dams~~ dam or mine refuse ~~piles~~
2247 ~~impounding water~~ impoundment shall be examined by an authorized person, as defined in §
2248 ~~45.1-161.8 45.2-xxx~~, at least every seven days or as otherwise approved by the Chief. Each
2249 such retaining dam or mine refuse ~~pile~~ impoundment shall be examined for compliance with
2250 approved design and maintenance requirements, visible structural weakness, volume
2251 overload, and other hazards.

2252 B. After each examination, the authorized person, as defined in § 45.2-xxx [§ 45.1-
2253 161.8], shall promptly record the results of the examination in a book that shall be available at
2254 the retaining dam or mine refuse ~~pile~~ impoundment, or other designated location, for
2255 inspection by the Chief or his authorized representative. ~~All~~ Each examination ~~records~~ record
2256 shall include a description of any potentially hazardous condition found and any action taken
2257 to abate ~~any such potentially~~ hazardous condition. ~~Records~~ Each record shall be countersigned
2258 by the supervisor of the authorized person creating the ~~records~~ record. ~~Where~~ If such ~~records~~
2259 ~~disclose a record discloses a potentially~~ hazardous ~~conditions~~ condition, the countersigning of
2260 the ~~records~~ record shall be performed no later than the end of the next regularly scheduled
2261 working shift following the shift for which the examination was completed, and the person
2262 countersigning shall ensure that actions to eliminate or control the potentially hazardous
2263 ~~conditions~~ condition have been taken. The operator of the retaining dam or mine refuse ~~pile~~
2264 impoundment may authorize ~~another~~ a person ~~with equivalent~~ who possesses authority
2265 equivalent to that of the supervisor to act in the supervisor's temporary absence to read and

2266 countersign the ~~records~~ record and ensure that action is taken to eliminate the potentially
2267 hazardous ~~conditions~~ condition disclosed in the ~~records~~ record.

2268 C. When rising water, coal slurry, or silt reaches 80 percent by volume of the safe
2269 design capacity of ~~the~~ a retaining dam or mine refuse ~~pile~~ impoundment, ~~such~~ the examination
2270 required by subsection A shall be made more often as required by the Chief or his authorized
2271 representative.

2272 D. When a potentially hazardous condition exists, the operator shall immediately
2273 initiate procedures to:

2274 1. Remove all persons from the area ~~which~~ that may reasonably be expected to be
2275 affected by the potentially hazardous condition;

2276 2. Eliminate the potentially hazardous condition; and

2277 3. Notify the Chief and other governing agencies by the quickest available means
2278 following the protocol established in the site's ~~Emergency Notification and Evacuation Plan~~
2279 emergency notification and evacuation plan pursuant to § 45.2-xxx [§ 45.1-224.1].

2280 E. The operator of each coal site on which a ~~water, coal slurry, or silt~~ retaining dam or
2281 mine refuse ~~pile impounding water~~ impoundment is located shall submit a plan for carrying
2282 out the requirements of § ~~45.1-222~~ 45.2-xxx and subsections A, B, C, and D for approval by
2283 the Chief. The plan shall include:

2284 1. The designs, construction specifications, and other related data required ~~under~~
2285 pursuant to § ~~45.1-222~~ 45.2-xxx;

2286 2. A schedule and procedures for inspection of the retaining dam or mine refuse
2287 impoundment by a qualified person under normal conditions and under conditions that could
2288 cause flooding;

2289 3. Procedures for evaluating a potentially hazardous ~~conditions~~ condition;

2290 4. Procedures for removing all persons from the area ~~which~~ that may reasonably be
2291 expected to be affected by the potentially hazardous ~~conditions~~ condition;

2292 5. Procedures for eliminating the potentially hazardous ~~conditions~~ condition;

2293 6. Procedures for notifying the Chief and other governing agencies; and

2294 7. Any additional information ~~which~~ that may be required by the Chief.

2295 F. Before making any changes or modifications in the approved plan, the operator
2296 shall obtain approval of such changes or modifications from the Chief.

2297 G. The Chief shall notify the operator in writing whether the operator's plan is
2298 approved or disapproved. If ~~he~~ the Chief disapproves the plan, he shall provide the operator
2299 with his written objections thereto and his required amendments.

2300 **Drafting note: The provisions regarding water, coal slurry, or silt retaining dams**
2301 **and mine refuse piles impounding water are shortened to correspond to the changes**
2302 **made to the definitions of "retaining dam" and "mine refuse impoundment" in**
2303 **proposed § 45.2-xxx [§ 45.1-221.1]. Changes are made pursuant to § 1-227, which states**
2304 **that throughout the Code any word used in the singular includes the plural and vice**
2305 **versa. Other technical changes are made and language is updated for modern usage and**
2306 **clarity.**

2307 § ~~45.1-224.1~~ 45.2-xxx. Emergency ~~Notification and Evacuation Plan~~ notification and
2308 evacuation plan.

2309 A. On or before July 1 of each year, the operator of any ~~water, coal slurry, or silt~~
2310 retaining dam or mine refuse ~~pile that impounds water~~ impoundment that meets the criteria of
2311 subsection A of § ~~45.1-222~~ 45.2-xxx shall submit to the Chief an ~~Emergency Notification and~~
2312 ~~Evacuation Plan~~ emergency notification and evacuation plan. If there are no changes to a plan
2313 at the time the updated plan is due, the operator may submit a notice that there are no changes
2314 to the plan in lieu of submitting an updated plan to the Chief.

2315 B. The plan and attendant maps, appropriate for the level of hazard of ~~the~~ such
2316 retaining dam or mine refuse ~~pile~~ impoundment, shall describe the ~~water, coal slurry, or silt~~
2317 retaining dam or mine refuse ~~pile that impounds water~~ impoundment and shall include:

2318 1. The name and address of the operator owning, operating, or controlling the
2319 structure;

2320 2. The identification numbers of the structure as assigned by the Chief, the Mine
2321 Safety and Health Administration, and the Office of Surface Mining;

- 2322 3. The location of the structure indicated on (i) a current United States Geological
2323 Survey ~~7 1/2-minute~~ 7.5-minute or 15-minute topographic quadrangle map, (ii) an equivalent
2324 digital map, or (iii) a topographic map of a scale approved by the Chief_;
- 2325 4. The name and size in acres of the watershed in which the structure is located_;
- 2326 5. A description of the physical and engineering properties of the foundation materials
2327 on which the structure is to be or was constructed_;
- 2328 6. The location of existing or proposed instrumentation_;
- 2329 7. A statement of the runoff attributable to the probable maximum precipitation of six-
2330 hour duration and the calculations used in determining such runoff_;
- 2331 8. A statement of the runoff attributable to the storm for which the structure is
2332 designed and the calculations used in determining such runoff_;
- 2333 9. The ~~locations~~ location of any surface ~~and or~~ underground coal ~~mines~~ mine,
2334 including the depth and extent of such workings, under and within 1,000 feet around the
2335 perimeter of the retaining dam, mine refuse impoundment, and the area of impounded
2336 material, shown at a scale not to exceed one inch equals 1,000 feet_;
- 2337 10. A map depicting the impoundment area, and downstream and adjacent drainways,
2338 streambeds, roads, structures, and other public areas that ~~might~~ could be affected ~~should if~~ an
2339 accident were to occur at the impoundment. The map shall be at a scale not to exceed one inch
2340 equals 1,000 feet_;
- 2341 11. The ~~name~~ names of persons who are familiar with the plan protocols and can take
2342 actions necessary to eliminate the hazard and minimize the impact to miners, the community,
2343 and the environment_;
- 2344 12. A location where a command and communication center ~~can~~ could be established
2345 for the company team and emergency response personnel to report during an impoundment
2346 event_;
- 2347 13. The location of potential evacuation centers where affected parties may take
2348 shelter during an impoundment event_;

2349 14. An emergency contact list for agencies that would respond to an impoundment
2350 event; [and](#)

2351 15. A list of miners employed at the site and businesses, community buildings,
2352 residences, and other occupied buildings within the impact zone that could be affected by an
2353 impoundment event, or other effective means of identifying such impact zone.

2354 **Drafting note: The provisions regarding water, coal slurry, or silt retaining dams**
2355 **and mine refuse piles impounding water are shortened to correspond to the changes**
2356 **made to the definitions of "retaining dam" and "mine refuse impoundment" in**
2357 **proposed § 45.2-xxx [§ 45.1-221.1]. Language is updated for clarity and technical**
2358 **changes are made, including changes made pursuant to § 1-227, which states that**
2359 **throughout the Code any word used in the singular includes the plural and vice versa.**

2360 ~~§ 45.1-225. Repealed.~~

2361 **Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

2362 CHAPTER ~~14.3~~ [7](#).

2363 REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; [MINE](#)

2364 [CONSTRUCTION](#).

2365 **Drafting note: Nine articles of existing Chapter 14.3 are retained as proposed**
2366 **Chapter 7, Requirements Applicable to Underground Coal Mines; Mine Construction.**
2367 **The remainder of existing Chapter 14.3 is designated as proposed Chapter 8. The nine**
2368 **articles in this proposed chapter are as follows: Article 1, General Provisions; Article 2,**
2369 **Additional Duties of Certified Persons and Other Miners; Article 3, Proximity of Mining**
2370 **to Gas or Oil Wells or Abandoned Areas; Article 4, Roof, Face, and Rib Control; Article**
2371 **5, Explosives and Blasting; Article 6, Mine Openings and Escapeways; Article 7,**
2372 **Hoisting; Article 8, Transportation; and Article 9, Surface Areas.**

2373 Article 1.

2374 General Provisions.

2375 **Drafting note: Existing Article 1, concerning general provisions, is retained as**
2376 **proposed Article 1.**

2377 § ~~45.1-161.105~~ 45.2-xxx. Scope of chapter.

2378 ~~This~~ The provisions of this chapter and Chapter 8 (§ 45.2-xxx et seq.) shall ~~be~~
2379 ~~applicable~~ apply to the operation of any underground coal mine in the Commonwealth; and
2380 shall supplement the provisions of Chapter ~~14.2~~ 5 (§ ~~45.1-161.7~~ 45.2-xxx et seq.).

2381 **Drafting note: Language is updated for modern usage and clarity. The provisions**
2382 **of this chapter are made to apply to both portions of existing Chapter 14.3, which is**
2383 **divided into proposed Chapters 7 and 8.**

2384 § ~~45.1-161.106~~ 45.2-xxx. Regulations governing conditions and practices at
2385 underground coal mines.

2386 A. The Chief shall have authority, after consultation with the Virginia Coal Mine
2387 Safety Board, created by Article 9 (§ 45.2-xxx [§ 45.1-161.98] et seq.) of Chapter 5, and in
2388 accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process
2389 Act, to ~~promulgate rules and~~ adopt regulations necessary to ensure safe and healthy working
2390 conditions in underground coal mines in the Commonwealth. Such ~~rules and~~ regulations
2391 governing underground coal mines shall relate to:

2392 1. The maintenance, operation, storage, and transportation of any mechanical or
2393 electrical equipment, device, or machinery used for any purpose in the underground mining of
2394 coal;

2395 2. Safety and health standards for the protection of the life, health, and property of,
2396 and the prevention of injuries to, ~~persons~~ any person involved in or likely to be affected by
2397 any underground coal mining ~~operations which~~ operation. Such standards shall include ~~but~~
2398 ~~not be limited to~~ the control of dust concentration levels; the use of respiratory equipment and
2399 ventilating systems; the development and maintenance of roof control systems; the handling
2400 of combustible materials and rock dusting; the installation, maintenance, and use of electrical
2401 devices, equipment, cables, and wires; fire protection, including equipment, emergency
2402 evacuation plans, emergency shelters, and communication facilities; the use and storage of
2403 explosives; and the establishment and maintenance of barriers in underground coal mines
2404 around gas and oil wells. The Chief is authorized to ~~promulgate~~ adopt regulations setting forth

2405 specific occupations and conditions ~~for~~ under which a miner ~~will be~~ is prohibited from
2406 working alone underground; and

2407 3. The storage or disposal of any matter or materials (i) extracted or disturbed as the
2408 result of an underground coal mining operation ~~or operations~~ or (ii) used in the mining
2409 operation or for the refinement or preparation of the materials extracted from the coal mining
2410 operation, so that such matter or material does not threaten the health or safety of the miners
2411 or the general public.

2412 B. The Chief shall not ~~promulgate~~ adopt any regulation establishing ~~requirements~~ any
2413 requirement for the operation of, or conditions at, an underground coal mine ~~which are~~ that is
2414 inconsistent with requirements established by the Act.

2415 **Drafting note: The term "promulgate regulations" is changed to "adopt**
2416 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
2417 **and includes the promulgation process. Technical changes are made, including changes**
2418 **pursuant to § 1-227, which states that throughout the Code any word used in the**
2419 **singular includes the plural and vice versa. A cross-reference to the creation of the**
2420 **Virginia Coal Mine Safety Board is added. In subdivision A 2, "but not be limited to" is**
2421 **removed following the term "include" on the basis of § 1-218, which states that**
2422 **throughout the Code "'Includes' means includes, but not limited to."**

2423 § ~~45.1-161.107~~ 45.2-xxx. Standards for regulations.

2424 In ~~promulgating rules and~~ adopting regulations pursuant to § ~~45.1-161.106~~ 45.2-xxx,
2425 the Chief shall consider:

- 2426 1. Standards utilized and generally recognized by the coal mining industry;
- 2427 2. Standards established by recognized professional coal mining organizations and
2428 groups;
- 2429 3. The federal mine safety law;
- 2430 4. Research, demonstrations, experiments, and such other information that is available
2431 regarding the maintenance of the highest degree of safety protection, including the latest

2432 available scientific data in the field, the technical feasibility of the standards, and the
2433 experience gained under ~~this~~ the Act and other mine safety laws; and

2434 5. Such other criteria as ~~shall be~~ are necessary for the protection of the safety and
2435 health of miners and other persons or property likely to be endangered by underground coal
2436 mines or related operations.

2437 **Drafting note: The term "promulgating regulations" is changed to "adopting**
2438 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
2439 **and includes the promulgation process. Language is updated for modern usage and**
2440 **clarity.**

2441 Article ~~16~~ 2.

2442 Additional Duties of Certified Persons and Other Miners.

2443 **Drafting note: Existing Article 16 of Chapter 14.3, concerning additional duties**
2444 **of certified persons and other miners, is retained as proposed Article 2.**

2445 § ~~45.1-161.249~~ 45.2-xxx. Duties of mine foreman.

2446 A. The mine foreman shall see that the requirements of ~~this~~ the Act that pertain to his
2447 duties and to the health and safety of the miners are fully complied with at all times.

2448 B. The mine foreman shall see that every miner employed to work in such mine,
2449 before beginning work therein, is aware of all hazardous conditions incident to his work in
2450 such mine. Any imminent danger that cannot be removed within a reasonable time shall be
2451 reported to the Chief by the quickest available means.

2452 **Drafting note: Technical changes.**

2453 § ~~45.1-161.250~~ 45.2-xxx. Employment and duties of top persons; plan for excavation
2454 of shaft or slope.

2455 A. During the construction or modification of any shaft or slope mine, the person
2456 engaged in the actual construction or modification of such mine shall employ one or more
2457 ~~certified~~ top persons certified pursuant to § 45.2-xxx [§ 45.1-161.41]. It shall be the duty of
2458 such top person to examine for proper and safe practices and materials used during the

2459 construction or modification of a shaft or slope mine. Such duties shall at all times be
2460 performed in the immediate vicinity of the shaft or slope under construction.

2461 B. Prior to commencing the excavation of any shaft or slope, the operator shall submit
2462 to the Department a copy of the plan that includes the following: (i) the name and location of
2463 the mine and ~~slope or~~ shaft or slope; (ii) a description of the work and methods to be used in
2464 the construction of the ~~slope or~~ shaft or slope; (iii) a description of the methods to be used to
2465 ensure wall and roof stability; (iv) a description of the system of ventilation to be used,
2466 including procedures for evacuation of the ~~slope or~~ shaft or slope should a fan stoppage occur;
2467 (v) details of hoisting equipment to be used; and (vi) such other information as ~~may be~~
2468 ~~required by~~ the Chief requires. The excavation of ~~a such~~ shaft or slope shall not begin until
2469 the plan is approved by the Chief.

2470 **Drafting note: Technical changes are made and language is updated for modern**
2471 **usage and clarity. A cross-reference regarding the certification of top persons is added**
2472 **in subsection A.**

2473 § ~~45.1-161.251~~ 45.2-xxx. Employment of inexperienced underground miners.

2474 A. ~~Inexperienced~~ An inexperienced underground ~~miners~~ miner shall be required to
2475 work with an experienced underground miner for a total of at least six months following the
2476 start of underground employment. However, an experienced surface ~~miners~~ miner shall only
2477 be required to work with an experienced underground miner for a total of at least ~~sixty~~ 60
2478 days following the start of underground employment.

2479 B. No inexperienced underground miner shall be assigned, ~~or~~ allowed, or ~~be~~ required
2480 to perform work alone in any area where there is ~~the a~~ potential ~~to endanger~~ danger to his
2481 safety unless he can communicate with others, ~~can or~~ be heard; or ~~can be~~ seen.

2482 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2483 **throughout the Code any word used in the singular includes the plural and vice versa.**
2484 **Language is updated for modern usage and clarity.**

2485 § ~~45.1-161.252~~ 45.2-xxx. Employment of authorized persons.

2486 No miner shall be placed in charge of a cutting, loading, drilling, continuous miner, or
2487 timbering machine in any mine ~~who~~ if such miner is not an authorized person capable of
2488 determining the safety of the roof and ribs of ~~the~~ a working ~~places~~ place. Such miner shall
2489 also be capable of detecting the presence of explosive gas and shall ~~be compelled to~~
2490 examination by a mine inspector or other ~~instructors who are~~ instructor certified by the Board
2491 of Coal Mining Examiners and authorized by the Chief to determine ~~his~~ such miner's fitness
2492 to detect explosive gas before being permitted to have charge of ~~machines~~ a machine in such
2493 ~~mines~~ mine.

2494 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2495 **throughout the Code any word used in the singular includes the plural and vice versa.**
2496 **Language is updated for modern usage and clarity.**

2497 Article 3.

2498 Proximity of Mining to Gas ~~and or~~ Oil Wells, ~~and or~~ Abandoned Areas.

2499 **Drafting note: Existing Article 3, concerning proximity of mining to gas or oil**
2500 **wells or abandoned areas, is retained as proposed Article 3. Technical changes are made**
2501 **to the name.**

2502 § ~~45.1-161.121~~ 45.2-xxx. Mining in proximity to gas ~~and or~~ oil wells.

2503 A. Except as provided in subsection D, an operator who plans to remove coal, drive
2504 any passage or entry, or extend any workings in any mine, within 500 feet of any gas or oil
2505 well already drilled into the projected mine workings or in the process of being drilled into the
2506 projected mine workings shall file with the Chief a notice that such mining is taking place or
2507 will take place. The notice shall include a copy of parts of the maps and plans required under
2508 § ~~45.1-161.64~~ 45.2-xxx ~~which~~ that show the mine workings ~~and or~~ projected mine workings
2509 ~~which~~ that are within 500 feet of the well. The operator shall simultaneously mail copies of
2510 such notice, maps, and plans by certified mail, return receipt requested, to the well operator
2511 and the Gas and Oil Inspector appointed pursuant to § 45.2-xxx [§ 45.1-361.4]. Each notice
2512 shall contain a certification made by the operator that he has complied with the provisions of
2513 this subsection.

2514 B. Subsequent to the filing of the notice required by subsection A, the operator may
2515 proceed with mining operations in accordance with the maps and plans; however, without the
2516 prior approval of the Chief, he shall not remove any coal, drive any entry, or extend any
2517 workings in any mine ~~closer than~~ within 200 feet ~~to of~~ any gas or oil well already drilled or in
2518 the process of being drilled into the projected mine workings ~~or in the process of being drilled~~
2519 ~~into the projected mine workings.~~

2520 C. The Chief shall ~~promulgate~~ adopt regulations ~~which that~~ prescribe the procedure to
2521 be followed by mine operators in petitioning the Chief for approval to conduct such activities
2522 within 200 feet of a gas or oil well or a vertical ventilation hole drilled or in the process of
2523 being drilled into the projected mine workings. Each operator who files such a petition shall
2524 mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the
2525 well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil
2526 Inspector and the operator of the gas or oil well or vertical ventilation hole shall have standing
2527 to object to any petition filed under this section. Such ~~objections~~ objection shall be filed
2528 within ~~ten~~ 10 days following the date such petition is filed.

2529 D. Procedures for safely mining in proximity to or through a coalbed methane ~~wells~~
2530 well or a vertical ventilation ~~holes~~ hole developed for methane drainage in a mine shall be
2531 addressed in the bleeder system plan for that mine required by § ~~45.1-161.220~~ 45.2-xxx.

2532 **Drafting note: The term "promulgate regulations" is changed in subsection C to**
2533 **"adopt regulations" in keeping with recent title revisions because "adopt" is more**
2534 **widely used and includes the promulgation process. A cross-reference to the section**
2535 **addressing the appointment of the Gas and Oil Inspector is added in subsection A, and**
2536 **technical changes are made.**

2537 § ~~45.1-161.122~~ 45.2-xxx. Mining in proximity to an abandoned ~~areas~~ area.

2538 A. The mine foreman shall ensure that boreholes are drilled in each advancing
2539 working place that is (i) within 50 feet of an abandoned ~~areas~~ area in the mine as shown by
2540 ~~surveys~~ a survey made and certified by a registered engineer or surveyor, (ii) within 200 feet
2541 of an abandoned ~~areas~~ area in the mine ~~which have~~ that has not been certified as surveyed, or,

2542 (iii) within 200 feet of any mine workings of an adjacent mine located in the same coal bed
2543 unless the adjacent area of the mine has been pre-shift examined pursuant to § 45.2-xxx
2544 [§45.1-161.208]. ~~The boreholes~~ Each borehole shall be at least 20 feet in depth ~~and, shall~~
2545 always be maintained not less than 10 feet in advance of the face, and shall be not more than
2546 eight feet ~~apart~~ from an adjacent borehole unless approved by the Chief. One borehole shall
2547 also be drilled for each cut on ~~sides~~ any side of the active workings that ~~are~~ is being driven
2548 toward; and in proximity to; an abandoned mine or part of a mine ~~which that~~ that may contain
2549 flammable explosive or hazardous gas or ~~which that~~ that is filled with water.

2550 B. Sufficient holes shall be drilled through to accurately determine whether hazardous
2551 quantities of methane, carbon dioxide ~~and, or~~ or other gases or water are present in the
2552 abandoned area. Materials shall be available to plug such holes to prevent an inundation of
2553 hazardous quantities of gases or water if detected.

2554 C. Mining shall not advance into any abandoned area penetrated by ~~boreholes~~ a
2555 borehole drilled in accordance with subsection A until a plan has been submitted and
2556 approved by the Chief. The plan ~~will~~ shall include at a minimum: (i) procedures for testing the
2557 atmosphere at the back of ~~boreholes~~ any borehole drilled into the abandoned area; (ii) the
2558 method of ventilation, the ventilation controls, and the air quantities and velocities in the
2559 affected working section and working place; (iii) procedures for ~~mining-through~~ penetrating
2560 an abandoned area when hazardous quantities of methane, carbon dioxide, or other hazardous
2561 gases cannot be removed; (iv) dewatering procedures to be used if a penetrated area contains
2562 hazardous water accumulation; and (v) ~~the~~ the procedures and precautions to be followed during
2563 ~~mining-through~~ a penetration operation. A copy of the plan shall be made available near the
2564 site of the penetration operation and the operator shall review the plan with all miners
2565 involved in the operation. Failure to comply with the approved plan shall constitute a
2566 violation of this section.

2567 D. Any operator, ~~his~~ of such operator, mine foreman, or miner engaged in
2568 drilling or mining into an inaccessible abandoned ~~areas~~ area shall have upon his person a self-
2569 contained self-rescuer.

2570 E. Whenever a mine or section of a mine advances under any body of water that is
2571 sufficiently large or in close proximity as to constitute a hazard to miners, the operator shall
2572 submit to the Chief a plan meeting the requirements of 30 C.F.R. § 75.1716. The operator
2573 shall obtain approval for the submitted plan from the Chief prior to advancing the mine or any
2574 section of the mine under the body of water.

2575 F. Prior to penetrating any portion of an active mine with a borehole, ventilation hole,
2576 or other hole drilled from the surface or from an overlying or underlying ~~mines~~ mine, or prior
2577 to drilling ~~from~~ into any portion of the same active mine, the operator shall submit a plan to
2578 the Chief addressing: (i) the purpose of the hole, (ii) information about any abandoned ~~mines~~
2579 mine that the hole may penetrate, (iii) procedures for ~~withdrawal~~ withdrawing or limiting the
2580 number of miners from the mine or affected area during penetration, (iv) casing details and
2581 procedures ~~to prevent~~ for preventing water inflow and air transfer from the hole into the active
2582 mine, (v) procedures for grouting or sealing the hole when it is no longer used, and (vi) such
2583 other information as the Chief may require. The drilling of such hole shall not begin until the
2584 plan is approved by the Chief. The provisions of this section shall not apply to a gas ~~wells~~
2585 well, coalbed methane ~~wells~~ well, or vertical ventilation ~~holes~~ hole.

2586 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2587 **throughout the Code any word used in the singular includes the plural and vice versa.**
2588 **Language is updated for modern usage and clarity. The phrase "flammable gas" in**
2589 **subsection A is replaced with "explosive or hazardous gas" for consistency with the**
2590 **reference in subsection B to "hazardous quantities of" certain gases.**

2591 Article ~~2~~ 4.

2592 Roof, ~~Rib~~ Face, and ~~Face~~ Rib Control.

2593 **Drafting note: Existing Article 2, concerning roof, face, and rib control, is**
2594 **retained as proposed Article 4. Technical changes are made to the name.**

2595 § ~~45.1-161.108~~ 45.2-xxx. Roof, ~~ribs~~ face, and ~~faces~~ ribs to be secure.

2596 A. All underground active workings and travel ways shall be secured and controlled to
2597 protect miners from ~~falls~~ a fall of roof, face, or ribs. Loose roof and any loose or overhanging
2598 ribs ~~and faces~~ or face shall be taken down or supported.

2599 B. The mining method ~~of mining followed~~ that the mine operator follows shall not
2600 expose ~~miners~~ any miner to a hazardous ~~conditions~~ condition caused by the excessive ~~widths~~
2601 width of ~~rooms and entries~~ a room or entry, a faulty pillar-recovery ~~methods~~ method, or any
2602 other hazardous mining ~~methods~~ method or working ~~conditions~~ condition.

2603 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
2604 **227, which states that throughout the Code any word used in the singular includes the**
2605 **plural and vice versa. Language is updated for modern usage and clarity.**

2606 § ~~45.1-161.109~~ 45.2-xxx. Roof control plans.

2607 A. Each underground coal mine shall have a roof control plan approved by the Chief.
2608 Each plan shall include (i) a minimum standard for adequately controlling the roof, face, and
2609 ribs; (ii) a description of mining methods used; (iii) a listing and specification of roof and rib
2610 support materials; (iv) instruction for the installation of temporary and permanent roof
2611 supports; (v) a description of any pillar recovery methods; (vi) applicable drawings that
2612 demonstrate the width of ~~openings~~ each opening, each roof support installation ~~sequences~~
2613 sequence, and each pillar recovery ~~sequences~~ sequence; and (vii) any additional requirements
2614 deemed necessary by the Chief. The initial submission of any roof control plan shall include
2615 maps of mine projections, overlying and underlying mine workings, coal contours, and
2616 surface contours. If changes are to be made in the mining system that necessitate any change
2617 in the roof control plan, the plan shall be revised and approved by the Chief prior to
2618 implementing the new mining system.

2619 B. The Chief shall, where he deems necessary, prescribe adequate minimum standards
2620 for systematic support of mine roof, suitable to the roof conditions and mining system of each
2621 mine. Such standards shall be incorporated into an approved roof control plan for the mine.
2622 This section shall not apply to any roof control ~~systems~~ system installed prior to January 27,
2623 1988, so long as the support system continues to effectively control the roof, face, and ribs.

2624 C. Failure to comply with the approved roof control plan for the mine shall constitute
2625 a violation of this section.

2626 D. The approved roof control plan shall be posted conspicuously at the mine and a
2627 copy shall be available at each working section of the mine.

2628 E. The minimum standards and plan shall provide for temporary support at all active
2629 workings, without regard to natural condition.

2630 F. If the minimum standards do not afford adequate protection, such additional
2631 supports ~~as shall be necessary~~ shall be installed as necessary. Such additional supports shall
2632 be described in the plan.

2633 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2634 **throughout the Code any word used in the singular includes the plural and vice versa.**
2635 **Language is updated for modern usage.**

2636 § ~~45.1-161.110~~ 45.2-xxx. Instruction of miners.

2637 The operator, or his agent, shall instruct all miners in the removal and installation of
2638 temporary and permanent roof supports as may be required by the roof control plan.

2639 **Drafting note: Technical changes.**

2640 § ~~45.1-161.111~~ 45.2-xxx. Copies of plan.

2641 The operator, or his agent, shall, upon request, furnish a copy of the roof control plan
2642 to any miner engaged in removing or installing a temporary or permanent roof ~~supports, upon~~
2643 ~~request, a copy of the roof control plan~~ support.

2644 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2645 **throughout the Code any word used in the singular includes the plural and vice versa.**
2646 **Language is reworded for clarity.**

2647 § ~~45.1-161.112~~. ~~Repealed.~~

2648 **Drafting note: Repealed by Acts 1996, c. 774, effective April 6, 1996.**

2649 § ~~45.1-161.114~~ 45.2-xxx. Automated temporary roof support systems.

2650 The Chief shall ~~promulgate~~ adopt regulations requiring automated temporary roof
2651 support systems for the installation of roof bolts.

2652 **Drafting note: The term "promulgate regulations" is changed to "adopt**
2653 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
2654 **and includes the promulgation process.**

2655 § ~~45.1-161.115~~ 45.2-xxx. Supplies of materials for supports.

2656 A. The operator, or his agent, shall provide at or near ~~the~~ each working ~~places~~ place an
2657 ample supply of suitable materials of proper size with which to secure ~~all roofs~~ the roof, ~~ribs~~
2658 face, and ~~faces~~ ribs of such working ~~places~~ place in a safe manner. Suitable supply materials
2659 shall be provided for variations in seam height. If the operator, or his agent, fails to provide
2660 such suitable materials, the mine foreman shall cause ~~the~~ all miners to withdraw from the
2661 mine, or the portion thereof affected, until such ~~material~~ materials or supplies are received.

2662 B. Safety posts, jacks, or temporary crossbars shall be set close to the face before other
2663 operations are begun and as needed thereafter, ~~if miners go~~ any miner goes in by the last
2664 permanent roof support.

2665 C. Unless an automated temporary roof support system is used, safety posts or jacks
2666 shall be used to protect ~~the~~ miners ~~when~~ during removal of roof material ~~is being taken down~~,
2667 installation of crossbars ~~are being installed~~, drilling of roof bolt holes ~~are being drilled~~,
2668 installation of roof bolts ~~are being installed~~, or ~~when~~ performance of any other work ~~is being~~
2669 ~~performed~~ that would reasonably require roof support to protect the miners involved.

2670 D. The operator, or his agent, shall make immediately available for emergency use at
2671 each mine site at least two lifting devices with a combined total of at least 80 tons lifting
2672 capacity. Each individual lifting device shall have 20 tons or greater lifting capacity.

2673 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2674 **throughout the Code any word used in the singular includes the plural and vice versa.**
2675 **Language is updated for clarity and terms are reordered for consistency.**

2676 § ~~45.1-161.116~~ 45.2-xxx. Examination and testing of roof, face, and ribs.

2677 A. The operator, or his agent, shall instruct ~~all miners~~ every miner on how to ~~make~~
2678 ~~visual examinations~~ visually examine and conduct sound and vibration testing of roof, face,
2679 and ribs.

2680 B. ~~Miners~~ Any miner exposed to danger from ~~falls~~ a fall of roof, face, ~~and or~~ ribs shall
2681 visually examine and, if conditions permit, test the roof, face, and ribs by sounding the roof
2682 before starting work or before starting a machine and as ~~frequently~~ needed thereafter ~~as may~~
2683 ~~be necessary~~ to ensure safety. ~~When~~ If hazardous conditions are found, miners discovering
2684 ~~them~~ such conditions shall either (i) correct ~~such~~ the conditions immediately by taking down
2685 the loose material, ~~by~~ installing proper timbering, or ~~installation of~~ installing proper roof
2686 support before work is continued or any other work is done, or ~~shall~~ (ii) cause all miners to
2687 vacate the place.

2688 C. At least once each shift, or more often if necessary, the mine foreman or other
2689 certified person shall examine and test the roof, face, and ribs of ~~all~~ each active working
2690 ~~sections~~ section where coal is being produced while one or more miners are working ~~therein~~
2691 in such section. Any place in which a hazardous condition is found by the mine foreman shall
2692 be made safe in his presence or under his direction, or ~~the~~ all miners shall be withdrawn from
2693 such place. Such hazardous ~~conditions~~ condition and corrective actions taken shall be
2694 recorded in the on-shift record book at the mine.

2695 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2696 **throughout the Code any word used in the singular includes the plural and vice versa.**
2697 **Language is updated for modern usage and clarity.**

2698 § ~~45.1-161.117~~ 45.2-xxx. Mapping of roof falls.

2699 ~~Unplanned~~ Any unplanned roof ~~falls~~ fall that ~~are~~ is required to be reported in
2700 accordance with § ~~45.1-161.78~~ 45.2-xxx shall be marked on a map maintained at the mine to
2701 indicate the specific location of the fall.

2702 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2703 **throughout the Code any word used in the singular includes the plural and vice versa.**

2704 § ~~45.1-161.118~~ 45.2-xxx. Unsafe conditions.

2705 A. No person shall work or travel under unsupported roof except to install temporary
2706 supports in accordance with the approved roof control plan. ~~Areas~~ Any area in by the breaker
2707 line where second mining has been or is being conducted shall be considered unsupported.

2708 B. If roof, face, or rib conditions are found to be unsafe, no person shall start any other
2709 work in the area where such conditions exist until the conditions have been corrected by
2710 taking down loose material or securely supporting the roof, face, or ribs pursuant to
2711 subsection B of § 45.2-xxx [45.1-161.116].

2712 C. A bar of proper length shall be used to pull down any loose material discovered.

2713 **Drafting note: A technical change is made pursuant to § 1-227, which states that**
2714 **throughout the Code any word used in the singular includes the plural and vice versa.**
2715 **Language is updated for clarity and a cross-reference is added.**

2716 § ~~45.1-161.119~~ 45.2-xxx. Removal of supports.

2717 A. No person shall deliberately remove any support in an active ~~areas~~ area unless
2718 equivalent protection is provided.

2719 B. Any person who accidentally knocks out or dislodges a support shall promptly
2720 replace the support.

2721 **Drafting note: A technical change is made pursuant to § 1-227, which states that**
2722 **throughout the Code any word used in the singular includes the plural and vice versa.**

2723 ~~§ 45.1-161.120. Repealed.~~

2724 **Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

2725 Article 5.

2726 Explosives and Blasting.

2727 **Drafting note: Existing Article 5, concerning explosives and blasting, is retained**
2728 **as proposed Article 5.**

2729 § ~~45.1-161.126~~ 45.2-xxx. Surface storage of explosives and detonators.

2730 A. ~~Separate~~ Two or more surface magazines shall be provided for the storage of
2731 explosives and the separate storage of detonators.

2732 B. ~~Surface magazines~~ Every surface magazine for storing and distributing explosives
2733 in ~~amounts~~ an amount exceeding 150 pounds shall be:

2734 1. Reasonably ~~bulletproof~~ bullet-resistant and constructed of incombustible material or
2735 covered with ~~fire-resistive~~ fire-resistant material. The ~~roofs~~ roof of ~~magazines so~~ a magazine

2736 that is located ~~that in such a way as to make~~ it ~~is~~ impossible to fire ~~bullets~~ a bullet directly
2737 through the roof from the ground need not be ~~bulletproof, but where~~ bullet-resistant. Where it
2738 is possible to fire ~~bullets~~ a bullet directly through ~~them, roofs~~ a roof from the ground, such
2739 roof shall be made bullet-resistant by material construction, ~~or~~ by the use of a ceiling that
2740 forms a tray containing not less than a four-inch thickness of sand, or by ~~other methods~~
2741 another method;

2742 2. Provided with doors that are constructed of ~~three-eighth inch~~ three-eighth-inch steel
2743 plate. Such doors shall be lined with a two-inch thickness of wood, or the equivalent;

2744 3. Provided with dry floors made of wood or other nonsparking material and have no
2745 metal exposed inside the magazine;

2746 4. Provided with suitable warning signs ~~so~~ located so that a bullet passing directly
2747 through the face of a sign will not strike the magazine;

2748 5. Provided with properly screened ventilators;

2749 6. Equipped with no openings except for entrance and ventilation openings;

2750 7. Kept locked securely when unattended; and

2751 8. Electrically bonded and grounded if constructed of metal.

2752 C. ~~Surface magazines~~ A surface magazine for storing detonators need not be
2753 ~~bulletproof~~ bullet-resistant, but ~~they it~~ shall ~~conform to~~ comply with the other provisions of
2754 subsection B regarding the storage of explosives.

2755 D. Explosives ~~in amounts~~ weighing a total of no more than 150 pounds ~~or less~~, or
2756 ~~5,000~~ detonators numbering 5,000 or ~~less~~ fewer, shall be stored (i) in accordance with
2757 ~~preceding the~~ standards set forth in subsection A, B, or C or (ii) in a separate locked box-type
2758 ~~magazines~~ magazine. ~~Box-type magazines~~ A box-type magazine may also be used as a
2759 ~~distributing~~ magazines magazine when ~~quantities do~~ the weight of the explosives or the
2760 number of detonators does not exceed ~~those mentioned~~. ~~Box-type magazines~~ the limits set
2761 forth in this subsection. Every box-type magazine shall be strongly constructed ~~strongly~~ of
2762 two-inch hardwood or the equivalent. ~~Metal magazines~~ Every metal magazine shall be lined
2763 with nonsparking material. No magazine shall be placed (a) in a building containing oil,

2764 grease, gasoline, wastepaper, or other highly flammable material; ~~nor shall a magazine be~~
2765 ~~placed~~ or (b) within 20 feet of a stove, furnace, open fire, or flame.

2766 E. ~~Magazines~~ No magazine shall be ~~located not~~ placed less than 300 feet from any
2767 mine opening. However, ~~in the event that~~ if a magazine cannot be practicably located at such
2768 a distance, ~~a magazine~~ it may be located less than 300 feet from ~~any a~~ mine opening, if it is
2769 sufficiently barricaded and is approved by the Chief. Unless approved by the Chief,
2770 ~~magazines~~ no magazine shall ~~not~~ be located closer to an occupied ~~buildings~~ building, public
2771 ~~roads~~ road, or passenger ~~railways~~ railway than ~~allowed~~ the distance recommended in the
2772 "American Table of Distances for Storage of Explosive Materials:" published by the Institute
2773 of Makers of Explosives.

2774 F. The supply kept in a distribution ~~magazines~~ magazine shall be limited to
2775 approximately a 48-hour supply, and ~~such~~ supplies of explosives and detonators may be
2776 distributed from the same magazine, if they are separated by ~~at least~~ a four-inch substantially
2777 fastened hardwood partition at least four inches thick or the equivalent ~~barrier~~.

2778 G. The area surrounding ~~magazines for not less than 25 feet in all directions~~ any
2779 magazine shall be kept free of rubbish, dry grass, or other materials of a combustible nature
2780 for at least 25 feet in every direction.

2781 H. If ~~the~~ an explosives magazine is illuminated electrically, each lamp shall be vapor-
2782 proof ~~lamps shall be~~ and installed and wired so as to ~~present minimum~~ minimize any fire ~~and~~
2783 or contact ~~hazards~~ hazard.

2784 I. Only nonmetallic tools shall be used for opening any wooden explosives ~~containers~~
2785 container. Extraneous materials shall not be stored with explosives or detonators in an
2786 explosives magazine.

2787 J. Smoking or carrying smokers' articles or open flames is prohibited in or near any
2788 magazine.

2789 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2790 **throughout the Code any word used in the singular includes the plural and vice versa.**
2791 **Language is updated for modern usage and "bulletproof" is replaced with "bullet-**

2792 resistant" three times in recognition that bullet-resistant is the correct descriptive term.
2793 Proposed subsection J is added to provide applicable law and make provisions in this
2794 section parallel to proposed § 45.2-xxx [§ 45.1-161.284] in Chapter 9 [existing Chapter
2795 14.4].

2796 § ~~45.1-161.127~~ 45.2-xxx. Underground transportation of explosives and detonators.

2797 A. ~~Explosives~~ Any explosives or detonators carried anywhere underground by any
2798 ~~person~~ miner shall be in individual containers. Such containers shall be constructed
2799 substantially of nonconductive material, maintained in good condition, and kept closed.

2800 B. ~~Explosives~~ Any explosives or detonators transported underground in ~~cars~~ a car that
2801 is moved by means of a locomotive or rope, or in a shuttle ~~cars~~ car, shall be in a substantially
2802 covered ~~cars~~ car or in a special substantially covered ~~containers~~ container used specifically for
2803 transporting explosives or detonators ~~or explosives~~, and only under the following conditions:

2804 1. The ~~bodies~~ body and ~~covers~~ cover of each such ~~cars~~ car and ~~containers~~ each such
2805 container shall be constructed or lined with nonconductive material;

2806 2. If explosives and detonators are hauled in the same ~~explosive~~ special explosives car
2807 or in the same special container, they shall be separated by ~~at least~~ a four-inch substantially
2808 fastened hardwood partition at least four inches thick or the equivalent barrier;

2809 3. ~~Explosives~~ No explosives, detonators, or other blasting devices shall ~~not~~ be
2810 transported on the same trip with ~~miners~~ any miner;

2811 4. ~~When~~ If explosives or detonators are transported in a special ~~cars~~ explosives car or
2812 ~~containers in cars~~ a container in a car, they shall be hauled in ~~special trips~~ a trip specifically
2813 for this purpose and not connected to any other trip; however, this provision shall not prohibit
2814 the use of such additional cars as needed to lower a rope trip; or to haul supplies, including
2815 timbers. ~~Materials~~ No materials so transported shall ~~not~~ project above the top of the car. In no
2816 case shall flammable materials such as oil or grease be hauled on the same trip with
2817 explosives; and

2818 5. ~~Explosives~~ No explosives or detonators shall ~~not~~ be hauled into or out of a mine
2819 within five minutes preceding or following a ~~man-trip~~ mantrip or any other trip. If traveling

2820 against the air current, the ~~man-trip~~ mantrip shall precede the explosives trip; if traveling with
2821 the air current, the ~~man-trip~~ mantrip shall follow the explosives trip.

2822 C. In a low coal ~~seams~~ seam where it is impractical to comply with the provisions of
2823 subsection B, explosives may be transported in the original and unopened case, or in suitable
2824 individual containers, to the underground distribution magazine.

2825 D. Explosives and detonators shall be transported underground by belt only under the
2826 following conditions:

2827 1. ~~They~~ Each shall be transported in the original and unopened case, in a special
2828 closed ~~eases~~ case constructed of nonconductive material, or in a suitable individual ~~containers~~
2829 container;

2830 2. Clearance requirements shall be the same as those for transporting miners on belts;

2831 3. Suitable loading and unloading stations with stop controls shall be provided; and

2832 4. ~~Stop controls shall be provided at loading and unloading points, and an~~ An
2833 authorized person shall supervise the loading and unloading of explosives ~~and or~~ or detonators.

2834 E. ~~Neither~~ No explosives ~~nor or~~ or detonators shall be transported on a flight or shaking
2835 ~~conveyors, scrapers~~ conveyor, scraper, mechanical loading ~~machines, locomotives~~ machine,
2836 locomotive, cutting ~~machines~~ machine, or drill ~~trucks, truck~~ or on any self-propelled mobile
2837 equipment; however, this provision shall not prohibit the transportation of explosives or
2838 detonators in special closed containers in a shuttle ~~cars~~ car or in equipment designed
2839 ~~especially~~ specifically to transport such explosives or detonators.

2840 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2841 **throughout the Code any word used in the singular includes the plural and vice versa.**
2842 **Language is updated for modern usage and clarity. Subdivisions D 3 and 4 are**
2843 **reorganized to group provisions relating to loading and unloading stations together.**

2844 § ~~45.1-161.128~~ 45.2-xxx. Underground storage of explosives and detonators.

2845 A. ~~When supplies~~ If a supply of explosives ~~and or~~ or detonators for use in one or more
2846 sections ~~are is~~ stored underground, ~~they it~~ shall be kept in a section ~~boxes~~ box or ~~magazines~~
2847 magazine of substantial construction with no metal exposed on the inside. Such ~~boxes~~ box or

2848 ~~magazines~~ magazine shall be located at least ~~twenty-five~~ 25 feet from ~~roadways and any~~
2849 roadway or power ~~wires,~~ wire and in a reasonably dry, well rock-dusted location protected
2850 from falls of roof. In a pitching ~~beds~~ bed, where it is not possible to comply with the location
2851 requirement, such ~~boxes~~ box shall be placed in ~~niches~~ a niche cut into the solid coal or rock.

2852 B. ~~When~~ If explosives ~~or~~ and detonators are both stored in the section, they shall be
2853 kept in separate boxes or magazines not less than ~~twelve~~ 12 feet apart if feasible; if kept in the
2854 same box or magazine, they shall be separated by ~~at least~~ a ~~four-inch~~ substantially fastened
2855 hardwood partition at least four inches thick or the equivalent. Not more than a ~~forty-eight-~~
2856 ~~hour~~ 48-hour supply of explosives or detonators shall be stored underground in such ~~boxes~~
2857 box or ~~magazines~~ magazine.

2858 C. ~~Explosives~~ If explosives and detonators, are kept near the face for the use of
2859 workmen, they shall be kept in separate individual closed containers, in niches in the ~~rib~~ ribs,
2860 not less than ~~twelve~~ 12 feet apart, and at least ~~fifty~~ 50 feet from the working place and out of
2861 the line of blast. ~~Such containers~~ Each such container shall be constructed of substantial
2862 material and maintained electrically nonconductive. Where it is physically impracticable to
2863 comply with such distance requirements, the explosives and detonator containers shall be
2864 stored in the safest available ~~plae~~ places not less than ~~fifteen~~ 15 feet from any pipe, rail,
2865 conveyor, haulage road, or power line, not less than ~~twelve~~ 12 feet apart, and at least ~~fifty~~ 50
2866 feet from the working face and out of the line of blast.

2867 D. Explosives and detonators shall be kept in their containers pursuant to subsection C
2868 until immediately before use at the working faces.

2869 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2870 **throughout the Code any word used in the singular includes the plural and vice versa.**
2871 **Language is updated for modern usage and clarity.**

2872 § ~~45.1-161.129~~ 45.2-xxx. Blasting practices; penalty.

2873 A. All explosives shall be of the permissible type except where addressed in the plan
2874 for shaft and slope development required by subsection B of § ~~45.1-161.250 B~~ 45.2-xxx.

2875 B. All explosives shall be used as follows:

- 2876 1. Explosives shall be fired only with electric detonators of proper strength;
- 2877 2. Explosives shall be fired with permissible shot-firing units, unless firing is done
- 2878 from the surface when all persons are out of the mine, or in accordance with a plan approved
- 2879 by the Chief;
- 2880 3. ~~Boreholes~~ Where the coal is cut, no borehole in coal shall ~~not~~ be drilled beyond the
- 2881 limits of the cut ~~where the coal is cut nor~~ or into the roof or floor;
- 2882 4. ~~Boreholes~~ Every borehole shall be cleaned; and ~~shall be~~ checked to ~~see~~ ensure that
- 2883 ~~they are~~ it is placed properly and ~~are~~ is of the correct depth in relation to the cut; before being
- 2884 charged;
- 2885 5. ~~All~~ Every blasting ~~charges~~ charge in coal shall have a burden of at least ~~eighteen~~ 18
- 2886 inches in ~~all directions~~ every direction if the height of the coal permits;
- 2887 6. ~~Boreholes~~ Every borehole shall be stemmed with at least ~~twenty-four~~ 24 inches of
- 2888 incombustible material, or at least one-half of the length of the hole shall be stemmed if the
- 2889 hole is less than four feet in depth. The Chief may approve the use of other stemming devices;
- 2890 7. ~~Examinations~~ An examination for gas shall be made immediately before firing each
- 2891 shot or group of ~~multiple~~ shots; and after blasting is completed;
- 2892 8. ~~Shots~~ No shot shall ~~not~~ be fired in any place where a methane level of one percent
- 2893 or greater can be detected with a permissible methane detector as directed by the Chief;
- 2894 9. Without approval, ~~charges exceeding~~ no charge of greater than one and one-half
- 2895 pounds, ~~but not exceeding three pounds~~, shall be used ~~only if~~ unless (i) ~~boreholes are~~ each
- 2896 borehole is six feet or more in depth; (ii) the explosives are charged in a continuous train, with
- 2897 no cartridges deliberately deformed or crushed; (iii) all cartridges are in contact with each
- 2898 other, with the end cartridges touching the back of the hole and the stemming, respectively;
- 2899 and (iv) ~~permissible~~ explosives permissible pursuant to this article are used. No charge
- 2900 exceeding three pounds shall be used; however, the three-pound limit shall not apply to solid
- 2901 rock work;
- 2902 10. Any solid shooting shall be done in compliance with conditions prescribed by the
- 2903 Chief;

- 2904 11. ~~Shots~~ Any shot shall be fired by a certified underground shot firer;
- 2905 12. ~~Boreholes~~ No borehole shall ~~not~~ be charged while any other work is being done at
- 2906 the face, and ~~the any shot or shots~~ shall be fired before any other work is done in the zone of
- 2907 danger from blasting except that which is necessary to safeguard the miners;
- 2908 13. Only nonmetallic tamping bars, including a nonmetallic tamping bar with a
- 2909 nonsparking metallic scraper on one end, shall be used for charging and tamping boreholes;
- 2910 14. The leg wires of every electric ~~detonators~~ detonator shall be kept shunted until
- 2911 ready to connect to the firing cable;
- 2912 15. The roof and faces of each working ~~places~~ place shall be tested before and after
- 2913 firing each shot or group of ~~multiple~~ shots;
- 2914 16. Ample warning shall be given before ~~shots are~~ any shot is fired, and care shall be
- 2915 taken to ascertain that all miners are in the clear;
- 2916 17. ~~All miners~~ Every miner shall be removed to a distance of at least 100 feet from the
- 2917 working place and ~~the any~~ immediately adjoining working place ~~or places to a distance of at~~
- 2918 ~~least 100 feet~~ and shall be accounted for before ~~shots are~~ any shot is fired;
- 2919 18. ~~Mixed~~ No mixed types or brands of explosives shall ~~not~~ be charged or fired in any
- 2920 borehole;
- 2921 19. ~~Adobe (mudcap)~~ No adobe, mudcap, or other open, unconfined ~~shots~~ shot shall ~~not~~
- 2922 be fired in any mine except ~~those types~~ a type approved by the federal Mine Safety and Health
- 2923 Administration and the Chief;
- 2924 20. ~~Power wires and cables~~ Any power wire or cable that could contact ~~blasting cables~~
- 2925 any blasting cable or leg ~~wires~~ wire shall be de-energized during charging and firing;
- 2926 21. Firing ~~shots~~ a shot from a properly installed and protected blasting circuit may be
- 2927 permitted by the Chief;
- 2928 22. No miner shall return, or shall be allowed to return, to the working place after the
- 2929 firing of any shot ~~or shots~~ until the smoke has reasonably cleared away;

2930 23. Before ~~returning~~ any miner returns to work and ~~beginning~~ begins to load coal,
2931 slate, or refuse, ~~a~~ such miner shall make a careful examination of the condition of the roof and
2932 do what is necessary to make the working place safe; and

2933 24. An examination for fire shall be made of the working area after any blasting.

2934 C. It ~~shall be~~ is unlawful for an operator, his agent, or a mine foreman to cause or
2935 permit any solid shooting to be done without first ~~having obtained~~ obtaining a written permit
2936 from the Chief. It ~~shall be~~ is unlawful for any miner to shoot coal from the solid without first
2937 obtaining permission to do so from the operator, his agent, or a mine foreman. A violation of
2938 this subsection is a Class 1 misdemeanor.

2939 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2940 **throughout the Code any word used in the singular includes the plural and vice versa.**
2941 **Language is updated for modern usage and clarity.**

2942 § ~~45.1-161.130~~ 45.2-xxx. Blasting cables.

2943 ~~Blasting cables~~ Each blasting cable shall be:

2944 1. Well insulated and as long as ~~may be~~ necessary to ~~permit~~ allow the shot firer to ~~get~~
2945 ~~in~~ move to a safe place around a corner;

2946 2. Short-circuited at the battery end until it is ready to attach to the blasting unit;

2947 3. Staggered as to length, or ~~the~~ have its ends kept well separated when attached to the
2948 detonator leg wires; and

2949 4. Kept clear of power wires and all other possible sources of active or stray electric
2950 currents.

2951 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2952 **throughout the Code any word used in the singular includes the plural and vice versa.**
2953 **Language is updated for clarity.**

2954 § ~~45.1-161.131~~ 45.2-xxx. Misfires.

2955 A. Where ~~misfires occur~~ a misfire occurs with an electric ~~detonators~~ detonator, a
2956 waiting period of at least ~~fifteen~~ 15 minutes ~~shall elapse~~ is required before ~~a~~ any miner ~~shall~~
2957 ~~be~~ is allowed to return to the shot area. After such failure, the blasting cable shall be

2958 disconnected from the source of power and the battery ends short-circuited before electric
2959 connections are examined.

2960 B. Explosives shall be removed by (i) firing a separate charge at least two feet away
2961 from, and parallel to, the misfired charge ~~or by~~; (ii) washing the stemming and the charge
2962 from the borehole with water; ~~or by~~ (iii) inserting and firing a new primer after the stemming
2963 has been washed out.

2964 C. A ~~very~~ careful search of the working place; and, if necessary, of the coal after it
2965 reaches the tippie shall be ~~conducted after the coal reaches the tippie~~ made after blasting a
2966 misfired hole to recover any undetonated explosive.

2967 D. The handling of a misfired shot shall ~~be directly supervised by~~ occur under the
2968 direct supervision of the mine foreman or a certified person designated by him.

2969 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
2970 **227, which states that throughout the Code any word used in the singular includes the**
2971 **plural and vice versa. Language is updated for modern usage and clarity. Changes are**
2972 **made to conform the section to existing § 45.1-161.285.**

2973 § ~~45.1-161.132~~ 45.2-xxx. Explosives and blasting practices in shaft and slope
2974 operations.

2975 A. ~~Blasting areas~~ Every blasting area in a shaft or slope ~~operations~~ operation shall be
2976 covered with mats or materials when the excavations are too shallow to retain the blasted
2977 material.

2978 B. If explosives are in the shaft or slope when an electrical storm approaches, ~~all~~
2979 ~~miners~~ every miner shall be removed from ~~such the~~ working ~~places~~ place until the storm has
2980 passed.

2981 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
2982 **throughout the Code any word used in the singular includes the plural and vice versa.**

2983 Article ~~8~~ 6.

2984 Mine Openings and Escapeways.

2985 **Drafting note: Existing Article 8, concerning mine openings and escapeways, is**
2986 **retained as proposed Article 6.**

2987 § ~~45.1-161.162~~ 45.2-xxx. Mine openings.

2988 A. Except as provided in § ~~45.1-161.164~~ 45.2-xxx, there shall be at least two travel
2989 ways, entries, or openings to the surface from each section of a mine worked. ~~All~~ Each
2990 longwall ~~panels~~ panel shall be developed with at least three entries; however, if new
2991 technology becomes available pursuant to which two-entry systems may be safely developed,
2992 such technology may be used, with the approval of the Chief.

2993 B. One of the required travel ways may be the haulage road.

2994 C. The first opening shall not be made through an adjoining mine. The second opening
2995 may be made through an adjoining mine.

2996 D. One of the required travel ways shall be designated as the primary escapeway and
2997 shall be in an intake ~~air~~ airway.

2998 E. ~~After July 1, 1999, new~~ Any surface ~~structures~~ structure where miners congregate
2999 or where the mine map or other official records are kept at the mine shall be offset ~~not less~~
3000 ~~than fifteen~~ at least 15 feet from the nearest side of any mine opening, or otherwise located to
3001 be out of the ~~direct line~~ zone of ~~possible forces coming out of the mine should~~ danger if an
3002 explosion ~~occurs~~ occurs, unless otherwise approved by the Chief.

3003 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3004 **throughout the Code any word used in the singular includes the plural and vice versa.**
3005 **Language is updated for modern usage and obsolete provisions are removed.**

3006 § ~~45.1-161.163~~ 45.2-xxx. Separation of openings.

3007 A. In a drift or slope ~~mines~~ mine, openings shall be separated by ~~not less than~~ at least
3008 50 feet of natural strata, unless specifically approved in the roof control plan. All connections
3009 between openings not used for the coursing of air, travel, or haulage shall be closed with
3010 stoppings of fireproof material.

3011 B. In a shaft ~~mines~~ mine, openings shall be separated by ~~not less than~~ at least 200 feet
3012 of natural strata.

3013 Drafting note: Technical changes are made pursuant to § 1-227, which states that
3014 throughout the Code any word used in the singular includes the plural and vice versa.
3015 Language is updated for modern usage.

3016 § ~~45.1-161.164~~ 45.2-xxx. Number of miners in openings.

3017 Until the two travel ways are made as required by § ~~45.1-161.162~~ 45.2-xxx, ~~not no~~
3018 more than ~~twenty~~ 20 miners shall work underground in the mine at one time. No additional
3019 development shall be permitted until the connection is made to the second opening. In ~~mines~~
3020 ~~where~~ a mine in which final pillar removal operations necessitate closing the second opening,
3021 ~~not no~~ more than ~~twenty~~ 20 miners shall be permitted to work in the mine.

3022 Drafting note: Technical changes are made pursuant to § 1-227, which states that
3023 throughout the Code any word used in the singular includes the plural and vice versa.
3024 Other technical changes are made and language is updated for modern usage.

3025 § ~~45.1-161.165~~ 45.2-xxx. Maintenance of mine openings.

3026 ~~Mine openings~~ Every mine opening that ~~are~~ is used for entering and leaving the mine
3027 and every other required ~~travelways~~ travel way shall be kept in good condition and shall at all
3028 times be maintained in a safe condition.

3029 Drafting note: Technical changes are made pursuant to § 1-227, which states that
3030 throughout the Code any word used in the singular includes the plural and vice versa.
3031 Other technical changes are made.

3032 § ~~45.1-161.166~~ 45.2-xxx. Signs, life lines, and equipment.

3033 A. Direction signs shall be posted conspicuously at all points where ~~the~~ a travel way to
3034 the mine opening, escapeway, or escapement shaft is intercepted by ~~other~~ another travel ~~ways~~
3035 way. The signs shall indicate the direction of the place of exit, ~~manways~~, and ~~escapeways~~ any
3036 manway or escapeway.

3037 B. Continuous life lines shall be installed and maintained in accordance with the
3038 approved emergency response plan pursuant to subsection A of § ~~45.1-161.202~~ 45.2-xxx.

3039 C. ~~Escapeways~~ Every escapeway shall be equipped with all necessary stairways,
3040 ladders, cleated walkways, or other equipment approved by the Chief. All equipment shall be

3041 installed in such a manner that ~~persons~~ a person using it in ~~emergencies~~ an emergency may do
3042 so quickly and without undue hazard.

3043 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3044 **throughout the Code any word used in the singular includes the plural and vice versa.**

3045 § ~~45.1-161.167~~ 45.2-xxx. Examination of escapeways.

3046 The mine foreman shall examine ~~all escapeways~~ every escapeway for hazardous
3047 conditions at least ~~once per week~~ weekly. The mine foreman shall mark his initials and the
3048 date at ~~the places~~ each place examined, and if a hazardous ~~conditions are~~ condition is found
3049 ~~they, it~~ shall be reported promptly. A record of these examinations and tests shall be kept at
3050 the mine.

3051 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3052 **throughout the Code any word used in the singular includes the plural and vice versa.**

3053 **Language is updated for modern usage.**

3054 § ~~45.1-161.168~~ 45.2-xxx. Longwall escape routes and plan.

3055 A. The operator of any mine ~~which~~ that uses longwalls as a method of mining shall
3056 maintain an accessible travel route off the tailgate end of the longwall working face. ~~He~~ The
3057 operator shall familiarize all miners working on the longwall section with the procedures to
3058 follow for escape from the section; and, when the travel route is impassible, the operator shall
3059 ~~also~~ inform ~~these~~ such miners ~~at any time during which the travel route is impassible~~ of that
3060 fact.

3061 B. The operator shall develop a plan for use of longwalls if the travel route becomes
3062 impassable. The plan shall address (i) the notification ~~of~~ to miners of the fact that the travel
3063 way is blocked and of the method and timetable for reestablishment of the travel way, (ii) the
3064 re-instruction of miners regarding escapeways and escape procedures in the event of an
3065 emergency, (iii) the re-instruction of miners on the availability and use of self-contained ~~self-~~
3066 ~~rescue devices~~ self-rescuers, (iv) the monitoring and evaluation of the air entering the
3067 longwall section, (v) the location and effectiveness of the two-way communication systems,
3068 and (vi) a means of transportation from the longwall section to the main line. The plan

3069 provisions shall remain in effect until a travel way is reestablished on the tailgate side of a
3070 longwall section. Such an operation shall include provisions for such protective devices as fire
3071 extinguishers and respirators for miners working on the longwall section.

3072 **Drafting note: Technical changes are made and language is updated for modern**
3073 **usage.**

3074 § ~~45.1-161.169~~ 45.2-xxx. Fire protection.

3075 A. ~~Shafts~~ Every shaft, and ~~partitions~~ every partition therein, shall be as nearly
3076 fireproof as is practicable.

3077 B. Where there is danger of fire entering the mine, ~~openings~~ every opening shall have
3078 adequate protection against a surface ~~fires~~ fire or a hazardous ~~volumes~~ volume of smoke
3079 entering the mine.

3080 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3081 **throughout the Code any word used in the singular includes the plural and vice versa.**
3082 **Language is updated for modern usage.**

3083 § ~~45.1-161.170~~ 45.2-xxx. Unused openings.

3084 ~~All~~ Every unused ~~and or~~ abandoned surface ~~openings~~ opening shall be effectively
3085 closed or fenced against unauthorized entrance.

3086 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3087 **throughout the Code any word used in the singular includes the plural and vice versa.**

3088 Article 7.

3089 Hoisting.

3090 **Drafting note: Existing Article 7, concerning hoisting, is retained as proposed**
3091 **Article 7.**

3092 § ~~45.1-161.153~~ 45.2-xxx. Hoisting equipment.

3093 A. ~~All hoists~~ Every hoist used for handling ~~men~~ miners shall be equipped with
3094 overspeed, overwind, and automatic stop controls.

3095 B. ~~All~~ Every suspended work ~~decks and platforms~~ deck or platform shall (i) ~~shall~~
3096 operate automatically, (ii) ~~shall~~ be equipped with guardrails capable of protecting ~~men~~ miners

3097 and materials from accidental overturning, and (iii) ~~shall~~ be equipped with safety belts and
3098 such other protective devices as the Chief shall require by regulation.

3099 C. ~~Any~~ Every platform or work deck that is used for transporting miners or materials
3100 shall be equipped with leveling indicators, and such conveyance shall be maintained and
3101 operated in a reasonably level position at all times.

3102 D. ~~Slope, Every~~ shaft, slope, or surface incline ~~hoists~~ hoist shall be equipped with
3103 brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point
3104 in the shaft or slope or on the surface incline.

3105 E. An accurate and reliable indicator showing the position of the cage or trip shall be
3106 placed so as to be in clear view of the hoisting engineer, unless the position of the ~~car~~ cage or
3107 trip is clearly visible at all times to the hoisting engineer or other person operating the
3108 equipment ~~at all times~~.

3109 F. Any conveyance that is used to haul miners or materials within a shaft or slope shall
3110 be (i) ~~shall be~~ designed to prevent materials from falling back into the shaft or slope and (ii)
3111 ~~shall be~~ equipped with a retaining edge of ~~not less than~~ at least six inches to prevent objects
3112 from falling into the shaft or slope.

3113 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3114 **throughout the Code any word used in the singular includes the plural and vice versa.**
3115 **Language is updated for modern usage and clarity, including the use of "miners"**
3116 **instead of "men" consistently throughout the section. The word "car" in subsection E,**
3117 **apparently an error, is corrected to "cage."**

3118 § ~~45.1-161.154~~ 45.2-xxx. Hoisting ropes.

3119 A. ~~Hoisting ropes~~ The hoisting rope on ~~all cages~~ any cage or ~~trips~~ trip shall be
3120 adequate in size to handle the load and have a proper factor of safety as described in clauses
3121 (i) and (ii). ~~Ropes~~ A rope (i) that is used to hoist or lower coal and other materials shall have a
3122 factor of safety of ~~not less than~~ at least five to one; ~~ropes~~ or (ii) that is used to hoist or lower
3123 miners shall have a factor of safety of ~~not less than~~ at least 10 to one.

3124 B. ~~The~~ Each hoisting rope shall have at least three full turns remaining on the drum
3125 when extended to its maximum working length. The rope shall make at least one full turn on
3126 the drum shaft, or around the spoke of the drum, in the case of a free drum, and be fastened
3127 securely by means of clamps.

3128 C. ~~The~~ Each hoisting rope shall be fastened to its load by (i) a spelter-filled socket or
3129 by (ii) a thimble and an adequate number of clamps that are properly spaced and installed.

3130 D. Any cage, ~~man-ear~~ mancar, or trip used for hoisting or lowering ~~men~~ miners with a
3131 single rope shall be provided with two bridle chains or wire ropes connected securely to the
3132 rope at least three feet above the socket or thimble and clamps and to the crosspiece of the
3133 cage or to the ~~man-ear~~ mancar or trip. Multiple hoisting ropes installed ~~according~~ pursuant to
3134 subsection C may be used in lieu of two bridle chains.

3135 E. ~~When~~ If equipment or supplies are being hoisted or lowered in the slope, safety
3136 chains or wire ropes shall be provided and connected securely to the hoist rope. In addition,
3137 visible or audible warning devices shall be installed in the slope where they may be seen or
3138 heard by ~~persons~~ any miner approaching the slope track entry from any access.

3139 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3140 **throughout the Code any word used in the singular includes the plural and vice versa.**
3141 **Language is updated for modern usage and clarity.**

3142 § ~~45.1-161.155~~ 45.2-xxx. Hoisting cages.

3143 A. ~~Cages~~ Any cage used for hoisting miners shall be of substantial construction and
3144 ~~shall~~ have (i) adequate steel bonnets, with enclosed sides; (ii) gates, safety chains, or bars
3145 across the ends of the cage when ~~men~~ miners are being hoisted or lowered; and (iii) sufficient
3146 handholds or chains for all ~~men~~ miners on the cage to maintain their balance. A locking
3147 device to prevent tilting of the cage shall be used on all self-dumping cages when transporting
3148 miners ~~are transported thereon~~.

3149 B. The floor of ~~the~~ each cage shall be constructed so that it ~~will be~~ is (i) adequate to
3150 carry the load and ~~so that it will be~~ (ii) impossible for a miner's foot or body to enter any
3151 opening in the bottom of the cage.

3152 C. ~~Cages~~ Each cage used for hoisting miners shall be equipped with safety catches that
3153 act quickly and effectively in case of an emergency. The provisions of this subsection shall
3154 not apply to ~~capsules~~ a capsule or ~~buckets~~ bucket that is used for emergency escape or ~~used~~
3155 during shaft or slope ~~or shaft~~ sinking.

3156 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3157 **throughout the Code any word used in the singular includes the plural and vice versa.**
3158 **Language is updated for modern usage and clarity.**

3159 § ~~45.1-161.156~~ 45.2-xxx. ~~Slope and shaft~~ Shaft and slope conditions.

3160 A. ~~All shafts~~ Every shaft shall be equipped with safety gates at the top and at each
3161 landing. Safety gates shall be kept closed except when the cage is being loaded or unloaded.

3162 ~~D. B.~~ At the bottom of each hoisting shaft and at each intermediate ~~landings~~ landing, a
3163 runaround shall be provided for safe passage from one side of the shaft to the other. This
3164 passageway shall be ~~not less than~~ at least five feet in height and three feet in width.

3165 ~~E. C.~~ Ice shall not be permitted to accumulate excessively in any shaft where miners
3166 are hoisted or lowered.

3167 ~~B. D.~~ Positive-acting stopblocks or derails shall be installed near the top and at
3168 intermediate landings of slopes and surface inclines and at the approaches to all shaft
3169 landings.

3170 ~~C. E.~~ Positive-acting stopblocks or derails shall be installed on the haulage track in the
3171 slope near the top of the slope. The stopblocks or derails shall be in a position to hold or stop
3172 any load, ~~including heavy mining equipment~~, to be lowered into the mine, including heavy
3173 mining equipment, until such time as the equipment is to be lowered into the mine by the
3174 hoist.

3175 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3176 **throughout the Code any word used in the singular includes the plural and vice versa.**
3177 **Language is updated for modern usage and clarity. The section is reorganized by**
3178 **moving existing subsections B and C, which deal with slopes or surface inclines, to the**
3179 **end of the section, after shafts.**

3180 § ~~45.1-161.157~~ 45.2-xxx. Signaling; signal code.

3181 A. Two independent means of signaling shall be provided between the top, bottom,
3182 and ~~all every~~ intermediate ~~landings~~ landing of ~~shafts, slopes, and~~ each shaft, slope, or surface
3183 ~~inelines~~ incline and the hoisting station. At least one of these means of signaling shall be
3184 audible to the hoisting engineer or other person operating the equipment. Bell cords shall be
3185 installed in ~~shafts~~ each shaft in such a manner as to prevent unnecessary movement of such
3186 cords within the shaft.

3187 B. A uniform signal code approved by the Chief shall be in use at each mine and ~~shall~~
3188 be at the cage station designated by the mine foreman.

3189 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3190 **throughout the Code any word used in the singular includes the plural and vice versa.**
3191 **Language is updated for modern usage and clarity.**

3192 § ~~45.1-161.158~~ 45.2-xxx. Inspections of hoisting equipment.

3193 A. Before hoisting or lowering ~~miners~~ any miner in a shaft, the hoisting engineer shall
3194 operate an empty ~~eages~~ cage up and down each shaft for at least one round trip, both at the
3195 beginning of each shift and after the hoist has been idle for one hour or more.

3196 B. Before hoisting or lowering ~~miners in~~ any miner by slope and surface incline
3197 hoisting, the hoisting engineer shall operate an empty ~~eages~~ cage for at least one round trip,
3198 both at the beginning of each shift and after the hoist has been idle for one hour or more.

3199 C. The hoisting engineer, at the time the inspections required by ~~subsections~~
3200 subsection A ~~and or~~ B are performed, shall (i) inspect all cable or rope fastenings ~~at all eages,~~
3201 buckets on every cage, bucket, or slope ~~ears~~ car; (ii) inspect hammer locks and pins, thimbles,
3202 and clamps; (iii) inspect safety chains on ~~buckets,~~ every cage, bucket, or slope ~~ears~~ car; (iv)
3203 inspect ~~the~~ each braking system for malfunctions; (v) clean all excess oil and extraneous
3204 materials from the hoist housing construction; (vi) inspect the overwind, overtravel, and lilly
3205 switch or control from stopping at the collar and within 100 feet of the work deck; and (vii)
3206 check communications between the top house, work deck, and work deck tugger house.

3207 D. ~~Hoisting~~ The hoisting engineer shall inspect the hoisting rope on ~~all cages~~ every
3208 cage or ~~trips shall be inspected~~ trip at the beginning of each shift ~~by the hoisting engineer~~.

3209 E. A test of safety catches on ~~cages~~ every cage shall be made by an authorized person
3210 designated by the operator at least once each month. A written record shall be kept of such
3211 tests, and such record shall be available for inspection by interested persons.

3212 F. ~~Hoisting~~ An authorized person designated by the operator shall inspect daily the
3213 hoisting equipment, including the headgear, cages, ropes, connections, links and chains, shaft
3214 guides, shaft walls, and other facilities ~~shall be inspected daily by an authorized person~~
3215 ~~designated by the operator~~. Such person shall also inspect ~~all~~ every bull ~~wheels~~ wheel and
3216 lighting ~~systems~~ system on the head frame. Such person shall report immediately to the
3217 operator, or his agent, any defects found, and any such defect shall be corrected promptly. The
3218 person making such examination shall make a daily permanent record of such inspection,
3219 which shall be available for inspection by interested persons. If a hoist is used only during a
3220 weekly examination of an escapeway, then the inspection required by this subsection shall
3221 only be required to be completed weekly before the examination occurs.

3222 G. Subsections A, B, C, and D shall not apply to automatically operated elevators.

3223 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3224 **throughout the Code any word used in the singular includes the plural and vice versa.**
3225 **Language is updated for modern usage and clarity.**

3226 § ~~45.1-161.159~~ 45.2-xxx. Hoisting engineers.

3227 A. ~~A~~ If miners are transported into or out of an underground area of a mine by a hoist
3228 or on a surface incline, a certified hoisting engineer shall be either on duty continuously, or
3229 available within a reasonable time, as determined by the Chief, to provide immediate
3230 transportation while any person is underground, ~~where miners are transported into or out of~~
3231 ~~underground areas of a mine by hoists or on surface inclines~~.

3232 B. When ~~miners are~~ any miner is being hoisted or lowered in ~~shafts, slopes, a shaft~~ or
3233 on a slope or surface ~~inclines~~ incline, the loading and unloading of ~~miners~~ any miner and the
3234 movement of the cage, car, or trip shall be under the direction of an authorized person.

3235 C. Subsections A and B shall not apply to automatically operated elevators that can be
3236 safely operated by any miner; however, a person qualified as an automatic elevator operator
3237 shall be available at any such ~~elevators~~ elevator within a reasonable time, as determined by
3238 the Chief.

3239 D. ~~No~~ An operator, or ~~his~~ agent, of such operator of any mine worked by shaft, slope,
3240 or surface incline shall place a competent and sober hoisting engineer in charge of any engine
3241 or drum used for lowering or hoisting miners ~~any but competent and sober hoisting engineers.~~
3242 No hoisting engineer in charge of such machinery shall allow any person, except ~~such as may~~
3243 be a person who is designated for such purpose by the operator, or his agent, to interfere with
3244 any part of the machinery. No person shall interfere with or intimidate ~~the~~ a hoisting engineer
3245 or automatic elevator operator who is engaged in the discharge of his duties.

3246 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3247 **throughout the Code any word used in the singular includes the plural and vice versa.**
3248 **Language is updated for modern usage and clarity. Subsections A and D are**
3249 **reorganized for clarity.**

3250 § ~~45.1-161.160~~ 45.2-xxx. Operations of hoisting equipment.

3251 A. The speed of the cage, car, or trip in ~~shafts, slopes,~~ a shaft or slope or on a surface
3252 ~~inelines~~ incline shall not exceed 1,000 feet per minute when ~~miners are~~ a miner is being
3253 hoisted or lowered.

3254 B. When moving the platform or work deck, ~~all miners~~ every miner traveling thereon
3255 shall have a safety ~~belts~~ belt secured.

3256 C. No ~~person~~ miner shall ride on a loaded cage.

3257 D. The number of ~~persons~~ miners riding in any cage or car at one time shall not
3258 exceed the maximum prescribed by the manufacturer. The Chief may prescribe a lesser
3259 number when necessary to ensure the safety of miners being transported.

3260 E. ~~Conveyances~~ Any conveyance being lowered into a shaft in which ~~miners are~~ a
3261 miner is working shall be stopped at least ~~twenty~~ 20 feet above the area where such ~~miners are~~
3262 miner is working.

3263 F. ~~Whenever miners are~~ If any miner is working at the bottom of a shaft, there shall be
3264 an adjustable ladder or chain ladder attached to the work deck to provide an additional means
3265 of escape. Such ladder shall be at least ~~twenty~~ 20 feet in length.

3266 G. ~~All chokers and slings~~ Every choker or sling used to transport materials within a
3267 shaft or slope shall meet specifications established by the ~~United States of America~~ American
3268 National Standards Institute.

3269 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3270 **throughout the Code any word used in the singular includes the plural and vice versa.**
3271 **Language is updated for modern usage and clarity. The name "United States of America**
3272 **Standards Institute" is changed to "American National Standards Institute" to reflect**
3273 **the 1969 name change.**

3274 § ~~45.1-161.161~~ 45.2-xxx. Maintenance of hoisting equipment.

3275 ~~Hoists, ropes, cages,~~ Every hoist, rope, cage, and other component of any piece of
3276 hoisting equipment shall be maintained in a safe operating condition, as directed by the Chief.
3277 ~~Hoisting ropes~~ A hoisting rope shall be replaced as soon as there is evidence of possible
3278 failure.

3279 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3280 **throughout the Code any word used in the singular includes the plural and vice versa. A**
3281 **reference to the authority of the Chief to determine safe operating conditions is added.**

3282 Article ~~6~~ 8.

3283 Transportation.

3284 **Drafting note: Existing Article 6, concerning transportation, is retained as**
3285 **proposed Article 8.**

3286 § ~~45.1-161.133~~ 45.2-xxx. Haulage roads.

3287 A. The roadbed, rails, joints, switches, frogs, and other elements of the track of ~~all~~
3288 each haulage ~~roads~~ road shall be constructed, installed, and maintained in a manner that
3289 ensures ~~their~~ the safe operation of the haulage road. In determining ~~their~~ its safety,

3290 consideration shall be given to the speed of equipment; and the type of haulage operations
3291 conducted on the haulage ~~roads~~ road.

3292 B. Haulage tracks shall be kept free of accumulations of coal spillage and debris, and
3293 water shall not be allowed to accumulate over the top of the rail.

3294 C. ~~Off-track~~ Every off-track haulage equipment ~~operators~~ operator shall observe any
3295 haulage ~~roads~~ road for hazardous conditions during the course of travel and shall promptly
3296 correct or report to the mine foreman any hazardous condition observed.

3297 D. ~~Off-track~~ Each off-track haulage ~~roads~~ road shall be maintained reasonably free of
3298 bottom irregularities, excess spillage, debris, wet or muddy conditions that make controlling
3299 off-track haulage equipment difficult, and ~~accumulations~~ any accumulation of water over such
3300 ~~areas~~ an area of the haulage ~~roads~~ road and in such ~~depths that~~ a depth as to allow water ~~could~~
3301 to enter any electrical ~~panels~~ panel and create a potentially hazardous ~~conditions~~ condition.

3302 E. ~~Uninsulated~~ No uninsulated trolley lines shall ~~not~~ be used or installed in any
3303 underground coal ~~mines~~ mine without approval of the Chief.

3304 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3305 **throughout the Code any word used in the singular includes the plural and vice versa.**
3306 **Language is updated for modern usage and clarity.**

3307 § ~~45.1-161.134~~ 45.2-xxx. Track switches and rails.

3308 A. ~~All~~ Every track ~~switches~~ switch shall be provided with a properly installed ~~throws,~~
3309 throw and properly installed latches; and bridle bars.

3310 B. ~~All~~ Every track ~~switches~~ switch, other than ~~those in rooms and~~ a switch in a room
3311 or entry development, shall be equipped with properly installed guardrails.

3312 C. ~~All~~ Every switch ~~throws~~ throw and ~~stands~~ stand shall be installed on the side of the
3313 track where clearance is provided.

3314 D. ~~Rails~~ Every rail shall be secured at all joints by plates or welds.

3315 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3316 **throughout the Code any word used in the singular includes the plural and vice versa.**
3317 **Language is updated for modern usage and clarity.**

3318 § ~~45.1-161.135~~ 45.2-xxx. Clearance on haulage roads.

3319 A. ~~Track~~ Every track haulage ~~roads~~ road in ~~entries, rooms, and crosseuts~~ an entry,
3320 room, or crosscut shall have a continuous clearance on one side of at least ~~24 inches~~ two feet
3321 from the farthest projection of moving traffic. The clearance shall be kept free of any
3322 obstruction to a height permitted by the height of the coal seam. When it is not possible to
3323 maintain such clearance, signs indicating close clearance ~~signs~~ shall be posted inby and outby
3324 the affected area.

3325 B. ~~Track~~ Every track haulage ~~roads~~ road in ~~entries, rooms, and crosseuts~~ an entry,
3326 room, or crosscut shall have a continuous clearance, on the side opposite the clearance
3327 required by subsection A, of at least six inches from the farthest projection of moving traffic.
3328 When it is not possible to maintain such clearance, signs indicating close clearance ~~signs~~ shall
3329 be posted inby and outby the affected area.

3330 C. ~~Haulage roads~~ Each track haulage road where trolley lines are used shall have the
3331 clearance required by subsection A on the side of the track opposite the trolley lines. This
3332 requirement shall not apply ~~where if~~ the trolley lines are ~~6 1/2~~ at least 6.5 feet ~~or more~~ above
3333 the rail.

3334 D. The clearance space on ~~all~~ each track haulage ~~roads~~ road shall be kept free of loose
3335 rock, loose coal, loose supplies, and other loose materials. If the clearance space exceeds ~~24~~
3336 ~~inches, not more than 24 inches~~ two feet, at least two feet of the clearance space shall be
3337 ~~required to be~~ kept free of such materials.

3338 E. ~~All~~ Every parallel ~~tracks~~ track shall be installed so as to provide a clearance of at
3339 least ~~24 inches~~ two feet between the outermost projections of passing traffic.

3340 F. Ample clearance shall be provided (i) at each conveyor loading ~~heads~~ head, (ii) at
3341 each conveyor control ~~panels~~ panel, and (iii) along each conveyor ~~lines~~ line.

3342 G. ~~Belt conveyors~~ Every belt conveyor shall be equipped with a control ~~switches~~
3343 switch to automatically stop the driving motor in the event that the belt is stopped by slipping
3344 on the driving pulley, ~~by~~ as a result of breakage or other accident.

3345 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3346 **throughout the Code any word used in the singular includes the plural and vice versa.**
3347 **Language is updated for modern usage and clarity.**

3348 § ~~45.1-161.136~~ 45.2-xxx. Conveyor crossings.

3349 Suitable facilities for crossing ~~conveyors~~ a conveyor belt shall be provided where it is
3350 necessary for miners to cross ~~conveyors~~ such conveyor belt regularly.

3351 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3352 **throughout the Code any word used in the singular includes the plural and vice versa.**

3353 § ~~45.1-161.137~~ 45.2-xxx. Shelter holes.

3354 A. ~~Track~~ Every haulage ~~roads~~ road shall have shelter holes at intervals not to exceed
3355 the interval permitted by the roof control plan for crosscuts. Except at ~~points~~ a point where
3356 more than six feet of side clearance, measured from the rail, is maintained ~~and, or~~ at a room
3357 ~~switches~~ switch, a shelter ~~holes~~ hole shall be provided at each manually operated ~~doors~~ door
3358 and at each switch ~~throws~~ throw.

3359 B. Except for shelter holes at an underground slope ~~landings~~ landing where ~~men~~
3360 miners pass and cars are handled, each shelter hole shall have (i) ~~the~~ a depth of ~~shelter holes~~
3361 ~~shall not be less than~~ at least five feet; (ii) ~~the~~ a width of ~~shelter holes shall not be greater~~
3362 ~~than~~ at most four feet, unless a room neck or crosscut width exceeding four feet is used as a
3363 shelter hole; and (iii) a height of ~~shelter holes shall not be less than~~ at least six feet or, if the
3364 height of the traveling space is less than six feet, ~~as high as~~ a height equivalent to that of the
3365 traveling space.

3366 C. ~~Shelter holes~~ Every shelter hole at an underground slope ~~landings~~ landing where
3367 ~~men~~ miners pass and cars are handled shall be at least (i) ~~ten~~ 10 feet in depth, (ii) four feet in
3368 width, and (iii) six feet in height.

3369 D. ~~Shelter holes~~ Every shelter hole shall be kept free of refuse, loose roof, and other
3370 obstructions.

3371 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3372 **throughout the Code any word used in the singular includes the plural and vice versa.**

3373 **Reference to the roof control plan is inserted to clarify the source of authority for the**
3374 **permitted crosscut interval and language is updated for modern usage and clarity,**
3375 **including by replacing "men" with "miners."**

3376 § ~~45.1-161.138~~ 45.2-xxx. Refuge from moving traffic.

3377 Upon the approach of moving traffic, ~~miners~~ any miner not engaged in haulage
3378 operations shall take refuge in a shelter ~~holes~~ hole or other ~~places~~ place of safety.

3379 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3380 **throughout the Code any word used in the singular includes the plural and vice versa.**

3381 § ~~45.1-161.139~~ 45.2-xxx. Inspection of underground equipment.

3382 Once ~~a~~ per week, or more often if necessary, the mine foreman or a certified person
3383 shall inspect electrical and diesel transportation equipment to ~~assure~~ ensure its safe operating
3384 condition. Such equipment located on the surface shall be inspected ~~as~~ once per month, or
3385 more often ~~as if~~ necessary ~~but at least monthly~~. Such person shall correct any defect found
3386 during the inspection. A record of such examination shall be maintained.

3387 **Drafting note: Language is updated for modern usage.**

3388 § ~~45.1-161.140~~ 45.2-xxx. Maintenance of equipment.

3389 ~~Locomotives,~~ Every locomotive, mine ~~cars~~ car, shuttle ~~cars~~ car, supply ~~cars,~~
3390 ~~conveyors,~~ car, conveyor, piece of self-propelled mobile equipment, and ~~all~~ other piece of
3391 equipment shall be maintained in a safe operating condition.

3392 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3393 **throughout the Code any word used in the singular includes the plural and vice versa.**

3394 **Language is updated for modern usage and clarity.**

3395 § ~~45.1-161.141~~ 45.2-xxx. Self-propelled equipment.

3396 A. ~~All~~ Every piece of self-propelled mobile transportation ~~and or~~ haulage equipment
3397 for use underground shall be equipped with safe seating facilities for the person operating the
3398 equipment unless it is equipped for remote control operation. Where seating facilities are
3399 provided on a piece of self-propelled mobile equipment, the person operating such equipment
3400 shall be seated before the equipment is put into motion.

3401 B. ~~All~~ Every piece of track-mounted equipment shall be equipped with proper lifting
3402 devices; for the rerailling of such equipment.

3403 C. An audible warning device and headlights shall be provided on each locomotive,
3404 shuttle car ~~and any, or~~ other piece of self-propelled mobile transportation ~~and or~~ haulage
3405 equipment.

3406 D. A trip light capable of being seen for at least 300 feet underground shall be used on
3407 the rear of ~~trips~~ any trip that is pulled and on the front of any pushed ~~trips and trips~~ trip or trip
3408 that is lowered ~~in slopes on a slope~~; however, ~~trip lights~~ a trip light need not be used ~~where if~~
3409 ~~locomotives are~~ a locomotive is used on each end of a trip.

3410 E. Effective ~~means~~ measures, including ~~but not limited to use of a~~ trailing ~~locomotives~~
3411 locomotive, slides, skids, or drags, shall be ~~used~~ taken during track haulage to ensure that safe
3412 control is maintained when ~~grades create~~ a grade creates a potential hazard.

3413 F. Where block signals are used, procedures ~~shall be established in writing~~ to safely
3414 control traffic movement within the system ~~and~~ shall be established in writing and posted and
3415 reviewed with all ~~mine personnel~~ miners.

3416 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3417 **throughout the Code any word used in the singular includes the plural and vice versa.**
3418 **Language is updated for clarity and modern usage.**

3419 § ~~45.1-161.142~~ 45.2-xxx. Pushing cars.

3420 Pushing ~~cars~~ any car on a main haulage ~~roads shall be~~ road is prohibited except (i)
3421 where it is necessary to push ~~cars~~ a car from ~~sidetraeks~~ a sidetrack that is located near the
3422 working section to the producing ~~entries and rooms~~ entry or room, (ii) where it is necessary to
3423 clear ~~switches and sidetraeks~~ a switch or sidetrack, and (iii) on the approach to ~~eages, slopes~~
3424 ~~and a cage, slope, or~~ surface ~~inlines~~ incline. However, where a rail transportation ~~systems are~~
3425 system is utilized and it becomes necessary to routinely push cars, the operator shall develop
3426 procedures for coordination and control of rail traffic, such as ~~provisions~~ the provision of
3427 effective trip lights or other warning devices, and other safety precautions specific to the
3428 mine. These procedures shall be subject to approval of the Chief.

3429 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3430 **throughout the Code any word used in the singular includes the plural and vice versa.**

3431 § ~~45.1-161.143~~ 45.2-xxx. Transportation of material.

3432 A. Equipment ~~or~~, material, or supplies being transported shall be loaded in a manner ~~to~~
3433 ~~protect~~ that protects the operator and other personnel from sliding equipment ~~or~~, material, or
3434 supplies.

3435 B. ~~Materials and~~ Equipment, material, or supplies that are not necessary for the
3436 operation of a piece of self-propelled mobile equipment shall not be transported on such
3437 equipment, except for when the mobile equipment is designed to carry such materials or
3438 supplies and a no hazard is ~~not~~ created. Only small hand tools and materials or supplies ~~which~~
3439 that do not create hazards may be transported in the same compartment of ~~personnel carriers a~~
3440 mantrip where ~~miners are~~ any miner is seated.

3441 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3442 **throughout the Code any word used in the singular includes the plural and vice versa.**
3443 **Language is updated for modern usage and clarity, including by replacing "personnel**
3444 **carrier" with "mantrip," the term used throughout the title for a specialized personnel**
3445 **carrier in a mine.**

3446 § ~~45.1-161.144~~ 45.2-xxx. Securing cars.

3447 A. ~~Standing cars~~ A standing car on any track, unless it is held effectively by brakes,
3448 shall be properly blocked ~~or spragged to prevent movement~~.

3449 B. Positive-acting stopblocks or derails shall be used ~~where~~ when necessary to protect
3450 miners from ~~danger~~ the hazard of runaway rail equipment. Derails shall be located where
3451 ~~grades a grade~~ a grade at the entrance ~~and or any other locations~~ location in the mine ~~create~~ creates a
3452 potential collision ~~hazards~~ hazard.

3453 C. Safety chains, steel ropes, or other effective devices capable of holding the load
3454 shall be used to prevent a runaway ~~man-trip~~ mantrip or other supply ~~cars~~ car.

3455 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3456 **throughout the Code any word used in the singular includes the plural and vice versa.**

3457 **Language is updated for modern usage and clarity and the unique term "spragged" is**
3458 **removed.**

3459 § ~~45.1-161.145~~ 45.2-xxx. Riding on cars.

3460 A. No person other than the motorman and the trip rider shall ride on a locomotive,
3461 unless authorized by the mine foreman.

3462 B. No person shall ride on a loaded ~~cars~~ car or between cars of any trip.

3463 C. No person shall get on or off a moving ~~locomotives~~ locomotive or ~~cars~~ car that is
3464 being moved by ~~locomotives~~ a locomotive.

3465 D. No person shall be allowed to ride on top of a piece of self-propelled mobile
3466 equipment.

3467 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3468 **throughout the Code any word used in the singular includes the plural and vice versa.**

3469 **Language is updated for modern usage and clarity.**

3470 § ~~45.1-161.146~~ 45.2-xxx. Back-poling.

3471 Back-poling shall be prohibited except (i) at ~~places~~ a place where the trolley pole
3472 cannot be reversed or (ii) when going up an extremely steep ~~grades~~ grade. In ~~all~~ such
3473 circumstances, back-poling shall occur only at very slow speed.

3474 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3475 **throughout the Code any word used in the singular includes the plural and vice versa.**

3476 § ~~45.1-161.147~~ 45.2-xxx. Operation of equipment.

3477 A. ~~Operators~~ Every operator of self-propelled mobile haulage equipment shall face in
3478 the direction of travel except when the equipment is being loaded and is under the boom of
3479 the loading equipment.

3480 B. ~~Track~~ Every track haulage ~~cars which require~~ car that requires coupling and
3481 uncoupling shall be equipped with automatic couplers or devices designed to allow coupling
3482 and uncoupling without exposing miners between such equipment. Specialty cars designed
3483 with safe clearance when connecting to other cars are excluded from the provisions of this
3484 subsection.

3485 C. ~~Persons~~ Every person operating self-propelled haulage equipment shall sound a
3486 warning before starting such equipment and on approaching ~~curves, sidetracks, doors, curtains~~
3487 any curve, sidetrack, door, curtain, manway ~~crossings~~ crossing, or ~~any~~ other place where
3488 ~~persons are~~ a miner is or ~~are~~ is likely to be.

3489 D. All rail equipment shall be operated at speeds ~~which~~ that are safe for the condition
3490 of ~~the~~ any rail installation, ~~grades and clearances~~ grade, or clearance encountered. When rail
3491 equipment is being operated at a normal safe ~~speeds~~ speed, a distance of 300 feet shall be
3492 maintained from the rear of other rail equipment in operation, except for a trailing
3493 ~~locomotives~~ locomotive that ~~are~~ is an integral part of the trip.

3494 E. All persons shall stand in the clear during any switching ~~operations~~ operation.

3495 F. No two pieces of self-propelled mobile mining equipment traveling in opposite
3496 directions inside a coal mine shall be allowed to pass each other while both are in motion on
3497 the same haulage road unless ~~a minimum of 24 inches~~ a distance of at least two feet is
3498 maintained between the vehicles.

3499 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3500 **throughout the Code any word used in the singular includes the plural and vice versa.**
3501 **Language is updated for modern usage and clarity.**

3502 § ~~45.1-161.148~~ 45.2-xxx. Dispatchers.

3503 Where a dispatcher is employed to control trips at a mine, traffic under his jurisdiction
3504 shall be moved only at his direction. The dispatcher shall be stationed on the surface at the
3505 mine.

3506 **Drafting note: Language is updated for clarity.**

3507 § ~~45.1-161.149~~ 45.2-xxx. Availability of ~~man-trips~~ mantrips.

3508 The operator or his agent shall maintain a ~~man-trip~~ mantrip or other equipment
3509 suitable for providing reasonable access within a reasonable time to ~~areas~~ any area of the mine
3510 where miners are working and where transportation is ordinarily provided. The suitability of
3511 the equipment, and the reasonableness of the time required to reach such ~~areas~~ an area of the
3512 mine, shall be determined by the Chief.

3513 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3514 **throughout the Code any word used in the singular includes the plural and vice versa.**
3515 **Language is updated for modern usage, including by replacing "man-trip" with**
3516 **"mantrip," consistent with language in proposed Chapter 9.**

3517 § ~~45.1-161.150~~ 45.2-xxx. ~~Man-trips~~ Mantrips.

3518 A. ~~Man-trips~~ Each mantrip that is operated by means of ~~locomotives~~ a locomotive
3519 shall be pulled and operated at a safe ~~speeds~~ speed that is consistent with the condition of
3520 ~~roads~~ the road and the type of equipment used, and shall be so controlled that ~~they~~ it can be
3521 stopped within the limits of the operator's visibility.

3522 B. Each ~~man-trip~~ mantrip shall be under the charge of an authorized person and ~~shall~~
3523 ~~be~~ operated independently of any loaded trip.

3524 C. ~~Man-trips~~ Each mantrip shall be maintained in safe operating condition, ~~and~~
3525 Mantrips shall be provided in sufficient number to prevent any mantrip from becoming
3526 overloaded.

3527 D. No person shall ride under a trolley wire other than in a suitably covered ~~man-cars~~
3528 mantrip. ~~Covered man-cars~~ A covered mantrip shall not be required under trolley wires that
3529 are guarded or positioned in accordance with subsection F of § ~~45.1-161.187~~ 45.2-xxx.

3530 E. Other than small hand tools carried on the person, no supplies ~~or~~ tools, or materials
3531 shall ~~not~~ be transported in the same car or cage with miners on any ~~man-trip~~ mantrip, except
3532 in a special ~~compartments~~ compartment in such ~~cars~~ car designed for this purpose.

3533 F. ~~Miners~~ No miner shall ~~not~~ board or leave a moving ~~man-trip cars~~. ~~Miners~~ mantrip
3534 car. Each miner shall remain seated while in a moving ~~cars,~~ car and shall proceed in an
3535 orderly manner to and from ~~man-trips~~ a mantrip.

3536 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3537 **throughout the Code any word used in the singular includes the plural and vice versa.**
3538 **Language is updated for modern usage and clarity, including by replacing "man-trip"**
3539 **with "mantrip," consistent with language in proposed Chapter 9.**

3540 § ~~45.1-161.151~~ 45.2-xxx. ~~Man-trip~~ Mantrip loading and unloading areas.

3541 A. ~~Areas~~ Any area used regularly for loading or unloading ~~man-trips or man-cages~~
3542 mantrips shall be kept clear, and free of obstructions, ~~and~~ with have ample clearance for
3543 moving equipment. ~~Miners~~ Each miner shall remain in such area until the ~~man-trip or man-~~
3544 eage mantrip is ready to load.

3545 B. Trolley and power wires shall be guarded effectively at ~~areas~~ any area where
3546 persons regularly load or unload from ~~man-trips or man-cages~~ mantrips or cages and where
3547 there is a possibility ~~of any that a person coming in could come into~~ contact with energized
3548 electric wiring while boarding or ~~leaving~~ disembarking the ~~man-trip~~ mantrip or cage.

3549 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3550 **throughout the Code any word used in the singular includes the plural and vice versa.**
3551 **Language is updated for modern usage and clarity, including by replacing "man-trip"**
3552 **with "mantrip," the term used throughout the title for a specialized personnel carrier in**
3553 **a mine, and "man-cage" with "cage."**

3554 § ~~45.1-161.152~~ 45.2-xxx. Transporting miners by ~~belts~~ conveyor belt.

3555 A. ~~When belts are~~ If a conveyor belt is used for transporting miners, such ~~belts~~ belt
3556 shall be free of loose materials, and maintain a minimum clearance of at least ~~eighteen~~ 18
3557 inches ~~shall be maintained~~ between the belt and the overhead roof or crossbars, projecting
3558 equipment, cap pieces, overhead cables, wiring, and other objects. ~~Belts~~ Each conveyor belt
3559 that is used for transporting miners shall be equipped with emergency stop cords for ~~their~~ its
3560 entire length.

3561 B. The conveyor belt speed while miners are being transported shall not exceed (i) 250
3562 feet per minute ~~while miners are being transported where~~ if the overhead clearance ~~between~~
3563 ~~the belt and overhead roof or projections~~ maintained pursuant to subsection A is ~~between~~
3564 eighteen more than 18 inches ~~and twenty-four~~ but less than 24 inches and (ii) 300 feet per
3565 minute ~~where~~ if the overhead clearance is ~~twenty-four~~ 24 inches or more. ~~The use of conveyor~~
3566 ~~belts to transport miners shall be prohibited if the clearance between the belt and overhead is~~
3567 ~~less than eighteen inches~~. Such conveyor belt shall be stopped while miners are boarding or
3568 ~~leaving~~ disembarking.

3569 C. The space between miners riding on a conveyor belt line shall be ~~not less than~~ at
3570 least five feet.

3571 D. Adequate clearance and proper illumination shall be provided where miners board
3572 or ~~leave~~ disembark a conveyor ~~belts~~ belt.

3573 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3574 **throughout the Code any word used in the singular includes the plural and vice versa.**
3575 **Language is updated for modern usage and clarity, including the substitution of**
3576 **"conveyor belt" for "belt" and "disembark" for "leave."**

3577 Article ~~15~~ 9.

3578 Surface Areas.

3579 **Drafting note: Existing Article 15, concerning surface areas, is retained as**
3580 **proposed Article 9.**

3581 § ~~45.1-161.236~~ 45.2-xxx. Housekeeping; noxious fumes.

3582 A. Good housekeeping shall be practiced in and around ~~buildings, shafts, slopes, yards~~
3583 ~~and every building, shaft, slope, yard, or~~ other ~~areas~~ area of the mine. Such ~~practices include~~
3584 practice includes cleanliness, orderly storage of materials, and the removal of possible sources
3585 of injury, such as stumbling hazards, protruding nails, broken glass, and possible falling and
3586 rolling materials.

3587 B. Painting or ~~operations creating~~ conducting any operation that creates noxious fumes
3588 shall be performed only in a ~~well-ventilated~~ well-ventilated atmosphere.

3589 C. ~~All~~ Every surface mine ~~structures, enclosures, and~~ structure, enclosure, or other
3590 ~~facilities~~ facility shall be maintained in good repair.

3591 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3592 **throughout the Code any word used in the singular includes the plural and vice versa.**
3593 **Language is updated for modern usage and clarity.**

3594 § ~~45.1-161.237~~ 45.2-xxx. Lighting.

3595 A. Lights shall be provided as needed in or on a surface ~~structures~~ mine structure,
3596 enclosure, or other facility.

3597 B. ~~Roads, paths and walks~~ Each road, path, or walk outside of ~~structures~~ a structure,
3598 enclosure, or other facility shall be kept free from obstructions and shall be ~~well illuminated,~~
3599 well-illuminated if it is used at night.

3600 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3601 **throughout the Code any word used in the singular includes the plural and vice versa.**
3602 **Language is updated for modern usage and clarity.**

3603 § ~~45.1-161.238~~ 45.2-xxx. Flammable or combustible materials.

3604 A. Oil, grease, and any similar flammable ~~materials~~ or combustible material shall be
3605 kept in a closed ~~containers~~ container, separate from other materials, so as ~~not to create a to~~
3606 prevent any fire hazard to nearby buildings or mines. If oil ~~or grease,~~ grease, or any similar
3607 flammable material is stored in a building, the building or room in which it is stored shall be
3608 of fireproof construction and ~~well-ventilated~~ well-ventilated.

3609 B. ~~Oily rags~~ Any oily rag, oily waste, ~~and or~~ wastepaper shall be kept in a closed
3610 metal ~~containers~~ container until removed for disposal.

3611 C. The area within 100 feet of ~~all~~ each mine ~~openings~~ opening shall be kept free of
3612 flammable or combustible material; however, this provision shall not apply to the temporary
3613 storage of not more than a ~~one-day's~~ one-day's supply of such ~~materials~~ material.

3614 D. ~~All~~ Every oxygen ~~and or~~ acetylene ~~bottles~~ bottle shall be (i) stored with its cap in
3615 place in ~~racks designated and a rack~~ constructed and designated for the storage of such bottles
3616 ~~with caps in place~~ and (ii) secured when not in use. ~~Any storage~~ Smoking shall be prohibited
3617 in any place ~~for~~ where such materials are stored. Signs indicating that smoking is prohibited
3618 in the area shall be posted ~~to prohibit smoking~~.

3619 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3620 **throughout the Code any word used in the singular includes the plural and vice versa.**
3621 **Language is updated for modern usage and clarity.**

3622 § ~~45.1-161.239~~ 45.2-xxx. ~~Crane~~ Hazardous crane operations.

3623 A crane operator shall at all times during any hazardous crane operation maintain
3624 visual or auditory communication with all persons involved in ~~the~~ such crane operation.

3625 **Drafting note: Language is updated for modern usage and clarity.**

3626 § ~~45.1-161.240~~ 45.2-xxx. Controlling dust at the surface.

3627 A. In each surface ~~structures~~ structure, enclosure, or facility at any excessively dusty
3628 ~~mines; mine, every~~ electric ~~motors~~ motor, ~~switches~~ switch, lighting ~~fixtures~~ fixture, and
3629 ~~controls~~ control shall be protected by dust-tight construction.

3630 B. ~~Surface structures~~ Each surface structure and piece of equipment shall be kept free
3631 of coal dust accumulations.

3632 C. ~~Where~~ If mining operations raise an excessive amount of dust into the air, such dust
3633 shall be allayed at its sources by the use of water ~~or~~, water with a wetting agent added to it, or
3634 ~~other~~ another effective ~~methods shall be used to allay such dust at its sources~~ method.

3635 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3636 **throughout the Code any word used in the singular includes the plural and vice versa.**
3637 **Language is updated for modern usage and clarity, including by reorganizing the text in**
3638 **subsection C.**

3639 § ~~45.1-161.241~~ 45.2-xxx. Scaffolding and overhead protection.

3640 ~~Where~~ Proper scaffolding or proper overhead protection shall be provided (i) where
3641 repairs are being made to ~~the plant, a facility~~ or (ii) where equipment or material is being used
3642 or transported overhead, ~~proper scaffolding or proper overhead protection shall be provided~~.

3643 **Drafting note: Language is updated for modern usage and clarity, including by**
3644 **reorganizing the text.**

3645 § ~~45.1-161.242~~ 45.2-xxx. Welding and cutting.

3646 ~~Welding~~ No welding or cutting with arc or flame shall ~~not~~ be done in an excessively
3647 dusty ~~atmospheres~~ atmosphere or dusty ~~locations~~ location. ~~Fire fighting~~ Firefighting
3648 apparatus shall be readily available when such welding or cutting is performed.

3649 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3650 **throughout the Code any word used in the singular includes the plural and vice versa.**
3651 **Language is updated for modern usage and clarity.**

3652 § ~~45.1-161.243~~ 45.2-xxx. Fire prevention and fire control.

3653 The provisions of Article ~~5~~ XX (§ ~~45.1-161.265~~ 45.2-xxx et seq.) of Chapter ~~14.4~~ of
3654 ~~this title~~ 9 shall apply with respect to ~~requirements~~ any requirement for ~~fire-fighting~~
3655 firefighting equipment, duties in the event of a fire, ~~and or~~ fire precautions at ~~the~~ any surface
3656 ~~areas~~ area of an underground coal ~~mines~~ mine.

3657 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3658 **throughout the Code any word used in the singular includes the plural and vice versa.**
3659 **Language is updated for modern usage and clarity.**

3660 § ~~45.1-161.244~~ 45.2-xxx. Surface equipment.

3661 The provisions of Article ~~6~~ XX (§ ~~45.1-161.268~~ 45.2-xxx et seq.) of Chapter ~~14.4~~ of
3662 ~~this title~~ 9 shall apply with respect to equipment at ~~the~~ any surface ~~areas~~ area of an
3663 underground coal ~~mines~~ mine.

3664 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3665 **throughout the Code any word used in the singular includes the plural and vice versa.**

3666 § ~~45.1-161.245~~ 45.2-xxx. Travel ways; and loading and haulage areas.

3667 The provisions of Article ~~7~~ XX (§ ~~45.1-161.275~~ 45.2-xxx et seq.) of Chapter ~~14.4~~ of
3668 ~~this title~~ 9 shall apply with respect to any travel ~~ways~~ way, loading area, ~~and or~~ haulage ~~areas~~
3669 area at the surface of an underground coal ~~mines~~ mine.

3670 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3671 **throughout the Code any word used in the singular includes the plural and vice versa.**

3672 **Language is updated for modern usage and clarity.**

3673 § ~~45.1-161.246~~ 45.2-xxx. Electricity.

3674 The provisions of Article ~~9~~ XX (§ ~~45.1-161.279~~ 45.2-xxx et seq.) of Chapter ~~14.4~~ of
3675 ~~this title~~ 9 shall apply with respect to any power ~~lines~~ line, ~~circuits~~ circuit, ~~transformers~~
3676 transformer, ~~and or~~ other ~~electric~~ electrical equipment at ~~the~~ any surface ~~areas~~ area of an
3677 underground coal ~~mines~~ mine.

3678 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3679 **throughout the Code any word used in the singular includes the plural and vice versa.**

3680 **Language is updated for modern usage and clarity.**

3681 § ~~45.1-161.247~~ 45.2-xxx. Surface blasting.

3682 The provisions of Article ~~10~~ XX (§ ~~45.1-161.284~~ 45.2-xxx et seq.) of Chapter ~~14.4~~ of
3683 ~~this title~~ 9 shall apply with respect to explosives ~~and or~~ blasting at ~~the any~~ surface ~~areas~~ area
3684 of an underground coal ~~mines~~ mine.

3685 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3686 **throughout the Code any word used in the singular includes the plural and vice versa.**
3687 **Language is updated for modern usage and clarity.**

3688 § ~~45.1-161.248~~ 45.2-xxx. Ground control.

3689 The provisions of Article ~~11~~ XX (§ ~~45.1-161.287~~ 45.2-xxx) of Chapter ~~14.4~~ of ~~this~~
3690 ~~title~~ 9 shall apply with respect to ~~the pits, highwalls, benches, banks, and walls~~ any pit,
3691 highwall, wall, bank, or bench associated with any coal mining ~~activities~~ activity conducted at
3692 ~~the any~~ surface ~~areas~~ area of an underground coal ~~mines~~ mine.

3693 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3694 **throughout the Code any word used in the singular includes the plural and vice versa.**
3695 **Language is updated for modern usage and clarity.**

3696 CHAPTER 8.

3697 REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; ELECTRICITY,

3698 SAFETY, ETC.

3699 **Drafting note: Articles 4, 10, 11, 12, 13, and 14 of existing Chapter 14.3 are**
3700 **retained as Articles 1 through 6 of proposed Chapter 8, Requirements Applicable to**
3701 **Underground Coal Mines; Electricity, Safety, Etc. The remainder of existing Chapter**
3702 **14.3 is organized as proposed Chapter 7. The six articles in this proposed chapter are as**
3703 **follows: Article 1, Mechanical Equipment; Article 2, Electricity; Article 3, Fire**
3704 **Prevention and Fire Control; Article 4, Ventilation, Mine Gases, and Other Hazardous**
3705 **Conditions; Article 5, Personal Safety; Smoking; and Article 6, First Aid Equipment;**
3706 **Medical Care; Emergency Medical Services Providers.**

3707 Article ~~4~~ 1.

3708 Mechanical Equipment.

3709 **Drafting note: Existing Article 4 of Chapter 14.3, concerning mechanical**
3710 **equipment, is retained as proposed Article 1.**

3711 § ~~45.1-161.123~~ 45.2-xxx. Face and other equipment.

3712 A. The cutter chains of any mining ~~machines~~ machine shall be locked securely by
3713 mechanical means or an electrical ~~interlocks;~~ interlock while such ~~machines are~~ machine is
3714 parked or being trammed.

3715 B. Drilling in rock shall be conducted wet or ~~by~~ other means of dust control shall be
3716 used.

3717 C. ~~Electric drills~~ Each electric drill or other electrically operated rotating ~~tools~~ tool
3718 intended to be held in the ~~hands~~ hand shall have the electric switch constructed so as to break
3719 the circuit when the hand releases the switch, or shall be equipped with a properly adjusted
3720 friction or safety ~~clutches~~ clutch.

3721 D. While equipment is in operation or is being trammed, no miner shall position
3722 himself or be placed in a pinch point between such equipment and the face or ~~ribs~~ any rib of
3723 the mine or another piece of equipment in the mine.

3724 E. ~~All~~ Each piece of equipment that is raised for repairs or other work shall be
3725 securely blocked prior to ~~persons~~ any person positioning ~~themselves~~ himself where the falling
3726 of such equipment could create a hazardous condition.

3727 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3728 **throughout the Code any word used in the singular includes the plural and vice versa.**
3729 **Language is updated for modern usage.**

3730 § ~~45.1-161.124~~ 45.2-xxx. Shop and other equipment.

3731 A. The following items of shop and other equipment shall be guarded and maintained
3732 adequately:

3733 1. ~~Gears, sprockets, pulleys~~ Any gear, sprocket, pulley, fan ~~blades~~ blade or ~~propellers,~~
3734 propeller, or friction ~~devices and couplings with~~ device or coupling that has a protruding ~~bolts~~
3735 bolt or ~~nuts~~ nut;

3736 2. Shafting ~~and or any~~ projecting shaft ~~ends end~~ that ~~are is~~ within seven feet of ~~the~~
3737 floor or platform level;

3738 3. ~~Belt~~ Any belt, chain, or rope ~~drives drive~~ that ~~are is~~ within seven feet of the floor or
3739 platform;

3740 4. ~~Fly wheels~~ Any fly wheel, provided that ~~a fly~~ ~~wheels wheel~~ extending more than
3741 seven feet above the floor shall be guarded to a height of at least seven feet;

3742 5. ~~Circular and~~ Any circular or band ~~saws and planers~~ saw or planer;

3743 6. ~~Repair pits~~ Any repair pit, ~~provided that guards shall be kept in place~~ including
3744 when the ~~pits are~~ pit is not in use;

3745 7. ~~Counterweights; and~~ Any counterweight; and

3746 8. ~~The~~ Any mine fan, including the approach to any mine ~~fans shall be guarded~~ fan.

3747 B. ~~Machinery~~ No machinery shall ~~not~~ be repaired or serviced while the machinery is
3748 in motion; however, this prohibition shall not apply where a safe remote ~~devices are~~ device is
3749 used.

3750 C. A guard or safety device that has been removed from any machine shall be replaced
3751 before the machine is put in operation.

3752 D. ~~Mechanically~~ A mechanically operated grinding ~~wheels~~ wheel shall be equipped
3753 with (i) safety washers and tool rests; (ii) substantial retaining hoods, the hood opening of
3754 which shall not expose more than a 90 degree sector of the wheel; and (iii) eyeshields, unless
3755 goggles are worn by the miners. ~~Retaining hoods~~ Each retaining hood shall include either a
3756 device to control and collect excess rock, metal, or dust particles; or a device providing
3757 equivalent protection to the ~~miners~~ miner operating such machinery.

3758 E. The operator or his agent shall develop procedures for examining for potential
3759 hazards, completing proper maintenance, and properly operating each type of centrifugal
3760 pump. The procedures shall, at a minimum, address the manufacturer's recommendations for
3761 start-up and shutdown of the ~~pumps~~ pump, proper actions to be taken when a pump is
3762 suspected of overheating, the safe location of start and stop switches, and actions to be taken
3763 when signs of structural metal fatigue, such as ~~cracks~~ a crack in the frame, a damaged cover

3764 mounting ~~brackets~~ bracket, or a missing ~~bolts~~ bolt or other ~~components are~~ component is
3765 detected. ~~All miners~~ Every miner who ~~repair, maintain~~ repairs, maintains, or ~~operate such~~
3766 pumps operates any type of centrifugal pump shall be trained in these procedures.

3767 **Drafting note: Language is updated for clarity and technical changes are made,**
3768 **including changes pursuant to § 1-227, which states that throughout the Code any word**
3769 **used in the singular includes the plural and vice versa.**

3770 § ~~45.1-161.125~~ 45.2-xxx. Hydraulic hoses.

3771 ~~All~~ Every hydraulic ~~hoses~~ hose used on equipment ~~purchased after January 1, 1986,~~
3772 shall ~~be clearly stamped or labeled by the hydraulic hose manufacturer to indicate~~ have the
3773 manufacturer's rated pressure in pounds per square inch (psi). ~~For hoses purchased after~~
3774 ~~January 1, 1989, the rated pressure shall be~~ permanently affixed on the outer surface of the
3775 hose and repeated at least every two feet. ~~Hoses~~ Every hose purchased and installed on an
3776 automatic displacement hydraulic ~~systems~~ system shall either (i) have a four-to-one safety
3777 factor based on the ratio between minimum burst pressure and the setting of the hydraulic
3778 unloading system ~~(, such as a relief valve),~~ or ~~shall (ii)~~ meet the minimum hose pressure
3779 requirements set by the hydraulic equipment manufacturer per the applicable hose standards
3780 for each type of equipment. No hydraulic hose shall be used in an application where the
3781 hydraulic unloading system is set higher than the hose's rated pressure.

3782 **Drafting note: Obsolete dates for the manufacture of hydraulic hoses are**
3783 **removed and language is amended accordingly. Technical changes are made pursuant to**
3784 **§ 1-227, which states that throughout the Code any word used in the singular includes**
3785 **the plural and vice versa. Other technical changes are made and language is updated for**
3786 **modern usage.**

3787 Article ~~11~~ 2.

3788 Electricity.

3789 **Drafting note: Existing Article 11 of Chapter 14.3, concerning electricity, is**
3790 **retained as proposed Article 2. Two sections, §§ 45.1-161.172 and 45.1-161.173, in**
3791 **existing Article 9, Illumination, are relocated to this article.**

3792 § ~~45.1-161.181~~ 45.2-xxx. Surface electrical installations.

3793 A. ~~Overhead~~ Any overhead high-potential power ~~lines~~ line shall be (i) placed at least
3794 fifteen 15 feet above the ground and ~~twenty~~ 20 feet above ~~driveways~~ any driveway, ~~shall be~~
3795 (ii) installed on insulators, and ~~shall be~~ (iii) supported and guarded to prevent contact with
3796 other circuits.

3797 B. ~~Surface~~ Any surface transmission ~~lines~~ line, including trolley circuits, shall be
3798 protected against short circuits and lightning. Each power circuit that leads underground shall
3799 be equipped with lightning arrestors within 100 feet of ~~where~~ the location at which the circuit
3800 enters the mine.

3801 C. Electric wiring in any surface ~~buildings~~ building shall be installed so as to prevent
3802 fire and contact hazards.

3803 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3804 **throughout the Code any word used in the singular includes the plural and vice versa,**
3805 **and language is updated for modern usage.**

3806 § ~~45.1-161.182~~ 45.2-xxx. Surface transformers.

3807 A. ~~Surface transformers which are~~ Any surface transformer that is not isolated by
3808 ~~elevation of~~ being elevated at least eight feet ~~or more~~ above the ground shall be enclosed in a
3809 transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or
3810 fence is of metal, it shall be grounded effectively. The door to the enclosure or the gate to the
3811 fence shall be kept locked at all times unless ~~persons~~ a person who is authorized to enter the
3812 gate or enclosure ~~are~~ is present.

3813 B. ~~Surface transformers containing~~ Any surface transformer that contains flammable
3814 oil and is installed near a mine ~~openings~~ opening, in or near a combustible ~~buildings~~ building,
3815 or at any other ~~places~~ place where ~~they present~~ such transformer presents a fire hazard shall
3816 be provided with a means to drain or to confine the oil in the event of a rupture of the
3817 transformer casing.

3818 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3819 **throughout the Code any word used in the singular includes the plural and vice versa,**
3820 **and language is updated for modern usage.**

3821 § ~~45.1-161.183~~ 45.2-xxx. Underground transformers.

3822 ~~All transformers~~ Every transformer that is used underground shall be air-cooled or
3823 filled with nonflammable liquid or inert gas.

3824 **Drafting note: A technical change is made pursuant to § 1-227, which states that**
3825 **throughout the Code any word used in the singular includes the plural and vice versa.**

3826 § ~~45.1-161.184~~ 45.2-xxx. Stations and substations.

3827 A. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every
3828 transformer ~~stations~~ station.

3829 B. ~~All~~ Every transformer ~~stations~~ station, ~~substations~~ substation, battery-charging
3830 ~~stations~~ station, pump ~~stations~~ station, and compressor ~~stations~~ station shall be kept free of
3831 nonessential combustible ~~materials~~ material and refuse.

3832 C. Reverse-current protection shall be provided at each storage-battery-charging
3833 ~~stations~~ station to prevent the storage batteries from energizing ~~the a~~ power ~~circuits~~ circuit in
3834 the event of power failure.

3835 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3836 **throughout the Code any word used in the singular includes the plural and vice versa,**
3837 **and language is updated for modern usage.**

3838 § ~~45.1-161.185~~. ~~Repealed.~~

3839 **Drafting note: Repealed by Acts 1999, c. 256.**

3840 § ~~45.1-161.186~~ 45.2-xxx. Power circuits.

3841 A. All underground power wires and cables shall (i) have adequate current-carrying
3842 capacity, ~~shall~~ (ii) be guarded from mechanical injury, and ~~shall~~ (iii) be installed in a
3843 permanent manner.

3844 B. Wires and cables that are not encased in armor shall be supported by ~~well installed~~
3845 well-installed insulators and shall not touch any roof, rib, or combustible ~~materials, roof, or~~

3846 ~~is~~ material; however, this prohibition shall not apply to ground wires, grounded power
3847 conductors, ~~and or~~ trailing cables.

3848 C. Power wires ~~and or~~ cables that are installed in a belt-haulage ~~slopes~~ slope shall be
3849 insulated adequately and buried in a trench ~~not less than 12 inches~~ at least one foot below any
3850 combustible material, unless such wires or cables are encased in armor or otherwise fully
3851 protected against mechanical injury.

3852 D. ~~Splices and repairs~~ Any splice or repair in a power ~~cables~~ cable shall ~~be made in~~
3853 ~~accordance with the following~~:

3854 1. ~~Mechanically~~ Be mechanically strong ~~with~~ and have adequate electrical
3855 conductivity;

3856 2. ~~Effectively~~ Be effectively insulated and sealed so as to exclude moisture;

3857 3. If the cable has metallic armor, possess mechanical protection and electrical
3858 conductivity equivalent to that of the original armor; and

3859 4. If the cable has metallic shielding around each conductor, ~~then the~~ possess new
3860 shielding ~~shall be~~ that is equivalent to ~~that of~~ the original shielding.

3861 E. ~~All~~ Every underground high-voltage transmission ~~cables~~ cable shall be:

3862 1. Installed only in a regularly inspected ~~airways~~ airway;

3863 2. Covered, buried, or placed on insulators so as to afford protection against damage
3864 by derailed equipment if it is installed along ~~the~~ a haulage road;

3865 3. Guarded ~~where~~ if miners regularly work or pass under ~~them~~ such cable, unless ~~they~~
3866 ~~are~~ 6 1/2 it is at least 6.5 feet ~~or more~~ above the floor or rail;

3867 4. Securely anchored, properly insulated, and guarded at its ends; and

3868 5. Covered, insulated, or placed to prevent contact with any trolley ~~circuits and~~ circuit
3869 or other low-voltage ~~circuits~~ circuit.

3870 F. ~~New~~ Any new high-voltage ~~disconnects~~ disconnect that is installed on ~~all~~
3871 underground electrical equipment shall automatically ground all three power leads when in
3872 the open position. ~~All~~ Every high-voltage ~~disconnects~~ disconnect that ~~are~~ is rebuilt or
3873 remanufactured ~~after July 1, 2011~~, shall meet this standard.

3874 G. ~~All~~ Every power ~~wires and cables~~ wire or cable shall be insulated adequately where
3875 ~~they pass~~ it passes into or out of an electrical ~~compartments~~ compartment and where ~~they pass~~
3876 it passes through ~~doors and stoppings~~ a door or stopping.

3877 H. Where track is used as a power conductor:

3878 1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross
3879 bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a
3880 feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at
3881 intervals of not more than 1,000 feet;

3882 2. At least one rail on any secondary track-haulage ~~roads~~ road shall be welded or
3883 bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet;
3884 and

3885 3. Track switches on entries shall be well bonded.

3886 **Drafting note: An obsolete date in subsection F regarding high voltage**
3887 **disconnects is removed. Technical changes are made pursuant to § 1-227, which states**
3888 **that throughout the Code any word used in the singular includes the plural and vice**
3889 **versa, and language is updated for modern usage.**

3890 § ~~45.1-161.187~~ 45.2-xxx. Trolley wires and feeder wires.

3891 A. Trolley wires and trolley feeder wires shall be installed on the side of the entry
3892 opposite the clearance space and any shelter ~~holes~~ hole, except where the wires are guarded or
3893 ~~6 1/2~~ are installed at least 6.5 feet ~~or more~~ above the top of the rail.

3894 B. Trolley-wire hangers shall be so spaced that the wire may become detached from
3895 any one hanger without creating a shock hazard.

3896 C. Trolley wires shall be aligned properly and installed on insulated hangers at least
3897 six inches outside the rail.

3898 D. Trolley wires and trolley feeder wires shall be provided with cut-out switches at
3899 intervals of not more than 1,500 feet and near the beginning of ~~all~~ each branch ~~lines~~ line.

3900 E. Trolley wires and trolley feeder wires shall be kept taut and shall not be permitted
3901 to touch the roof, ~~ribs, timbers~~ or any rib, timber, or combustible material.

3902 F. Trolley wires and trolley feeder wires shall be guarded adequately at both sides of
3903 ~~doors~~ any door and at ~~all places~~ every place where ~~it is necessary to~~ miners work or pass
3904 under them, unless they are ~~more than six and one-half~~ at least 6.5 feet above the top of the
3905 rail.

3906 G. ~~Trolley~~ No trolley wires ~~and or~~ trolley feeder wires shall ~~not~~ extend beyond any
3907 open crosscut between an intake and a return ~~airways, and~~ airway. All such wires shall be
3908 kept at least 150 feet from any active, open pillar workings.

3909 H. Trolley wires and trolley feeder wires shall be guarded, anchored securely, and
3910 insulated properly at the ends.

3911 I. Trolley wires and trolley feeder wires shall be installed only in an intake ~~air~~ airway.

3912 J. ~~Trolley~~ No trolley wires or other exposed conductors shall ~~not~~ carry more than 300
3913 volts.

3914 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3915 **throughout the Code any word used in the singular includes the plural and vice versa,**
3916 **and language is updated for modern usage. The minimum separation of "more than" six**
3917 **and one-half feet in subsection F is reduced to "at least" 6.5 feet for consistency with**
3918 **subsection A.**

3919 § ~~45.1-161.188~~ 45.2-xxx. Grounding.

3920 A. ~~All~~ Every metallic ~~sheaths, armors, and conduits enclosing~~ sheath, armor, or
3921 conduit that encloses a power ~~conductors~~ conductor shall be electrically continuous
3922 throughout and shall be grounded effectively.

3923 B. ~~Metallie frames~~ Every metallic frame, casing, ~~and or~~ other ~~enclosures~~ enclosure of
3924 stationary ~~electrie~~ electrical equipment that can become ~~"alive"~~ electrified through failure of
3925 insulation or by contact with energized parts shall be grounded effectively, or equivalent
3926 protection shall be provided.

3927 C. ~~Three-phase~~ Any three-phase alternating current ~~circuits~~ circuit that is used
3928 underground shall contain either a direct or derived neutral ~~which~~ that shall be grounded
3929 through a suitable resistor at the power center, ~~and a~~ A grounding circuit, ~~originating that~~

3930 [originates](#) at the grounded side of the grounding resistor; shall extend with the power
3931 conductors and serve as the grounding conductor for the ~~frames~~ [frame](#) of ~~all the~~ [every piece of](#)
3932 electrical equipment [that is](#) supplied [with](#) power from that circuit. ~~Grounding resistors~~ [A](#)
3933 [grounding resistor](#) that ~~are~~ [is](#) manufactured to meet the extended time rating as set forth in
3934 [American National standard](#) IEEE ~~Standard 32-1972, formerly AIEE Standard 32, are~~
3935 [C57.32-2015](#) [is](#) deemed to meet the requirements of this section. High-voltage circuits
3936 extending underground shall be supplied with a grounding resistor of a proper Ohmic value
3937 located on the surface to limit the voltage drop in the grounding circuit external to the resistor
3938 to not more than 100 volts under fault conditions. ~~The~~ [Such](#) grounding resistor shall be rated
3939 for maximum fault current continuously and insulated from ground for a voltage equal to the
3940 phase-to-phase voltage of the system. ~~All~~ [Every](#) resistance-grounded alternating ~~circuits~~
3941 [circuit](#) used underground shall include a fail-safe ground check circuit to monitor
3942 continuously the grounding circuit to ~~assure~~ [ensure](#) the continuity of the ground conductor.

3943 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
3944 **throughout the Code any word used in the singular includes the plural and vice versa.**
3945 **An obsolete citation to the former name of the IEEE standard is removed and the**
3946 **current standard is added.**

3947 § ~~45.1-161.189~~ [45.2-xxx](#). Circuit breakers and switches.

3948 A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be
3949 installed so as to protect ~~all electric~~ [each piece of electrical](#) equipment and [each](#) power ~~circuits~~
3950 [circuit](#) against excessive overload; however, this [requirement](#) shall not apply to ~~locomotives~~
3951 [any locomotive that is](#) operated regularly on ~~grades exceeding a grade that exceeds~~ five
3952 percent. ~~Wires~~ [Wire](#) or other conducting ~~materials~~ [material](#) shall not be used as a substitute
3953 for [a](#) properly designed ~~fuses~~ [fuse](#), and [every](#) circuit breaking ~~devices~~ [device](#) shall be
3954 maintained in safe operating condition.

3955 B. An automatic circuit breaker of [the](#) correct type and capacity shall be installed on
3956 each resistance grounded circuit used underground. Such circuit breaker shall be located at the

3957 power source and equipped with devices to provide protection against under-voltage,
3958 grounded phase, short circuit, and overcurrent.

3959 C. Operating controls, such as switches, starters, and switch buttons, shall be so
3960 installed that they are readily accessible and can be operated without danger of contact with
3961 moving or ~~live~~ electrified parts.

3962 D. ~~Disconnecting switches~~ A disconnecting switch shall be installed underground in
3963 ~~all each~~ main power ~~circuits~~ circuit within approximately 500 feet of the ~~bottoms~~ bottom of
3964 ~~shafts and boreholes,~~ each shaft or borehole and at any other ~~places where~~ place at which a
3965 main power ~~circuits enter~~ circuit enters the mine.

3966 E. ~~Electric~~ Each piece of electrical equipment and ~~circuits~~ each circuit shall be
3967 provided with switches or other controls of safe design, construction, and installation.

3968 F. Insulating mats or other electrically nonconductive material shall be kept in place at
3969 each power-control switch and at any piece of stationary machinery ~~where~~ at which a shock
3970 ~~hazards exist~~ hazard exists.

3971 G. ~~Circuit breakers~~ Each circuit breaker, disconnecting ~~devices~~ device, and ~~switches~~
3972 switch shall be marked for identification.

3973 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
3974 **227, which states that throughout the Code any word used in the singular includes the**
3975 **plural and vice versa. Language is updated for modern usage and clarity.**

3976 ~~§ 45.1-161.190. Repealed.~~

3977 **Drafting note: Repealed by Acts 1996, c. 774, effective April 6, 1996.**

3978 ~~§ 45.1-161.191~~ 45.2-xxx. Communication systems.

3979 A. Telephone service or equivalent two-way communication facilities shall be
3980 provided between the top and each landing of each main ~~shafts and slopes~~ shaft or slope. A
3981 telephone or equivalent two-way communication facility shall be located on the surface
3982 within 500 feet of ~~all each~~ main ~~portals, and shall be~~ portal and installed in either ~~in~~ a building
3983 or ~~in~~ a box-like structure that is designed to protect the ~~facilities~~ facility from damage by
3984 inclement weather. At least one of these communication facilities shall be at a location where

3985 an authorized person who is always on duty when miners are underground can see or hear the
3986 facility and respond immediately in the event of an emergency.

3987 B. Telephone lines, other than cables, shall be carried on insulators, installed on the
3988 opposite side from power or trolley wires, and insulated adequately where they cross power or
3989 trolley wires, ~~they shall be insulated adequately.~~

3990 C. Lightning arrestors shall be provided at ~~the points~~ each point where a telephone
3991 ~~circuits enter~~ circuit enters the mine and at each telephone on the surface. Where the
3992 telephone circuit enters a building or structure, ~~the~~ a lightning arrestor is ~~only~~ required ~~where~~
3993 only at the point at which the circuit enters such building or structure.

3994 D. If a communication system other than telephones is used and its operation depends
3995 entirely upon power from the mine electric system, a means shall be provided to permit
3996 continued communication in the event the mine electric power fails or is cut off.

3997 E. Communication systems equipped with audible and visual signals that become
3998 operative when telephone communication is being established between the phones of the
3999 communication station on the surface and the underground working sections shall be
4000 provided.

4001 F. The Chief shall ~~promulgate~~ adopt regulations governing any disruption of
4002 communication in ~~mines~~ a mine.

4003 **Drafting note: The term "promulgate regulations" is changed to "adopt**
4004 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
4005 **and includes the promulgation process. Technical changes are made pursuant to § 1-227,**
4006 **which states that throughout the Code any word used in the singular includes the plural**
4007 **and vice versa, and language is updated for modern usage.**

4008 ~~§ 45.1-161.192. Repealed.~~

4009 **Drafting note: Repealed by Acts 1999, c. 256.**

4010 ~~§ 45.1-161.193~~ 45.2-xxx. ~~Electric~~ Electrical equipment.

4011 A. ~~Electric~~ Electrical equipment that is taken into or used in by the last open crosscut
4012 or in other than an intake ~~air shall be~~ airway constitutes permissible equipment.

4013 B. Permissible equipment that is used in ~~areas~~ an area specified in subsection A shall
4014 be maintained in permissible condition.

4015 C. ~~Electric~~ No electrical equipment shall ~~not~~ be taken into or operated in any place
4016 where a methane level of one percent or more is detected.

4017 D. Voltage limitations for underground installations of ~~electric~~ electrical equipment
4018 using direct or alternating current shall conform to the voltages provided in 30 C.F.R. § 18.47.

4019 E. ~~Electric~~ Electrical equipment ~~must~~ shall be classified as permissible and shall be
4020 maintained in a permissible condition when such equipment is located within 150 feet of any
4021 pillar workings or longwall ~~faces~~ face.

4022 F. ~~Electric~~ Any electrical conductors and cables installed in or ~~by~~ inby the last open
4023 crosscut, or within 150 feet of any pillar workings or longwall ~~faces~~ face, shall be:

4024 1. Shielded high-voltage cables supplying power to permissible longwall ~~and~~
4025 equipment or other equipment;

4026 2. Interconnecting conductors and cables of permissible longwall equipment;

4027 3. Conductors and cables of intrinsically safe circuits; or

4028 4. Cables and conductors supplying power to ~~low and medium voltage~~ low-voltage or
4029 medium-voltage permissible equipment.

4030 G. ~~Electric~~ Electrical equipment shall be maintained in safe operating condition at all
4031 times while it is being used, and any unsafe condition shall be corrected promptly or the
4032 equipment shall be removed from service.

4033 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4034 **throughout the Code any word used in the singular includes the plural and vice versa,**
4035 **and language is updated for modern usage and clarity.**

4036 § ~~45.1-161.194~~ 45.2-xxx. Trailing cables.

4037 A. Trailing cables that are used underground shall be flame-resistant ~~cables~~.

4038 B. Trailing cables shall be provided with suitable short-circuit protection and some
4039 means of disconnecting power from the cable. ~~Power connections~~ Any power connection that

4040 is made in other than an intake ~~air~~ airway shall be by means of a permissible ~~connectors~~
4041 connector.

4042 C. ~~Temporary splices~~ Any temporary splice in a trailing ~~cables~~ cable shall be made in
4043 a workmanlike manner; and shall be mechanically strong; and well insulated.

4044 D. No more than one temporary, unvulcanized splice shall be allowed in ~~a~~ any trailing
4045 cable.

4046 E. ~~Permanent splices~~ Any permanent splice or ~~repairs~~ repair in a trailing ~~cables~~ cable
4047 shall ~~be made as follows~~:

4048 1. ~~They shall be~~ Be mechanically strong, with adequate electrical conductivity and
4049 flexibility;

4050 2. ~~They shall be~~ Be effectively insulated and sealed so as to exclude moisture;

4051 3. ~~The finished splice or repair shall be~~ Be vulcanized or otherwise treated with
4052 suitable materials to provide flame-resistant properties and good bonding to the outer jacket;
4053 and

4054 4. If the cable has metallic shielding around each conductor, ~~then the~~ possess new
4055 shielding ~~shall be~~ that is equivalent to ~~that of~~ the original shielding.

4056 F. Trailing cables shall be protected against mechanical damage. ~~Trailing cables~~ A
4057 trailing cable that is damaged in a manner that exposes the insulated inner power conductors
4058 shall be repaired promptly or removed from service.

4059 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4060 **throughout the Code any word used in the singular includes the plural and vice versa,**
4061 **and language is updated for clarity.**

4062 § ~~45.1-161.195~~ 45.2-xxx. Inspection of ~~electric~~ electrical equipment and wiring;
4063 checking and testing methane monitors.

4064 A. ~~Electric~~ Electrical equipment and wiring shall be inspected by a certified person at
4065 least weekly if it is located underground; and at least monthly if it is located on the surface;
4066 ~~and~~. Such equipment and wiring shall be inspected more often if doing so is necessary to
4067 ~~assure~~ ensure safe operating conditions, ~~and any~~. Any hazardous condition that is found shall

4068 be promptly corrected or the equipment or wiring shall be removed from service. Records of
4069 such ~~examination~~ inspections shall be maintained at the mine for a period of one year.

4070 B. A functional check of methane monitors on electrical face equipment shall be
4071 conducted to determine ~~that~~ whether such monitors are de-energizing the electrical face
4072 equipment properly. Such check shall be (i) made on each production shift ~~and shall be~~, (ii)
4073 conducted by the equipment operator in the presence of a mine foreman, and ~~shall be~~ (iii)
4074 recorded in the on-shift report of the mine foreman.

4075 C. ~~Weekly calibration tests on~~ To determine the accuracy and operation of methane
4076 monitors on electrical face equipment ~~to determine the accuracy and operation of~~, weekly
4077 calibration tests of such monitors shall be conducted with a known mixture of methane at the
4078 flow rate recommended by the methane monitor manufacturer. A record of the results shall be
4079 maintained.

4080 D. Required methane monitors shall be maintained in permissible and proper
4081 operating condition.

4082 **Drafting note: Language is updated for modern usage and clarity.**

4083 § ~~45.1-161.196~~ 45.2-xxx. Repairs to circuits and electric equipment.

4084 A. No electrical work shall be performed on any low-voltage, medium-voltage, or
4085 high-voltage distribution ~~circuits~~ circuit or equipment; except by a certified person or ~~by~~ a
4086 person who is trained to perform electrical work and to maintain electrical equipment and is
4087 working under the direct supervision of a certified person. ~~All~~ Every high-voltage ~~circuits~~
4088 circuit shall be grounded before repair work is performed. Disconnecting devices shall be
4089 locked out and suitably tagged by ~~the persons~~ the person who ~~perform~~ performs electrical or
4090 mechanical work on such ~~circuits~~ a circuit or piece of equipment connected to ~~the circuits~~
4091 such a circuit, except that ~~in cases~~ where locking out is not possible, such devices shall be
4092 opened and suitably tagged by such ~~persons~~ person. Locks and tags shall be removed only by
4093 the ~~persons~~ person who installed them or, if such ~~persons are~~ person is unavailable, by a
4094 certified ~~persons~~ person authorized by the operator or his agent.

4095 ~~However, miners~~ B. A miner may, where necessary, repair energized trolley wires if
4096 ~~they wear~~ he wears insulated shoes and lineman's gloves.

4097 C. This section does not prohibit a certified electrical ~~repairmen~~ repairman from
4098 making checks on or troubleshooting energized circuits or ~~the performance of an authorized~~
4099 person from performing repairs or maintenance on equipment ~~by authorized persons~~ once the
4100 power is off and the equipment is blocked against motion, except where motion is necessary
4101 to make adjustments.

4102 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4103 **throughout the Code any word used in the singular includes the plural and vice versa,**
4104 **and language is updated for modern usage. The section is divided into subsections for**
4105 **clarity.**

4106 § ~~45.1-161.172~~ 45.2-xxx. Underground illumination.

4107 A. Electric-light wires shall be supported by suitable insulators or installed in conduit,
4108 shall be fastened securely to the power conductors, and shall not contact any combustible
4109 ~~materials~~ material.

4110 B. ~~Electric lights~~ Every electric light shall be guarded and installed so that ~~they do it~~
4111 does not contact any combustible ~~materials~~ material.

4112 **Drafting note: This section is relocated from existing Article 9 of Chapter 14.3.**
4113 **Technical changes are made pursuant to § 1-227, which states that throughout the Code**
4114 **any word used in the singular includes the plural and vice versa, and language is**
4115 **updated for modern usage.**

4116 § ~~45.1-161.173~~ 45.2-xxx. Inspection of electric illumination equipment.

4117 ~~All lamps,~~ Every lamp, extension ~~lights~~ light, and permissible form of portable
4118 illumination, such as a cap ~~lamps and flashlights~~ lamp or flashlight, that ~~are~~ is used for
4119 personal illumination underground shall be inspected by an authorized person at least once per
4120 week, and more often if necessary, to ensure safe operating conditions. ~~Such~~ When such
4121 equipment is located at the surface, it shall be inspected by an authorized person at least once

4122 per month, and more often if necessary, to ensure safe operating conditions. Any defect found
4123 shall be corrected.

4124 **Drafting note: This section is relocated from existing Article 9 of Chapter 14.3.**

4125 **Technical changes are made pursuant to § 1-227, which states that throughout the Code**

4126 **any word used in the singular includes the plural and vice versa, and language is**

4127 **updated for modern usage.**

4128 Article ~~13~~ 3.

4129 Fire Prevention and Fire Control.

4130 **Drafting note: Existing Article 13 of Chapter 14.3, concerning fire prevention**

4131 **and fire control, is retained as proposed Article 3.**

4132 § ~~45.1-161.200~~ 45.2-xxx. Firefighting equipment; fire prevention.

4133 A. Each mine shall be provided with suitable firefighting equipment; that is adequate

4134 for the size of the mine.

4135 B. The following equipment, at a minimum, shall be immediately available at each

4136 mine:

4137 1. A water car filled with water and provided with hose and pump, or waterlines and

4138 necessary hoses;

4139 2. At least three 20-pound dry chemical fire extinguishers;

4140 3. Ten 50-pound bags of rock dust, which shall be made available at doors or other

4141 strategic places;

4142 4. Bolt cutters ~~which may~~ that can be used to cut trolley wire in an emergency;

4143 5. One pair of rubber gloves ~~to~~ that shall be used with each pair of bolt cutters when

4144 cutting trolley wire;

4145 6. Two sledge hammers; and

4146 7. Five hundred square feet of brattice cloth, nails, and a hammer.

4147 C. Clean, dry sand, rock dust, or fire extinguishers; that are suitable from a toxic and

4148 shock standpoint; shall be ~~provided and~~ placed at each electrical station, ~~such as substations~~

4149 including each substation, transformer-~~stations~~ station, and permanent pump-~~stations~~ station,
4150 so as to be out of the smoke in case of a fire in the station.

4151 D. Suitable fire extinguishers shall be provided at ~~all~~ each (i) electrical-~~stations~~ station,
4152 ~~such as substations~~ including each substation, transformer-~~stations~~ station, and permanent
4153 pump-~~stations~~ station; (ii) piece of self-propelled mobile equipment; (iii) belt-~~heads~~ head and
4154 at the inby end of-~~belts~~ each belt; (iv) ~~areas~~ area used for the storage of flammable materials;
4155 (v) fueling-~~stations~~ station; and (vi) any other-~~areas~~ area that may constitute a fire hazard, so
4156 as to be on the fresh air side in case of a fire.

4157 E. All firefighting equipment and each fire sensor-~~systems~~ system shall be maintained
4158 in a useable and operative condition. ~~Chemical extinguishers~~ Each chemical extinguisher shall
4159 be examined every six months and the date of the examination shall be indicated on a tag
4160 attached to ~~the extinguishers~~ each extinguisher.

4161 F. A sufficient number of approved one-hour, self-contained, self-rescuers shall be
4162 readily available, not more than 100 feet away, for the persons involved in the moving or
4163 transporting of any ~~unit~~ piece of off-track mining equipment.

4164 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4165 **throughout the Code any word used in the singular includes the plural and vice versa,**
4166 **and language is updated for modern usage and consistency.**

4167 § ~~45.1-161.201~~ 45.2-xxx. Duties in case of fire.

4168 A. In case of a fire, the next inby permanent stopping into the return air course shall be
4169 opened, as soon as possible, in order to short circuit the air and permit close access to the fire
4170 for extinguishment.

4171 B. When a fire that ~~may~~ could endanger persons underground cannot be extinguished
4172 immediately, ~~the~~ such persons shall be withdrawn promptly from the mine.

4173 C. ~~Should~~ If a fire ~~occurs~~ occurs, the person discovering it and any other person in the
4174 vicinity of the fire shall make a prompt effort to extinguish it.

4175 **Drafting note: Technical changes.**

4176 § ~~45.1-161.202~~ 45.2-xxx. Emergency response plans; list of next of kin.

4177 A. ~~Operators~~ Each operator shall develop an emergency response plan for each mine.

4178 The plan shall include (i) a mine emergency communication plan, (ii) an evacuation
4179 procedure, (iii) the identification of waterlines, (iv) the number system of brattice, (v) the
4180 location of ~~escapeways~~ each escapeway, and (vi) such other information as the Chief may
4181 reasonably require.

4182 B. The operator shall maintain a list of the next of kin of all miners employed at the
4183 mine. The list shall be kept at the mine site or at a central facility readily accessible to the
4184 mine.

4185 C. ~~An~~ Such emergency response plan shall be subject to approval by the Chief or mine
4186 inspector. The Chief may require periodic updates to an operator's emergency response plan.
4187 ~~Operators~~ Such operator shall comply with the requirements of the approved plan.

4188 D. The emergency response plan shall be posted in a conspicuous manner and ~~place,~~
4189 location readily accessible to all miners, both underground and at the surface of the mine.

4190 E. The operator shall train miners in the implementation of the emergency response
4191 plan and shall conduct practice drills. Records of dates and times of practice drills shall be
4192 maintained in the emergency response plan.

4193 F. Each miner employed by the operator who goes underground, and each visitor
4194 authorized by the operator to enter the mine ~~by the operator~~, shall have available an adequate
4195 supply of self-rescue devices, each of which provides at least one hour ~~or longer of~~ protection
4196 and is approved by the federal Mine Safety and Health Administration. The training related to
4197 self-rescue devices shall be included in the emergency response plan approved by the Chief.

4198 **Drafting note: Language is updated for modern usage and clarity. Technical**
4199 **changes are made.**

4200 § ~~45.1-161.203~~ 45.2-xxx. Reporting fires; response.

4201 In case of any unplanned fire at a mine that is not extinguished within ~~thirty~~ 30
4202 minutes of discovery, the operator shall report the fire to the Chief, by the quickest available
4203 means, giving all information known to ~~him~~ the operator. The Chief, based on ~~the~~ such
4204 information, shall promptly go in person or dispatch a mine inspector to the scene of the fire

4205 for consultation, and ~~assist~~ assistance in the ~~extinguishing~~ extinguishment of the fire and the
4206 protection of exposed persons. In the event of a difference of opinion as to measures required,
4207 the decision of the Chief or the mine inspector shall be final. The decision of the Chief
4208 regarding measures to extinguish the fire and protect persons shall have the force of an order
4209 issued pursuant to § ~~45.1-161.91~~ 45.2-xxx if it is delivered to the operator in writing.

4210 **Drafting note: Technical changes are made.**

4211 § ~~45.1-161.204~~ 45.2-xxx. Fire prevention in transportation of mining equipment.

4212 A. Prior to moving or transporting any ~~unit~~ piece of off-track mining equipment in
4213 ~~areas~~ any area of the active workings where energized trolley wires or trolley feeder wires are
4214 present; (i) the ~~unit~~ piece of equipment shall be examined by a certified person to ensure that
4215 accumulations of coal dust, float coal dust, loose coal, oil, grease, and other combustible
4216 materials have been removed from such ~~unit~~ piece of equipment; and (ii) a qualified person
4217 shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit
4218 interrupting devices to ensure that proper short circuit protection exists.

4219 B. A record shall be kept of the examinations required pursuant to subsection A and
4220 shall be made available, upon request, to the Chief or his authorized representative.

4221 C. Off-track mining equipment shall not be moved or transported in ~~areas~~ any area of
4222 the active workings where energized trolley wires or trolley feeder wires are present ~~only~~
4223 unless under the direct supervision of a certified person who ~~shall be~~ is physically present at
4224 all times during the moving or transporting of such equipment.

4225 D. The ~~frames~~ frame of any unit of off-track mining equipment that is being moved or
4226 transported shall be covered on the top and on the trolley wire side with fire-resistant material.

4227 E. Electrical contact shall be maintained between the mine track and the ~~frames~~ frame
4228 of any piece of off-track mining equipment that is being moved ~~in-track~~ in a track and trolley
4229 ~~entries, except that~~ entry. However, rubber-tired equipment need not be grounded to a
4230 transporting vehicle if no metal part of such rubber-tired equipment can come into contact
4231 with the transporting vehicle.

4232 F. To avoid accidental contact with power lines, the equipment being transported or
4233 trammed shall be insulated or, if necessary, the assemblage shall be removed, ~~if necessary,~~ if
4234 the clearance to the power lines is six inches or less.

4235 G. Sufficient prior notice shall be given to the Department so that a mine inspector, if
4236 he deems it necessary, may travel the route of the move before the actual move is made, ~~if he~~
4237 ~~deems it necessary.~~

4238 H. A minimum vertical clearance of ~~twelve inches~~ one foot shall be maintained
4239 between the farthest projection of the ~~unit~~ piece of equipment ~~which that~~ is being moved and
4240 the energized trolley wires or trolley feeder wires at all times during the movement or
4241 transportation of such equipment. If the height of the coal seam does not permit ~~twelve inches~~
4242 one foot of vertical clearance to be so maintained, the following additional precautions shall
4243 be taken:

4244 1. Electric power shall be supplied to the trolley wires or trolley feeder wires only
4245 from outby the ~~unit~~ piece of equipment being moved or transported. Where direct current
4246 electric power is used and such electric power can be supplied only from inby the equipment
4247 being moved or transported, such power may be supplied from inby such equipment if a
4248 miner ~~with~~ who has the means to cut off the power, ~~and is~~ in direct communication with the
4249 persons actually engaged in the moving or transporting operation, ~~and~~ is stationed outby the
4250 equipment being moved;

4251 2. The settings of automatic circuit interrupting devices used to provide short circuit
4252 protection for the trolley circuit shall be reduced to not more than one-half of the maximum
4253 current that could flow if the equipment being moved or transported were to come into contact
4254 with the trolley wire or trolley feeder wire;

4255 3. At all times when the ~~unit~~ piece of equipment is being moved or transported, a
4256 miner shall be stationed at the first automatic circuit breaker outby the equipment being
4257 moved. Such miner shall be (i) in direct communication with the persons actually engaged in
4258 the moving or transporting operation and (ii) capable of communicating with the authorized
4259 person on the surface who is required to be on duty;

4260 4. Where trolley phones are utilized to satisfy the requirements of subdivision 3 ~~of this~~
4261 ~~subsection~~, telephones or other equivalent two-way communication devices that can readily
4262 be connected with the mine communication system shall be carried by (i) the miner who is
4263 stationed at the first automatic circuit breaker outby the equipment being moved and (ii) by a
4264 miner who is actually engaged in the moving or transporting operation; and

4265 5. No person shall be permitted to be inby the ~~unit~~ piece of equipment being moved or
4266 transported, or in the ventilating current of air that is passing over such equipment, except
4267 ~~those persons~~ a person who is directly engaged in moving such equipment.

4268 The provisions of this subsection shall not apply to ~~units~~ a piece of mining equipment
4269 that ~~are~~ is transported in a mine ~~cars, provided that~~ car if no part of the equipment extends
4270 above or over the sides of the mine car.

4271 **Drafting note: Technical changes are made, including pursuant to § 1-227, which**
4272 **states that throughout the Code any word used in the singular includes the plural and**
4273 **vice versa, and language is updated for modern usage and consistency.**

4274 § ~~45.1-161.205~~ 45.2-xxx. Storage and use of flammable fluids and materials.

4275 A. ~~Underground~~ Each underground storage ~~places~~ place for oil, grease ~~and~~ or
4276 flammable hydraulic fluid shall be of fireproof construction.

4277 B. Oil, grease, and flammable hydraulic fluid that is kept underground for current use
4278 shall be kept in a closed metal ~~containers~~ container.

4279 C. Provisions shall be made to prevent an accumulation of spilled oil or grease at ~~the~~
4280 any such storage ~~places~~ place or at ~~the locations where~~ any location at which such ~~materials~~
4281 are material is used.

4282 D. ~~Oily rags~~ Any oily rag, oily waste, ~~and~~ or wastepaper shall be kept in a closed
4283 metal ~~containers~~ container until it is removed for disposal.

4284 E. No gasoline, benzene, kerosene, or other flammable ~~oils~~ oil shall be used
4285 underground in powering machinery.

4286 F. ~~All~~ Every oxygen ~~and~~ or acetylene ~~bottles~~ bottle that is used underground shall be
4287 secured while in use. When stored underground, an oxygen ~~and~~ or acetylene ~~bottles~~ bottle

4288 shall be placed in a safe location, protected from physical damage, stored with ~~caps~~ its cap in
4289 place where such storage is provided for on the tank, and secured upright or elevated,
4290 whichever mine heights allow.

4291 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4292 **throughout the Code any word used in the singular includes the plural and vice versa.**
4293 **Language is updated for modern usage and clarity.**

4294 § ~~45.1-161.206~~ 45.2-xxx. ~~Diesel-powered~~ Diesel-powered equipment.

4295 ~~Diesel-powered~~ Diesel-powered equipment may be utilized underground with the
4296 written approval of the Chief. The Chief shall ~~promulgate~~ adopt regulations necessary to carry
4297 out the provisions of this section. ~~The~~ Such regulations shall require that the air in each travel
4298 way in which diesel equipment is used, and in any active workings connected thereto, be of a
4299 quality necessary for a safe, healthful working environment. The minimum quantity of
4300 ventilating air that ~~must~~ shall be supplied for a permissible diesel machine in a given time
4301 shall conform to ~~that~~ the quantity shown on the approval plate attached to the machine. ~~All~~
4302 Every diesel ~~machines and~~ machine or piece of equipment shall be maintained in such manner
4303 that the exhaust emissions meet the ~~same~~ standards to which the machine or equipment was
4304 manufactured.

4305 **Drafting note: The term "promulgate regulations" is changed to "adopt**
4306 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
4307 **and includes the promulgation process. Technical changes are made pursuant to § 1-227,**
4308 **which states that throughout the Code any word used in the singular includes the plural**
4309 **and vice versa, and language is updated for modern usage and clarity.**

4310 § ~~45.1-161.207~~ 45.2-xxx. Arcs, sparks, and flames.

4311 A. The intentional creation of any open arc, open spark, or open flame, except as
4312 provided in subsection B, ~~shall be~~ is prohibited.

4313 B. ~~Welding and~~ Underground (i) welding or cutting with arc or flame or (ii) soldering
4314 ~~underground in other than,~~ unless conducted in a fireproof enclosure that is ventilated with
4315 intake air, shall be done by or under the direct instruction of a certified foreman or repairman.

4316 A person certified in gas detection shall test for methane before and during such ~~operations~~ an
4317 operation in an underground ~~mines~~ coal mine and shall make a diligent search for fire after
4318 such an operation in all ~~mines~~ parts of the mine where such operation occurred. Rock dust or
4319 suitable fire extinguishers shall be immediately available during such welding or cutting.
4320 ~~Welding operations~~ A welding operation shall be performed only in ~~well-ventilated areas~~ a
4321 well-ventilated area.

4322 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4323 **throughout the Code any word used in the singular includes the plural and vice versa,**
4324 **and language is updated for clarity.**

4325 Article ~~14~~ 4.

4326 Ventilation, Mine Gases, and Other Hazardous Conditions.

4327 **Drafting note: Existing Article 14 of Chapter 14.3, concerning ventilation, mine**
4328 **gases, and other hazardous conditions, is retained as proposed Article 4.**

4329 § ~~45.1-161.208~~ 45.2-xxx. Pre-shift examinations.

4330 A. The operator or his agent shall establish eight-hour intervals of time, each of which
4331 shall be subject to a required pre-shift ~~examinations~~ examination. Within three hours
4332 preceding the beginning of any such eight-hour interval during which any person is scheduled
4333 to work or travel underground, a mine ~~foremen~~ foreman shall make a pre-shift examination.
4334 No person scheduled to enter the mine during the eight-hour interval, other than the mine
4335 ~~foremen~~ foreman who is conducting the examination ~~may~~, shall enter any underground area
4336 unless a pre-shift examination has been completed for such established eight-hour interval.

4337 B. During the pre-shift examination, the mine foreman shall (i) examine for hazardous
4338 conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and
4339 (iii) determine whether the air is traveling in its regular course and in sufficient volume in
4340 each split, at the following underground locations ~~which are underground~~:

4341 1. ~~Track entries and~~ Each track entry or other ~~areas~~ area where persons are scheduled
4342 to work or travel during the oncoming shift;

4343 2. ~~Belt conveyors~~ Each belt conveyor that will be used to transport persons during the
4344 oncoming shift and the ~~entries~~ entry in which ~~these~~ each such belt ~~conveyors are~~ conveyor is
4345 located;

4346 3. ~~Working sections and areas~~ Any working section or area where mechanized mining
4347 equipment is being installed or removed; if ~~anyone~~ a person is ~~being~~ scheduled to work on the
4348 section or in the area during the oncoming shift. ~~This~~ Such a working section or area includes
4349 each working ~~places, approaches~~ place and each approach to a worked-out ~~areas~~ area, and
4350 ventilation controls on ~~these sections~~ each such section or in ~~these areas~~ each such area;

4351 4. ~~Approaches~~ Each approach to a worked-out ~~areas~~ area along an intake air ~~courses~~
4352 course if intake air passes by ~~the~~ such worked-out area to ventilate any working ~~sections~~
4353 section where ~~anyone~~ a person is scheduled to work during the oncoming shift;

4354 5. ~~Seals~~ Each seal along an intake air ~~courses~~ course where intake air passes by ~~a~~ such
4355 seal to ventilate any working ~~sections~~ section where ~~anyone~~ a person is scheduled to work
4356 during the oncoming shift;

4357 6. ~~Entries and rooms~~ Where intake air passes through or by an entry or room to any
4358 working section where a person is scheduled to work during the oncoming shift, each such
4359 entry or room that is driven (i) more than 20 feet off an intake air course without a crosscut
4360 ~~and without~~ or permanent ventilation controls; or (ii) more than two crosscuts off an intake air
4361 course without permanent ventilation controls ~~where intake air passes through or by these~~
4362 ~~entries or rooms to a working section where anyone is scheduled to work during the oncoming~~
4363 ~~shift~~; and

4364 7. Where unattended diesel equipment is expected to operate or ~~areas where~~ an area in
4365 which trolley wires or trolley feeder wires are to be or will remain energized during the
4366 oncoming shift.

4367 C. During the pre-shift examination, the mine foreman shall determine the volume of
4368 air entering each of the following areas if a miner is scheduled to work in ~~the areas~~ such area
4369 during the oncoming shift:

4370 1. In the last open crosscut, ~~which means the crosseut in the line of pillars containing~~
4371 ~~the permanent stoppings that separate the intake air courses and the return air courses,~~ of each
4372 set of entries or rooms on each working section ~~and areas where~~ or any area in which
4373 mechanized mining equipment is being installed or removed;

4374 2. On each longwall or shortwall in ~~the~~ each intake entry ~~or entries~~ at the intake end of
4375 the longwall or shortwall face immediately outby the face ~~and~~. The mine foreman shall also
4376 determine the velocity of air at each end of the face at the locations specified in the approved
4377 ventilation plan required by the federal mine safety law; and

4378 3. At the intake end of any pillar line (i) ~~if a single split of air is used,~~ in the intake
4379 entry furthest from the return air course, immediately outby the first open crosscut outby the
4380 line of pillars being mined, if a single split of air is used or (ii) ~~if a split system is used,~~ in the
4381 intake entries of each split, immediately inby the split point, if a split system is used.

4382 D. A mine foreman shall make a pre-shift examination of the surface areas of an
4383 underground coal ~~mines~~ mine in accordance with the requirements for pre-shift examinations
4384 at surface coal mines as provided in § ~~45.1-161.256~~ 45.2-xxx.

4385 E. The Chief may require the mine foreman to examine other areas of the mine or to
4386 examine for other hazards during the pre-shift examination.

4387 F. Any area of the mine where hazardous conditions are found shall be posted with a
4388 conspicuous danger sign located where anyone entering the area would pass. Only ~~persons a~~
4389 person designated by the operator, or his agent, to correct or evaluate the condition ~~may shall~~
4390 enter ~~this~~ such posted area.

4391 G. At each working place examined, the mine foreman shall certify by initials, date,
4392 and time, that the examination was made. In ~~areas~~ any area to be examined outby a working
4393 section, the mine foreman shall certify completion of the examination by initials, date, and
4394 time at enough locations to show that the entire area has been examined.

4395 H. ~~Idle and~~ Each idle or worked-out ~~areas~~ area underground shall be inspected for gas
4396 and other hazardous conditions by a mine foreman, immediately before miners are permitted
4397 to enter or work in such ~~places~~ place. A certified person shall supervise the correction of

4398 ~~conditions~~ any condition that ~~create~~ creates an imminent danger. The mine operator, or his
4399 agent, ~~may~~ shall not pass beyond the danger ~~signal only~~ sign except in cases of necessity.

4400 I. ~~Where persons have not~~ If no person has been working underground before an
4401 established eight-hour interval, no person other than ~~the a mine foremen~~ foreman conducting
4402 a pre-shift examination ~~may~~ shall enter the mine until the examination has been completed
4403 and the mine ~~foremen report~~ foreman reports that the mine ~~to be~~ is clear of danger; however,
4404 miners may enter under the direction of a mine foreman for the purpose of making the mine
4405 safe. The Chief ~~shall have the authority~~ may, in certain mines, ~~in his discretion, to~~ authorize
4406 ~~man trips~~ mantrips to proceed to a designated station underground, from which ~~they may not~~
4407 pass no mantrip shall leave until ~~the a mine foremen report~~ foreman reports that the remainder
4408 of the areas of the mine ~~to be~~ are clear of danger.

4409 J. Miners who are regularly employed on a shift during which a pre-shift examination
4410 is being conducted shall be permitted to leave or enter the mine in the performance of their
4411 duties.

4412 K. In ~~multiple shift operations~~ a multiple-shift operation, certified persons may be
4413 used to make the pre-shift examination for the next or succeeding shift.

4414 L. ~~Areas~~ Immediately before any miner is permitted to enter an area of an inactive
4415 underground coal ~~mines~~ mine in order to take emergency actions to preserve the mine, a mine
4416 foreman shall ~~be examined~~ examine such area for gas and other hazardous conditions ~~by a~~
4417 ~~mine foreman immediately before miners are permitted to enter such areas to take emergency~~
4418 ~~actions to preserve a mine.~~

4419 M. In the performance of his duties under this section, the mine foreman shall have no
4420 superior officer, and ~~all miners~~ every miner shall be subordinate to him.

4421 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
4422 **227, which states that throughout the Code any word used in the singular includes the**
4423 **plural and vice versa. Language is updated for modern usage and clarity. The text**
4424 **defining "last open crosscut" is moved to the definitions section for Subtitle II, in**
4425 **proposed Chapter 5.**

4426 § ~~45.1-161.209~~ 45.2-xxx. On-shift examinations.

4427 A. At least once during each shift, and more often if necessary, a certified person shall
4428 examine each underground section where coal is produced and any other area where
4429 mechanized mining equipment is being installed or removed during the shift. The certified
4430 person shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency
4431 with a suitable permissible device, and (iii) determine whether the air is traveling in its regular
4432 course and in sufficient volume in each split. ~~Hazardous conditions~~ Any hazardous condition
4433 shall be corrected immediately or the miners shall be withdrawn and the affected area plainly
4434 marked with ~~"danger"~~ danger signs.

4435 B. During each shift ~~that~~ in which coal is produced, a certified person shall examine
4436 for hazardous conditions along each underground belt conveyor entry where a belt conveyor
4437 is operated. This examination may be conducted at the same time as the pre-shift examination
4438 of the belt conveyors and the belt conveyor entries, if the examination is conducted within
4439 three hours before the established eight-hour interval. The person conducting the examination
4440 shall certify by initials, date, and time at enough locations to show that the entire area has
4441 been examined.

4442 C. ~~Persons~~ A person conducting ~~the~~ an on-shift examination shall determine at the
4443 following underground locations ~~which are underground~~:

4444 1. The volume of air in the last open crosscut, ~~which means the crosscut in the line of~~
4445 ~~pillars containing the permanent stoppings that separate the intake air courses and the return~~
4446 ~~air courses~~, of each set of entries or rooms on each working section and ~~areas where~~ in any
4447 area in which mechanized mining equipment is being installed or removed;

4448 2. The volume of air on a longwall or shortwall, including ~~areas~~ any area where
4449 longwall or shortwall equipment is being installed or removed, in the intake entry or entries at
4450 the intake end of the longwall or shortwall;

4451 3. The velocity of air at each end of the longwall or shortwall face at ~~the locations~~
4452 each location specified in the approved ventilation plan required pursuant to the federal mine
4453 safety law; and

4454 4. The volume of air at the intake end of any pillar line (i) ~~where a single split of air is~~
4455 ~~used~~, in the intake entry furthest from the return air course, immediately outby the first open
4456 crosscut outby the line of pillars being mined, if a single split of air is used or (ii) ~~if a split~~
4457 ~~system is used~~, in the intake entries of each split, immediately inby the split point, if a split
4458 system is used.

4459 D. A test shall be made for methane before (i) any electrically powered equipment is
4460 taken inby the last open crosscut, ~~before~~ (ii) any blasting takes place, and ~~before~~ (iii) work is
4461 resumed after blasting. When a longwall or shortwall mining ~~systems are~~ system is used,
4462 ~~these~~ such methane ~~tests~~ test shall be made from under permanent roof support at the shearer,
4463 the plow, or the cutting head. ~~These~~ Such methane ~~tests~~ test shall be made at least once every
4464 20 minutes or more often as necessary for safety while such equipment is in operation. When
4465 mining has been stopped for more than 20 minutes, a methane ~~tests~~ test shall be conducted
4466 prior to the ~~start-up~~ start-up of equipment.

4467 E. ~~Idle~~ Each idle or worked-out ~~areas~~ area underground, including a section ~~belts~~ belt
4468 that ~~have~~ has been idle for a period of 24 hours or more, shall be examined by a certified
4469 person immediately before miners are permitted to enter or work in such ~~areas~~ area. The
4470 person conducting the examination shall certify completion of the examination by initials,
4471 date, and time at enough locations to show that the entire area has been examined.

4472 F. Daily and on-shift examinations of surface areas of underground coal mines shall be
4473 made in accordance with the requirements for daily and on-shift examinations at surface coal
4474 mines as provided in § ~~45.1-161.256~~ 45.2-xxx.

4475 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
4476 **227, which states that throughout the Code any word used in the singular includes the**
4477 **plural and vice versa. Language is updated for modern usage and clarity. The text**
4478 **defining "last open crosscut" is moved to the definitions section for Subtitle II, in**
4479 **proposed Chapter 5.**

4480 § ~~45.1-161.210~~ 45.2-xxx. Weekly examinations.

4481 A. At least once every seven days, a mine foreman shall examine each unsealed
4482 worked-out ~~areas~~ area where no pillars have been recovered.

4483 B. At least once every seven days, a mine foreman shall evaluate the effectiveness of
4484 each bleeder ~~systems~~ system used ~~under~~ pursuant to § ~~45.1-161.220~~ 45.2-xxx.

4485 C. At least once every seven days, a mine foreman shall examine each of the following
4486 locations for hazardous conditions:

4487 1. ~~In at~~ At least one entry of each intake air course, in its entirety, so that the entire air
4488 course is traveled.

4489 2. ~~In at~~ At least one entry of each return air course, in its entirety, so that the entire air
4490 course is traveled.

4491 3. ~~In each~~ Each longwall or shortwall travel way, in its entirety, so that the entire
4492 travel way is traveled.

4493 4. ~~At each~~ Each seal along each return ~~and or~~ bleeder air ~~courses~~ course and ~~at~~ each
4494 seal along each intake air ~~courses~~ course not examined ~~under~~ pursuant to § ~~45.1-161.208~~ 45.2-
4495 xxx.

4496 5. ~~In each~~ Each escapeway, in its entirety, so that the entire escapeway is traveled.

4497 6. ~~On each~~ Each working section not examined ~~under~~ pursuant to § ~~45.1-161.208~~ 45.2-
4498 xxx during the previous seven days.

4499 D. At least once every seven days, a certified person shall:

4500 1. Determine the volume of air entering ~~the~~ each main ~~intakes~~ intake and ~~in~~ each
4501 intake split;

4502 2. Determine the volume of air and test for methane in the last open crosscut in any
4503 pair or set of developing entries or rooms; Such determination and test shall be conducted in
4504 the return of each split of air immediately before it enters the main returns and where the air
4505 leaves the main returns; and

4506 3. Test for methane in the return entry nearest each set of seals immediately after the
4507 air passes the seals.

4508 E. ~~Hazardous conditions~~ Any hazardous condition shall be corrected immediately. If
4509 the condition creates an imminent danger, everyone except those persons necessary to correct
4510 the hazardous ~~conditions~~ condition shall be withdrawn from the area affected to a safe area
4511 until the hazardous condition is corrected.

4512 F. ~~Weekly~~ No weekly examination is ~~not~~ required during any seven-day period in
4513 which no person enters any underground area of ~~the a~~ mine. ~~When~~ If a mine is idled or is in a
4514 nonproducing status with entry only for maintenance of the mine, weekly examinations may
4515 be conducted in accordance with a plan approved by the Chief.

4516 G. Except for certified persons required to make examinations, no person shall enter
4517 any underground area of a coal mine if ~~the no~~ weekly examination has ~~not~~ been completed
4518 within the preceding seven days. The weekly examination may be conducted at the same time
4519 as the pre-shift examination.

4520 H. ~~The A~~ person making ~~the a~~ weekly ~~examinations~~ examination shall certify
4521 completion of the examination by initials, date, and ~~the time that the examination was made.~~
4522 ~~Certifications and time shall appear~~ at enough locations to show that the entire area has been
4523 examined.

4524 I. ~~Examinations~~ Any examination of surface areas of underground coal mines shall be
4525 made in accordance with the requirements for weekly examinations at surface coal mines ~~as~~
4526 ~~provided in pursuant to~~ § ~~45.1-161.256~~ 45.2-xxx.

4527 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4528 **throughout the Code any word used in the singular includes the plural and vice versa.**
4529 **Language is updated for modern usage and clarity, and the text of subsection H is**
4530 **conformed to similar certification provisions in other sections.**

4531 § ~~45.1-161.211~~ 45.2-xxx. Examinations of fans.

4532 A. ~~A~~ An authorized person shall conduct a daily inspection ~~shall be made~~ of ~~all~~ each
4533 main ~~fans~~ fan and of the machinery connected ~~therewith by an authorized person~~ with such
4534 fan. The person making the examination shall ~~make a record of the same~~ such examination in
4535 a book prescribed for this purpose or by other adequate ~~facilities~~ means provided to

4536 permanently record the performance of the main fan and to give warning of an interruption to
4537 a fan. No such daily examination is required on any day in which no person goes
4538 underground, except that the examination shall be completed prior to any person entering the
4539 mine if no examination was made on the previous ~~day's examination has not been made~~ day.

4540 B. ~~Places~~ Any place ventilated by means of a blower ~~fans~~ fan shall be examined for
4541 methane by a certified person before the fan is started at the beginning of the shift and after
4542 any interruption of fan operation that lasts for five minutes or more during the shift.

4543 C. ~~The~~ Each blower fan and its tubing shall be inspected at least twice during each
4544 working shift by a certified person.

4545 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4546 **throughout the Code any word used in the singular includes the plural and vice versa,**
4547 **and language is updated for modern usage and clarity.**

4548 § ~~45.1-161.212~~ 45.2-xxx. Record of examinations.

4549 A. Any hazardous condition found by the mine foreman or ~~other~~ another certified
4550 ~~persons~~ person designated by the operator for the ~~purposes~~ purpose of conducting
4551 examinations under ~~Article 14 (§ 45.1-161.208 et seq.) of this chapter~~ this article shall be (i)
4552 corrected immediately; or ~~the affected area shall be dangered off~~ (ii) posted with conspicuous
4553 danger signs until the condition is corrected. If the hazardous condition creates an imminent
4554 danger, all persons except those required to perform work to correct the imminent danger
4555 shall be withdrawn from the affected area. ~~A record of the~~ The hazardous condition ~~found~~
4556 the corrective actions taken shall be ~~made~~ recorded in a book maintained for this purpose on
4557 the surface at the mine. The record shall be made by the completion of the shift on which the
4558 hazardous condition is found.

4559 B. Upon completing the pre-shift examination, the mine foreman shall return to the
4560 surface or a designated station underground and report in person to an authorized person
4561 before ~~other miners enter~~ any other miner enters the mine. Immediately upon reaching the
4562 surface, the mine foreman shall record in ink or indelible pencil the result of his inspection in
4563 a book ~~kept~~ maintained for this purpose on the surface ~~for that purpose at the mine~~.

4564 C. At the completion of any shift during which a portion of a weekly examination is
4565 made, a record of each hazardous ~~conditions, their locations~~ condition, its location, the
4566 corrective action taken, and the ~~results~~ result and location of each air and methane
4567 ~~measurements~~ measurement shall be made. ~~The~~ Such record shall be made by the ~~person~~ mine
4568 foreman making the examination or ~~by a~~ another certified person designated by the operator.
4569 If the record is made by a person other than the ~~examiner~~ one making the examination, the
4570 ~~examiner~~ person making the examination shall verify the record by initials and date.

4571 D. The actual level of methane detected in any examination shall be recorded in the
4572 book.

4573 E. A mine foreman or other certified person conducting a required examination shall
4574 record the results of his examination in ink or indelible pencil in a book ~~kept~~ maintained for
4575 this purpose on the surface ~~for that purpose at the mine~~. Similar records may be kept at
4576 designated stations or offices underground.

4577 F. Records shall be countersigned by the supervisor of the examiner creating the
4578 records. Where such records disclose ~~hazardous conditions~~ a hazardous condition, the
4579 countersigning of the records shall be performed no later than the end of the next regularly
4580 scheduled working shift following the shift for which the examination records were
4581 completed, and the person countersigning shall ensure that actions to eliminate or control ~~the~~
4582 each hazardous ~~conditions~~ condition have been taken. Where such records ~~do not~~ disclose no
4583 hazardous ~~conditions~~ condition, the countersigning may be completed within 24 hours
4584 following the end of the shift for which the examination records were completed. The
4585 operator may authorize another person ~~with equivalent~~ who possesses authority equivalent to
4586 that of the supervisor to act in the supervisor's temporary absence to read and countersign the
4587 records and ensure that action is taken to eliminate ~~the~~ each hazardous ~~conditions~~ condition
4588 disclosed in the records.

4589 G. All records of examination shall be open for inspection by interested persons and
4590 maintained at the mine site for a minimum of one year.

4591 **Drafting note: Changes are made pursuant to § 1-227, which states that**
4592 **throughout the Code any word used in the singular includes the plural and vice versa.**
4593 **Other technical changes are made and language is updated for modern usage and**
4594 **clarity, including by rephrasing the requirement in subsection A that an area "be**
4595 **dangered off."**

4596 ~~§ 45.1-161.213. Repealed.~~

4597 **Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

4598 ~~§ 45.1-161.214~~ [45.2-xxx](#). Notice of hazardous conditions.

4599 The mine foreman shall give prompt attention to the removal of ~~all~~ [each](#) hazardous
4600 ~~conditions~~ [condition](#) reported to him by any person working in the mine. If it is impracticable
4601 to remove ~~the~~ [a](#) hazardous condition at once, ~~he~~ [the mine foreman](#) shall notify every person
4602 whose safety is ~~menaced thereby~~ [threatened by such hazardous condition](#) to remain away
4603 from the portion of the mine where the hazardous condition exists.

4604 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4605 **throughout the Code any word used in the singular includes the plural and vice versa,**
4606 **and language is updated for modern usage.**

4607 ~~§ 45.1-161.215~~ [45.2-xxx](#). Notice of monitor tampering prohibition.

4608 The operator or agent, shall display, in bold-faced type, on a sign placed at the mine
4609 office, at the ~~bath house~~ [bathhouse](#), and on a bulletin board at the mine site, the following
4610 notice:

4611 NOTICE: IT IS UNLAWFUL TO DISTURB, DISCONNECT, BYPASS, IMPAIR,
4612 OR OTHERWISE TAMPER WITH METHANE MONITORS OR OTHER DEVICES
4613 CAPABLE OF DETECTING THE PRESENCE OF EXPLOSIVE GASES IN AN
4614 UNDERGROUND COAL MINE. A VIOLATION IS PUNISHABLE AS A CLASS 6
4615 FELONY.

4616 **Drafting note: Technical changes.**

4617 ~~§ 45.1-161.216~~ [45.2-xxx](#). Main fans.

4618 A. The active workings of a mine shall be ventilated by means of main fans.

4619 B. Unless otherwise approved by the Chief, ~~fans~~ each fan shall be (i) provided with
4620 pressure-recording gauges, (ii) installed on the surface in a fireproof ~~housings~~ housing, and
4621 (iii) equipped with fireproof air ducts.

4622 C. In addition to the requirements of subsection B, each main ~~fans~~ fan shall either:

4623 1. Be equipped with ample means of pressure relief; and be offset not less than 15 feet
4624 from the nearest side of the mine opening; or

4625 2. Be directly in front of, or over, the mine opening; however, ~~the~~ such opening shall
4626 not be in direct line with ~~possible~~ forces coming out of the mine ~~should if~~ an explosion were
4627 to occur; ~~and there~~. There shall be another opening ~~having~~ equipped with a weak-wall
4628 stopping or with explosion doors ~~that would be in direct line with the forces coming out of the~~
4629 ~~mine should an explosion occur, such opening to be~~ that is located not less than 15 feet ~~nor or~~
4630 more than 100 feet from the fan opening and in direct line with the forces coming out of the
4631 mine if an explosion were to occur; and

4632 3. In ~~mines~~ a mine ventilated by multiple main mine fans, incombustible doors shall
4633 be installed so that if any main mine fan stops and air reversals through the fan are possible,
4634 the doors on the affected fan automatically close.

4635 D. ~~Main~~ Each main mine ~~fans~~ fan shall be provided with an automatic device to give
4636 alarm when the fan slows down or stops. Unless otherwise approved by the Chief, ~~this~~ such
4637 device shall be placed so that it ~~will~~ shall be seen or heard by an authorized person.

4638 E. ~~Main fans~~ Each main fan shall be on a separate power ~~circuits~~ circuit, independent
4639 of the mine circuit.

4640 F. The area surrounding a main fan ~~installations~~ installation shall be kept free of
4641 combustible material for at least 100 feet in ~~all directions~~ every direction where physical
4642 conditions permit.

4643 G. ~~Mine fans~~ Each mine fan shall be operated continuously; except when no miner is
4644 underground and such mine fan is intentionally stopped for necessary testing, adjustment,
4645 maintenance, or repairs ~~while no miners are underground~~, or as otherwise approved by the
4646 Chief. If the main fan is intentionally stopped for testing, adjustment, maintenance, or repairs,

4647 the mine operator shall comply with the requirements set forth in the approved fan stoppage
4648 plan for that mine. If the main fan is stopped after all miners are out of the mine, the fan shall
4649 be operated for a period specified in the approved fan stoppage plan for that mine, prepared
4650 pursuant to § 45.2-xxx [§ 45.1-161.217], before any miner is allowed underground.

4651 H. Where electric power is available, no main mine ~~fans~~ fan shall ~~not~~ be powered by
4652 means of an internal combustion ~~engines; however, where~~ engine. ~~However, if~~ electric power
4653 is not available or the fan is employed for emergency use, a main mine ~~fans~~ fan may be
4654 powered with an internal combustion ~~engines if, unless~~ engine. Unless otherwise approved by
4655 the Chief, ~~(i) the~~ such fan shall be operated exhausting, and ~~(ii) the~~ engine operating ~~the~~ such
4656 fan shall be offset at least 10 feet from the fan and housed in a separate fireproof structure.

4657 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4658 **throughout the Code any word used in the singular includes the plural and vice versa,**
4659 **and language is updated for modern usage.**

4660 § ~~45.1-161.217~~ 45.2-xxx. Fan stoppage plan.

4661 A fan stoppage plan shall be prepared for each mine, ~~which~~. Such plan shall be subject
4662 to approval by the Chief or his designated representative. Failure to comply with ~~requirements~~
4663 any requirement set forth in the approved plan ~~will be~~ is a violation of this section. ~~Fan~~ Each
4664 fan stoppage ~~plans~~ plan shall require the following:

4665 1. When the main fan fails or stops, the power shall be cut off from the mine and
4666 miners shall be withdrawn from ~~the~~ all face areas.

4667 2. Miners shall be withdrawn from the underground areas if the ventilation is not
4668 restored within a reasonable time determined by the Chief, ~~which period of time shall~~ not to
4669 exceed ~~fifteen~~ 15 minutes. In determining ~~the~~ such reasonable time period, the Chief shall
4670 consider, among other ~~things~~ factors, the size and number of fans, and the methane liberation
4671 rate of the mine.

4672 3. If ventilation is restored within the time period established in the plan, ~~the~~ each face
4673 ~~areas~~ area and any other ~~areas where~~ area in which methane is likely to accumulate shall be

4674 examined by a certified person, and if ~~the~~ all areas are found to be free of explosive or
4675 harmful gases, power may be restored and work resumed.

4676 4. If ventilation is not restored within the time period established in the plan and the
4677 miners are evacuated from the mine, the main fan shall be operated for a period of time
4678 specified in the plan, ~~which~~. Such period of time shall not be less than ~~fifteen~~ 15 minutes.
4679 Thereafter, the mine shall be examined by a certified person before ~~miners shall be~~ any miner
4680 is permitted underground or ~~energizing any power circuits~~ circuit is energized.

4681 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4682 **throughout the Code any word used in the singular includes the plural and vice versa,**
4683 **and language is updated for modern usage and clarity.**

4684 § ~~45.1-161.218~~ 45.2-xxx. Auxiliary fans.

4685 A. The installation or use of an auxiliary ~~fans~~ fan in any mine ~~shall be~~ is prohibited,
4686 without the prior written approval of the Chief.

4687 B. ~~Machine-mounted scrubbers~~ A machine-mounted scrubber and spray fan ~~systems~~
4688 system may be used for control of coal dust and to enhance ventilation. Such ~~installations are~~
4689 an installation is not considered an auxiliary ~~fans~~ fan.

4690 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4691 **throughout the Code any word used in the singular includes the plural and vice versa,**
4692 **and language is updated for modern usage.**

4693 § ~~45.1-161.219~~ 45.2-xxx. ~~Volume~~ Quantity of air.

4694 A. The quantity of air passing through the last open crosscut shall be ~~not less than~~ at
4695 least 9,000 cubic feet per minute; ~~provided, however, that~~. However, the quantity of air
4696 reaching the last open crosscut in a pillar-recovery ~~sections~~ section may be less than 9,000
4697 cubic feet per minute; if at least 9,000 cubic feet of air per minute is being delivered to the
4698 intake end of the pillar line.

4699 B. The air current at a working ~~faces~~ face shall, under all conditions, have a sufficient
4700 volume and velocity to readily dilute and carry away smoke from blasting and any flammable
4701 or harmful gases and dust.

4702 C. In a longwall~~and~~ or shortwall mining~~systems~~ system:

4703 1. The quantity of air shall be at least 30,000 cubic feet per minute reaching the
4704 working face, unless otherwise approved by the Chief; and

4705 2. The velocity of air provided to control dust at designated locations on the longwall
4706 or shortwall face shall be maintained in accordance with the provisions of the mine ventilation
4707 plan approved by the federal Mine Safety and Health Administration.

4708 D. Ventilation shall be maintained during the installation~~and~~ or removal of
4709 mechanized mining equipment.

4710 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
4711 **227, which states that throughout the Code any word used in the singular includes the**
4712 **plural and vice versa, and language is updated for clarity.**

4713 § ~~45.1-161.220~~ 45.2-xxx. Bleeder systems.

4714 A. ~~All mines~~ Every mine shall have a system, ~~which has been~~ approved by the Chief,
4715 of bleeder openings of air courses designed to provide positive movement of air through or
4716 around worked-out areas ~~which is~~. Such system shall be sufficient to prevent a hazardous
4717 accumulation of gas in such areas and to minimize the effect of variations in atmospheric
4718 pressure. ~~Operators~~ Each operator shall submit a bleeder system ~~plans which comply~~ plan that
4719 complies with requirements developed by the Chief.

4720 B. The system requirements developed by the Chief shall, at a minimum, address
4721 standards for (i) supplemental roof supports, (ii) water accumulation, (iii) continuous
4722 movement of gases from gob areas, (iv) methane content, (v) the use and operation of
4723 degasification systems, (vi) air flow direction, and content, and (vii) ventilation controls. The
4724 Chief shall not approve a plan ~~which~~ that provides for a methane content exceeding ~~four and~~
4725 ~~one-half~~ 4.5 percent in bleeder air courses. ~~Failure to comply with an approved plan will be a~~
4726 ~~violation of this section.~~

4727 C. This section shall not prohibit the sealing of worked-out areas in accordance with §
4728 ~~45.1-161.228~~ 45.2-xxx.

4729 ~~B.~~ The mine map requirements of § ~~45.1-161.64~~ 45.2-xxx may be used to depict
4730 bleeder system standards specified in this section.

4731 D. Failure to comply with an approved plan is a violation of this section.

4732 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
4733 **227, which states that throughout the Code any word used in the singular includes the**
4734 **plural and vice versa, and organizational changes are made that separate the provisions**
4735 **addressing the requirements to be developed by the Chief and place the violation**
4736 **provision at the end of the section.**

4737 § ~~45.1-161.221~~ 45.2-xxx. Coursing of air.

4738 A. The main intake and return air currents of ~~drifts~~ a drift or slope ~~mines~~ mine shall
4739 not be in a single partitioned opening.

4740 B. ~~All entries~~ Every entry driven in coal shall be in ~~sets~~ a set of two or more entries.

4741 C. ~~Underground~~ Every transformer ~~stations~~ station, battery-charging ~~stations,~~
4742 ~~substations, rectifiers~~ station, substation, rectifier, and water ~~pumps~~ pump shall be housed in
4743 ~~noncombustible structures~~ an incombustible structure or ~~areas,~~ area or be equipped with an
4744 approved fire suppression system. ~~These installations~~ Each such installation shall be
4745 ventilated with intake air that is coursed into a return air course or to the surface; and that is
4746 not used to ventilate any working ~~places~~ place. This requirement does not apply to: any (i)
4747 ~~rectifiers,~~ rectifier, battery-charging station, or power ~~centers~~ center with transformers that are
4748 ~~either dry-type~~ of the dry type or contain nonflammable liquid, ~~or battery-charging stations,~~ if
4749 ~~they are~~ such rectifier, battery-charging station, or power center is located at or near the
4750 working section and ~~are~~ is moved as the working section advances or retreats; (ii)
4751 submersible ~~pumps,~~ pump; (iii) permissible ~~pumps~~ pump and associated permissible switch
4752 gear; (iv) ~~pumps~~ pump located at or near the working section that ~~are~~ is moved as the
4753 working section advances or retreats, ~~and;~~ or (v) small portable ~~pumps~~ pump. Such equipment
4754 shall be installed and operated only in a well-ventilated ~~locations~~ location.

4755 D. ~~Changes~~ Any change in ventilation that materially ~~affect~~ affects the main air
4756 current or any split thereof shall be made when the mine is not in operation and there are no
4757 miners in the mine other than those engaged in changing the ventilation.

4758 E. Each section in a mine shall be ventilated by a separate split of air.

4759 F. Air used to ventilate a belt haulage ~~entries~~ entry shall not be used to ventilate any
4760 working place unless approved by the Chief.

4761 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4762 **throughout the Code any word used in the singular includes the plural and vice versa,**
4763 **and language is updated for modern usage.**

4764 § ~~45.1-161.222~~ 45.2-xxx. Actions for excessive methane.

4765 A. Tests for methane concentration under this section shall be made by certified or
4766 qualified persons trained in the use of an approved detecting device ~~which~~ that is properly
4767 maintained and calibrated. Tests shall be made at least ~~twelve inches~~ one foot from the roof,
4768 face, ribs, and floor.

4769 B. ~~When~~ If a methane concentration of one percent or more ~~methane~~ is present in a
4770 working place ~~or~~; an intake air course, including an air course in which a belt conveyor is
4771 located; ~~or~~ in an area where mining equipment is being installed or removed, work shall
4772 cease and ~~electrical power~~ electrically powered equipment shall be de-energized in the
4773 affected working place ~~at the equipment~~, except for any intrinsically safe atmospheric
4774 monitoring ~~systems~~ system (AMS), which need not be de-energized. Changes or adjustments
4775 shall be made to ~~the~~ such ventilation system to reduce the methane concentration to below one
4776 percent. Only work to reduce the methane concentration ~~of methane~~ to below one percent
4777 ~~shall be~~ is permitted. ~~This~~ Such limitation does not apply to ~~other faces~~ any other face in the
4778 entry or slope in which work can be safely continued.

4779 C. ~~When one and one-half~~ If a methane concentration of 1.5 percent or more ~~methane~~
4780 is present in a working place ~~or~~; an intake air course, including an air course in which a belt
4781 conveyor is located; ~~or~~ in an area where mining equipment is being installed or removed, only
4782 work necessary to reduce the methane concentration to less than ~~one and one-half~~ 1.5 percent

4783 ~~will be~~ is permitted, and all ~~other personnel~~ miners except those required to perform such
4784 necessary work shall be withdrawn from the affected area. Electrically powered equipment in
4785 the affected area shall be de-energized and other mechanized equipment in the affected area
4786 shall be shut off, except for any intrinsically safe ~~atmospheric monitoring systems (AMS)~~
4787 AMS.

4788 D. ~~When~~ If a methane concentration of one percent or more ~~methane~~ is present in a
4789 return or split between the last working place on a working section and ~~where that~~ the location
4790 at which such split of air meets another split of air, or the location at which ~~the~~ such split is
4791 used to ventilate ~~seals~~ a seal or worked-out ~~areas~~ area, changes or adjustments shall be made
4792 to the ventilation system to reduce the methane concentration ~~of methane~~ in the return air to
4793 less than one percent.

4794 E. ~~When one and one-half~~ If a methane concentration of 1.5 percent or more ~~methane~~
4795 is present in a return air split between the last working place on a working section and ~~where~~
4796 ~~that~~ the location at which such split of air meets another split of air, or the location ~~where the~~
4797 at which such split is used to ventilate ~~seals~~ a seal or worked-out ~~areas, everyone~~ area, all
4798 miners except those ~~persons~~ required to perform necessary work to correct the problem shall
4799 be withdrawn from the affected area. Other than an intrinsically safe ~~atmospheric monitoring~~
4800 ~~systems (AMS)~~ AMS, all equipment in the affected area shall be de-energized at the source.
4801 No other work ~~shall be~~ is permitted in the affected area until the methane concentration ~~of~~
4802 ~~methane~~ in the return air is less than one percent.

4803 F. An alternative methane ~~level up to one and one-half~~ concentration of as much as 1.5
4804 percent ~~may be~~ is allowed in ~~the~~ a return air split ~~where~~ if the following ~~precautions~~
4805 conditions are met: (i) the quantity of air in the split ventilating the active workings is at least
4806 27,000 cubic feet per minute in the last open crosscut; (ii) the methane ~~content of the air~~
4807 concentration in the split is continuously monitored during mining operations by an
4808 intrinsically safe ~~atmospheric monitoring system (AMS)~~ AMS that gives a visual and audible
4809 signal on the working section when the methane concentration in the return air reaches ~~one~~
4810 ~~and one-half~~ 1.5 percent; and (iii) rock dust is continuously applied with a mechanical duster

4811 to the return air course during coal production at a location in the air course that is
4812 immediately outby the most inby monitoring point or inby such point ~~provided~~ if the
4813 mechanical duster is maintained in a permissible condition and does not adversely affect the
4814 AMS. ~~When one and one-half~~ If a methane concentration of 1.5 percent or more ~~methane~~
4815 present ~~where~~ at the location at which a return air alternative is applied, all persons shall be
4816 withdrawn, except those necessary to improve ventilation, and changes or adjustments shall
4817 be made to reduce the methane concentration ~~of methane~~ in the return air to below ~~one and~~
4818 ~~one-half~~ 1.5 percent as set forth in subsection E.

4819 G. The methane concentration ~~of methane~~ in a bleeder split of air immediately before
4820 the air in ~~the~~ such split joins another split of air, or in a return air course other than described
4821 in subsections D and E, shall not exceed two percent.

4822 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4823 **throughout the Code any word used in the singular includes the plural and vice versa,**
4824 **and language is updated for modern usage and clarity.**

4825 § ~~45.1-161.223~~ 45.2-xxx. Crosscuts.

4826 A. Crosscuts shall be made between entries and between rooms as provided in the
4827 approved roof control plan.

4828 B. ~~Crosseuts~~ Every crosscut between an intake and a return air ~~courses~~ course shall be
4829 closed, except the one nearest the face. ~~Crosseuts~~ A crosscut between rooms shall be closed
4830 where necessary to provide adequate ventilation at the working face.

4831 C. Where practicable, a crosscut shall be provided at or near the face of each entry or
4832 room before the place is abandoned.

4833 D. ~~Entries~~ No entry or ~~rooms~~ room shall ~~not~~ be started off an entry beyond the last
4834 open crosscut.

4835 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4836 **throughout the Code any word used in the singular includes the plural and vice versa.**

4837 § ~~45.1-161.224~~ 45.2-xxx. Permanent stoppings.

4838 A. Permanent stoppings shall be built and maintained:

4839 1. Between each intake and return air ~~courses~~ course, except that temporary controls
4840 may be used in ~~rooms~~ any room that ~~are~~ is located 600 feet or less from the centerline of the
4841 entry from which the room was developed. Unless otherwise approved by the Chief, ~~these~~
4842 such stoppings shall be maintained to and ~~including~~ inclusive of the third connecting crosscut
4843 outby the working face.

4844 2. To separate each belt conveyor ~~haulageways~~ haulage entry from any return air
4845 ~~courses~~ course, except where a belt ~~entries are~~ entry is used as a return air ~~courses~~ course.

4846 3. To separate the primary escapeway from any belt ~~and or~~ trolley haulage ~~entries~~
4847 entry, unless otherwise approved by the Chief.

4848 4. In each return air ~~courses~~ course to direct air into adjacent worked-out areas.

4849 B. Permanent stoppings shall be built of substantial, incombustible material such as
4850 concrete, concrete ~~bloeks~~ block, brick, tile, or other approved material; however, where
4851 physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to
4852 skin" may be used.

4853 C. The use of an air lock in the permanent intake stopping line near the section loading
4854 point ~~shall be~~ is permitted to access the belt and transport supplies.

4855 D. Stoppings shall be maintained to serve the purpose for which they were built and
4856 shall be reasonably ~~air tight~~ airtight.

4857 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4858 **throughout the Code any word used in the singular includes the plural and vice versa,**
4859 **and language is updated for modern usage.**

4860 § ~~45.1-161.225~~ 45.2-xxx. Ventilation controls.

4861 A. Ventilation shall be so arranged by means of air locks, overcasts, or undercasts that
4862 the passage of a haulage ~~trips~~ trip or ~~persons~~ person along the entries will ~~not~~ cause no
4863 interruption of the air current. ~~Air locks~~ Each air lock shall be ventilated sufficiently to
4864 prevent ~~accumulations~~ an accumulation of methane therein.

4865 B. Air lock doors that are used in lieu of permanent stoppings or to control ventilation
4866 within an air course shall be (i) made of ~~noncombustible~~ incombustible material or coated on

4867 all accessible surfaces with flame-retardant material having a flame spread index of 25 or less
4868 as tested under ASTM ~~E 162-187~~ [E162](#) and (ii) of sufficient strength to serve their intended
4869 purpose of maintaining separation and permitting travel between or within air courses or
4870 entries.

4871 C. To provide easy access between the return, belt, and intake escapeway entries,
4872 substantially constructed man-doors [that are](#) properly marked so as to be readily detected shall
4873 be installed in at least every fifth crosscut in the stopping ~~lines~~ [line](#) separating such entries.

4874 D. Doors shall be kept closed except when ~~miners~~ [a miner](#) or [piece of](#) equipment is
4875 passing through the ~~doorways. Motor crews and~~ [doorway. Any motor crew or](#) other ~~miners~~
4876 [miner](#) who ~~open~~ [opens such](#) doors shall see that ~~the doors~~ [they](#) are closed before leaving them.

4877 E. Overcasts, undercasts, and regulators shall be ~~well-constructed~~ [well-constructed](#); of
4878 incombustible material, such as masonry, concrete, concrete ~~blocks~~ [block](#), or prefabricated
4879 metal. ~~They shall;~~ [and](#) (i) ~~be~~ of sufficient strength to withstand possible falls from the roof,
4880 (ii) ~~be~~ of ample area to pass the required quantity of air, and (iii) ~~be~~ kept clear of obstructions.

4881 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4882 **throughout the Code any word used in the singular includes the plural and vice versa,**
4883 **and language is updated for modern usage and clarity. A reference to an ASTM**
4884 **standard is corrected and updated.**

4885 § ~~45.1-161.226~~ [45.2-xxx](#). Line brattice.

4886 A. Substantially constructed line brattice shall be used from the last open crosscut of
4887 an entry or room when necessary to provide adequate ventilation for the miners and to remove
4888 gases. Any line brattice [that is](#) damaged by ~~falls~~ [a fall](#) or otherwise shall be repaired promptly.

4889 B. The space between the line brattice and the rib shall be large enough to permit the
4890 flow of a sufficient volume of air to keep the working face clear of flammable and noxious
4891 gases.

4892 C. Brattice cloth [that is](#) used underground shall be of flame-resistant material.

4893 D. ~~Accumulations~~ [An accumulation](#) of methane shall be moved only by means of
4894 properly installed line brattice, or other approved method.

4895 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4896 **throughout the Code any word used in the singular includes the plural and vice versa,**
4897 **and language is updated for modern usage.**

4898 § ~~45.1-161.227~~ 45.2-xxx. Ventilation with air from certain areas.

4899 Active face workings shall not be ventilated with air that has passed through a
4900 worked-out-~~areas~~ area or has been used to ventilate a pillar-~~lines~~ line. This section shall not
4901 apply to air-~~which~~ that is being used to ventilate an active pillar line-~~and rooms which are~~ or a
4902 room that is necessary to establish and maintain the pillar line.

4903 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4904 **throughout the Code any word used in the singular includes the plural and vice versa,**
4905 **and language is updated for modern usage.**

4906 § ~~45.1-161.228~~ 45.2-xxx. Worked-out areas.

4907 A. ~~All~~ Every worked-out-~~areas~~ area shall be either sealed or ventilated.

4908 B. Where the practice is to seal worked-out areas, the sealing shall be done in
4909 accordance with sealing provisions of the approved bleeder plan.

4910 **Drafting note: Technical changes are made, including a change pursuant to § 1-**
4911 **227, which states that throughout the Code any word used in the singular includes the**
4912 **plural and vice versa.**

4913 § ~~45.1-161.229~~ 45.2-xxx. Air quality.

4914 A. All active workings shall be ventilated by a current of air containing-~~not less than~~ at
4915 least 19.5 volume percent of oxygen and no harmful-~~quantities~~ amount of-~~other~~ any noxious
4916 or poisonous-~~gases~~ gas.

4917 B. The volume and velocity of the current of air in all active workings shall be
4918 sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and
4919 harmful gases-~~and~~ , dust, smoke, and explosive fumes.

4920 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4921 **throughout the Code any word used in the singular includes the plural and vice versa,**
4922 **and language is updated for modern usage.**

4923 ~~§ 45.1-161.230. Repealed.~~

4924 **Drafting note: Repealed by Acts 1999, c. 256.**

4925 § ~~45.1-161.231~~ 45.2-xxx. Examination of ~~mines~~ mine for explosive gas and other
4926 hazardous conditions.

4927 A. ~~Certified persons~~ Every certified person whose regular duties require ~~them~~ him to
4928 inspect working places in any mine for hazardous conditions shall have in ~~their~~ his
4929 possession; and shall use, when underground, a permissible methane detector or other
4930 permissible device capable of detecting methane and oxygen deficiency.

4931 B. A sufficient number of permissible methane detectors or other permissible devices
4932 capable of detecting methane shall be kept at each mine in by the last open crosscut. ~~All~~
4933 ~~miners~~ Every miner shall be trained in the operation of ~~the~~ such device. ~~Any miners~~ Every
4934 miner working in by the last open crosscut shall be certified by the Board of Coal Mining
4935 Examiners pursuant to § 45.2-xxx [45.1-161.28] to conduct gas testing. ~~Methane detectors or~~
4936 ~~indicators~~ Every methane detector shall be maintained in permissible condition.

4937 C. ~~Methane detectors or indicators~~ Every methane detector shall be calibrated at least
4938 monthly in accordance with ~~manufacturers~~ the manufacturer's recommendations. A record of
4939 such calibration shall be made in a book for this purpose kept at a surface location at the mine
4940 and maintained for one year.

4941 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4942 **throughout the Code any word used in the singular includes the plural and vice versa.**
4943 **Outdated references to methane indicators are removed as duplicative of references to**
4944 **methane detectors.**

4945 § ~~45.1-161.232~~ 45.2-xxx. Tampering with methane monitoring devices prohibited;
4946 penalty.

4947 A. No person shall intentionally disturb, disconnect, bypass, impair, or otherwise
4948 tamper with any methane ~~monitors~~ monitor or other ~~devices~~ device that is capable of
4949 detecting the presence of explosive ~~gases~~ gas and is used in an underground coal mine. If ~~the~~
4950 such methane monitor or device is installed on a face cutting machine, a continuous miner,

4951 longwall face equipment, a loading machine, or other mechanized equipment used to extract
4952 or load coal, as required pursuant to 30 CFR Part 75.342, and ~~the such~~ monitor, device, or ~~the~~
4953 equipment malfunctions, ~~the such~~ monitor or device may be disconnected or bypassed for the
4954 ~~purposes~~ purpose of removing ~~the monitor it~~ or the equipment in order to make necessary
4955 repairs to ~~the monitor it~~ or the equipment. Any ~~other~~ methane monitor or device not otherwise
4956 required by law may be disconnected, bypassed, or removed.

4957 ~~B. Any person convicted of a violation~~ Violation of this section ~~shall be guilty of is~~ a
4958 Class 6 felony.

4959 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4960 **throughout the Code any word used in the singular includes the plural and vice versa,**
4961 **and language is updated for modern usage. The final sentence in subsection A, which**
4962 **allows any other methane monitor to be disconnected, is clarified to refer only to such a**
4963 **monitor when it is not required by law.**

4964 ~~§ 45.1-161.233~~ 45.2-xxx. Allowing persons to work in mine where methane
4965 monitoring equipment disconnected; penalty.

4966 ~~An~~ No operator, agent, or mine foreman shall ~~not~~ knowingly permit any miner to work
4967 in any area of ~~the an~~ underground coal mine where such operator, agent, or mine foreman has
4968 knowledge that a methane monitor or other device capable of detecting the presence of
4969 explosive ~~gases~~ gas has been impaired, disturbed, disconnected, or bypassed in violation of §
4970 ~~45.1-161.232. Any person convicted of a violation~~ 45.2-xxx. Violation of this section ~~shall be~~
4971 ~~guilty of is~~ a Class 6 felony.

4972 **Drafting note: Technical changes are made, including a change pursuant to § 1-**
4973 **227, which states that throughout the Code any word used in the singular includes the**
4974 **plural and vice versa. Language is updated for modern usage and clarity.**

4975 ~~§ 45.1-161.233:1~~ 45.2-xxx. Intentionally bypassing a safety ~~devices~~ device;
4976 prohibition.

4977 A. No person shall intentionally bypass, bridge, or otherwise impair an electrical or
4978 hydraulic circuit that affects the safe operation of electrical or mechanical equipment. ~~This~~

4979 B. The provisions of subsection A shall not prohibit (i) a certified electrical ~~repairmen~~
4980 repairman from ~~by-passing~~ bypassing an energized ~~circuits~~ circuit for troubleshooting; (ii) an
4981 authorized person from performing repairs or maintenance on equipment once the power is
4982 off and the equipment is blocked against motion, except where motion is necessary to make
4983 adjustment or to move the equipment to a safe location; (iii) an authorized person from
4984 bypassing a hydraulic circuit for the purpose of troubleshooting or moving equipment to a
4985 safe location in order to make necessary repairs or ~~be taken~~ take such equipment out of
4986 service; or (iv) an authorized person from activating an override feature that is designed by
4987 the machine manufacturer to allow ~~the~~ such machine to be moved to a safe location in order to
4988 ~~make~~ undergo necessary repairs or be taken out of service.

4989 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
4990 **throughout the Code any word used in the singular includes the plural and vice versa.**
4991 **Language is updated for modern usage and subsection designations are added for**
4992 **clarity. An erroneous reference to a certified electrical "repairmen" in the second**
4993 **sentence is corrected.**

4994 § ~~45.1-161.234~~ 45.2-xxx. Control of coal dust.

4995 A. Coal dust shall not be permitted to accumulate excessively in any part of the active
4996 areas, including any active workings that are soon to be worked-out.

4997 B. Where an underground mining ~~operations create~~ operation creates or ~~raise~~ raises an
4998 excessive amount of coal dust into the air, any coal dust on the ribs, roof, or floor shall
4999 undergo an application of water or water with ~~an added~~ a wetting agent; added to it or ~~other~~
5000 another effective method ~~of controlling dust~~, approved by the Chief; or his authorized
5001 representative, ~~shall be applied to coal dust on the ribs, roof, and floor~~ of controlling dust to
5002 reduce dispersibility and ~~to~~ minimize the ~~hazard~~ risk of explosion; Such application or
5003 method shall occur within ~~forty~~ 40 feet ~~from all of any~~ active workings or such other ~~areas~~
5004 area as the Chief or his authorized representative ~~shall require~~ requires.

5005 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5006 **throughout the Code any word used in the singular includes the plural and vice versa,**
5007 **and language is updated for modern usage and clarity.**

5008 § ~~45.1-161.235~~ 45.2-xxx. Rock dusting.

5009 A. ~~All~~ Every underground ~~areas~~ area of a mine, except ~~those areas where~~ an area in
5010 which the coal dust is too wet or too high in incombustible content to propagate an explosion,
5011 shall be ~~rock dusted~~ rock-dusted to within ~~forty~~ 40 feet of ~~all~~ every working ~~faces~~ face, unless
5012 such ~~areas are~~ area is inaccessible or unsafe to enter or unless the Chief, or his authorized
5013 representative, permits an exception upon his finding that such exception ~~will~~ does not pose a
5014 hazard to ~~the miners~~. ~~All crosseuts~~ any miner. Every crosscut that ~~are~~ is less than ~~forty~~ 40 feet
5015 from a working ~~faces~~ face shall also be ~~rock dusted~~ rock-dusted.

5016 B. ~~All~~ Every other ~~areas~~ area of a mine shall be ~~rock dusted~~ rock-dusted if conditions
5017 are found by a proper inspection to be so dusty as to constitute a hazard ~~after proper~~
5018 ~~inspection~~. ~~Should~~. If such conditions ~~be~~ are found to exist, the Chief, or his authorized
5019 representative, shall require the necessary rock dusting to make ~~the areas~~ every such area of
5020 the mine safe.

5021 C. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal,
5022 and other combustible ~~materials~~ material, shall be cleaned up and shall not be permitted to
5023 accumulate excessively in active workings, or on electric equipment therein.

5024 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5025 **throughout the Code any word used in the singular includes the plural and vice versa,**
5026 **and language is updated for modern usage.**

5027 Article ~~10~~ 5.

5028 Personal Safety; Smoking.

5029 **Drafting note: Existing Article 10 of Chapter 14.3, concerning personal safety**
5030 **and smoking, is retained as proposed Article 5.**

5031 § ~~45.1-161.174~~ 45.2-xxx. Checking system; tracking system.

5032 A. Each mine shall have a personnel checking system~~containing~~ that includes the
5033 following requirements:

5034 1. Every person underground shall have on his person a means of positive
5035 identification bearing a number recorded by the operator; and

5036 2. An accurate record of the persons in the mine shall be kept on the surface in a place
5037 that will not be affected by an explosion~~;~~.

5038 ~~3. The~~ Such record shall consist of a written record, check board, lamp check, or time-
5039 clock record~~;~~ and

5040 ~~4. The record~~ shall bear a number identical to that carried by the person underground.

5041 B. ~~Mine-wide~~ Any mine-wide tracking~~systems~~ system shall be maintained in useable
5042 and operative~~conditions~~ condition.

5043 **Drafting note: Technical changes are made, including organizational changes in**
5044 **subsection A and changes pursuant to § 1-227, which states that throughout the Code**
5045 **any word used in the singular includes the plural and vice versa. Language is updated**
5046 **for modern usage.**

5047 § ~~45.1-161.175~~ 45.2-xxx. Protective clothing.

5048 A. ~~All miners~~ Every miner shall wear a protective~~hats~~ hat while underground and
5049 while in~~those areas~~ any area on the surface where there is a danger of injury from falling
5050 objects.

5051 B. Every person assigned to or performing duties on the surface of an underground
5052 coal mine, or any person entering the underground portion of~~the~~ such mine, shall wear
5053 reflective materials adequate to~~be~~ make him visible from all sides.~~The~~ Such reflective
5054 material shall be placed on a hard~~hats~~ hat and at least one other item of outer clothing such as
5055 ~~belts~~ a belt, suspenders,~~jaackets, coats~~ jacket, coat, coveralls,~~shirts~~ shirt, pants, or~~vests~~ vest.

5056 C. Protective footwear shall be worn by~~miners~~ each miner while on duty in~~and or~~
5057 around a mine where falling objects may cause injury.

5058 D. ~~All employees~~ Every employee inside or outside of ~~mines~~ a mine shall wear
5059 ~~approved-type~~ an approved type of goggles or shields where there is a hazard from flying
5060 particles.

5061 E. ~~Welders~~ Every welder and ~~helpers~~ helper shall use proper ~~shields or~~ goggles or
5062 shields to protect ~~their~~ his eyes.

5063 F. ~~Miners~~ Any miner engaged in haulage operations ~~and miners or~~ employed around
5064 moving equipment on the surface ~~and or~~ underground shall wear snug-fitting clothing.

5065 G. ~~Gloves~~ Every employee shall ~~be worn~~ wear gloves when handling material ~~which~~
5066 that may injure the hands ~~is handled. Gloves or when handling energized cables. No gloves~~
5067 with gauntlet cuffs shall ~~not~~ be worn around moving equipment. ~~Gloves shall be worn when~~
5068 ~~handling energized cables.~~

5069 H. ~~Miners~~ Any miner who may be exposed for short periods to hazards from
5070 inhalation of gas, dust, fumes, ~~and or~~ mist shall wear approved respiratory equipment. When
5071 the exposure is for a prolonged ~~periods~~ period, adequate approved measures to protect ~~miners~~
5072 such miner or to reduce the hazard shall be taken.

5073 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5074 **throughout the Code any word used in the singular includes the plural and vice versa,**
5075 **and language is updated for modern usage.**

5076 § ~~45.1-161.176~~ 45.2-xxx. Noise levels and ear protection.

5077 ~~Approved~~ Each mine operator shall provide approved hearing protection ~~shall be~~
5078 ~~provided~~ to miners ~~by the mine operator. Miners.~~ Every miner shall wear approved hearing
5079 protection in ~~areas~~ any area of excess noise levels in accordance with the mine's hearing
5080 conservation program approved under 30 CFR Part 62.

5081 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5082 **throughout the Code any word used in the singular includes the plural and vice versa,**
5083 **and language is updated for modern usage.**

5084 § ~~45.1-161.177~~ 45.2-xxx. Smoking materials prohibited; penalty.

5085 A. No miner or other person shall smoke or carry or possess underground any
5086 smoker's articles or ~~matches, lighters~~ any match, lighter, or similar ~~materials~~ material
5087 generally used for igniting smoker's articles. ~~Any person convicted of a violation~~ Violation of
5088 this subsection ~~shall be guilty of~~ is a Class 6 felony.

5089 B. ~~The~~ Each operator shall institute a smoker search program, approved by the Chief,
5090 to ensure that ~~any no~~ person entering the underground area of the mine ~~does not carry~~ carries
5091 any smoking ~~materials, matches,~~ material, match, or ~~lighters~~ lighter.

5092 C. Any person entering or present in any underground area of a coal mine shall, by his
5093 entry into ~~the~~ such underground area of the mine, be subject to a search of his person, ~~such of~~
5094 his including any personal property ~~as may be~~ that is in any underground area of the mine at
5095 any time he is underground, ~~or both~~. Such search shall be conducted at the direction of the
5096 Chief by employees of the Department. It shall be limited in scope to the person and property
5097 of the ~~persons~~ person present underground at the time of the search and shall be for the
5098 purpose of enforcing the provisions of this section.

5099 D. This section shall not prohibit the possession of equipment used solely for the
5100 operation of a flame safety ~~lamps~~ lamp or for welding or cutting.

5101 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5102 **throughout the Code any word used in the singular includes the plural and vice versa,**
5103 **and language is updated for modern usage.**

5104 § ~~45.1-161.178~~ 45.2-xxx. Allowing persons to work in a mine with smoker's articles;
5105 penalty.

5106 A. No operator, agent, or mine foreman shall knowingly permit any person in an
5107 underground coal mine to smoke, carry, or possess any smoker's articles or materials used for
5108 igniting smoker's articles.

5109 B. ~~Any person convicted of a violation~~ Violation of this section ~~shall be guilty of~~ is a
5110 Class 6 felony.

5111 **Drafting note: Language is updated for modern usage.**

5112 § ~~45.1-161.179~~ 45.2-xxx. Posting of notice.

5113 The operator, or his agent, shall display, in bold-faced type, on a sign placed at the
5114 mine office, bath house, and on a bulletin board at the mine site, the following notice:

5115 NOTICE:

5116 IT IS UNLAWFUL FOR A MINER OR OTHER PERSON IN AN
5117 UNDERGROUND COAL MINE TO SMOKE OR CARRY OR POSSESS
5118 UNDERGROUND ANY SMOKER'S ARTICLES OR MATCHES, LIGHTERS, OR
5119 SIMILAR MATERIALS GENERALLY USED FOR IGNITING SMOKER'S ARTICLES. A
5120 VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY. ANY PERSON ENTERING OR
5121 PRESENT IN THE UNDERGROUND AREA OF ANY COAL MINE IS SUBJECT TO A
5122 SEARCH OF HIS PERSON AND PROPERTY BY OFFICIALS OF THE DEPARTMENT
5123 OF MINES, MINERALS AND ENERGY FOR SUCH PROHIBITED SMOKER
5124 MATERIALS AT ANY TIME WHILE UNDERGROUND.

5125 **Drafting note: Technical changes.**

5126 § ~~45.1-161.180~~ 45.2-xxx. Smoking in surface and other areas.

5127 A. No miner or other person shall smoke, carry, or possess any smoker's articles, or
5128 carry an open flame, in or near any magazine for the storage of explosive materials.

5129 B. No miner or other person shall smoke in or around any oil ~~houses, tipples, and~~
5130 house, tipple, or other surface ~~areas~~ area where such practice may cause a fire or explosion.

5131 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5132 **throughout the Code any word used in the singular includes the plural and vice versa.**

5133 ~~Article 9.~~

5134 ~~Illumination.~~

5135 **Drafting note: The first section of existing Article 9 of Chapter 14.3 is relocated**
5136 **to this proposed article, while the remaining two sections of existing Article 9 are**
5137 **relocated to proposed Article 2 of this chapter.**

5138 § ~~45.1-161.171~~ 45.2-xxx. Portable illumination.

5139 A. ~~All miners~~ For portable illumination underground, every miner shall use ~~only a~~
5140 permissible electric cap ~~lamps~~ lamp that ~~are~~ is worn on the person ~~for portable illumination.~~

5141 ~~B. Light bulbs on extension cables shall be guarded adequately.~~

5142 ~~C. The Such requirement of subsection A~~ shall not preclude the use of any other type
5143 of permissible electric ~~lamps~~ lamp, permissible ~~flashlights~~ flashlight, permissible safety ~~lamps~~
5144 lamp, or ~~any~~ other permissible portable illumination device.

5145 B. Any light bulb on an extension cable shall be guarded adequately.

5146 **Drafting note: Technical changes are made, including organizational changes**
5147 **that condense subsection A and move subsection B to the end of the section for clarity,**
5148 **and changes pursuant to § 1-227, which states that throughout the Code any word used**
5149 **in the singular includes the plural and vice versa. Language is updated for modern**
5150 **usage and clarity.**

5151 Article ~~12~~ 6.

5152 First Aid Equipment; Medical Care; Emergency Medical Services Providers.

5153 **Drafting note: Existing Article 12 of Chapter 14.3, concerning first aid**
5154 **equipment, medical care, and emergency medical services providers, is retained as**
5155 **proposed Article 6.**

5156 § ~~45.1-161.197~~ 45.2-xxx. First aid equipment.

5157 Each mine shall have ~~an~~ adequate ~~supply~~ supplies of first aid equipment as determined
5158 by the Chief. Such supplies shall be located on the surface, at the bottom of ~~shafts~~ each shaft
5159 and ~~slopes~~ slope, and at other strategic locations near the working faces, as shall be prescribed
5160 by the Chief. ~~The~~ Such first aid supplies shall be encased in suitable sanitary receptacles
5161 designed to be reasonably dust-tight and moisture-proof. ~~The~~ Such supplies shall be available
5162 for use of ~~all persons~~ any person employed in the mine. No first aid material shall be removed
5163 or diverted without authorization except in case of injury at the mine.

5164 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5165 **throughout the Code any word used in the singular includes the plural and vice versa,**
5166 **and language is updated for modern usage.**

5167 § ~~45.1-161.198~~ 45.2-xxx. Attention to injured persons.

5168 A. When an injury occurs underground, the injured person shall be brought promptly
5169 to the surface. Prompt medical attention shall be provided in the event of injury, and adequate
5170 facilities shall be made available for transporting such injured ~~persons~~ person to a hospital if
5171 necessary.

5172 B. Safe transportation shall be provided to carry an injured person from the site where
5173 the injury occurred to the surface of the mine.

5174 C. The operator of each mine shall post directional signs that are conspicuously
5175 located to identify the routes of ingress to and egress from any mine located off of a public
5176 road.

5177 **Drafting note: A technical change is made pursuant to § 1-227, which states that**
5178 **throughout the Code any word used in the singular includes the plural and vice versa.**

5179 § ~~45.1-161.199~~ 45.2-xxx. Certified emergency medical services providers.

5180 A. At each mine, the mine operator shall station at least one person who is a working
5181 coal miner and who holds a valid certificate as an emergency medical services provider issued
5182 ~~by the Commissioner of the Department of Health shall be located~~ pursuant to § 32.1-111.5 so
5183 as to ~~be~~ make such person available for duty ~~at each mine~~ during any time when miners are
5184 working at ~~that~~ such mine. Such ~~emergency medical services~~ operator shall utilize enough
5185 such providers ~~shall be utilized in sufficient numbers~~ to assure that workers in any mine
5186 location can be reached by ~~them~~ a provider within ~~such~~ a reasonable time as ~~is~~ determined by
5187 the Chief. ~~Emergency medical services providers~~ Each provider shall have available to ~~them~~
5188 him at all times the necessary equipment, as specified by the Chief, for prompt response to
5189 emergencies. ~~In the event that at any time there is at any mine~~ Telephone facilities or their
5190 equivalent shall be installed to provide two-way voice communication between such provider
5191 and medical personnel outside the mine.

5192 B. If an insufficient number of qualified miners ~~volunteering~~ at a particular mine
5193 volunteer to serve as ~~emergency medical services~~ providers ~~as provided for in~~ pursuant to this
5194 section, the operator may ~~elect to~~ utilize the services of first aid trainees, in such numbers as
5195 the Chief determines to be appropriate. ~~Telephone or equivalent facilities shall be installed to~~

5196 ~~provide two-way voice communication between the emergency medical services providers~~
5197 ~~and medical personnel outside the mine.~~

5198 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5199 **throughout the Code any word used in the singular includes the plural and vice versa.**
5200 **Language is updated, subsection designations are added, and the provision referring to**
5201 **telephone facilities is moved for clarity. A cross-reference to the emergency medical**
5202 **services provider certification is added.**

5203 PART C.

5204 SURFACE COAL MINES.

5205 **Drafting note: In proposed Subtitle II, proposed Part C (Surface Coal Mines) is**
5206 **created to logically organize provisions relating to surface coal mines and contains two**
5207 **chapters: proposed Chapter 9, Requirements Applicable to Surface Coal Mines, and**
5208 **proposed Chapter 10, Virginia Coal Surface Mining Control and Reclamation Act of**
5209 **1979.**

5210 ~~CHAPTER 14.4~~ 9.

5211 **REQUIREMENTS APPLICABLE TO SURFACE COAL MINES.**

5212 **Drafting note: Existing Chapter 14.4, Requirements Applicable to Surface Coal**
5213 **Mines, which is divided into 13 articles, is retained as proposed Chapter 9. Articles 1**
5214 **through 13 of existing Chapter 14.4 are retained in that order in this proposed chapter.**

5215 **Article 1.**

5216 **General Provisions.**

5217 **Drafting note: Existing Article 1, containing general provisions, is retained as**
5218 **proposed Article 1.**

5219 ~~§ 45.1-161.253~~ 45.2-xxx. Scope of chapter.

5220 This chapter ~~shall be applicable~~ applies to the operation of any surface coal mine in
5221 the Commonwealth, and ~~shall supplement~~ supplements the provisions of Chapter ~~14.2~~ 5 (§
5222 ~~45.1-161.7~~ 45.2-xxx et seq.).

5223 **Drafting note: Technical changes are made to modernize language.**

5224 § ~~45.1-161.254~~ 45.2-xxx. Regulations governing conditions and practices at surface
5225 coal mines.

5226 A. The Chief ~~shall have authority~~ is authorized, after consultation with the Virginia
5227 Coal Mine Safety Board and in accordance with the provisions of the Administrative Process
5228 Act (§ 2.2-4000 et seq.), to ~~promulgate rules and~~ adopt regulations necessary to ensure safe
5229 and healthy working conditions in surface coal mines in the Commonwealth. Such ~~rules and~~
5230 regulations governing surface coal mines shall relate to:

5231 1. Safety and health standards for the protection of the life, health, and property of,
5232 and the prevention of injuries to, persons involved in or likely to be affected by any surface
5233 coal mining ~~operations which shall include but not be limited to~~. Such regulations shall
5234 include standards for the control of dust concentration levels; the installation, maintenance,
5235 and use of electrical devices, equipment, cables, and wires; fire protection; the use and storage
5236 of explosives; hoistings; drilling; loading and haulage areas; the training of surface miners;
5237 the preparation of responses to emergencies; examinations of conditions at a surface mine
5238 site; and reporting requirements;

5239 2. The storage or disposal of any matter or ~~materials~~ material that is (i) extracted or
5240 disturbed as the result of a surface coal mining operation ~~or operations~~ or (ii) used in the
5241 surface coal mining operation or for the refinement or preparation of the ~~materials~~ material
5242 that is extracted from the surface coal mining operation, so that such matter or material does
5243 not threaten the health ~~or~~, safety, or property of ~~the~~ miners or the general public; and

5244 3. The operation, inspection, operating condition, and movement of drilling equipment
5245 and machines to protect the health, safety, and property of miners and the general public.

5246 B. The Chief shall ~~not promulgate any rule or~~ adopt no regulation establishing
5247 ~~requirements~~ a requirement for the operation of, or for conditions at, a surface coal mine
5248 ~~which are~~ that is inconsistent with ~~requirements~~ any requirement established by ~~this~~ the Act.

5249 **Drafting note: The term "promulgate regulations" is changed to "adopt**
5250 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
5251 **and includes the promulgation process. In subdivision A 1, the phrase "but not limited**

5252 to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes'
5253 means includes, but not limited to.'" The word "property" is added to subdivision A 2
5254 for consistency with subdivision A 1. Technical changes are made pursuant to § 1-227,
5255 which states that throughout the Code any word used in the singular includes the plural
5256 and vice versa. Other technical changes are made to modernize language.

5257 § ~~45.1-161.255~~ [45.2-xxx](#). Standards for regulations.

5258 In ~~promulgating the rules and~~ [adopting](#) regulations pursuant to § ~~45.1-161.254~~ [45.2-](#)
5259 [xxx](#), the Chief shall consider:

5260 1. Standards utilized and generally recognized by the surface coal mining industry;

5261 2. Standards established by recognized professional coal mining organizations and
5262 groups;

5263 3. Standards established by federal mine safety laws;

5264 4. Research, demonstrations, experiments, and such other information that is available
5265 regarding the maintenance of the highest degree of safety protection, including the latest
5266 available scientific data in the field, the technical feasibility of the standards, and the
5267 experience gained under ~~this~~ [the](#) Act and other mine safety laws; and

5268 5. Such other criteria as ~~shall be~~ [are](#) necessary for the protection of the safety and
5269 health of miners and other persons or property likely to be affected by surface coal mines or
5270 related operations.

5271 **Drafting note: The term "promulgate regulations" is changed to "adopt**
5272 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
5273 **and includes the promulgation process. Technical changes are made.**

5274 Article 2.

5275 Work Area Examinations, ~~Record Keeping~~ [Recordkeeping](#), and Reporting.

5276 **Drafting note: Existing Article 2, concerning work area examinations,**
5277 **recordkeeping, and reporting, is retained as proposed Article 2. Technical changes are**
5278 **made to the name.**

5279 § ~~45.1-161.256~~ [45.2-xxx](#). Safety examinations.

5280 A. ~~On-shift examinations~~ An on-shift examination of the work area, including any pit,
5281 auger, thin seam ~~and, or highwall-operations~~ operation, shall be conducted by a certified
5282 ~~persons once every~~ person for each production shift and at such other times or frequency as
5283 the Chief designates as necessary for hazardous conditions.

5284 B. ~~Pre-operational examinations~~ A pre-operational examination of all mobile
5285 equipment shall be conducted by an authorized person.

5286 C. ~~Pre-shift examinations~~ A pre-shift examination shall be conducted by a certified
5287 person for certain hazardous conditions designated by the Chief.

5288 D. ~~Mine~~ Each mine refuse ~~piles~~ pile, as defined in § 45.2-xxx [§ 45.1-221.1], shall be
5289 examined ~~daily~~ by an authorized person on ~~any~~ each day on which ~~a~~ any person works at such
5290 location.

5291 E. The location of ~~all~~ each natural gas ~~pipelines~~ pipeline on a permitted surface mine
5292 ~~areas~~ area shall be identified and conspicuously marked so that equipment operators can
5293 readily ~~see~~ identify the location of such ~~lines~~ pipeline. ~~Pre-shift examinations~~ A pre-shift
5294 examination shall be conducted of the location of ~~pipelines~~ each pipeline whenever the work
5295 area approaches within 500 feet of such pipeline unless otherwise approved by the Chief.

5296 F. ~~Air~~ An air quality ~~examinations~~ examination shall be conducted by a certified
5297 person when a surface coal mining operation intersects an underground mine, auger hole, or
5298 other underground ~~workings~~ working.

5299 G. ~~Examinations~~ At least one examination for methane shall be conducted for each
5300 production shift in each surface ~~installations~~ installation, ~~enclosures~~ enclosure, or other
5301 ~~facilities~~ facility in which coal is handled or stored ~~once each production shift~~. ~~Such areas~~
5302 Each such area shall also be tested for methane before any activity involving welding, cutting,
5303 or an open flame. ~~Examinations~~ An examination pursuant to this subsection shall be made by
5304 an authorized person certified to make gas tests.

5305 H. Electrical equipment and wiring shall be inspected as often as necessary but at least
5306 once ~~a~~ per month.

5307 I. ~~Fire extinguishers~~ Each fire extinguisher shall be examined at least once every six
5308 months.

5309 J. ~~Areas~~ Each area of an inactive surface coal ~~mines~~ mine shall be examined for
5310 hazardous conditions by a mine foreman immediately before ~~miners are~~ any miner is
5311 permitted to enter into such ~~areas~~ an area to take emergency actions to preserve a mine.

5312 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5313 **throughout the Code any word used in the singular includes the plural and vice versa.**
5314 **Reference to the definition of "mine refuse pile" is made as that term is not defined in**
5315 **this chapter.**

5316 § ~~45.1-161.257~~ 45.2-xxx. Records of examinations.

5317 A. Documentation of examinations and testing conducted pursuant to § ~~45.1-161.256~~
5318 45.2-xxx shall be recorded in a mine record book provided for that purpose. Documentation
5319 shall include records of hazardous conditions found in the work area. However, examinations
5320 of fire extinguishers shall be conducted by an authorized person and documentation shall be
5321 accomplished by recording the date of the examination on a permanent tag attached to ~~the~~
5322 each extinguisher.

5323 B. The actual methane readings taken during examinations required under ~~this~~ the Act
5324 shall be recorded in the mine record book.

5325 C. The surface foreman shall maintain and sign a daily record book. Where any such
5326 ~~reports disclose~~ report discloses a hazardous ~~conditions~~ condition, the surface foreman shall
5327 take prompt action to have such ~~conditions~~ condition corrected, barricaded, or posted with
5328 warning signs.

5329 D. ~~Records~~ Each record shall be countersigned by the supervisor of the examiner
5330 creating the ~~records~~ record. Where such ~~records disclose~~ record discloses a hazardous
5331 ~~conditions~~ condition, the countersigning of the ~~records~~ record shall be performed no later than
5332 the end of the next regularly scheduled working shift following the shift for which the
5333 examination ~~records were~~ record was completed, and the person countersigning shall ensure
5334 that actions to eliminate or control the hazardous ~~conditions~~ condition have been taken.

5335 Where such ~~records do~~ record does not disclose a hazardous ~~conditions~~ condition, the
5336 countersigning ~~may~~ shall be completed within 24 hours following the end of the shift for
5337 which the examination ~~records were~~ record was completed. The operator may authorize
5338 another person ~~with equivalent~~ who has authority equivalent to that of the supervisor to act in
5339 the supervisor's temporary absence to read and countersign ~~the~~ records and ensure that action
5340 is taken to eliminate ~~the~~ any hazardous ~~conditions~~ condition disclosed in ~~the records~~ a record.

5341 E. All records of inspections shall be open for inspection by any interested ~~persons~~
5342 person and maintained at the mine site for a minimum of one year.

5343 **Drafting note: Subsection D is clarified so that it does not allow an operator to**
5344 **convey the authority of a supervisor to another person. Technical changes are made**
5345 **pursuant to § 1-227, which states that throughout the Code any word used in the**
5346 **singular includes the plural and vice versa. Other technical changes are made and**
5347 **language is updated for modern usage.**

5348 § ~~45.1-161.258~~ 45.2-xxx. Areas with safety or health hazards; duties of surface mine
5349 foreman.

5350 A. Any hazardous condition shall be corrected promptly or the affected area shall be
5351 barricaded or posted with warning signs specifying the hazard and proper safety procedures.
5352 Any imminent danger that cannot be removed within a reasonable time shall be reported to
5353 the Chief by the quickest available means.

5354 B. The surface mine foreman shall see that the requirements of ~~this~~ the Act pertaining
5355 to his duties and to the health and safety of the miners are fully complied with at all times.

5356 C. The surface mine foreman shall see that every miner employed to work at the mine,
5357 before beginning work therein, is aware of ~~all~~ any hazardous ~~conditions~~ condition incident to
5358 his work at the mine.

5359 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
5360 **227, which states that throughout the Code any word used in the singular includes the**
5361 **plural and vice versa.**

5362 Article 3.

5363 Personal Protection.

5364 **Drafting note: Existing Article 3, concerning personal protection, is retained as**
5365 **proposed Article 3.**

5366 § ~~45.1-161.259~~ 45.2-xxx. Personal protection devices and practices.

5367 A. ~~All persons~~ Every person at a surface coal mine shall wear the following protection
5368 in the specified conditions:

5369 1. ~~Hard hats~~ A hard hat in and around ~~mines~~ any area of a mine where falling objects
5370 ~~may~~ could cause injury.

5371 2. Hard-toed footwear in and around ~~mines~~ a mine.

5372 3. Safety goggles or ~~shields~~ a shield where there is a hazard of flying material.

5373 4. ~~Protective~~ A protective shield or goggles when welding.

5374 5. Snug-fitting clothes when working around moving parts or machinery.

5375 6. Gloves where the hands could be injured. Gauntlet cuffed gloves are prohibited
5376 around moving machinery.

5377 B. ~~Ear~~ The operator shall supply ear protection ~~shall be supplied by the operator to all~~
5378 ~~miners~~ any miner upon request.

5379 C. Every person assigned to or performing duties at a surface mine work area shall
5380 wear reflective ~~materials~~ material adequate to ~~be~~ make the person visible from all sides. ~~The~~
5381 Such reflective material shall be placed on the hard ~~hats~~ hat and at least one other item of
5382 outer clothing, such as ~~belts~~ a belt, suspenders, ~~jaekets~~ a jacket, ~~coats~~ a coat, coveralls, ~~shirts~~ a
5383 shirt, pants, or ~~vests~~ a vest.

5384 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5385 **throughout the Code any word used in the singular includes the plural and vice versa**
5386 **Other technical changes are made and language is updated for modern usage.**

5387 § ~~45.1-161.260~~ 45.2-xxx. Housekeeping.

5388 A. Good housekeeping shall be practiced in and around ~~buildings~~ every building,
5389 shafts shaft, ~~slopes~~ slope, ~~yards and~~ yard, or other ~~areas~~ area of the mine. Such practices
5390 include cleanliness, orderly storage of materials, and the removal of possible sources of

5391 injury, such as stumbling hazards, protruding nails, broken glass, and material that ~~may~~
5392 ~~potentially~~ could fall or roll.

5393 B. ~~All~~ Every surface mine ~~structures~~ structure, ~~enclosures~~ enclosure, ~~and or~~
5394 ~~facilities~~ facility shall be maintained in a safe condition.

5395 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5396 **throughout the Code any word used in the singular includes the plural and vice versa.**

5397 § ~~45.1-161.261~~ 45.2-xxx. Noxious fumes.

5398 Painting or ~~operations creating~~ any operation that creates noxious fumes shall be
5399 performed only in a well-ventilated atmosphere.

5400 **Drafting note: A technical change is made pursuant to § 1-227, which states that**
5401 **throughout the Code any word used in the singular includes the plural and vice versa.**

5402 Article 4.

5403 First Aid Equipment; Medical Care; Emergency Medical Services Providers.

5404 **Drafting note: Existing Article 4, concerning first aid equipment, medical care,**
5405 **and emergency medical services providers, is retained as proposed Article 4.**

5406 § ~~45.1-161.262~~ 45.2-xxx. First aid equipment.

5407 ~~Each~~ Every surface coal mine shall have ~~an~~ adequate ~~supply~~ supplies of first aid
5408 equipment as determined by the Chief. Such supplies shall be located at strategic locations at
5409 the mine site so as to be available in a reasonable response time. ~~The first aid~~ Such supplies
5410 shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and
5411 moisture proof. In addition to the supplies in the ~~cases~~ receptacles, blankets, splints, and
5412 properly constructed stretchers in good ~~conditions~~ condition shall be provided at every mine.
5413 ~~The~~ All of the first aid supplies shall be available for use ~~of all persons~~ by any person
5414 employed at the mine. No first aid supplies shall be removed or diverted without authorization
5415 except in case of injury at the mine.

5416 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5417 **throughout the Code any word used in the singular includes the plural and vice versa.**

5418 § ~~45.1-161.263~~ 45.2-xxx. First aid training.

5419 A. ~~Surface foremen~~ Each surface foreman shall ~~have completed~~ complete and ~~passed~~
5420 pass a first aid course of study as prescribed by the Chief. The Chief is authorized to utilize
5421 the Department's educational and training facilities in the conduct of such training programs
5422 and may require the cooperation of mine operators in making such programs available to their
5423 employees.

5424 B. Each operator of a surface coal mine, ~~upon request~~, shall make first aid training,
5425 including refresher training, available upon request to every miner employed ~~in~~ at such mine
5426 ~~first aid training, including refresher training~~.

5427 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5428 **throughout the Code any word used in the singular includes the plural and vice versa.**
5429 **Language is updated for modern usage.**

5430 § ~~45.1-161.264~~ 45.2-xxx. Attention to injured persons.

5431 A. Prompt medical attention shall be provided in the event of an injury, and adequate
5432 facilities shall be made available for transporting injured persons to a hospital where
5433 necessary.

5434 B. Safe transportation shall be provided to move injured persons from the site where
5435 the injury occurred to ~~areas~~ an area that is accessible to emergency transportation.

5436 C. The operator of each mine shall post directional signs that are conspicuously
5437 located to identify ~~the routes~~ each route of ingress to and egress from any mine located off of
5438 a public road.

5439 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5440 **throughout the Code any word used in the singular includes the plural and vice versa.**

5441 Article 5.

5442 Fire Prevention and Fire Control.

5443 **Drafting note: Existing Article 5, concerning fire prevention and fire control, is**
5444 **retained as proposed Article 5.**

5445 § ~~45.1-161.265~~ 45.2-xxx. ~~Fire-fighting~~ Firefighting equipment; duties in case of fire;
5446 fire precaution in transportation of mining equipment; fire prevention generally.

5447 A. Each mine shall be provided with suitable ~~fire-fighting~~ firefighting equipment; that
5448 is adequate for the size of the mine and ~~shall include~~ includes at least three 20-pound dry
5449 chemical fire extinguishers. Equipment and devices used for the detection, warning, and
5450 extinguishing of fires shall be suitable in type, size, and quantity for the type of fire hazard
5451 that ~~may~~ could be encountered. Such equipment and devices shall be strategically located and
5452 plainly identified.

5453 B. Suitable fire extinguishers shall be provided at ~~all~~ or on each (i) electrical ~~stations~~
5454 station, such as ~~substations~~ a substation, transformer ~~stations and~~ station, or permanent pump
5455 ~~stations, station;~~ (ii) piece of self-propelled mobile equipment; (iii) belt ~~heads,~~ head; (iv)
5456 ~~areas~~ area used for the storage of flammable materials; (v) fueling ~~stations,~~ station; and (vi)
5457 other ~~areas~~ area that ~~may~~ could constitute a fire hazard; Such fire extinguishers shall be
5458 placed so as to be out of the smoke in case of a fire.

5459 **Drafting note: Language is updated for modern usage and technical changes are**
5460 **made pursuant to § 1-227, which states that throughout the Code any word used in the**
5461 **singular includes the plural and vice versa.**

5462 § ~~45.1-161.266~~ 45.2-xxx. Duties in case of fire.

5463 A. ~~Should~~ If a fire ~~occurs~~ occurs, the person discovering it and any other person in the
5464 vicinity of the fire shall make a prompt effort to extinguish it. When a fire that ~~may~~ could
5465 endanger persons at the mine cannot be extinguished immediately, all persons shall be
5466 withdrawn promptly from the area of the fire.

5467 B. In case of any unplanned fire at or about a mine that is not extinguished within
5468 ~~thirty~~ 30 minutes of discovery, the operator or agent shall report the fire to the Chief by the
5469 quickest available means ~~to the Chief,~~ giving all information known to ~~him~~ the operator or
5470 agent regarding the fire. The Chief shall take prompt action, ~~based on the information,~~ and
5471 decide whether to go in person or dispatch qualified subordinates to the scene of the fire for
5472 consultation; and ~~assist~~ assistance in the extinguishing of the fire and the protection of
5473 exposed persons. In the event of a difference of opinion as to measures required, the decision

5474 of the Chief or his designated subordinate shall be final, but ~~must~~ such decision shall be given
5475 to the operator in writing in order to have the force of an order.

5476 **Drafting note: Technical changes are made and language is updated for modern**
5477 **usage.**

5478 § ~~45.1-161.267~~ 45.2-xxx. Fire precautions.

5479 A. An examination for fire shall be made after every blasting operation.

5480 B. No person shall smoke or use an open flame within ~~twenty-five~~ 25 feet of ~~locations~~
5481 any location used to handle or store flammable or combustible liquids or where an arc or
5482 flame ~~may~~ could cause a fire or explosion.

5483 C. ~~Areas~~ Any area surrounding a flammable liquid storage ~~tanks, tank or~~ electrical
5484 ~~substations and transformers~~ substation or transformer shall be kept free of combustible
5485 material for at least ~~twenty-five~~ 25 feet in ~~all directions~~ every direction. ~~Such~~ Each such
5486 storage ~~tanks, substations and transformers~~ tank, substation, or transformer shall be posted
5487 with readily visible fire hazard warning signs.

5488 D. ~~Structures~~ Any structure or ~~areas~~ area used for storage of flammable materials shall
5489 be constructed of fire resistant material, ~~well-ventilated~~, kept well-ventilated, clean, and
5490 orderly, and posted with readily visible fire hazard warning signs.

5491 E. ~~Fuel lines~~ Every fuel line shall be equipped with a shut-off ~~valves~~ valve at ~~the~~
5492 ~~sources~~ its source. Such valves shall be readily accessible and maintained in good operating
5493 condition.

5494 F. ~~Battery~~ Every battery charging ~~areas~~ area shall be ~~well-ventilated~~ well-ventilated
5495 and posted with warning signs prohibiting smoking or open flames within ~~twenty-five~~ 25 feet.

5496 G. Oil, grease, ~~other~~ flammable hydraulic fluid, and other flammable materials shall
5497 be kept in closed metal containers and separated from other materials so as to not create a fire
5498 hazard.

5499 H. Combustible materials, grease, lubricants, paints, and other flammable materials
5500 and liquids shall not be allowed to accumulate where they could create a fire hazard.

5501 Provision shall be made to prevent the accumulation of such material on any equipment, at
5502 any storage ~~areas~~ area, and at any location where the material is used.

5503 I. Electric motors, switches, lighting fixtures, and controls shall be protected by dust-
5504 tight construction.

5505 J. Precautions shall be taken to ensure that ~~sparks~~ no spark or other hot ~~materials~~ do
5506 ~~not result~~ material results in a fire when welding or cutting. Welding or cutting with an arc or
5507 flame shall not be done in any excessively dusty ~~atmospheres~~ atmosphere or ~~locations~~
5508 location. ~~Fire fighting~~ Firefighting apparatus shall be readily available when welding or
5509 cutting is performed.

5510 K. Precautions shall be taken before applying heat, cutting, or welding on any pipe or
5511 container that has contained a flammable or combustible material.

5512 L. ~~Oxygen and~~ Every oxygen or acetylene ~~bottles~~ bottle shall be (i) stored in ~~racks~~
5513 ~~designated and~~ a rack constructed and designated for the storage of such bottles with their
5514 caps in place and (ii) secured when not in use. Such bottles shall not be stored near oil, grease,
5515 ~~and or~~ other flammable material.

5516 M. ~~Oxygen~~ Every oxygen and acetylene ~~gauges~~ gauge and ~~regulators~~ regulator shall
5517 be kept clean and free of oil, grease, and other combustible materials.

5518 N. ~~Belt conveyors~~ Every belt conveyor shall be equipped with a control ~~switches~~
5519 switch to automatically stop the driving motor of the conveyor in the event that the belt is
5520 stopped by slipping on the driving pulley, ~~by~~ as a result of breakage or other accident.

5521 O. ~~Areas~~ The area surrounding every main fan ~~installations and~~ installation or other
5522 mine ~~openings~~ opening shall be kept free from grass, weeds, underbrush, and other
5523 combustible materials for ~~twenty-five~~ 25 feet in ~~all directions~~ every direction.

5524 P. ~~Internal~~ Every internal combustion ~~engines~~ engine, except a diesel ~~engines~~ engine,
5525 shall be shut off prior to fueling.

5526 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5527 **throughout the Code any word used in the singular includes the plural and vice versa.**

5528 Other technical changes are made and language is updated for modern usage and
5529 parallel construction.

5530 Article 6.

5531 Surface Equipment.

5532 Drafting note: Existing Article 6, concerning surface equipment, is retained as
5533 proposed Article 6.

5534 § ~~45.1-161.268~~ 45.2-xxx. Haulage and mobile equipment; operating condition.

5535 A. All mobile equipment shall be maintained in a safe operating condition.

5536 B. Positive-acting stopblocks shall be used where necessary to protect persons from
5537 danger of moving or runaway haulage equipment.

5538 C. Where it is necessary for ~~men~~ persons to cross conveyors regularly, suitable
5539 crossing facilities shall be provided.

5540 D. ~~Persons~~ No person shall ~~not~~ get on or off moving equipment.

5541 E. When the equipment operator is present, ~~persons shall notify him before~~ any person
5542 getting on or off mobile equipment shall notify the operator before doing so.

5543 F. Mobile equipment shall not be left unattended unless the brakes are set. Mobile
5544 equipment with wheels or tracks, when parked on a grade, shall either be blocked or turned
5545 ~~into~~ in to a bank unless the lowering of the bucket or blade to the ground will prevent
5546 movement and such bucket or blade is lowered.

5547 G. ~~Persons~~ No person shall ~~not~~ work on or from a piece of mobile equipment in a
5548 raised position unless the equipment is specifically designed to lift ~~persons~~ a person.

5549 H. Water, debris, or spilled materials ~~which may~~ that could create ~~hazards~~ a hazard to
5550 moving equipment shall be removed.

5551 I. Where seating facilities are provided on self-propelled mobile equipment, the
5552 operator shall be seated before such equipment is moved. No person shall be allowed to ride
5553 on top of self-propelled mobile equipment.

5554 J. ~~Operators~~ The operator of a piece of self-propelled haulage equipment shall sound a
5555 warning before ~~starting he starts~~ such equipment and as ~~approaching he approaches~~ any place
5556 where ~~persons are~~ a person is or ~~are~~ is likely to be.

5557 K. Each ~~man-trip~~ mantrip shall be operated independently under the charge of an
5558 authorized person, ~~and operated independently~~.

5559 L. ~~Operator provided man-trips~~ Each mantrip shall be maintained in safe operating
5560 condition, ~~and enough of them~~. Mantrips shall be provided in sufficient number to prevent
5561 ~~their being~~ any mantrip from becoming overloaded.

5562 M. ~~Employees~~ No employee shall ~~not~~ board or leave a moving ~~man-trips; they~~
5563 mantrip. Each employee shall remain seated while in a moving ~~cars; car~~ and shall proceed in
5564 an orderly manner to and from ~~man-trips~~ a mantrip.

5565 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5566 **throughout the Code any word used in the singular includes the plural and vice versa.**
5567 **Language is updated for modern usage. The unnecessary phrase "Operator provided" is**
5568 **removed from subsection L to make the subsection parallel to subsection C of § 45.1-**
5569 **161.150 in proposed chapter 7.**

5570 § ~~45.1-161.269~~ 45.2-xxx. Equipment operation.

5571 A. Equipment operating speeds, conditions, and characteristics shall be prudent and
5572 consistent with the conditions of the roadway, ~~grades~~ grade, clearance, visibility, and traffic,
5573 and the type and use of equipment.

5574 B. ~~Vehieles~~ Any vehicle that follows another vehicle shall ~~follow~~ do so at a safe
5575 distance; passing shall be limited to areas of adequate clearance and visibility.

5576 C. Mobile equipment shall be operated under power control at all times and each
5577 mobile equipment ~~operators~~ operator shall have full control of the equipment while in motion.

5578 D. Before starting or moving equipment, an equipment operator must be certain by
5579 signal or other means that all persons are clear.

5580 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5581 **throughout the Code any word used in the singular includes the plural and vice versa.**
5582 **Language is updated for modern usage.**

5583 § ~~45.1-161.270~~ 45.2-xxx. Safety measures on equipment.

5584 A. ~~Rubber-tired~~ Every rubber-tired or ~~crawler-mounted~~ crawler-mounted piece of
5585 equipment shall have a rollover protective ~~structures~~ structure to the extent required by 30
5586 ~~CFR-77.403a~~ C.F.R. § 77.403-1.

5587 B. ~~Seat belts~~ Each seat belt provided in mobile equipment shall be maintained in safe
5588 working condition. ~~Operators~~ Every operator of such equipment shall wear a seat ~~belts~~ belt
5589 when the equipment is in motion.

5590 C. Mobile equipment shall be equipped with adequate brakes and parking brakes.

5591 D. Cab windows shall be of ~~safety~~ safe design, kept in good condition, and clean for
5592 adequate visibility.

5593 E. ~~Tires~~ Any tire shall be deflated before ~~repairs~~ any repair on ~~them are~~ it is started,
5594 and adequate means shall be provided to prevent ~~wheel-locking~~ wheel-locking rims from
5595 creating a hazard during tire inflation.

5596 F. An audible warning device and headlights shall be provided on ~~all~~ each piece of
5597 self-propelled mobile equipment.

5598 G. An automatic backup alarm, that is audible above surrounding noise levels, shall be
5599 provided on ~~all~~ each piece of mobile equipment. An automatic reverse-activated strobe light
5600 may be substituted for an audible alarm when mobile equipment is operated at night.

5601 H. ~~All~~ Each piece of equipment that is raised for repairs or other work shall be
5602 securely blocked ~~prior to persons positioning themselves~~ before any person positions himself
5603 where the falling of such equipment could create a hazardous condition.

5604 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5605 **throughout the Code any word used in the singular includes the plural and vice versa.**
5606 **The cross-reference to the Code of Federal Regulations in subsection A is updated to**

5607 reflect a redesignation of the section number in 71 Fed. Reg. 16669 (April 3, 2006).

5608 Language is updated for modern usage.

5609 § ~~45.1-161.271~~ 45.2-xxx. Transportation of personnel.

5610 No person shall be permitted to ride or ~~be~~ otherwise be transported (i) on or in: ~~(i)~~

5611 ~~dippers, shovels, buckets, forks and clamshells~~ a dipper, shovel, bucket, fork, or clamshell;

5612 (ii) on or in the cargo space of a dump ~~trucks, truck;~~ (iii) outside ~~cabs or beds~~ the cab or bed

5613 of a piece of heavy equipment; or (iv) on or in a chain, belt, or bucket ~~conveyors~~ conveyor,

5614 unless such items described in clauses (i) through (iv) are specifically designed to transport

5615 persons.

5616 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**

5617 **throughout the Code any word used in the singular includes the plural and vice versa.**

5618 Language is added for clarity.

5619 § ~~45.1-161.272~~ 45.2-xxx. Lighting.

5620 A. Lights shall be provided on or in surface structures as needed, ~~in or on surface~~

5621 ~~structures.~~

5622 B. Roads, paths, and walks outside of surface structures shall be kept free from

5623 obstructions and shall be ~~well illuminated~~ well-illuminated if used at night.

5624 **Drafting note: Language is updated for modern usage.**

5625 § ~~45.1-161.273~~ 45.2-xxx. Shop and other equipment.

5626 A. The following shall be guarded and maintained adequately:

5627 1. Gears, sprockets, pulleys, fan blades or propellers, friction devices, and couplings

5628 with protruding bolts or nuts.

5629 2. Shafting and projecting shaft ends that are within seven feet of the floor or the

5630 platform level.

5631 3. Belt, chain, or rope drives that are within seven feet of the floor or the platform.

5632 4. Fly wheels. ~~Where a Any fly wheels extend~~ wheel that extends more than seven feet

5633 above the floor, ~~they~~ shall be guarded to a height of at least seven feet.

5634 5. Circular and band saws and planers.

- 5635 6. Repair pits. Guards shall be kept in place when ~~the pits are~~ a pit is not in use.
- 5636 7. Counterweights.
- 5637 8. Mine fans. The approach to any mine fan shall be guarded.
- 5638 9. Lighting and other electrical equipment that ~~may cause~~ could create a shock ~~hazards~~
- 5639 hazard or cause personal injury.
- 5640 B. ~~Machinery~~ No machinery shall ~~not~~ be repaired or oiled while in motion; ~~provided,~~
- 5641 ~~however, that this shall not apply where~~ unless a safe remote oiling ~~devices are~~ device is used.
- 5642 C. A guard or safety device that is removed from any machine shall be replaced before
- 5643 the machine is put in operation.
- 5644 D. ~~Mechanically operated~~ Every mechanically operated grinding ~~wheels~~ wheel shall
- 5645 be equipped with:
- 5646 1. Safety washers and tool rests;
- 5647 2. ~~Substantial~~ A substantial retaining ~~hoods~~ hood, the hood opening of which shall not
- 5648 expose more than a 90 degree sector of the wheel. ~~Such hoods~~ Each such hood shall include a
- 5649 device to control and collect excess rock, metal, or dust particles, ~~or. If no such device is~~
- 5650 provided, equivalent protection shall be provided to ~~the employees~~ each employee operating
- 5651 such machinery; and
- 5652 3. Eyeshields, unless goggles are worn by the ~~operators~~ operator.
- 5653 E. The operator or his agent shall develop proper procedures for examining for
- 5654 potential hazards, completing ~~proper~~ maintenance, and ~~properly~~ operating each type of
- 5655 centrifugal pump. The procedures shall, at a minimum, address the manufacturers'
- 5656 recommendations for start-up and shutdown of ~~the pumps~~ each type of pump, the proper
- 5657 actions to be taken when a pump is suspected of overheating, the safe location of start and
- 5658 stop switches, and the actions to be taken when signs of structural metal fatigue, such as
- 5659 cracks in the frame, damaged cover mounting brackets, or missing bolts or other components,
- 5660 are detected. ~~All miners~~ Every miner who ~~repair~~ repairs, ~~maintain~~ maintains, or ~~operate~~
- 5661 operates any such ~~pumps~~ pump shall be trained in these procedures.

5662 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5663 **throughout the Code any word used in the singular includes the plural and vice versa.**
5664 **Language is updated for modern usage.**

5665 § ~~45.1-161.274~~ [45.2-xxx](#). Hydraulic hoses.

5666 ~~All~~ Every hydraulic ~~hoses used on equipment purchased after January 1, 1986,~~ hose
5667 that is used on equipment shall ~~be clearly stamped or labeled by~~ have the hydraulic hose
5668 ~~manufacturer to indicate the~~ manufacturer's rated pressure in pounds per square inch (psi). ~~For~~
5669 ~~hoses purchased after January 1, 1989, the rated pressure shall be~~ permanently affixed on the
5670 outer surface of the hose and repeated at least every two feet. ~~Hoses purchased and~~ Every
5671 hose installed on an automatic displacement hydraulic ~~systems~~ system shall either (i) have a
5672 four-to-one safety factor based on the ratio between minimum burst pressure and the setting
5673 of the hydraulic unloading system, ~~(such as a relief valve),~~ or ~~shall~~ (ii) meet the minimum
5674 hose pressure requirements set by the hydraulic equipment manufacturer per the applicable
5675 hose standards for each type of equipment. No hydraulic hose shall be used in an application
5676 where the hydraulic unloading system is set higher than the hose's rated pressure.

5677 **Drafting note: Obsolete dates for manufacture of hydraulic hoses are removed**
5678 **and language is amended accordingly. Technical changes are made pursuant to § 1-227,**
5679 **which states that throughout the Code any word used in the singular includes the plural**
5680 **and vice versa. Other technical changes are made and language is updated for modern**
5681 **usage.**

5682 Article 7.

5683 ~~Travelways,~~ Travel Ways and Loading and Haulage Areas.

5684 **Drafting note: Existing Article 7, concerning travel ways and loading and**
5685 **haulage areas, is retained as proposed Article 7. Technical changes are made to the**
5686 **name.**

5687 § ~~45.1-161.275~~ [45.2-xxx](#). Stairways, platforms, runways, and floor openings.

5688 A. Stairways, platforms, and runways shall be provided where ~~men~~ persons work or
5689 travel.

5690 B. Stairways, elevated platforms, ~~floor openings, and~~ elevated runways, and floor
5691 openings shall be equipped with suitable handrails or guardrails.

5692 C. ~~Elevated Stairways, elevated~~ platforms, runways, and floor openings, ~~stairways,~~
5693 ~~and runways~~ shall be provided with toe boards. ~~Platforms, stairways,~~ Stairways, platforms,
5694 and runways shall be kept clear of stumbling and slipping hazards and shall be maintained in
5695 good repair.

5696 **Drafting note: Language is updated for modern usage and consistency.**

5697 § ~~45.1-161.276~~ 45.2-xxx. Loading and haulage work area requirements.

5698 A. ~~Ramps and dumps~~ Every ramp or dump shall be of solid construction, ample width,
5699 and ample clearance, and ~~head room and~~ headroom shall be kept reasonably free of spillage.

5700 B. Berms or guards shall be provided on the outer bank of every elevated haulage
5701 ~~roads~~ road. ~~Berms constructed on or after July 1, 2005,~~ Every berm shall be constructed of
5702 substantial material to the mid-axle height of the largest vehicle regularly used on ~~the~~ such
5703 haulage road. The width and height of the berm shall be constructed on a two-to-one ratio
5704 when it is constructed of unconsolidated material. Other ~~no less~~ equally effective and
5705 appropriate methods may be used for berms.

5706 C. Berms, bumper blocks, safety hooks, or similar means shall be provided to prevent
5707 overtravel and overturning at ~~dump~~ dumping stations.

5708 D. Dumping locations and haulage roads shall be kept reasonably free of water, debris,
5709 and spillage. Water, debris, or spilled material that creates ~~hazards~~ a hazard to moving
5710 equipment shall be removed.

5711 E. ~~Haulage roads~~ Every haulage road constructed on or after July 1, 2005, shall be
5712 constructed at least one and one-half times the width of the widest equipment in use, and
5713 ~~those~~ any haulage ~~roads~~ road that is used for passing shall be constructed at least three times
5714 the width of the widest equipment in use. In ~~areas where this may~~ any area in which it is not
5715 ~~be~~ possible to construct the haulage road to at least the applicable minimum width, the
5716 foreman shall establish procedures for safe travel of haulage vehicles.

5717 F. Traffic rules, signals, and warning signs shall be standardized at each mine and
5718 ~~shall be~~ posted. ~~This~~ Such rules, signals, and signs shall include, ~~but not be limited to,~~ rules
5719 for the travel of on-road vehicles operating near off-road haulers in work areas.

5720 ~~G. Dumping stations where~~ Every dumping station at which material is dumped over
5721 an embankment shall be designed to minimize backing and, where conditions permit, to
5722 provide for perpendicular travel to allow the equipment operator to observe the dumping
5723 station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other
5724 available means shall be used to clearly indicate each dumping ~~locations~~ location. This
5725 subsection shall not apply to a dumping ~~stations~~ station (i) that ~~are~~ is moved after each
5726 dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are
5727 dumped short and pushed over the embankment. ~~Dump stations~~ Any dumping station that
5728 ~~may~~ could interfere with ~~haulroads~~ a haulage road or work ~~areas~~ area below shall be clearly
5729 marked with signs to prevent further dumping, unless other effective precautions are taken to
5730 protect ~~haulroads~~ such haulage road or work ~~areas~~ area below the dump station.

5731 **Drafting note: The berm construction date reference is removed from subsection**
5732 **B because it has been made obsolete by federal law. Technical changes are made**
5733 **pursuant to § 1-227, which states that throughout the Code any word used in the**
5734 **singular includes the plural and vice versa. Language is updated for clarity, consistency,**
5735 **and modern usage. The word "haulroads," which appears only in this section, is**
5736 **replaced with the standard "haulage road."**

5737 § ~~45.1-161.277~~ 45.2-xxx. Equipment operation.

5738 A. If ~~truck spotters are~~ a truck spotter is used, ~~they~~ he shall be well in the clear while
5739 ~~trucks are~~ any truck is backing into dumping position and dumping. ~~Truck spotters~~ Every
5740 truck spotter shall use lights at night to direct backing and dumping operations.

5741 B. ~~Dippers, buckets, scraper blades, and similar movable parts~~ Every dipper, bucket,
5742 scraper blade, or similar movable part shall be secured or lowered to the ground when not in
5743 use.

5744 C. Equipment ~~which~~ that is to be hauled shall be loaded and protected so as to prevent
5745 sliding or spillage. When moving between work areas, the equipment shall be secured in the
5746 travel position.

5747 D. Tow bars shall be used to tow heavy equipment and a safety chain shall be used in
5748 conjunction with each tow bar.

5749 E. Dust control measures shall be taken so as to ~~not obstruct~~ prevent the obstruction of
5750 visibility of any equipment ~~operators~~ operator.

5751 F. ~~Dippers~~ No dipper, ~~buckets~~ bucket, loading ~~booms~~ boom, or other heavy ~~loads~~ load
5752 shall ~~not~~ be swung over ~~cabs~~ the cab of haulage equipment until the driver is out of the cab
5753 and ~~is~~ in a safe location, unless the equipment is designed specifically to protect ~~drivers~~ the
5754 driver from falling material.

5755 G. Lights, flares, or other warning devices shall be posted when parked equipment
5756 creates a hazard for other vehicles.

5757 **Drafting note: Language is updated for clarity and technical changes are made,**
5758 **including changes pursuant to § 1-227, which states that throughout the Code any word**
5759 **used in the singular includes the plural and vice versa.**

5760 Article 8.

5761 Dust Control.

5762 **Drafting note: Existing Article 8, concerning dust control, is retained as proposed**
5763 **Article 8.**

5764 § ~~45.1-161.278~~ 45.2-xxx. Control of dust and combustible material.

5765 A. Where a surface coal mining ~~operations raise~~ operation raises an excessive amount
5766 of dust into the air, such dust shall be allayed at its sources by the use of water ~~or~~, water with
5767 a wetting agent added to it, ~~or other~~ another effective ~~methods shall be used to allay such dust~~
5768 ~~at its sources~~ method.

5769 B. Drilling in rock shall be done wet, or other means of dust control shall be used.

5770 C. Loose coal, coal dust, oil, grease, ~~and~~ or other combustible materials shall not be
5771 permitted to accumulate excessively on equipment or surface structures.

5772 **Drafting note: Language is updated for clarity and technical changes are made.**

5773 Article 9.

5774 Electricity.

5775 **Drafting note: Existing Article 9, concerning electricity, is retained as proposed**

5776 **Article 9.**

5777 § ~~45.1-161.279~~ 45.2-xxx. Overhead high-potential power lines; surface transmission
5778 lines; electric wiring in surface buildings.

5779 A. Overhead high-potential power lines shall be (i) placed at least ~~fifteen~~ 15 feet above
5780 the ground and ~~twenty~~ 20 feet above ~~driveways and~~ any driveway or haulage ~~roads, shall be~~
5781 road, (ii) installed on insulators, and ~~shall be~~ (iii) supported and guarded to prevent contact
5782 with other circuits.

5783 B. Surface transmission lines shall be protected against short circuits and lightning.

5784 C. Electric wiring in surface buildings shall be installed so as to prevent fire and
5785 contact hazards.

5786 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
5787 **227, which states that throughout the Code any word used in the singular includes the**
5788 **plural and vice versa.**

5789 § ~~45.1-161.280~~ 45.2-xxx. Transformers.

5790 A. Unless a surface ~~transformers are~~ transformer is isolated by elevation ~~(to a height~~
5791 of eight feet or more above the ground), ~~they, it~~ it shall be enclosed in a transformer house or
5792 surrounded by a suitable fence at least six feet high. If the enclosure or fence is made of
5793 metal, ~~it~~ such enclosure or fence shall be grounded effectively. The gate or door to the
5794 enclosure shall be kept locked at all times, unless an authorized ~~persons are~~ person is present.

5795 B. ~~Surface transformers containing~~ Any surface transformer that contains flammable
5796 oil and is installed where ~~they present~~ it presents a fire hazard shall be provided with a means
5797 to drain or ~~to~~ confine the oil in the event of a rupture of the transformer casing.

5798 C. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every
5799 transformer ~~stations~~ station on the surface.

5800 D. ~~All~~ Every transformer ~~stations~~ station on the surface shall be kept free of
5801 nonessential combustible materials and refuse.

5802 E. No electrical work shall be performed on any low-voltage, medium-voltage, or
5803 high-voltage distribution ~~circuits~~ circuit or equipment; except by (i) a certified person or ~~by~~
5804 (ii) a person who is trained to perform electrical work and to maintain electrical equipment
5805 and who is working under the direct supervision of a certified person. ~~All~~ Every high-voltage
5806 ~~circuits~~ circuit shall be grounded before repair work is performed. Disconnecting devices shall
5807 be locked out and suitably tagged by the ~~persons~~ person who ~~perform~~ performs electrical or
5808 mechanical work on such ~~circuits~~ a circuit or on any equipment connected to the ~~circuits~~;
5809 ~~except that~~ circuit. However, in ~~cases where~~ a case in which such locking out is not possible,
5810 such devices shall be opened and suitably tagged by such ~~persons~~. ~~Locks and tags~~ person.
5811 Each lock and tag shall be removed only by the ~~persons~~ person who installed ~~them~~ it or, if
5812 such ~~persons are~~ person is unavailable, by a certified ~~persons~~ person who is authorized by the
5813 operator or his agent. However, ~~employees~~ an employee may, where necessary, repair
5814 energized trolley wires if ~~they wear~~ he wears insulated shoes and lineman's gloves.

5815 F. This section does not prohibit a certified electrical ~~repairmen~~ repairman from
5816 making checks on or troubleshooting an energized ~~circuits~~ circuit or ~~the performance of an~~
5817 authorized person from performing repairs or maintenance on equipment ~~by authorized~~
5818 ~~persons~~ once the power is off and the equipment is blocked against motion, except where
5819 motion is necessary to make adjustments.

5820 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
5821 **227, which states that throughout the Code any word used in the singular includes the**
5822 **plural and vice versa. An organizational change is made in proposed subsection F, and**
5823 **language is updated for modern usage.**

5824 § ~~45.1-161.281~~ 45.2-xxx. Grounding.

5825 A. ~~All~~ Every metallic ~~sheaths, armors, and conduits~~ sheath, armor, or conduit
5826 enclosing a power ~~conductors~~ conductor shall be electrically continuous throughout and shall
5827 be grounded effectively.

5828 B. ~~Metallic frames~~ Every metallic frame, casing, ~~and or~~ other ~~enclosures~~ enclosure of
5829 stationary electric equipment that can become ~~"alive"~~ electrified through failure of insulation
5830 or by contact with energized parts shall be grounded effectively, or equivalent protection shall
5831 be provided.

5832 C. When electric equipment is operated from a three-phase alternating current ~~circuits~~
5833 circuit originating in ~~transformers~~ a transformer that is connected to provide a neutral point, a
5834 continuous grounding conductor of adequate size shall be installed and connected to the
5835 neutral point and to the ~~frames~~ frame of the power-utilizing equipment. Such grounding
5836 ~~conductors~~ conductor shall be grounded at the neutral point and at intervals along the
5837 conductor, if feasible. A suitable circuit breaker or switching device shall be provided having
5838 a ground-trip coil connected in series with the grounding conductor to provide effective
5839 ground-fault tripping.

5840 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
5841 **227, which states that throughout the Code any word used in the singular includes the**
5842 **plural and vice versa. In subsection B, the phrase "become 'alive' through failure" is**
5843 **changed to "become electrified through failure."**

5844 § ~~45.1-161.282~~ 45.2-xxx. Circuit breakers and switches.

5845 A. ~~Automatic circuit breaking devices or fuses~~ An automatic circuit breaking device or
5846 fuse of the correct type and capacity shall be installed so as to protect ~~all~~ every piece of
5847 electric equipment and power ~~circuits~~ circuit against excessive overload. ~~Wires or other~~ Wire
5848 or another conducting ~~materials~~ material shall not be used as a substitute for a properly
5849 designed ~~fuses~~ fuse, and ~~circuit breaking devices~~ every circuit breaking device shall be
5850 maintained in safe operating condition.

5851 B. Operating controls, such as switches, starters, ~~and or~~ switch buttons, shall be so
5852 installed that they are readily accessible and can be operated without danger of contact with
5853 moving or live parts.

5854 C. Electric equipment and circuits shall be provided with switches or other controls of
5855 safe design, construction, and installation.

5856 D. ~~Insulating mats~~ An insulating mat or other electrically nonconductive ~~material~~
5857 material shall be kept in place at each power-control switch and at stationary machinery
5858 where a shock hazard exists.

5859 E. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every high-
5860 voltage ~~installations~~ installation.

5861 F. ~~All~~ Every power ~~wires and cables~~ wire or cable shall have adequate current-
5862 carrying capacity, ~~shall~~ be guarded from mechanical injury, and be installed in a permanent
5863 manner.

5864 G. ~~Power circuits~~ Every power circuit shall be labeled to indicate the unit or circuit
5865 ~~they control~~ that it controls.

5866 H. ~~Persons~~ All persons shall stay clear of ~~an~~ any electrically powered shovel or other
5867 similar heavy equipment during an electrical storm.

5868 I. ~~All devices~~ Every device that is installed on or after July 1, 2005, ~~which provide that~~
5869 provides either short circuit protection or protection against overload, shall conform to the
5870 minimum requirements for protection of electric circuits and equipment of the National
5871 ~~Electric~~ Electrical Code in effect at the time of ~~their~~ its installation.

5872 J. ~~All~~ Every electric ~~conductors~~ conductor installed on or after July 1, 2005, shall be
5873 sufficient in size to meet the minimum current-carrying capacity provided for in the National
5874 ~~Electric~~ Electrical Code in effect at the time of ~~their~~ its installation.

5875 K. ~~All~~ Every trailing ~~cables~~ cable purchased on or after July 1, 2005, shall meet the
5876 minimum requirements for ampacity provided in the standards of the Insulated ~~Power~~ Cable
5877 Engineers Association ~~—~~ National ~~Electric~~ Electrical Manufacturers Association in effect at
5878 the time such ~~cables are~~ cable is purchased.

5879 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
5880 **227, which states that throughout the Code any word used in the singular includes the**
5881 **plural and vice versa. The names of the Insulated Cable Engineers Association and the**
5882 **National Electrical Manufacturers Association are updated. Language is updated for**
5883 **modern usage and clarity.**

5884 § ~~45.1-161.283~~ 45.2-xxx. Electrical trailing cables.

5885 A. ~~Trailing cables~~ Every trailing cable shall be provided with suitable short-circuit
5886 protection and a means of disconnecting power from the cable.

5887 B. ~~Temporary splices~~ Any temporary splice in a trailing ~~cables~~ cable shall be made in
5888 a workmanlike manner; and shall be mechanically strong; and ~~well insulated~~ well-insulated.

5889 C. The number of temporary, unvulcanized splices in a trailing cable shall be limited
5890 to one.

5891 D. ~~Permanent splices~~ Every permanent splice in a trailing ~~cables~~ cable shall be made
5892 as follows:

5893 1. ~~Mechanically~~ mechanically strong, with adequate electrical conductivity and
5894 flexibility:

5895 2. ~~Effectively~~, and shall be effectively insulated and sealed so as to exclude moisture.

5896 3. The finished splice shall be vulcanized or otherwise treated with suitable materials
5897 to provide flame-resistant properties and good bonding to the outer jacket.

5898 E. ~~Trailing cables~~ Every trailing cable shall be protected against mechanical injury.

5899 **Drafting note: Technical changes are made, including organizational changes in**
5900 **subsection D and changes pursuant to § 1-227, which states that throughout the Code**
5901 **any word used in the singular includes the plural and vice versa. Language is updated**
5902 **for modern usage.**

5903 Article 10.

5904 Explosives and Blasting.

5905 **Drafting note: Existing Article 10, concerning explosives and blasting, is retained**
5906 **as proposed Article 10.**

5907 § ~~45.1-161.284~~ 45.2-xxx. Surface storage of explosives and detonators.

5908 A. ~~Separate~~ Two or more surface magazines shall be provided for the storage of
5909 explosives and the separate storage of detonators.

5910 B. ~~Surface magazines~~ Every surface magazine for storing and distributing explosives
5911 in ~~amounts~~ an amount exceeding 150 pounds shall be:

5912 1. Reasonably ~~bulletproof~~ bullet-resistant and constructed of incombustible material or
5913 covered with ~~fire-resistive~~ fire-resistant material. The ~~roofs~~ roof of ~~magazines~~ a magazine
5914 that is located ~~that in such a way as to make~~ it is impossible to fire ~~bullets~~ a bullet directly
5915 through the roof from the ground; need not be ~~bulletproof, but where~~ bullet-resistant. Where it
5916 is possible to fire ~~bullets~~ a bullet directly through ~~them, roofs~~ a roof from the ground, such
5917 roof shall be made bullet-resistant by material construction, ~~or~~ by the use of a ceiling that
5918 forms a tray containing not less than a four-inch thickness of sand, or by ~~other methods~~
5919 another method;

5920 2. Provided with doors that are constructed of ~~three-eighth-inch~~ three-eighth-inch steel
5921 plate. Such doors shall be lined with a two-inch thickness of wood; or the equivalent;

5922 3. Provided with dry floors made of wood or other nonsparking material and have no
5923 metal exposed inside the magazine;

5924 4. Provided with suitable warning signs ~~so~~ located so that a bullet passing directly
5925 through the face of a sign will not strike the magazine;

5926 5. Provided with properly screened ventilators;

5927 6. Equipped with no openings except for entrance and ventilation openings;

5928 7. Kept locked securely when unattended; and

5929 8. Electrically bonded and grounded; if constructed of metal.

5930 C. ~~Surface magazines~~ A surface magazine for storing detonators need not be
5931 ~~bulletproof~~ bullet-resistant, but ~~they it~~ shall be in accordance comply with other provisions for
5932 storing explosives.

5933 D. Explosives ~~in amounts~~ weighing a total of no more than 150 pounds ~~or less~~, or
5934 ~~5,000~~ detonators numbering 5,000 or ~~less~~ fewer, shall be stored either (i) in accordance with
5935 the ~~preceding~~ standards set forth in subsection A, B, or C or (ii) in a separate locked box-type
5936 ~~magazines~~ magazine. ~~Box-type magazines~~ A box-type magazine may also be used as a
5937 distributing ~~magazines~~ magazine when ~~quantities do~~ the weight of the explosives or the
5938 number of detonators does not exceed ~~those mentioned~~. ~~Box-type magazines~~ the limits set
5939 forth in this subsection. Every box-type magazine shall be strongly constructed ~~strongly~~ of

5940 two-inch hardwood or the equivalent. ~~Metal magazines~~ Every metal magazine shall be lined
5941 with nonsparking material. No magazine shall be placed (a) in a building containing oil,
5942 grease, gasoline, wastepaper, or other highly flammable material; ~~nor shall a magazine be~~
5943 ~~placed~~ or (b) within ~~twenty~~ 20 feet of a stove, furnace, open fire, or flame.

5944 E. ~~The location of magazines~~ No magazine shall be ~~not~~ placed less than 300 feet from
5945 any mine opening. However, ~~in the event that~~ if a magazine cannot be practicably located at
5946 such a distance, ~~the magazine~~ it may be located less than 300 feet from a mine opening; if it is
5947 sufficiently barricaded and is approved by the Chief. Unless approved by the Chief,
5948 ~~magazines~~ no magazine shall ~~not~~ be located closer to an occupied ~~buildings~~ building, public
5949 ~~roads~~ road, or passenger ~~railways~~ railway than ~~allowed~~ the distance recommended in the
5950 "American Table of Distances for Storage of Explosive Materials" published by the Institute
5951 of Makers of Explosives.

5952 F. The supply kept in a distribution ~~magazines~~ magazine shall be limited to
5953 approximately a ~~forty-eight hour~~ 48-hour supply, and ~~such~~ supplies of explosives and
5954 detonators may be distributed from the same magazine; if they are separated by ~~at least~~ a four-
5955 ~~inch~~ substantially fastened hardwood partition at least four inches thick or the equivalent.

5956 G. The area surrounding ~~magazines for not less than twenty-five feet in all directions~~
5957 any magazine shall be kept free of rubbish, dry grass, or other materials of a combustible
5958 nature for at least 25 feet in every direction.

5959 H. If ~~the~~ an explosives magazine is illuminated electrically, ~~the lamps~~ each lamp shall
5960 be of vapor-proof type; and installed and wired so as to present ~~minimum~~ a minimal fire ~~and~~
5961 or contact ~~hazards~~ hazard.

5962 I. Only nonmetallic tools shall be used for opening any wooden ~~containers~~ explosives
5963 container. Extraneous materials shall not be stored ~~in an~~ with explosives or ~~detonator~~
5964 detonators in an explosives magazine.

5965 J. Smoking; or carrying smokers' articles or open flames ~~shall be~~ is prohibited in or
5966 near any magazine.

5967 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
5968 **throughout the Code any word used in the singular includes the plural and vice versa.**
5969 **Language is updated for modern usage and "bulletproof" is replaced by "bullet-**
5970 **resistant" three times for consistency.**

5971 § ~~45.1-161.285~~ 45.2-xxx. Misfires.

5972 A. ~~Misfires~~ Every misfire shall be reported promptly to the mine foreman, and no
5973 other work shall be performed in the blasting area until the hazard has been corrected. A
5974 waiting period of at least ~~fifteen~~ 15 minutes ~~shall elapse~~ is required before anyone ~~returns~~ is
5975 allowed to ~~the~~ any misfired ~~holes~~ hole. If explosives are suspected of burning in a hole, ~~all~~
5976 ~~persons~~ every person affected shall move to a safe location for ~~the longer of~~ one hour or until
5977 the danger has passed, whichever time is longer. When such failure involves an electronic
5978 ~~detonators~~ detonator, the blasting cable shall be disconnected from the source of power and
5979 the battery ends short-circuited before ~~electric connections are~~ any electrical connection is
5980 examined.

5981 B. Explosives shall be removed by (i) firing a separate charge at least two feet away
5982 from, and parallel to, the misfired charge ~~or by~~, (ii) washing the stemming and the charge
5983 from the borehole with water, or ~~by~~ (iii) inserting and firing a new primer after the stemming
5984 has been washed out.

5985 C. A ~~very~~ careful search of the blasting area, and, if necessary, of the coal after it
5986 reaches the tipple shall be made after blasting a misfired hole to recover any undetonated
5987 explosive.

5988 D. The handling of a misfired shot shall ~~be~~ occur under the direct supervision of the
5989 foreman or an authorized person designated by him.

5990 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
5991 **227, which states that throughout the Code any word used in the singular includes the**
5992 **plural and vice versa. Language is updated for modern usage and clarity.**

5993 § ~~45.1-161.286~~ 45.2-xxx. Minimum blasting practices.

5994 A. ~~When~~ If explosives are in use on the surface and an electrical storm approaches, all
5995 persons shall be removed from ~~such~~ the blast area until the storm has passed.

5996 B. In accordance with the standards set forth in § ~~45.1-161.255~~ 45.2-xxx, the Chief
5997 shall ~~promulgate~~ adopt regulations regarding the safe storage, transportation, handling, and
5998 use of blasting agents and other explosives.

5999 **Drafting note: Technical changes are made for modern usage. The term**
6000 **"promulgate regulations" is changed to "adopt regulations" in keeping with recent title**
6001 **revisions because "adopt" is more widely used and includes the promulgation process.**

6002 Article 11.

6003 Ground Control.

6004 **Drafting note: Existing Article 11, concerning ground control, is retained as**
6005 **proposed Article 11.**

6006 § ~~45.1-161.287~~ 45.2-xxx. Ground control.

6007 A. ~~All~~ Every surface coal mining ~~operations~~ operation shall establish and follow a
6008 ground control plan approved by the Chief to ensure the safety of workers and others affected
6009 by the ~~operations~~ operation. The ground control plan shall be consistent with prudent
6010 engineering design. Mining methods, including benching, shall ensure wall and bank stability,
6011 ~~including benching~~, in order to obtain a safe overall slope. The ground control plan shall also
6012 ensure the safety of ~~persons~~ every person who is (i) located in ~~residences~~ a residence or other
6013 occupied ~~buildings~~ building, (ii) working or traveling on any roadway, ~~and or~~ (iii) located in
6014 any other area where persons congregate, work, or travel that ~~may~~ could be affected by
6015 blasting or by the falling, sliding, or other uncontrolled movement of material. The ground
6016 control plan shall identify how residents or occupants of other buildings located down the
6017 slope from active workings will be notified when ~~ground-disturbing~~ ground-disturbing
6018 activities will take place above them and what actions will be taken to protect such residents
6019 or occupants from ground control failures during the work.

6020 B. Scaling and removal of loose hazardous material from the ~~tops~~ top of ~~pits and~~
6021 ~~highwalls, banks, walls and benches~~ a pit or from a highwall, wall, bank, or bench shall be
6022 completed to ~~assure~~ ensure a safe work area.

6023 C. Employees and other persons, except those involved in correction of the condition,
6024 shall be restricted from ~~areas~~ any area where hazardous highwall or pit conditions exist.

6025 D. Unless he is required for the purpose of making repairs, ~~all persons~~ no person shall
6026 be ~~restricted from areas~~ allowed in any area that is located between equipment and ~~walls,~~
6027 ~~benches, or banks~~ a highwall, wall, bank, or bench if the equipment ~~may~~ could hinder ~~their~~
6028 escape from falling or sliding material. Special precautions shall be taken when ~~persons are~~
6029 any person is required to perform such repairs.

6030 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
6031 **throughout the Code any word used in the singular includes the plural and vice versa.**
6032 **Language is updated for modern usage and clarity. References to a highwall, wall, bank,**
6033 **or bench are made consistent.**

6034 Article 12.

6035 Auger and Highwall Mining.

6036 **Drafting note: Existing Article 12, concerning auger and highwall mining, is**
6037 **retained as proposed Article 12.**

6038 § ~~45.1-161.288~~ 45.2-xxx. Inspection of electric equipment and wiring; checking and
6039 testing methane monitors.

6040 Electric equipment and wiring that ~~extend~~ extends to an underground ~~areas~~ area shall
6041 be inspected by a certified person at least once a week and more often if necessary to ~~assure~~
6042 ensure safe operating conditions, ~~and any~~ Any hazardous condition found shall be corrected
6043 or the equipment or wiring shall be removed from service. ~~This~~ Such surface inspection is
6044 also required for any trailing ~~cables and~~ cable or circuit ~~breakers~~ breaker used in conjunction
6045 with such equipment and wiring.

6046 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
6047 **throughout the Code any word used in the singular includes the plural and vice versa.**

6048 **The first sentence in the section is divided into two sentences for clarity and language is**
6049 **updated for clarity.**

6050 § ~~45.1-161.289~~ 45.2-xxx. Highwall inspections.

6051 A. ~~The~~ A mine foreman shall inspect the face of ~~all highwalls~~ each highwall, for a
6052 distance of 25 feet in both directions from an auger or highwall miner operation, ~~shall be~~
6053 ~~inspected by a mine foreman~~ before any such operation begins and at least once during each
6054 coal producing shift.

6055 B. ~~Mine~~ A mine foreman shall examine the face of ~~all highwalls~~ each highwall, for a
6056 distance of 25 feet in both directions from an auger or highwall miner ~~operations~~ operation,
6057 frequently during ~~periods~~ any period of heavy rainfall or intermittent ~~freezing thawing~~
6058 freezing and thawing.

6059 C. Hazardous conditions shall be corrected and loose material removed from above the
6060 mining area before any work is begun.

6061 D. Records shall be kept of the inspection ~~compiled~~ and examination performed
6062 pursuant to subsections A and B. Such records shall be maintained for at least one year.

6063 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
6064 **throughout the Code any word used in the singular includes the plural and vice versa.**
6065 **Language is updated for modern usage and clarity.**

6066 § ~~45.1-161.290~~ 45.2-xxx. Penetration of underground mines; testing.

6067 A. A qualified person shall test for the presence of methane and for a deficiency of
6068 oxygen₂ using an approved device₂ at the entrance to an auger hole or at a highwall miner
6069 entry when either such entry point penetrates a worked-out area of an underground mine.

6070 B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is
6071 found to exist₂, no further work shall be performed until the atmosphere has been made safe.

6072 **Drafting note: Language is updated for clarity.**

6073 § ~~45.1-161.291~~ 45.2-xxx. Safety precautions.

6074 A. No person shall enter an auger hole or highwall miner entry without prior approval
6075 from the Chief.

6076 B. ~~Auger holes and~~ Every auger hole or highwall miner ~~entries~~ entry shall be blocked
6077 with highwall spoil or other suitable material before it is abandoned.

6078 C. ~~Auger and~~ Every auger or highwall mining ~~machines which are~~ machine that is
6079 exposed to any highwall ~~and or~~ explosion ~~hazards~~ hazard shall be provided with worker
6080 protection from falling material and a mine ~~explosions~~ explosion.

6081 D. At least one person shall be assigned to observe the highwall for possible
6082 movement while ground personnel are working in ~~high risk areas~~ a high-risk area in close
6083 proximity to the highwall.

6084 E. ~~Persons~~ All persons shall stay clear of any moving auger or highwall miner train,
6085 and no ~~persons~~ person shall pass over or under a moving train unless adequate crossing
6086 facilities are provided.

6087 F. The ground control plan shall specify ~~spacing~~ any spacing of holes, any web design,
6088 and any use of alignment control devices.

6089 G. The ground control plan shall include other administrative, engineering, and source
6090 controls that are to be provided for safe operations.

6091 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
6092 **throughout the Code any word used in the singular includes the plural and vice versa.**
6093 **Language is updated for modern usage and clarity.**

6094 Article 13.

6095 Proximity of Mining to Gas; or Oil Wells ~~and or~~ Vertical Ventilation Holes.

6096 **Drafting note: Existing Article 13, concerning proximity of mining to gas or oil**
6097 **wells or vertical ventilation holes, is retained as proposed Article 13. Technical changes**
6098 **are made to the name.**

6099 § ~~45.1-161.292~~ 45.2-xxx. Surface coal mining; distance from wells; requirements.

6100 A. Any mine operator who plans to remove coal or extend any workings in any mine
6101 ~~closer~~ to a distance of less than 500 feet ~~to~~ from any gas or oil well that is already drilled or is
6102 in the process of being drilled shall file with the Chief a notice that such mining is taking
6103 place or will take place, together with ~~a copy~~ copies of parts of the maps and plans required

6104 under § ~~45.1-161.64~~ ~~which~~ 45.2-xxx ~~that~~ show the mine workings and projected mine
6105 workings beneath the tract in question and within 500 feet of the well. Such mine operator
6106 shall simultaneously mail copies of such notice, maps, and plans by certified mail, return
6107 receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to the
6108 provisions of § 45.2-xxx [§ 45.1-361.4]. ~~Each notice~~ The mine operator shall certify in each
6109 notice that ~~the mine operator~~ he has complied with the provisions of this subsection.

6110 B. Subsequent to the filing of the notice required by subsection A ~~of this section~~, the
6111 mine operator may proceed with surface coal mining operations in accordance with the maps
6112 and plans; ~~however~~. However, without the prior approval of the Chief, ~~he~~ such mine operator
6113 shall not remove any coal or extend any workings in any mine ~~closer to a distance of less~~ than
6114 200 feet ~~to~~ from any gas or oil well that is already drilled or is in the process of being drilled.

6115 C. The Chief shall ~~promulgate~~ adopt regulations ~~which~~ that prescribe the procedure to
6116 be followed by a mine ~~operators~~ operator in petitioning the Chief for approval to conduct ~~such~~
6117 ~~activities~~ ~~closer~~ surface coal mining operations to a distance of less than 200 feet ~~to~~ from a
6118 well. A petition may include a request to mine through a plugged well or a plugged vertical
6119 ventilation hole. ~~A~~ Such petition may also include a request to mine through a well or a
6120 vertical ventilation hole and to lower the head of such well or vertical ventilation hole. Each
6121 mine operator who files a petition to remove coal or extend any workings ~~closer to a distance~~
6122 of less than 200 feet ~~to~~ from any gas or oil well shall mail copies of the petition, maps, and
6123 plans by certified mail, return receipt requested, to the well operator and the Gas and Oil
6124 Inspector no later than the day of filing. The well operator and the Gas and Oil Inspector ~~and~~
6125 ~~the well operator~~ shall have standing to object to any petition filed under this section. Such
6126 ~~objections~~ objection shall be filed within ~~ten~~ 10 days following the date such petition is filed.

6127 **Drafting note: Language is updated for modern usage and clarity and technical**
6128 **changes are made. Changes are made pursuant to § 1-227, which states that throughout**
6129 **the Code any word used in the singular includes the plural and vice versa. The term**
6130 **"promulgate regulations" is changed to "adopt regulations" in keeping with recent title**
6131 **revisions because "adopt" is more widely used and includes the promulgation process.**

6132 Existing subsection B is divided into two subsections for clarity. A cross-reference to the
6133 section addressing the appointment of the Gas and Oil Inspector is added.

6134 CHAPTER ~~19~~ 10.

6135 VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979.

6136 Drafting note: Existing Chapter 19 is retained as proposed Chapter 10, consisting
6137 of five articles: Article 1, General and Administrative Provisions; Article 2, Regulation
6138 of Mining Activity; Article 3, Miscellaneous Provisions; Article 4, Abandoned Mine
6139 Reclamation; and Article 5, Coal Surface Mining Reclamation Fund.

6140 Article 1.

6141 General and Administrative Provisions.

6142 Drafting note: Existing Article 1, concerning general and administrative
6143 provisions, is retained as proposed Article 1.

6144 ~~§ 45.1-226. Short title.~~

6145 ~~This chapter shall be known as the "Virginia Coal Surface Mining Control and~~
6146 ~~Reclamation Act of 1979."~~

6147 Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which
6148 states that throughout the Code the caption of a subtitle, chapter, or article serves as a
6149 short title citation.

6150 ~~§ 45.1-227. Findings and policy.~~

6151 ~~A. The General Assembly finds and declares that federal enforcement and~~
6152 ~~administration of the regulatory program established by the federal Surface Mining Control~~
6153 ~~and Reclamation Act of 1977 (Public Law 95-87), would not be in the best interests of the~~
6154 ~~Commonwealth. It is the objective of the General Assembly to preclude, or minimize the~~
6155 ~~adverse effects of federal enforcement, and to allow the regulation of coal surface mining to~~
6156 ~~remain within the powers of the Commonwealth, to the fullest extent possible.~~

6157 ~~It is the purpose of this chapter to enable the Commonwealth through its own~~
6158 ~~instrumentalities, to enforce and administer the provisions of the federal program, in order to~~
6159 ~~lessen federal enforcement and administration thereof.~~

6160 ~~Nothing in this chapter, however, is intended, nor shall be construed, as expressing the~~
6161 ~~Commonwealth's approval of or satisfaction with the standards or provisions contained in the~~
6162 ~~regulatory program of the federal act, so as to limit or affect any suit, action or other~~
6163 ~~proceeding brought by the Commonwealth or any person, to invalidate, set aside or modify, in~~
6164 ~~whole or part, the federal act or regulations promulgated thereunder.~~

6165 ~~B. The proper control of surface mining of coal so as to minimize or prevent adverse~~
6166 ~~disruptions and the injurious effects thereof requires thorough planning in the selection of~~
6167 ~~appropriate coal surface mining sites, methods of coal surface mining, and the nature and~~
6168 ~~extent and the incorporation and use of control techniques and reclamation actions as an~~
6169 ~~integral and simultaneous part of coal surface mining;~~

6170 ~~C. Because the Commonwealth's administrative agencies, through their experience of~~
6171 ~~regulating coal surface mining, have developed a special expertise in the characteristics of~~
6172 ~~coal surface mining in Virginia, as well as physical conditions in Virginia's coal mining areas,~~
6173 ~~and because coal mining is such an important and integral element in the economy and culture~~
6174 ~~of Virginia, it is in the best interest of the Commonwealth that the development,~~
6175 ~~administration and enforcement of the provisions of the federal Surface Mining Control and~~
6176 ~~Reclamation Act of 1977 be carried out by State officials and instrumentalities pursuant to a~~
6177 ~~permanent State regulatory program and a State abandoned mine reclamation program~~
6178 ~~approved by the Secretary of the Interior of the United States.~~

6179 **Drafting note: This section, which is currently not set out, is deleted as an**
6180 **unnecessary and nonstatutory policy statement in accordance with policies of the Code**
6181 **Commission. In addition, the interest of the General Assembly in providing that**
6182 **Virginia agencies administer and enforce requirements related to the federal Surface**
6183 **Mining Control and Reclamation Act of 1977 are now in place and incorporated into**
6184 **Title 45.1 (Mines and Mining).**

6185 § ~~45.1-229~~ [45.2-xxx](#). Definitions.

6186 ~~The following words and phrases when As used in this chapter shall have the meaning~~
6187 ~~respectively ascribed to them in this section except where, unless the context clearly~~ requires
6188 a different meaning; ~~the Director shall have the power to adopt by regulation such other~~
6189 ~~definitions as may be deemed necessary to carry out the intent of this chapter.:~~

6190 "Approximate original contour" means ~~that~~ the surface configuration achieved by
6191 backfilling and grading of the mined area so that the reclaimed area, including any terracing
6192 or access ~~roads~~ road, closely resembles the general surface configuration of the land prior to
6193 mining and blends into and complements the drainage pattern of the surrounding terrain, with
6194 all highwalls and spoil piles eliminated; water impoundments may be permitted where the
6195 Director determines that they are in compliance with the applicable performance standards
6196 ~~promulgated~~ adopted pursuant to this chapter.

6197 "Coal surface mining and reclamation ~~operations~~ operation" means a surface mining
6198 ~~operations~~ operation and ~~all activities~~ any activity necessary and incidental to the reclamation
6199 of such ~~operations after March 20, 1979~~ operation.

6200 "Coal surface mining ~~operations~~ operation" means ~~the following~~:

6201 1. ~~Activities~~ Any activity conducted on the surface of lands in connection with a
6202 surface coal mine or, subject to the requirements of § ~~45.1-243~~ 45.2-xxx, any surface
6203 ~~operations~~ operation and surface ~~impacts~~ impact incident to an underground coal mine, the
6204 products of which enter commerce or the ~~operations~~ operation of which directly or indirectly
6205 ~~affect~~ affects interstate commerce. Such ~~activities include~~ activity includes (i) excavation for
6206 the purpose of obtaining coal, including by such common methods as contour, strip, auger,
6207 mountaintop removal, box cut, open pit, and area mining; (ii) the ~~uses~~ use of explosives and
6208 blasting; ~~and~~; (iii) in situ distillation or retorting, leaching, or other chemical or physical
6209 processing; and (iv) the cleaning, concentrating, or other processing or preparation, ~~and~~
6210 loading of coal for interstate commerce at or near the mine site; ~~however.~~ However, such
6211 ~~activities do~~ activity does not include the extraction of coal incidental to the extraction of
6212 other minerals where coal does not exceed 16 ~~2/3~~ and two-thirds percent of the tonnage of

6213 minerals removed for purposes of commercial use or sale, or coal ~~explorations~~ exploration

6214 subject to § ~~45.1-233 of this chapter~~ 45.2-xxx; and

6215 2. The ~~areas~~ area upon which such ~~activities occur~~ activity occurs or where such

6216 ~~activities disturb~~ activity disturbs the natural land surface. Such ~~areas shall also include~~ area

6217 includes (i) any adjacent land ~~the whose~~ use of which is incidental to any such ~~activities,~~

6218 activity; (ii) all lands affected by the construction of any new ~~roads~~ road or the improvement

6219 or use of any existing ~~roads~~ road to gain access to the site of such ~~activities~~ activity and for

6220 haulage; ~~and excavations~~ (iii) any excavation, workings, ~~impoundments~~ impoundment, ~~dams~~

6221 dam, ventilation ~~shafts~~ shaft, ~~entryways~~ entryway, refuse ~~banks~~ bank, ~~dumps~~ dump, ~~stockpiles~~

6222 stockpile, overburden ~~piles~~ pile, spoil ~~banks~~ bank, culm ~~banks~~ bank, tailings, ~~holes~~ hole or

6223 ~~depressions~~ depression, repair ~~areas~~ area, storage ~~areas~~ area, processing ~~areas~~ area, shipping

6224 ~~areas~~ area, and other ~~areas~~ area upon which ~~are~~ is sited ~~structures~~ any structure, ~~facilities~~

6225 facility, or other property or materials on the surface, resulting from or incident to such

6226 ~~activities~~ activity.

6227 "Division" means the Division of Mined Land Reclamation.

6228 "Federal act" means the federal Surface Mining Control and Reclamation Act of 1977,

6229 ~~Public Law~~ P.L. 95-87, 91 U.S. Stat. 445.

6230 "Imminent danger to the health and safety of the public" means the existence in a coal

6231 surface mining and reclamation operation of any condition ~~or~~ practice, or ~~any~~ violation of a

6232 permit or other requirement of this chapter ~~in a coal surface mining and reclamation~~

6233 ~~operation, which condition, practice or violation~~ that could reasonably be expected to cause

6234 substantial physical harm to ~~persons~~ a person outside the permit area before such condition,

6235 practice, or violation can be abated. A reasonable expectation of substantial physical harm,

6236 including death or serious injury, before abatement exists if a rational person, subjected to the

6237 same ~~conditions~~ condition or ~~practices~~ practice giving rise to the peril, would not expose

6238 himself to the danger during the time necessary for abatement.

6239 "Operator" means any person engaging in a coal surface mining operation
6240 whether or not such coal is sold within ~~or without~~ the Commonwealth.

6241 "Other minerals" means clay, stone, sand, gravel, metalliferous ~~—and~~ or
6242 nonmetalliferous ~~ores~~ ore, and any other solid material or ~~substances~~ substance of commercial
6243 value excavated in solid form from natural deposits on or in the earth, exclusive of coal and
6244 ~~those minerals which occur~~ any mineral that occurs naturally in liquid or gaseous form.

6245 "Permit" means a permit issued by the Director pursuant to ~~the approved~~ state
6246 ~~regulatory program~~ regulations.

6247 "Permit area" means the area of land indicated on the approved map submitted by the
6248 operator with ~~his~~ the operator's application, ~~which~~. Such area of land shall be covered by the
6249 operator's bond as required by § ~~45.1-241~~ 45.2-xxx and shall be readily identifiable by
6250 appropriate markers on the site.

6251 "Permittee" means a person holding ~~a permit~~ any of the following permits issued by
6252 the Director: (i) a permit for coal surface mining pursuant to § ~~45.1-234~~ 45.2-xxx, (ii) a permit
6253 for coal exploration pursuant to § ~~45.1-233~~ 45.2-xxx, or ~~for an NPDES~~ (iii) a national
6254 pollutant discharge elimination system permit pursuant to § ~~45.1-254~~ 45.2-xxx.

6255 "Person" means any individual, partnership, association, joint venture, trust, company,
6256 firm, joint stock company, corporation, ~~or any~~ other group or combination acting as a unit, or
6257 ~~any~~ other legal entity.

6258 "Secretary" means the U.S. Secretary of the Interior ~~of the United States~~.

6259 "State or local agency" means any department, agency, or instrumentality of the
6260 Commonwealth; ~~or any~~ public authority, municipal corporation, local governmental unit, or
6261 political subdivision of the Commonwealth; or ~~any~~ department, agency, or instrumentality of
6262 any public authority, municipal corporation, local governmental unit, or political subdivision
6263 of the Commonwealth, or two or more of any of the aforementioned.

6264 "State ~~regulatory program regulations~~" ~~or~~ "means the permanent state regulatory
6265 program" ~~means the program~~ established by this chapter meeting the requirements of the

6266 federal act for the regulation of coal surface mining and reclamation operations within the
6267 Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

6268 "Unwarranted failure to comply" means the failure of a permittee (i) to prevent the
6269 occurrence of any violation of ~~his~~ its permit or any requirement of this chapter due to
6270 indifference, lack of diligence, or lack of reasonable care; or ~~the failure~~ (ii) to abate any
6271 violation of such permit or ~~the~~ requirement of this chapter due to indifference, lack of
6272 diligence, or lack of reasonable care.

6273 **Drafting note: The section, because it contains definitions, is relocated to the**
6274 **beginning of the chapter. The provision in the first sentence authorizing certain**
6275 **regulations is retained as a part of subsection A in proposed § 45.2-xxx [§ 45.1-230].**
6276 **Technical changes are made, including the reordering of definitions into alphabetical**
6277 **order. An obsolete provision in the definition of "coal surface mining and reclamation**
6278 **operations" is proposed for deletion and an obsolete reference to a future "permanent**
6279 **state regulatory program" is proposed for deletion because it has been adopted.**

6280 § ~~45.1-228~~ 45.2-xxx. Purpose ~~and policy~~ of chapter.

6281 A. ~~It is the~~ The purpose ~~and policy~~ of this chapter is to ~~do the following:~~

6282 1. Provide for the implementation and enforcement; by the Commonwealth; of the
6283 federal ~~Surface Mining Control and Reclamation Act of 1977,~~ act and the regulations of the
6284 ~~United States~~ U.S. Secretary of the Interior ~~promulgated~~ adopted thereunder; ~~and amendments~~
6285 ~~thereto, as the same may be or become effective at any time or from time to time.~~

6286 2. Promote the reclamation of coal-mined areas, and areas ~~which~~ that have been
6287 affected by such mining; ~~which~~ and that were not adequately reclaimed; or were abandoned;
6288 prior to the enactment of the federal ~~Surface Mining Control and Reclamation Act of 1977,~~
6289 act and ~~which~~ that, in their unreclaimed condition, continue to substantially degrade the
6290 quality of the environment, prevent or damage the beneficial use of land or water resources, or
6291 endanger the public health or safety;

6292 3. Exercise the police power of the Commonwealth in a coordinated statewide
6293 program to effectively control present and future problems associated with coal surface
6294 mining and provide for the reclamation of disturbed lands to ~~insure~~ ensure the protection of
6295 the public welfare and safety; and

6296 4. Authorize and enable the Department to submit; and obtain approval ~~of;~~ for a
6297 ~~permanent~~ state regulatory program and abandoned mine reclamation program, pursuant to
6298 the federal ~~Surface Mining Control and Reclamation Act of 1977~~ act.

6299 B. Nothing in this chapter is intended; ~~nor~~ or shall be construed; to limit, impair,
6300 abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any
6301 person in any dispute involving property rights, including interests in water resources, or the
6302 right of any person to ~~damage~~ seek damages or other relief on account of injury to persons or
6303 property, including interests in water resources, and to maintain any action or other
6304 appropriate proceeding therefor, except as is otherwise specifically provided in this chapter;
6305 ~~nor~~. Nothing in this chapter is intended or shall be construed to affect the powers of the
6306 Commonwealth to initiate, prosecute ~~and,~~ or maintain actions to abate public nuisances.

6307 **Drafting note: The term "promulgate regulations" is changed to "adopt**
6308 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
6309 **and includes the promulgation process. Language is updated for clarity and modern**
6310 **usage and the single sentence of subsection B is divided into two sentences for clarity.**

6311 § ~~45.1-253~~ 45.2-xxx. Certain mining operations exempt from this chapter.

6312 The provisions of this chapter shall not apply to ~~any of the following activities~~ the
6313 extraction of coal:

6314 1. ~~The extraction of coal by~~ By a landowner for his own noncommercial use from land
6315 owned or leased by him; ~~and~~ or

6316 2. ~~The extraction of coal as~~ As an incidental part of federal, state, or local government-
6317 financed highway or other construction under regulations established by the Director.

6318 **Drafting note: The section is relocated from existing Article 3. Technical changes**
6319 **are made.**

6320 § ~~45.1-259~~ 45.2-xxx. Applicability of chapter to public agencies, utilities, and
6321 corporations.

6322 Any agency, unit, or instrumentality of the Commonwealth, or of federal or local
6323 government, including any publicly owned utility or publicly owned corporation of federal,
6324 state, or local government, ~~which that~~ proposes to engage in coal surface mining operations
6325 ~~which that~~ are subject to the requirements of this chapter shall comply with the provisions of
6326 this chapter.

6327 **Drafting note: The section is relocated from existing Article 3. Technical changes**
6328 **are made.**

6329 § ~~45.1-230~~ 45.2-xxx. Authority and duties of Director.

6330 A. The authority to ~~publish and promulgate such~~ adopt regulations ~~as may be~~
6331 necessary to carry out the purposes and provisions of this chapter is ~~hereby~~ vested in the
6332 Director. ~~Regulations~~ Such regulations shall be consistent with regulations ~~promulgated~~
6333 adopted by the Secretary pursuant to the federal act or in conformity ~~to~~ with any court ruling
6334 construing such act. The Director may adopt by regulation definitions other than those
6335 provided in § 45.2-xxx [§ 45.1-229] as necessary to carry out the intent of this chapter. ~~In~~
6336 ~~promulgating such~~ Unless otherwise directed by law, in adopting regulations, the Director
6337 shall ~~provide an opportunity for public comment, both oral and written, and shall give public~~
6338 ~~notice of proposed regulations, in accordance~~ comply with the Administrative Process Act (§
6339 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

6340 ~~A1.~~ B. In addition to the adoption of regulations under this chapter, the Director may
6341 ~~at his discretion~~ issue or distribute to the public interpretative, advisory, or procedural
6342 bulletins ~~or guidelines~~ pertaining to permit applications or to matters reasonably related
6343 thereto without following any of the procedures set forth in the Administrative Process Act (§
6344 2.2-4000 et seq.). ~~The~~ Such materials shall be clearly designated as to their nature, shall be

6345 provided solely for purposes of public information and education, and shall not have the force
6346 of regulations ~~under this chapter or under any other provision of this Code.~~

6347 ~~B.~~C. The authority to administer and enforce the provisions of this chapter is ~~hereby~~
6348 vested in the Director. In administering and enforcing the provisions of this chapter, the
6349 Director shall exercise the following powers in addition to any other powers conferred upon
6350 him by law:

6351 1. To supervise the administration and enforcement of this chapter; to make
6352 investigations and inspections necessary to ~~insure~~ ensure compliance with this chapter; to
6353 conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses
6354 and production of written or printed material as provided for in this chapter; to issue orders
6355 and notices of violation; to review and vacate or modify or approve orders and decisions; and
6356 to order the suspension, revocation, or withholding of any permit for failure to comply with
6357 any ~~of the provisions~~ provision of this chapter or any ~~rules and regulations~~ regulation adopted
6358 ~~thereunder~~ hereunder;

6359 2. To administer the program for the purchase and reclamation of abandoned and
6360 unreclaimed mine areas pursuant to Article 4 (§ ~~45.1-260~~ 45.2-xxx et seq.) ~~of this chapter~~;

6361 3. To encourage and conduct investigations, research, experiments, and
6362 demonstrations; and to collect and disseminate information relating to coal surface mining and
6363 reclamation of lands and waters affected by coal surface mining;

6364 4. To receive any federal ~~or~~ state ~~funds~~, or ~~any~~ other funds; and to enter into any
6365 contracts for which funds are available to carry out the purposes of this chapter; and

6366 5. To enter into cooperative agreements with the Secretary to regulate coal surface
6367 mining on federal lands.

6368 ~~C.~~D. The Division of Mined Land Reclamation shall have the responsibilities
6369 provided under this chapter and such duties and responsibilities as the Director may assign; or
6370 as may be provided for in regulations ~~promulgated~~ adopted by the Director.

6371 **Drafting note:** A provision of existing § 45.1-229 regarding definitions is
6372 relocated to proposed subsection A because it authorizes certain regulations. The term
6373 "promulgate regulations" is changed to "adopt regulations" in keeping with recent title
6374 revisions because "adopt" is more widely used and includes the promulgation process.
6375 The proviso "unless otherwise directed by law" is added to the Administrative Process
6376 Act and Virginia Register Act compliance requirement in subsection A to accommodate
6377 any future exception contained in this Title. Language is updated for modern usage and
6378 technical changes are made, including changes pursuant to § 1-227, which states that
6379 throughout the Code any word used in the singular includes the plural and vice versa.

6380 § ~~45.1-256~~ 45.2-xxx. Training and certification of blasters.

6381 A. In order to ensure that explosives are used only in accordance with applicable state
6382 and federal laws, the Director is authorized to ~~promulgate~~ adopt regulations requiring the
6383 training, examination, and certification of persons engaging in or directly responsible for
6384 blasting or the use, storage, and handling of explosives in coal surface mining operations.

6385 B. The Division shall assume primary responsibility for conducting the examinations
6386 and issuing the certificates for such persons in accordance with the regulations adopted
6387 pursuant to ~~subdivision A of~~ this section.

6388 **Drafting note:** The section is relocated from existing Article 3. The term
6389 "promulgate regulations" is changed to "adopt regulations" in keeping with recent title
6390 revisions because "adopt" is more widely used and includes the promulgation process.
6391 Technical changes are made.

6392 § ~~45.1-231~~ 45.2-xxx. Conflicts of interest prohibited.

6393 ~~B.~~ A. For the purposes of this section, "financial interest" ~~shall include~~ includes a
6394 pecuniary interest accruing to an employee or to ~~his~~ the employee's spouse, minor ~~children~~
6395 child, or other ~~relatives~~ relative living in the same household.

6396 ~~A.~~ B. No employee of the Department performing any function or duty under this
6397 chapter, shall have a financial interest in any underground or surface coal mining operation.

6398 C. The Director shall ~~promulgate~~ adopt regulations ~~by which~~ for the monitoring and
6399 enforcement of the provisions of this section ~~will be monitored and enforced~~, including
6400 ~~provisions~~ regulations (i) for the filing and review of statements and supplements by
6401 employees concerning any financial interest ~~which~~ that may be affected by this section; (ii)
6402 for the hiring, transfer, and removal of employees consistent with the prohibition of this
6403 section; (iii) for the resolution of prohibited interests; (iv) for the confidentiality, protection,
6404 and disclosure to enforcement authorities of reporting statements; and (v) for such exemptions
6405 from the provisions of this section as may be consistent with federal law.

6406 D. ~~[Repealed.]~~

6407 E. Judicial proceedings to enforce the provisions of this section may be brought by the
6408 Attorney General at the request of the Director.

6409 E. Nothing in this ~~article~~ section shall be construed as repealing or amending any other
6410 ~~provisions~~ provision of law pertaining to conflicts of interest except that in cases of conflict,
6411 the provisions of this ~~article~~ section shall control.

6412 **Drafting note: Existing subsection B is relocated as subsection A in keeping with**
6413 **Code style that definitions are provided at the beginning of a section. The term**
6414 **"promulgate regulations" in subsection C is changed to "adopt regulations" in keeping**
6415 **with recent title revisions because "adopt" is more widely used and includes the**
6416 **promulgation process. Language is updated for modern usage and technical changes are**
6417 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
6418 **word used in the singular includes the plural and vice versa. In proposed subsection E,**
6419 **two references to "this article" are replaced with "this section" because this is the only**
6420 **section in this article that pertains to conflicts of interest.**

6421 § ~~45.1-257~~ 45.2-xxx. ~~Impeding~~ Resisting, etc., Director or ~~agents a misdemeanor~~
6422 agent of the Director; penalty.

6423 It ~~shall be~~ is a misdemeanor, punishable by a fine of not more than \$5,000 ~~or by~~
6424 confinement in jail for not more than one year, or both, for any person, except as permitted by

6425 law, to willfully resist, prevent, impede, or interfere with the Director or any ~~of his agents~~
6426 [agent of the Director](#) in the performance of duties pursuant to this chapter.

6427 **Drafting note: The section is relocated from existing Article 3. Language is**
6428 **updated for modern usage.**

6429 ~~§ 45.1-232. Repealed.~~

6430 **Drafting note: Repealed by Acts 1984, c. 590.**

6431 [§ 45.2-xxx. Coal Surface Mining Regulatory Fund created.](#)

6432 [There is hereby created in the state treasury a special nonreverting fund to be known](#)
6433 [as the Coal Surface Mining Regulatory Fund, referred to in this section as "the Fund." The](#)
6434 [Fund shall be established on the books of the Comptroller. All fees collected pursuant to §](#)
6435 [45.2-xxx \[§ 45.1-235\] or another provision of this chapter shall be paid into the state treasury](#)
6436 [and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and](#)
6437 [be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of](#)
6438 [each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in](#)
6439 [the Fund shall be used solely for administering coal surface mining state regulations.](#)
6440 [Expenditures and disbursements from the Fund shall be made by the State Treasurer on](#)
6441 [warrants issued by the Comptroller upon written request signed by the Director.](#)

6442 **Drafting note: This section, with its nonreverting fund language for the Coal**
6443 **Surface Mining Regulatory Fund, is proposed to reflect current language requested by**
6444 **the Department of the Treasury for nonreverting funds in the Code. This section**
6445 **formally establishes the special fund referenced in proposed § 45.2-xxx [§ 45.1-235] in**
6446 **Article 2.**

6447 Article 2.

6448 Regulation of Mining Activity.

6449 **Drafting note: Existing Article 2, concerning regulation of mining activity, is**
6450 **retained as proposed Article 2.**

6451 ~~§ 45.1-233~~ [45.2-xxx](#). Coal exploration operations.

6452 A. ~~Coal~~ Any coal exploration ~~operations which~~ operation that substantially ~~disturb~~
6453 disturbs the natural land surface shall be conducted in accordance with exploration regulations
6454 ~~promulgated~~ adopted by the Director. Such regulations shall ~~include~~, at a minimum, (i) ~~the~~
6455 ~~requirement~~ require that any person, prior to conducting any exploration under this section,
6456 ~~any person must~~ file with the Director notice of intention to explore ~~and such notice shall~~
6457 ~~include~~ that includes a description of the exploration area and the proposed period of
6458 ~~supposed~~ exploration; and (ii) include provisions for the reclamation, in accordance with the
6459 performance standards established pursuant to § ~~45.1-242~~ 45.2-xxx, of all lands disturbed in
6460 exploration, including all excavations, roads, and drill holes, and for the removal of necessary
6461 facilities and equipment.

6462 B. Information submitted to the Director pursuant to this section as confidential
6463 concerning trade secrets or privileged commercial or financial information ~~which~~ that relates
6464 to the competitive rights of the person or entity intended to explore the described area shall be
6465 exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
6466 and shall not be ~~available for public examination~~ disclosed.

6467 C. Any person who conducts any coal exploration ~~activities which~~ activity that
6468 substantially disturbs the natural land surface in violation of this section or ~~regulations~~ any
6469 regulation issued pursuant thereto ~~shall be~~ is subject to the provisions of § ~~45.1-246~~ 45.2-xxx.

6470 D. No person shall remove more than 250 tons of coal while engaged in a coal
6471 exploration ~~operations~~ operation without a specific written coal exploration permit issued by
6472 the Director.

6473 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
6474 **227, which states that throughout the Code any word used in the singular includes the**
6475 **plural and vice versa. The term "promulgate regulations" is changed to "adopt**
6476 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
6477 **and includes the promulgation process. A cross-reference to the Virginia Freedom of**
6478 **Information Act is added in subsection B and the prohibition on making information**

6479 available is replaced with a prohibition on disclosure for clarity. Language is updated
6480 for modern usage.

6481 § ~~45.1-234~~ 45.2-xxx. ~~Permits~~ Permit required for coal surface mining operation;
6482 ~~certain operations conducted pending initial administrative decision; time for application and~~
6483 ~~action of Director thereon~~; term; transfer, etc.

6484 A. ~~On and after eight months from the date on which a permanent state regulatory~~
6485 ~~program is approved for the Commonwealth by the Secretary, no~~ No person shall engage in or
6486 carry out any coal surface mining ~~operations~~ operation without having first obtained a permit
6487 to engage in ~~the operations~~ such operation issued by the Director, in accordance with ~~the~~
6488 ~~approved~~ state ~~regulatory program, except that a person conducting coal surface mining~~
6489 ~~operations under a valid permit issued by the Director pursuant to Chapter 19 (§ 45.1-226 et~~
6490 ~~seq.) may conduct operations beyond the period if an application for a new permit has been~~
6491 ~~filed in accordance with the provisions of this chapter, but the initial administrative decision~~
6492 ~~has not yet been rendered. Operations so conducted pending an administrative decision shall~~
6493 ~~be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247,~~
6494 ~~45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing~~
6495 ~~those sections~~ regulations.

6496 B. ~~No later than two months following the Secretary's approval of the state regulatory~~
6497 ~~program, regardless of any litigation contesting that approval, all operators of coal surface~~
6498 ~~mines expecting to operate such mines after the expiration of eight months from the~~
6499 ~~Secretary's approval shall file an application for a permit with the Director. Such application~~
6500 ~~shall cover those lands to be mined after the expiration of eight months from the Secretary's~~
6501 ~~approval.~~

6502 C. ~~Coal~~ Each coal surface mining ~~permits~~ permit issued pursuant to the requirements
6503 of this chapter shall be for a term of five years. The rights granted under ~~a~~ such permit shall
6504 not be transferred, assigned, or sold without the written approval of the Director in accordance
6505 with regulations ~~promulgated~~ adopted by ~~him~~ the Director. The Director shall also ~~promulgate~~

6506 adopt regulations; meeting the requirements of § 506 of the federal act; for longer permit
6507 terms, successors in interest to the permittee, termination of the permit for failure to
6508 commence ~~operations~~ operation, right of and procedure for permit renewal, and extension of
6509 boundaries of a mining ~~operations~~ operation.

6510 **Drafting note: Obsolete provisions regarding the future adoption of a regulatory**
6511 **program, which has occurred, and the grandfathering of mining operations that existed**
6512 **prior to the adoption of the regulatory program are proposed for deletion.**

6513 § ~~45.1-235~~ 45.2-xxx. Form and contents of permit application; fee.

6514 A. Application for a surface mining permit shall be made to the Division in the format
6515 required by the Director and shall be signed and verified under oath by the person, ~~or his legal~~
6516 ~~representative~~, intending to engage in the surface mining of coal, or the person's legal
6517 representative.

6518 B. The application shall contain ~~such~~ the information ~~as shall be~~ required by
6519 regulations adopted by the Director, including, ~~but not limited to~~, the information required
6520 under the provisions of § ~~507(b)~~ 507(b) of the federal act.

6521 C. To the extent that funds are available from the federal Office of Surface Mining
6522 Reclamation and Enforcement, the Director shall provide for permit application assistance to
6523 small operators as provided in § ~~507(e)~~ 507(c) and (h) of the federal act. Such assistance shall
6524 be provided in accordance with regulations adopted by the Director.

6525 D. Each applicant for a permit shall be required to submit to the Division as part of the
6526 permit application an ~~operations~~ operation plan and a reclamation plan ~~which shall~~ that meet
6527 the requirements of this chapter and regulations ~~promulgated~~ adopted by the Director.

6528 E. Each application for a coal surface mining permit issued under this chapter shall be
6529 accompanied by a fee of \$26 per acre for the area of land to be affected by the total operation
6530 for which plans have been submitted. ~~An anniversary~~ A payment of \$13 per acre for ~~areas~~ any
6531 area disturbed under the permit shall be payable annually on the anniversary date of the
6532 permit. All fees collected under the provisions of this ~~chapter~~ section shall be paid into ~~a~~

6533 ~~special fund of the Department to be used for the administration of the coal surface mining~~
6534 ~~regulatory program and are hereby appropriated for that purpose~~ the Coal Surface Mining
6535 Regulatory Fund created pursuant to § 45.2-xxx.

6536 F. Each applicant for a coal surface mining permit shall file a copy of his application
6537 for public inspection at an appropriate public office approved by the Director where the
6538 mining is proposed to occur. However, information ~~which~~ that pertains only to the analysis of
6539 the chemical and physical property of the coal, excepting information regarding such mineral
6540 or elemental content ~~which~~ that is potentially toxic in the environment, shall be kept
6541 confidential upon request of the applicant and not made a matter of public record.

6542 G. Each applicant for a coal surface mining permit shall ~~be required to~~ submit to the
6543 Division as part of the permit application a certificate issued by an insurance company
6544 authorized to do business in the Commonwealth, certifying that the applicant has a public
6545 liability insurance policy in force for the surface mining and reclamation ~~operations~~ operation
6546 for which such permit is sought. Such policy shall provide for personal injury and property
6547 damage protection in an amount, that is not less than that specified in regulations adopted by
6548 the Director, and is adequate to compensate any ~~persons~~ person who is injured or whose
6549 property is damaged as a result of a surface coal mining and reclamation ~~operations~~ operation,
6550 including by the use of explosives, and who is entitled by law to compensation under
6551 applicable provisions of law. Such policy shall be maintained in full force and effect during
6552 the ~~terms~~ term of the permit ~~or~~ and any renewal, ~~and~~ including the length of all reclamation
6553 operations. The Director ~~is authorized to promulgate~~ may adopt regulations ~~which~~ that
6554 provide for the submission by the applicant of evidence of self-insurance, meeting the
6555 requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

6556 **Drafting note: In subsection B, the phrase "but not limited to" is removed**
6557 **pursuant to § 1-218, which states that throughout the Code "'Includes' means includes,**
6558 **but not limited to." In subsection C, the name of the federal Office of Surface Mining**
6559 **Reclamation and Enforcement is updated. In subsection E, reference to a special fund is**

6560 changed to specify the Coal Surface Mining Regulatory Program Fund created in
6561 proposed § 45.2-xxx. Technical changes are made, including changes pursuant to § 1-
6562 227, which states that throughout the Code any word used in the singular includes the
6563 plural and vice versa. Language is updated for clarity and modern usage.

6564 § ~~45.1-236~~ 45.2-xxx. ~~Operations~~ Operation and reclamation plans.

6565 Each application for a coal surface mining permit pursuant to ~~the approved~~ state
6566 ~~regulatory program~~ regulations shall include an ~~operations~~ operation plan and a reclamation
6567 plan, in such form and containing such information as the Director ~~shall require and meeting~~
6568 ~~the requirements of this chapter and regulations adopted by the Director~~ requires, including
6569 ~~but not limited to~~ the information required under § ~~508 (a)~~ 508(a) of the federal act, and
6570 meeting the requirements of this chapter and regulations adopted by the Director. ~~Operations~~
6571 ~~plans~~ An operation plan shall not include underground workings. ~~The operations~~ An operation
6572 plan and a reclamation ~~plans~~ plan, as approved by the Director, shall be ~~an~~ integral ~~part~~ parts
6573 of the terms and conditions of ~~the~~ a coal surface mining permit.

6574 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
6575 **227, which states that throughout the Code any word used in the singular includes the**
6576 **plural and vice versa. The phrase "but not limited to" is removed pursuant to § 1-218,**
6577 **which states that throughout the Code "'Includes' means includes, but not limited to."**
6578 **Language is updated for modern usage.**

6579 § ~~45.1-237~~ 45.2-xxx. Revision of permits.

6580 A. 1. During the term of ~~the~~ a permit, the permittee may submit an application for a
6581 revision of ~~the~~ such permit, together with a revised ~~operations~~ operation plan and reclamation
6582 plan, to the Director.

6583 2. An application for a revision of a permit shall not be approved unless the Director
6584 finds that reclamation as required by the federal act and ~~the permanent~~ state ~~regulatory~~
6585 ~~program~~ regulations can be accomplished under the revised reclamation plan. The Director
6586 shall establish, by regulation, the period of time within which the revision shall be approved

6587 or disapproved, as well as ~~guidelines~~ parameters for a determination of the scale or extent of a
6588 revision request for which all permit application information requirements and procedures,
6589 including notice and hearings, shall apply; however, any revisions ~~which~~ that propose
6590 significant alterations in the ~~operations~~ operation plan and reclamation plan shall, at a
6591 minimum, be subject to notice and hearing requirements.

6592 3. Any extension to the area covered by the permit, except an insignificant boundary
6593 ~~revisions~~ revision, ~~must~~ shall be made by application for another permit.

6594 B. The Director shall, within a time limit prescribed in regulations ~~promulgated~~
6595 adopted by him, review each outstanding ~~permits~~ permit and may require reasonable revision
6596 or modification of the permit provisions during the term of ~~such~~ any permit; however, such
6597 revision or modification shall be based upon a written finding and subject to notice and
6598 hearing requirements.

6599 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
6600 **227, which states that throughout the Code any word used in the singular includes the**
6601 **plural and vice versa. The term "promulgate regulations" is changed to "adopt**
6602 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
6603 **and includes the promulgation process. Language is updated for modern usage.**

6604 § ~~45.1-238~~ 45.2-xxx. Approval or denial of permit.

6605 A. Upon the basis of a complete mining application and reclamation plan or a revision
6606 or renewal thereof, as required by the federal act and pursuant to ~~the approved permanent~~
6607 ~~state regulatory program~~ regulations, including public notification and opportunity for public
6608 hearing, the Director shall grant, require modification of, or deny the application for a permit
6609 in a reasonable time established by regulation and shall notify the applicant in writing. The
6610 applicant shall have the burden of establishing that the application is in compliance with all of
6611 the requirements of ~~the permanent~~ state ~~regulatory program~~ regulations. Within ~~ten~~ 10 days
6612 after the granting of a permit, the Director shall notify the government officials in the ~~city or~~

6613 county or city in which the area of land to be affected is located that a permit has been issued
6614 and shall describe the location of the land.

6615 B. No permit or revision application shall be approved unless the application
6616 affirmatively demonstrates, and the Director finds in writing on the basis of the information
6617 set forth in the application or from information otherwise available, which will be
6618 documented in the approval and made available to the applicant, that:

6619 1. The permit application is accurate and complete and that all the requirements of the
6620 federal act and ~~the permanent~~ state ~~regulatory program~~ regulations have been complied with;

6621 2. The applicant has demonstrated that reclamation as required by the federal act and
6622 ~~the permanent~~ state ~~regulatory program~~ regulations can be accomplished under the
6623 reclamation plan contained in the permit application;

6624 3. ~~The~~ An assessment of the probable cumulative impact of all anticipated mining in
6625 the area on the hydrologic balance has been made by the Director in accordance with
6626 regulation, and the proposed operation has been designed to prevent material damage to
6627 hydrologic balance outside the permit area;

6628 4. The area proposed to be mined is not included within an area designated as
6629 unsuitable for coal surface mining pursuant to this chapter ~~nor is it~~ or located within an area
6630 under study for such designation in an administrative proceeding commenced pursuant to this
6631 chapter, ~~unless in such an area as to which an administrative proceeding has commenced, the~~
6632 ~~applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial~~
6633 ~~commitments in relation to the operation for which he seeks a permit; and~~

6634 5. In ~~cases where~~ any case in which the private mineral estate has been severed from
6635 the private surface estate, the applicant has submitted to the Director:

6636 a. The written consent of the surface owner to the extraction of coal by surface mining
6637 methods; ~~or~~

6638 b. A conveyance that expressly grants or reserves the right to extract ~~the~~ coal by
6639 surface mining methods; or

6640 c. If the conveyance does not expressly grant the right to extract coal by surface
6641 mining methods, evidence that the surface-subsurface legal relationship ~~shall~~ will be
6642 determined in accordance with the laws of ~~this~~ the Commonwealth; ~~provided, however, that~~
6643 ~~nothing.~~ Nothing herein shall be construed to authorize the Director to adjudicate any
6644 property rights ~~disputes~~ dispute.

6645 C. The applicant shall file with ~~his~~ each permit application a schedule listing ~~any and~~
6646 all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the
6647 United States ~~or of this,~~ the Commonwealth, ~~or of~~ any department or agency in the United
6648 States pertaining to air or water environmental protection, incurred by the applicant in
6649 connection with any coal surface mining operation during the three-year period preceding the
6650 date of application. The schedule shall also indicate the final resolution of ~~any~~ each such
6651 notice of violation. Where the schedule or other information available to the Director
6652 indicates that any coal surface mining operation owned or controlled by the applicant is
6653 currently in violation of ~~the laws~~ any law, rule, or regulation referred to in this subsection, the
6654 permit shall not be issued until the applicant submits proof that such violation has been
6655 corrected or is in the process of being corrected to the satisfaction of the authority,
6656 department, or agency ~~which~~ that has jurisdiction over such violation, ~~and no.~~ No permit shall
6657 be issued to an applicant after a finding by the Director ~~after,~~ following an opportunity for a
6658 hearing, that the applicant, or the operator specified in the application, controls or has
6659 controlled any mining ~~operations~~ operation with a demonstrated pattern of willful violations
6660 of the federal act or this chapter of such nature and duration and with such resulting
6661 irreparable damage to the environment as to indicate an intent not to comply with the federal
6662 act or this chapter.

6663 D. ~~In addition to finding the~~ If the Director finds an application in compliance with
6664 subsection B ~~of this section, if~~ and the area proposed to be mined contains prime farmland
6665 pursuant to ~~§ 507 (b) (16)~~ § 507(b)(16) of the federal act, the Director shall comply with

6666 applicable regulations issued by the Secretary in determining whether to issue a permit for
6667 such area.

6668 **Drafting note: Changes are made for clarity, including the insertion of the word**
6669 **"evidence" and the substitution of "will" for "shall" in subdivision B 5 c, the division of**
6670 **the last sentence in subsection C into two sentences, and the rephrasing of subsection D**
6671 **to avoid the implication that the Director is required to find an application in**
6672 **compliance with subsection B. In subdivision B 4, an obsolete provision regarding the**
6673 **grandfathering of a mining operation in an unsuitable area for which the applicant**
6674 **made legal and financial commitments prior to 1977 is proposed for deletion. Technical**
6675 **changes are made, including the replacement of "guidelines" with "parameters" and**
6676 **changes pursuant to § 1-227, which states that throughout the Code any word used in**
6677 **the singular includes the plural and vice versa.**

6678 § ~~45.1-239~~ 45.2-xxx. Public participation in process of issuing or revising permits.

6679 A. The Director shall establish, by regulation, procedures for the notification of and
6680 participation by the public and appropriate federal, state, and local governmental authorities in
6681 the process for issuing or revising coal surface mining permits, in accordance with § 513 of
6682 the federal act.

6683 B. Any person having an interest ~~which~~ that is or may be adversely affected, or the
6684 officer or head of any federal, state, or local governmental agency or authority ~~shall have,~~ has
6685 the right to file written objections to the proposed initial or revised application for a permit for
6686 a coal surface mining operation with the Director within ~~thirty~~ 30 days after the last
6687 publication of the applicant's notice required by the regulation ~~promulgated~~ adopted pursuant
6688 to subsection A ~~hereof~~. If no written ~~objections are~~ objection is filed and an informal hearing
6689 is requested, the Director shall then hold an informal hearing in the manner and location
6690 prescribed by regulation, unless ~~all the parties~~ every party requesting the informal hearing
6691 stipulate stipulates agreement prior to the requested informal hearing and ~~withdraw their~~
6692 withdraws such request therefor.

6693 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
6694 **227, which states that throughout the Code any word used in the singular includes the**
6695 **plural and vice versa. The term "promulgate regulations" is changed to "adopt**
6696 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
6697 **and includes the promulgation process. Language is updated for modern usage.**

6698 § ~~45.1-240~~ 45.2-xxx. Decision of Director upon permit application; hearing; appeal.

6699 A. The Director shall notify ~~the~~ each applicant for a permit within a reasonable time,
6700 as set forth in regulations, taking into account the time needed for proper investigation of the
6701 site, the complexity of the permit application, and ~~such~~ written objections ~~as may~~ that have
6702 been filed, of his written decision to approve or disapprove the application, in whole or in
6703 part, except that if an informal hearing has been held pursuant to § ~~45.1-239~~ 45.2-xxx, the
6704 Director shall issue to the applicant and the parties to the hearing his written decision within
6705 ~~sixty~~ 60 days of such hearings.

6706 B. If ~~the~~ such application is approved ~~the,~~ a permit shall be issued. If ~~the~~ such
6707 application is disapproved, specific reasons ~~therefor~~ shall be ~~set forth~~ given in the notification.
6708 Within ~~thirty~~ 30 days after the applicant is notified of the final decision of the Director on ~~the~~
6709 such permit application, the applicant, or any person with an interest ~~which~~ that is or may be
6710 adversely affected, may request a hearing on the reasons for the final determination. The
6711 Director shall hold a formal adjudicatory hearing in accordance with the Administrative
6712 Process Act (§ 2.2-4000 et seq.); and within ~~thirty~~ 30 days thereafter shall issue to the
6713 applicant and ~~all persons~~ every person who participated in the hearing the written decision of
6714 the Director granting or denying the permit in whole or in part and stating the reasons
6715 therefor. No person who presided at an informal hearing under § ~~45.1-239~~ 45.2-xxx shall
6716 preside at the formal adjudicatory hearing or participate in the decision therein or any
6717 administrative appeal therefrom.

6718 C. Where a hearing is requested pursuant to subsection B ~~herein~~, the Director, under
6719 such conditions as he ~~may prescribe~~ prescribes, may grant ~~such~~ temporary relief ~~as he deems~~
6720 appropriate pending final determination of the proceedings if:

6721 1. All parties to the proceeding have been notified and given an opportunity to be
6722 heard on ~~a~~ any request for temporary relief;

6723 2. The person requesting such relief shows that there is a substantial likelihood that he
6724 will prevail on the merits of the final determination of the proceeding; and

6725 3. Such relief will not adversely affect the public health or safety or cause significant
6726 imminent environmental harm to land, air, or water resources.

6727 D. Any (i) applicant, or ~~any~~ (ii) person ~~with~~ who has an interest ~~which that~~ is or may
6728 be adversely affected and ~~who~~ has participated in the formal hearing as an objector; who is
6729 aggrieved by the decision of the Director or by the failure of the Director to act within the
6730 time limits specified in this chapter ~~shall have~~, has a right to judicial review in accordance
6731 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

6732 **Drafting note: Language is updated for clarity and modern usage.**

6733 § ~~45.1-241~~ 45.2-xxx. Performance bonds.

6734 A. After a coal surface mining permit application has been approved, but before such
6735 permit is issued, the applicant shall file with the Director, on a form prescribed and furnished
6736 by the Director, a bond for performance payable to the Commonwealth and conditioned upon
6737 the faithful performance of all the requirements of this chapter and the permit. The bond shall
6738 cover that area of land within the permit area upon which the operator ~~will~~ plans to initiate
6739 and conduct surface coal mining and reclamation operations within the initial term of the
6740 permit. As each succeeding ~~increments~~ increment of coal surface mining and reclamation
6741 operations ~~are~~ is initiated and conducted within the permit area, the permittee shall file with
6742 the Director an additional bond ~~or bonds~~ to cover such ~~increments~~ increment in accordance
6743 with this section. The amount of the bond required for each bonded area shall be determined
6744 by the Director and shall (i) depend upon the reclamation requirements of the approved

6745 permit, ~~shall~~ and (ii) reflect the probable difficulty of reclamation, giving consideration to
6746 such factors as topography, geology of the site, hydrology, and revegetation potential, ~~and~~
6747 ~~shall be determined by the Director~~. The amount of the bond shall be sufficient to assure the
6748 completion of the reclamation plan if the work ~~has to be~~ is performed by the Director in the
6749 event of forfeiture; but in no case shall the bond for the entire area under one permit be less
6750 than \$10,000.

6751 B. Liability under ~~the~~ a performance bond shall be for the duration of the coal surface
6752 mining and reclamation operation and for a period coincident with the operator's
6753 responsibility for revegetation as required under regulations ~~promulgated~~ adopted pursuant to
6754 § ~~45.1-242~~ 45.2-xxx. The bond shall be executed by the operator and a corporate surety
6755 licensed to do business in the Commonwealth, except that the operator may elect to deposit
6756 cash, negotiable bonds of the United States ~~Government~~ or ~~of~~ the Commonwealth, or
6757 negotiable certificates of deposit of any bank organized for transacting business in the United
6758 States. The cash deposit or market value of such securities shall be equal to or greater than the
6759 amount of the bond required for the bonded area.

6760 ~~D.~~ C. Cash or securities ~~so~~ deposited pursuant to subsection B shall be deposited upon
6761 the same terms as the terms upon which surety bonds may be deposited. Such securities shall
6762 be security for the repayment of such negotiable certificate of deposit.

6763 ~~C.~~ D. The Director may accept a letter of credit on certain designated funds issued by
6764 a financial institution authorized to do business in the United States. ~~The letters~~ Such letter of
6765 credit shall be irrevocable, and unconditional, shall be payable to the Department upon
6766 demand, and shall afford ~~to~~ the Department protection equivalent to a corporate surety's bond.
6767 Such letter of credit shall be provided on a form and in a format established by the Director.
6768 Nothing in this section shall relieve the permittee of responsibility under the permit or the
6769 issuer of liability on the letter of credit.

6770 E. The issuer of ~~the~~ a letter of credit pursuant to subsection D shall give prompt notice
6771 to the permittee and the Department of any notice received or action filed alleging the

6772 insolvency or bankruptcy of the issuer, or alleging any ~~violations~~ violation of a regulatory
6773 ~~requirements which~~ requirement that could result in the suspension or revocation of the
6774 issuer's charter or license to do business. In the event the issuer becomes unable to fulfill any
6775 of its obligations under the letter of credit for any reason, the issuer shall immediately notify
6776 the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy,
6777 insolvency, or the suspension or revocation of its charter or license, the permittee shall be
6778 deemed to be without proper performance bond coverage and shall promptly notify the
6779 Department, ~~and the~~. The Department shall then issue a notice to the permittee specifying a
6780 reasonable period, ~~which shall not exceed ninety~~ exceeding 90 days, to replace bond
6781 coverage. If an adequate bond is not posted by the end of the period allowed, the permittee
6782 shall cease coal extraction and coal processing operations and shall immediately begin to
6783 conduct reclamation operations in accordance with ~~the~~ its reclamation plan. ~~Coal~~ No coal
6784 extraction ~~and or~~ coal processing ~~operations~~ operation shall ~~not~~ resume until the Department
6785 has determined that an acceptable bond has been posted. If an acceptable bond has not been
6786 posted by the end of the period allowed, the Department may suspend the permit until an
6787 acceptable bond is posted. ~~The letter of credit shall be provided on the form and format~~
6788 ~~established by the Director. Nothing herein shall relieve the permittee of responsibility under~~
6789 ~~the permit or the issuer of liability on the letter of credit.~~

6790 F. The Director ~~is further authorized to~~ may develop and ~~promulgate~~ adopt an
6791 alternative system ~~that will~~ to achieve the objectives and purposes of the bonding program
6792 established under this section.

6793 E.-G. The amount of the bond or deposit required and the terms of each acceptance of
6794 the applicant's bond shall be adjusted by the Director from time to time as affected land
6795 acreages are increased or decreased or where the cost of future reclamation changes.

6796 **Drafting note: The section is proposed for reorganization by placing the text of**
6797 **subsection D after the subsection to which it refers, subsection B; by moving general**
6798 **provisions regarding the letter of credit from the end of subsection C to the beginning of**

6799 that subsection, where such letters are addressed; by separating provisions regarding
6800 the failure of a letter of credit in proposed subsection D; and by separating a provision
6801 authorizing alternative systems in proposed subsection E. Technical changes are made,
6802 including changes pursuant to § 1-227, which states that throughout the Code any word
6803 used in the singular includes the plural and vice versa. Language is updated for modern
6804 usage.

6805 § ~~45.1-242~~ 45.2-xxx. Performance standards.

6806 A. The Director shall, by regulation, establish performance standards ~~meeting that~~
6807 meet the requirement of § 515 of the federal act ~~and, are~~ consistent with regulations adopted
6808 thereunder by the Secretary ~~thereunder which shall be, and are~~ applicable to all coal surface
6809 mining and reclamation operations, except as otherwise provided in this chapter.

6810 B. Any permit issued pursuant to this chapter to conduct a coal surface mining
6811 ~~operations~~ operation shall require that such ~~operations meet~~ operation meets all applicable
6812 performance standards established by the Director.

6813 C. The Director shall include, in ~~his~~ such regulations, special procedures and
6814 standards, consistent with regulations ~~promulgated~~ adopted by the Secretary, for the issuance
6815 of permits for ~~mountain-top~~ mountaintop removal operations, without regard to requirements
6816 to restore to approximate original contour, and for variances from such requirements for
6817 steep-slope operations.

6818 D. ~~Because of the diversity in terrain, climate, biologic, chemical and other physical~~
6819 ~~conditions in Virginia, the primary governmental responsibility for developing, authorizing,~~
6820 ~~issuing and enforcing regulations for coal surface mining and reclamation operations should~~
6821 ~~rest with the Commonwealth, and accordingly, the~~ The Director ~~is encouraged and authorized~~
6822 ~~to develop and promulgate~~ may adopt, with the approval of the Secretary, alternative
6823 performance standards and procedures for administering and enforcing the program created
6824 pursuant to this chapter.

6825 E. The Director, with the approval of the Secretary, may authorize departures on an
6826 experimental basis from the environmental protection performance standards ~~promulgated~~
6827 adopted under this section and § ~~45.1-243~~ 45.2-xxx.

6828 **Drafting note: The superfluous and nonstatutory policy text of subsection D is**
6829 **proposed for deletion because it is obsolete, referring to future regulations that have**
6830 **been adopted. The term "promulgate regulations" is changed to "adopt regulations" in**
6831 **keeping with recent title revisions because "adopt" is more widely used and includes the**
6832 **promulgation process. Technical changes are made, including changes pursuant to § 1-**
6833 **227, which states that throughout the Code any word used in the singular includes the**
6834 **plural and vice versa. Language is updated for modern usage.**

6835 § ~~45.1-243~~ 45.2-xxx. Surface effects of underground coal mining operations.

6836 A. The Director shall ~~promulgate~~ adopt regulations directed toward the surface effects
6837 of underground coal mining operations and embodying the requirements of §§ 516 and ~~720~~
6838 ~~(a) (1)~~ 720(a)(1) of the federal act. The provisions of this chapter relating to permits, bonds,
6839 inspections and enforcement, public review, and administrative and judicial review shall be
6840 applicable to any surface ~~operations and~~ operation or surface ~~impacts~~ impact incident to an
6841 underground coal mine with such modifications to the permit application requirements, permit
6842 approval or denial procedures, and bond requirements as are necessary to accommodate the
6843 ~~distinct difference~~ differences between surface and underground coal mining. Nothing in §
6844 ~~720 (a) (1)~~ 720(a)(1) of the federal act shall be construed to prohibit or interrupt any
6845 underground coal mining ~~operations~~ operation.

6846 B. The ~~Director's~~ regulations adopted by the Director shall require that each permit
6847 ~~applicants~~ applicant submit hydrologic reclamation plans that include measures ~~that will be~~
6848 ~~utilized~~ to prevent the sudden release of accumulated water from underground workings.

6849 C. ~~In order to protect the stability of the land, the~~ The Director shall suspend
6850 underground coal mining under any elementary ~~and or~~ secondary ~~schools~~ school, ~~institutions~~
6851 institution of higher education, urbanized ~~areas~~ area, ~~cities~~ city, ~~towns and communities~~ town,

6852 ~~or community~~, and adjacent to any industrial or commercial ~~buildings~~ building, major
6853 ~~impoundments~~ impoundment, or permanent ~~streams~~ stream, if he finds imminent danger to
6854 ~~the inhabitants or occupants of the elementary and secondary schools, institutions of higher~~
6855 ~~education, urbanized areas, cities, towns and communities~~ people from such underground coal
6856 mining.

6857 **Drafting note: Subsection C is rephrased to clarify that any danger to people**
6858 **caused by coal mining under or adjacent to certain locations is cause for suspension of**
6859 **underground coal mining. Technical changes are made, including changes pursuant to §**
6860 **1-227, which states that throughout the Code any word used in the singular includes the**
6861 **plural and vice versa. Language is updated for modern usage.**

6862 § ~~45.1-244~~ 45.2-xxx. Inspections and monitoring.

6863 A. For the purpose of administering and enforcing any permit issued under this
6864 chapter or ~~of~~ determining whether any person is in violation of any requirement of this
6865 chapter or any regulation ~~promulgated~~ adopted hereunder:

6866 1. The Director shall require any permittee to (i) establish and maintain appropriate
6867 records; (ii) make monthly reports to the Division; (iii) install, use, and maintain any
6868 necessary monitoring equipment or methods; (iv) evaluate results in accordance with such
6869 methods, at such locations, and intervals; and in such manner as the Director ~~shall prescribe~~
6870 prescribes; and (v) provide ~~such~~ other information relative to a coal surface mining and
6871 reclamation ~~operations~~ operation as the Director deems reasonable and necessary;

6872 2. For ~~those~~ any coal surface mining and reclamation ~~operations which remove~~
6873 operation that removes or ~~disturb~~ disturbs strata that serve as aquifers ~~which~~ and thereby
6874 significantly ~~insure~~ ensure the hydrologic balance of water use, either on or off the mining
6875 site, the Director shall specify ~~those (i)~~ monitoring sites ~~to~~ at which the permittee shall record
6876 (i) the quantity and quality of surface drainage above and below the mine site ~~as well as~~ and
6877 in the potential zone of influence, ~~and to record~~; (ii) the level, amount, and characteristics of
6878 samples of ~~ground water~~ groundwater and aquifers that are potentially affected by mining;

6879 ~~and also~~ or are located directly below the deepest coal seam to be mined; ~~and to record~~ (iii)
6880 amount of precipitation; ~~and (ii).~~ The Director shall specify certain records of well logs and
6881 borehole data to be maintained. The monitoring data collection and analysis required by this
6882 section shall be conducted according to standards and procedures set forth in regulations
6883 ~~promulgated~~ adopted by the Director in order to assure their reliability and validity; and
6884 3. ~~The Any~~ authorized ~~representatives~~ representative of the Director, without advance
6885 notice and upon presentation of appropriate credentials, ~~(i)~~ shall have (i) the right of entry to,
6886 upon, or through any coal surface mining and reclamation operation; and (ii) ~~shall have~~ the
6887 right to inspect any monitoring equipment, ~~any~~ method of exploration, ~~any~~ method of
6888 operation, or ~~any~~ records required by this chapter; and ~~shall have the right~~ to copy any such
6889 records.

6890 No search warrant shall be required for any entry or inspection under this subsection,
6891 except with respect to entry into a building.

6892 B. ~~The inspections~~ Inspections by the Director shall (i) occur on an irregular basis
6893 averaging not less than one partial inspection per month and one complete inspection per
6894 calendar quarter for the coal surface mining and reclamation ~~operations~~ operation covered by
6895 each permit; (ii) occur without prior notice to the permittee or ~~his agents~~ any agent or
6896 ~~employees~~ employee of the permittee except for necessary on-site meetings with the
6897 permittee; and (iii) include the filing of inspection reports adequate to enforce the
6898 requirements of this chapter and ~~to~~ carry out ~~the its~~ terms and purposes ~~of this chapter~~.

6899 C. Each permittee shall conspicuously maintain at the entrance to ~~the each~~ coal surface
6900 mining and reclamation operation a clearly visible sign setting forth such information as ~~shall~~
6901 ~~be~~ is prescribed by regulation.

6902 D. Each inspector, upon detection of ~~each a~~ violation of any requirement of this
6903 chapter or of ~~the regulations promulgated~~ a regulation adopted hereunder, shall ~~forthwith~~
6904 promptly inform the operator in writing and shall report ~~in writing any~~ such violation to the
6905 Director in writing.

6906 E. Copies of any records, reports, inspection materials, or information obtained by the
6907 Director under this article shall be made immediately available to the public at central and
6908 sufficient locations in the area of mining so that they are conveniently available to residents in
6909 such areas; ~~however.~~ However, information ~~which that~~ pertains only to the analysis of the
6910 chemical and physical properties of the coal, excepting information regarding mineral or
6911 elemental content ~~which that~~ is potentially toxic in the environment, shall be kept confidential
6912 and ~~not made a matter of public record~~ be exempt from disclosure under the Virginia Freedom
6913 of Information Act (§ 2.2-3700 et seq.).

6914 **Drafting note: Subdivision A 2 is reorganized for clarity, including by dividing**
6915 **the first sentence into two sentences. A cross-reference to the Freedom of Information**
6916 **Act is added and technical changes are made, including changes pursuant to § 1-227,**
6917 **which states that throughout the Code any word used in the singular includes the plural**
6918 **and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in**
6919 **keeping with recent title revisions because "adopt" is more widely used and includes the**
6920 **promulgation process. Language is updated for modern usage.**

6921 § ~~45.1-245~~ 45.2-xxx. Enforcement of chapter generally.

6922 A. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that any
6923 condition or ~~practices exist,~~ practice or ~~that~~ any violation by a permittee ~~is in violation~~ of any
6924 requirement of this chapter ~~or of any,~~ regulation ~~promulgated~~ adopted hereunder, ~~or of any~~
6925 permit condition, ~~which condition, practice or violation also~~ (i) creates an imminent danger to
6926 the health or safety of the public; or (ii) is causing; or can reasonably be expected to cause
6927 significant, imminent environmental harm to land, air, or water resources, the Director ~~or his~~
6928 ~~authorized representative~~ shall immediately order a cessation of the coal surface mining and
6929 reclamation operation or the portion thereof relevant to the condition, practice, or violation.
6930 Such cessation order shall remain in effect until the Director ~~or his authorized representative~~
6931 determines that the condition, practice, or violation has been abated; or until such order is
6932 modified, vacated, or terminated by the Director ~~or his authorized representative~~. Whenever

6933 the Director ~~or his authorized representative~~ finds that the ordered cessation of coal surface
6934 mining and reclamation operations, or any portion thereof, ~~will~~ is not expected to completely
6935 abate the imminent danger to health or safety of the public or the significant imminent
6936 environmental harm to land, air, or water resources, the Director shall, in addition to ordering
6937 the cessation ~~order~~ of the operation, impose affirmative obligations on the operator and
6938 require ~~him~~ such operator to take whatever steps the Director ~~or his authorized representative~~
6939 determines necessary to abate the imminent danger or the significant environmental harm.

6940 B. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that ~~any a~~
6941 permittee is in violation of any requirement of this chapter ~~or~~ any regulation ~~thereunder~~
6942 adopted hereunder, or any permit condition, but such violation does not create an imminent
6943 danger to the health or safety of the public, or cannot reasonably be expected to cause
6944 significant, imminent environmental harm to land, air, or water resources, the Director ~~or his~~
6945 ~~authorized representative~~ shall issue a notice of violation to the permittee or his agent setting a
6946 reasonable ~~time but~~ period of not more than ~~ninety~~ 90 days for the abatement of the violation
6947 and shall provide an opportunity for public hearing. ~~If, upon~~

6948 C. Upon expiration of the period of time ~~as~~ originally set pursuant to subsection B or
6949 subsequently extended for good cause shown upon the written finding of the Director ~~or his~~
6950 ~~authorized representative~~, if the Director ~~or his authorized representative~~ finds that a violation
6951 has not been abated, he shall immediately order a cessation of coal surface mining and
6952 reclamation operations or the portion thereof relevant to the violation. Such cessation order
6953 shall remain in effect until the Director ~~or his authorized representative~~ determines that the
6954 violation has been abated, or until such order is modified, vacated, or terminated by the
6955 Director ~~or his authorized representative~~ pursuant to subsection ~~D of this section~~ E. The
6956 Director ~~or his authorized representative~~ shall include in the cessation order the necessary
6957 measures to abate the violation in the most expeditious manner possible.

6958 C. D. Whenever the Director ~~or his authorized representative~~ determines that a pattern
6959 of violations of the requirements of this chapter, ~~or regulations promulgated thereunder~~ any

6960 regulation adopted hereunder, or any permit ~~conditions exist~~ condition exists or ~~have~~ has
6961 existed, and if the Director ~~or his authorized representative~~ also finds that such violations are
6962 (i) caused by the unwarranted failure of the permittee to comply with any such requirements;
6963 or ~~that such violations are~~ (ii) willfully caused by the permittee, the Director ~~or his authorized~~
6964 ~~representative~~ shall ~~forthwith~~ promptly issue an order to the permittee to show cause as to
6965 why the permit should not be suspended or revoked and shall provide opportunity for a formal
6966 public hearing. If a hearing is requested, the Director shall inform all interested parties of the
6967 time and place of the hearing. Upon the permittee's failure to show cause as to why the permit
6968 should not be suspended or revoked, the Director ~~or his authorized representative~~ shall
6969 ~~forthwith~~ promptly suspend or revoke the permit.

6970 ~~D. Notices and order~~ E. Each notice or order issued pursuant to this section shall set
6971 forth with reasonable specificity the nature of the violation and the remedial action required,
6972 the period of time established for abatement, and a reasonable description of the portion of the
6973 coal surface mining and reclamation operation to which the notice or order applies. Each
6974 notice or order shall be given promptly to the permittee or his agent by the Director ~~or his~~
6975 ~~authorized representative issuing such notice or order~~, and ~~all such notices and orders~~ shall be
6976 in writing and signed by ~~such authorized representatives~~ the Director. Any notice or order
6977 issued pursuant to this section may be modified, vacated, or terminated by the Director ~~or his~~
6978 ~~authorized representative~~. Any notice or order issued pursuant to this section ~~which~~ that
6979 requires cessation of mining by the operator shall expire within ~~thirty~~ 30 days of actual notice
6980 to the operator unless an informal public hearing, ~~unless waived by the operator~~, is held at the
6981 site or close enough to the site to allow viewings thereof during the course of the public
6982 hearing. Such informal public hearing may be waived by the operator.

6983 ~~E.~~ F. The Director may institute a civil action for injunctive or other relief in any court
6984 of competent jurisdiction whenever any permittee or his agent, or any other person:

6985 1. Violates; or fails or refuses to comply with any order or decision issued by the
6986 Director; ~~or~~

6987 2. Interferes with, hinders, or delays the Director in carrying out the provisions of this
6988 chapter or the regulations ~~thereunder~~ [adopted hereunder](#); ~~or~~

6989 3. Refuses to admit ~~such authorized representative~~ [the Director](#) to ~~the~~ [a](#) mine; ~~or~~

6990 4. Refuses to permit inspection of ~~the~~ [a](#) mine; ~~or~~

6991 5. Refuses to furnish any information or report requested by the Director pursuant to
6992 the provisions of this chapter or the regulations ~~thereunder~~ [adopted hereunder](#); ~~or~~

6993 6. Refuses to permit access to, and copying of, such records as the Director determines
6994 necessary in carrying out the provisions of this chapter or the regulations ~~thereunder~~ [adopted](#)
6995 [hereunder](#); or

6996 7. Conducts [any](#) coal surface mining or coal exploration ~~operations~~ [operation](#) without
6997 first obtaining a permit, ~~or~~ after a permit has lapsed, or after suspension or revocation of a
6998 permit.

6999 **Drafting note: Changes are proposed for clarity, including the reorganization of**
7000 **existing subsection A and the addition of subsection designation C to the second**
7001 **paragraph of existing subsection B. The phrase "or his authorized representative" is**
7002 **proposed for deletion because such agent will be proposed for inclusion in the definition**
7003 **of "Director" in § 45.2-xxx in Chapter 1 [existing § 45.1-161.1 in Chapter 14.1].**
7004 **Language is updated for clarity and modern usage and technical changes are made,**
7005 **including changes pursuant to § 1-227, which states that throughout the Code any word**
7006 **used in the singular includes the plural and vice versa. The term "promulgate**
7007 **regulations" is changed to "adopt regulations" in keeping with recent title revisions**
7008 **because "adopt" is more widely used and includes the promulgation process.**

7009 § ~~45.1-246~~ [45.2-xxx](#). Civil and criminal penalties.

7010 A. Any permittee who violates any permit condition or any other provision of this
7011 chapter or the regulations ~~thereunder~~ [adopted hereunder](#) may be assessed a civil penalty by
7012 the Director, except that if such violation leads to the issuance of a cessation order, the civil
7013 penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation except that

7014 if the violation resulted in a personal injury or fatality to any person, then the civil penalty
7015 shall not exceed \$70,000 for each violation. Each day of continuing violation may be deemed
7016 a separate violation for the purposes of assessing penalties. In determining the amount of the
7017 penalty, consideration shall be given to the permittee's history of previous violations at the
7018 particular coal surface mining operation; the seriousness of the violation, including any
7019 irreparable harm to the environment and any hazard to the health or safety of the public;
7020 whether the permittee was negligent; and the demonstrated good faith of the permittee
7021 charged in attempting to achieve rapid compliance after notification of the violation.

7022 B. A civil penalty may be assessed by the Director only after the person charged with
7023 a violation has been given an opportunity for a public hearing. ~~Where~~ After such ~~a~~ public
7024 hearing has been held, the Director shall make findings of fact and issue a written decision as
7025 to the occurrence of the violation and the amount of the penalty ~~which~~ that is warranted,
7026 incorporating therein, when appropriate, an order ~~therein~~ requiring that the penalty be paid.
7027 When appropriate, the Director shall consolidate such ~~hearings~~ hearing with other
7028 proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be
7029 a formal adjudicatory hearing in accordance with the Administrative Process Act ~~(Chapter 40~~
7030 ~~(§ 2.2-4000 et seq.)~~ of Title 2.2). When the person charged with such ~~a~~ violation fails to avail
7031 himself of the opportunity for a public hearing, a civil penalty shall be assessed by the
7032 Director after the Director determines that a violation has occurred and the amount of the
7033 penalty warranted, and issues an order requiring that the penalty be paid.

7034 C. Upon the issuance of a notice or order charging that a violation described under
7035 subsection A ~~of this section~~ has occurred, the Director shall inform the permittee within 30
7036 days of the proposed amount of the penalty. ~~The~~ Such permittee ~~charged with the penalty~~
7037 shall ~~then have~~ within 30 days ~~to of being so informed~~, pay the proposed penalty in full or, if
7038 the permittee ~~wishes to contest~~ contests either the amount of the penalty or the fact of the
7039 violation, forward the proposed amount to the Director for placement in an interest-bearing
7040 trust account in the ~~State Treasurer's office~~ state treasury. Failure to forward the money to the

7041 Director within 30 days constitutes a waiver of all legal rights to contest the violation or the
7042 amount of the penalty. If through administrative or judicial review of the proposed penalty, it
7043 is determined that no violation occurred, or that the amount of the penalty ~~should~~ will be
7044 reduced, the Director shall within 30 days of ~~that~~ such determination remit the appropriate
7045 amount to the permittee with accrued interest thereon. ~~Failure to forward the money to the~~
7046 ~~Director within 30 days shall result in a waiver of all legal rights to contest the violation or the~~
7047 ~~amount of the penalty.~~

7048 D. If a permittee ~~who is~~ required to pay a civil penalty fails to do so, the Director may
7049 transmit a true copy of the final order assessing such penalty to the clerk of the court of any
7050 county or city wherein it is ascertained that the permittee owing the penalty has any estate;
7051 and the clerk to whom such copy is ~~so~~ sent shall record ~~it~~ such final order, as a judgment is
7052 required by law to be recorded, and ~~shall~~ index ~~the same as well~~ it in the name of the
7053 Commonwealth as of the person owing the penalty, ~~and thereupon.~~ Upon such recording and
7054 indexing, there shall be a lien in favor of the Commonwealth on the property of the permittee
7055 within such county or city in the amount of the penalty. The Director may collect civil
7056 penalties ~~which~~ that are owed in the same manner as provided by law in respect to judgment
7057 of a court of record. All civil penalties shall be paid into a special fund in the ~~State Treasurer's~~
7058 ~~office~~ state treasury to be used by the Director for enhancing conservation and recreational
7059 opportunities in the coal-producing counties of the Commonwealth. The Director shall
7060 transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic
7061 Development Authority, created pursuant to Chapter 60 (§ 15.2-6000 et seq.) of Title 15.2, for
7062 the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50
7063 percent of the fund balance to the Virginia Coalfield Regional Tourism Development
7064 Authority for the purpose of developing conservation and recreational opportunities consistent
7065 with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

7066 E. Any person who willfully and knowingly (i) conducts any coal surface mining or
7067 coal exploration ~~operations~~ operation without first obtaining a permit, or after a permit has

7068 lapsed, or after suspension or revocation of a permit; ~~or~~ (ii) violates a condition of a permit
7069 issued pursuant to this chapter; or (iii) disregards; or fails or refuses to comply with ~~the~~
7070 ~~regulations~~ any regulation adopted or ~~orders promulgated or order~~ issued pursuant to the
7071 provisions of this chapter, except an order incorporated in a decision under subsection B ~~of~~
7072 ~~this section~~, shall; upon conviction; be punished by a fine of not more than \$10,000, by
7073 confinement in jail for not more than 12 months, or both.

7074 F. Whenever a corporate permittee violates a condition of a permit or disregards; or
7075 fails; or refuses to comply with any order issued under this chapter, except an order
7076 incorporated in a decision issued under subsection B ~~of this section~~, any director, officer, or
7077 agent of such corporation who willfully and knowingly authorized, ordered, or carried out
7078 such violation, failure, or refusal ~~shall be~~ is subject to the same civil penalties, fines, and
7079 confinement in jail ~~that to which a person~~ may be ~~imposed upon a person~~ subject under
7080 subsections A and E ~~of this section~~.

7081 G. Whoever knowingly makes any false statement, representation, or certification, or
7082 knowingly fails to make any required statement, representation, or certification, in any
7083 application, objection, record, report, plan, or other document filed or required to be
7084 maintained pursuant to this chapter, ~~the regulations promulgated thereunder~~ any regulation
7085 adopted hereunder, or any order or decision issued by the Director under this chapter shall;
7086 upon conviction ~~thereof~~, be punished by a fine of not more than \$10,000, ~~or~~ by confinement
7087 in jail for not more than 12 months, or both.

7088 H. Any operator who within the period permitted for the correction of such violation
7089 fails to correct a violation for which a notice or order has been issued ~~within the~~ shall be
7090 assessed a civil penalty of not less than \$750 for each day during which such failure or
7091 violation occurs. Such period ~~permitted~~ for ~~its~~ the correction, ~~which period of a violation~~ shall
7092 not end until the entry of (i) a final order by the Director, in the case of any review
7093 proceedings initiated by the operator wherein the Director orders, after an expedited hearing,
7094 the suspension of the abatement requirements of the notice or order after determining that the

7095 operator ~~will~~ is likely to suffer irreparable loss or damage from the application of those
7096 requirements, or ~~until entry of~~ (ii) an order of the court, in the case of any review proceedings
7097 initiated by the operator wherein the court orders the suspension of the abatement
7098 requirements, ~~shall be assessed a civil penalty of not less than \$750 for each day during which~~
7099 ~~such failure or violation occurs.~~

7100 **Drafting note: Organizational changes are proposed for clarity, including the**
7101 **moving of the last sentence in subsection C to a different location within that subsection**
7102 **and the moving of the last phrase in subsection H to a different location within that**
7103 **subsection. Language is updated for modern usage.**

7104 § ~~45.1-246.1~~ 45.2-xxx. Citizen suits; rights of citizens to accompany inspectors.

7105 A. Except as provided in ~~subsections~~ subsection B or C ~~of this section~~, any person
7106 having an interest ~~which~~ that is or ~~may~~ could be adversely affected may, in order to compel
7107 compliance with the provisions of this chapter, commence a civil action on his own behalf
7108 against:

7109 1. The United States ~~or~~, any other governmental instrumentality or agency, or any
7110 ~~other~~ person ~~that is~~ alleged to be in violation of ~~the provisions~~ any provision of this chapter or
7111 of any ~~rule~~, regulation, order, or permit issued pursuant thereto; or

7112 2. The Director, when there is alleged a failure of the Director to perform any act or
7113 duty under this chapter ~~which~~ that is not a discretionary ~~with~~ act on the part of the Director.

7114 B. No action ~~may~~ shall be commenced under subdivision A 1 ~~of this section~~:

7115 1. Prior to ~~sixty~~ 60 days after the plaintiff has given written notice of the violation to
7116 ~~(i)~~ the Secretary, ~~(ii)~~ the Director, and ~~(iii)~~ any alleged violator; or

7117 2. If the Commonwealth ~~of Virginia~~ or the Secretary ~~of the Interior~~ has commenced
7118 and is diligently prosecuting a civil or criminal action in a court of the United States or ~~this~~
7119 the Commonwealth to require compliance with the provisions of this chapter, or any ~~rule~~,
7120 regulation, order, or permit issued pursuant to this chapter, provided, ~~however~~, that in any

7121 such action in a court of the Commonwealth, any person ~~may~~ is entitled to intervene as a
7122 matter of right ~~in any such action in a court of the Commonwealth~~;

7123 C. No action ~~may~~ shall be commenced under subdivision A 2 ~~of this section~~ prior to
7124 ~~sixty~~ 60 days after the plaintiff has given written notice of such action to the Director; ~~in such~~
7125 a manner ~~as shall be~~ prescribed by regulation, ~~provided, however, that~~ However, such action
7126 may be brought immediately after such notification in any case in which it is alleged that a
7127 violation or order would constitute an imminent threat to the health or safety of the plaintiff or
7128 would immediately affect a legal interest of the plaintiff.

7129 D. Any action with respect to a violation of this chapter or ~~the regulations thereunder~~ a
7130 regulation adopted hereunder may be brought only in the circuit court of the county or city in
7131 which the surface coal mining operation complained of is located. In any such action
7132 commenced under the provisions of this section, the Director may intervene as a matter of
7133 right, whether or not ~~he~~ the Director is a party to the action.

7134 E. The court, in issuing any final order in any action brought pursuant to subsection A
7135 ~~of this section~~, may award costs of litigation, including attorney and expert witness fees, to
7136 any party, ~~provided that~~ if the court determines such award is appropriate. If a preliminary
7137 injunction is sought, the court may require the filing of a bond or equivalent security in
7138 accordance with the rules of civil procedure.

7139 F. Nothing in this section shall restrict any common-law or statutory right ~~which of~~
7140 any person or class of persons ~~may have~~ to seek enforcement of any ~~of the provisions~~
7141 provision of this chapter and the regulations ~~thereunder~~, adopted hereunder or to seek any
7142 other relief, including relief against the Director.

7143 G. Any person who as a result of the violation by any operator of any ~~rule~~, regulation,
7144 order, or permit issued pursuant to this chapter, suffers injury to his person or property may
7145 bring an action for damages, including reasonable attorney and expert witness fees. Such
7146 action ~~may~~ shall be brought only in the circuit court of the county or city in which the surface
7147 coal mining operation complained of is located. Nothing in this subsection shall affect the

7148 rights established by or limits imposed under ~~Title 65.2~~ [the Virginia Workers' Compensation](#)
7149 [Act \(§ 65.2-100 et seq.\)](#).

7150 H. Whenever information provided to the Director by any person results in any
7151 inspection, the Director shall notify such person of the time at which the inspection is
7152 scheduled to occur, and such person shall be allowed to accompany the inspector during the
7153 inspection.

7154 **Drafting note: Language is updated for modern usage and technical changes are**
7155 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
7156 **word used in the singular includes the plural and vice versa.**

7157 § ~~45.1-247~~ [45.2-xxx](#). Forfeiture or release of performance bond.

7158 A. The Director shall ~~promulgate~~ [adopt](#) regulations, consistent with regulations
7159 ~~promulgated~~ [adopted](#) by the Secretary, establishing procedures, conditions, criteria, and
7160 schedules for the forfeiture or release of performance bonds or deposits required under this
7161 chapter; however, no bond shall be fully released until all reclamation requirements of this
7162 chapter and the regulations ~~thereunder~~ [adopted hereunder](#) are fully met.

7163 B. Any person with a valid legal interest ~~which might~~ [that could](#) be adversely affected
7164 by release of the bond, or the responsible officer or head of any federal, state, or local
7165 governmental agency ~~which~~ [that \(i\)](#) has jurisdiction by law or special expertise with respect to
7166 any environmental, social, or economic impact involved in the operation; or [\(ii\)](#) is authorized
7167 to develop and enforce environmental standards with respect to such operations, ~~shall have~~
7168 [has](#) the right to file written objections to the proposed release from bond by the Director
7169 within ~~thirty~~ [30](#) days after the last publication of notice, as required by regulation. If [a](#) written
7170 ~~objections are~~ [objection is](#) filed, and a hearing requested, the Director shall inform all
7171 interested parties of the time and place of the hearing and hold a public hearing, [either](#) in the
7172 locality of the coal surface mining operation proposed for bond release; or in Richmond, at the
7173 option of the objector, within ~~thirty~~ [30](#) days of the request for such hearing.

7174 C. Without prejudice to the rights of ~~the objectors~~ any objector, the applicant, or the
7175 responsibilities of the Director pursuant to this section, the Director may establish an informal
7176 conference, in accordance with regulations ~~promulgated~~ adopted pursuant to § ~~45.1-239-B~~
7177 45.2-xxx, to resolve written objections.

7178 D. For the purpose of ~~such~~ the hearing specified in subsection B, the Director is
7179 authorized to administer oaths, subpoena witnesses, or written or printed materials, compel
7180 the attendance of witnesses, or production of materials, and take evidence, including ~~but not~~
7181 ~~limited to~~ inspections of the land affected or other coal surface mining operations carried on
7182 by the applicant in the general vicinity. A verbatim record of each public hearing shall be
7183 made, and a transcript shall be made available on the motion of any party or by order of the
7184 Director.

7185 **Drafting note: In subsection D, the phrase "but not limited to" is removed**
7186 **pursuant to § 1-218, which states that throughout the Code "'Includes' means includes,**
7187 **but not limited to." Language is updated for clarity and modern usage and technical**
7188 **changes are made, including changes pursuant to § 1-227, which states that throughout**
7189 **the Code any word used in the singular includes the plural and vice versa.**

7190 § ~~45.1-248~~ 45.2-xxx. Performance of reclamation operations by Director.

7191 In the event of forfeiture of a performance bond, in whole or in part, the Director shall
7192 deposit the proceeds in the ~~State Treasurer's office~~ state treasury in a special fund to be used
7193 by the Director to complete the reclamation plan and other regulatory requirements pertaining
7194 to the operation for which the forfeited bond had been posted. The Director may use the
7195 resources and facilities of the Division or ~~he may~~ enter into contracts for performance of such
7196 reclamation with any individual, corporation, partnership, association, or ~~any~~ other legal
7197 entity, any soil conservation district, or any agency of the state or federal government. After
7198 completion of the reclamation and payment of all costs and administrative expenses
7199 associated with the completion of reclamation, any additional funds from the forfeiture of the
7200 bond shall be returned.

7201 **Drafting note: Language is updated for modern usage and technical changes are**
7202 **made.**

7203 § ~~45.1-249~~ 45.2-xxx. Administrative review of notice or order issued under § ~~45.1-245~~
7204 45.2-xxx.

7205 A. A permittee who is issued a notice or order pursuant to § ~~45.1-245~~ 45.2-xxx, or any
7206 person having an interest ~~which that~~ is or ~~may could~~ be adversely affected by such notice or
7207 order by any modification, vacation, or termination of such notice or order, may apply to the
7208 Director for the review of ~~the such~~ notice or order within ~~thirty 30~~ days of the receipt thereof
7209 or within ~~thirty 30~~ days of its modification, vacation, or termination. Upon receipt of such
7210 application, the Director shall cause such investigation to be made as he deems appropriate;
7211 ~~which. Such investigation~~ shall ~~include an opportunity for a public formal hearing~~, at the
7212 request of the applicant or the person having an interest ~~which that~~ is or ~~may could~~ be
7213 adversely affected, include a public formal hearing to enable the applicant or such person to
7214 present information relating to the issuance and continuance of such notice or order or the
7215 modification, vacation, or termination thereof. The filing of an application for review under
7216 this subsection shall not operate as a stay of any order or notice.

7217 B. Upon receiving the report of such investigation, the Director shall make findings of
7218 fact; and shall issue a written decision, incorporating therein an order vacating, affirming,
7219 modifying, or terminating the notice or order complained of ~~and. Such order shall~~ incorporate
7220 ~~his the Director's~~ findings ~~therein of fact. When If~~ the application for review concerns an
7221 order for cessation of coal surface mining and reclamation operations issued pursuant to the
7222 provisions of subsection A or B of § ~~45.1-245~~ 45.2-xxx, the Director shall issue the written
7223 decision within ~~thirty 30~~ days of the receipt of the application for review unless temporary
7224 relief has been granted by the Director pursuant to subsection C ~~of this section~~ or by a court
7225 pursuant to § ~~45.1-251~~ 45.2-xxx.

7226 C. Pending completion of the hearing required by this section, the applicant may file
7227 with the Director a written request that the Director grant temporary relief from any notice or

7228 order issued under § ~~45.1-245~~ 45.2-xxx, together with a detailed statement giving reasons for
7229 granting such relief. The Director shall issue an order granting or denying such relief
7230 expeditiously. ~~Where~~ If the applicant requests relief from an order for cessation of coal
7231 surface mining and reclamation operations issued pursuant to subsection A or B of § ~~45.1-245~~
7232 45.2-xxx, the order on such a request shall be issued within five days of its receipt. The
7233 Director may grant such relief, under such conditions as ~~he may prescribe~~ the Director
7234 prescribes, if:

7235 1. A hearing has been held in the locality of the permit area on the request for
7236 temporary relief in which all parties were given an opportunity to be heard;

7237 2. The applicant shows that there is substantial likelihood that the decision of the
7238 Director will be favorable to ~~him~~ the applicant; and

7239 3. Such relief will not adversely affect the health or safety of the public or cause
7240 significant imminent environmental harm to land, air, or water resources.

7241 D. Following the issuance of an order to show cause as to why a permit should not be
7242 suspended or revoked pursuant to § ~~45.1-245~~ 45.2-xxx, the Director shall hold a public formal
7243 hearing, unless waived by the permittee, after giving written notice of the time, place, and
7244 date thereof. Within ~~sixty~~ 60 days following the formal hearing, the Director shall issue and
7245 furnish to the permittee and ~~all every~~ other ~~parties~~ party to the hearing a written decision
7246 concerning suspension or revocation of the permit and reasons therefor. If the Director
7247 revokes the permit, the permittee shall immediately cease coal surface mining operations on
7248 the permit area and shall complete reclamation within a period specified by the Director, or
7249 the Director shall declare as forfeited the performance bonds for the operation.

7250 E. The Director ~~is authorized to promulgate~~ may adopt regulations providing for the
7251 award of costs and expenses, including attorney fees, to any party to any administrative
7252 proceedings under this chapter, incurred by such person in connection with his participation in
7253 such proceedings, and ~~to~~ may assess such costs and expenses against any other party, ~~as may~~

7254 ~~be~~ the Director deems proper. For the purpose of this subsection, ~~the term~~ "party" ~~shall~~
7255 ~~include~~ includes the Commonwealth or any of its agents, officers, or employees.

7256 **Drafting note: The term "promulgate regulations" is changed to "adopt**
7257 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
7258 **and includes the promulgation process. Language is updated for clarity and modern**
7259 **usage and technical changes are made, including changes pursuant to § 1-227, which**
7260 **states that throughout the Code any word used in the singular includes the plural and**
7261 **vice versa.**

7262 § ~~45.1-250~~ 45.2-xxx. Hearings.

7263 A. ~~[Repealed.]~~

7264 B. ~~All~~ Every formal ~~hearings~~ hearing shall be conducted in accordance with § 2.2-
7265 4020 unless the parties consent to informal proceedings. When a hearings officer presides, ~~he~~
7266 such officer shall recommend findings and a decision to the Director, who shall then issue
7267 findings and a decision, unless ~~he~~ the Director provides for the making of findings and an
7268 initial decision by such hearings officer subject to review and reconsideration by the Director
7269 on appeal as of right or on the Director's own motion. Such regulations shall also provide for a
7270 reasonable time in which such appeals shall be acted upon, which shall be in addition to the
7271 period required for the making of the initial decision.

7272 **Drafting note: Language is updated for modern usage and technical changes are**
7273 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
7274 **word used in the singular includes the plural and vice versa.**

7275 § ~~45.1-251~~ 45.2-xxx. Judicial review of final order or decision or ~~of~~ decision under §
7276 ~~45.1-263~~ 45.2-xxx.

7277 A. Any party aggrieved by a final order ~~or~~ decision, ~~and any or~~ decision for entry
7278 upon property pursuant to § ~~45.1-263~~ 45.2-xxx, issued by the Director, after exhaustion of the
7279 administrative remedies provided for in this chapter, ~~shall have~~ has the right to the judicial
7280 review thereof in the circuit court of the county or city in which the land at issue or a major

7281 portion thereof is located. In all other respects, judicial review shall be in accordance with the
7282 provisions of the ~~Virginia~~ Administrative Process Act (§ ~~2.2-4020~~ 2.2-4000 et seq.).

7283 B. The commencement of a proceeding under this section shall not, unless specifically
7284 ordered by the court, operate as a stay of the order or decision of the Director. The court may,
7285 under such conditions as it ~~may prescribe~~ prescribes, grant such temporary relief as it deems
7286 appropriate pending final determination of the proceedings if:

7287 1. All parties to the proceedings have been notified and given an opportunity to be
7288 heard on a request for temporary relief;

7289 2. The person requesting such relief shows that there is a substantial likelihood that he
7290 will prevail on the merits of the final determination of the proceeding; and

7291 3. Such relief will not adversely affect the public health or safety or cause significant
7292 imminent environmental harm to land, air, or water resources.

7293 C. ~~To any proceeding under this section, the~~ The court may award costs and expenses,
7294 including ~~attorneys'~~ attorney fees, to any party to any proceeding under this section and ~~to~~
7295 may assess such costs and expenses against any other party as the court ~~may deem~~ deems
7296 proper. For the purpose of this subsection, ~~the term~~ "party" ~~shall include~~ includes the
7297 Commonwealth or any of its agents, officers, or employees.

7298 **Drafting note: Language is updated for clarity and modern usage and technical**
7299 **changes are made.**

7300 § ~~45.1-252~~ 45.2-xxx. Designating areas unsuitable for coal surface mining.

7301 A. 1. The Director shall establish a planning process ~~enabling~~ that enables objective
7302 decisions, based on competent and scientifically sound data and information ~~as to,~~ regarding
7303 which, ~~if any,~~ land areas of the Commonwealth, if any, are unsuitable for ~~all or certain types~~
7304 ~~of~~ coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 ~~of~~
7305 ~~this subsection but such.~~ Such designation shall not prevent the mineral exploration pursuant
7306 to this chapter of any area so designated.

7307 2. Upon petition pursuant to subsection C ~~of this section~~, the Director shall designate
7308 ~~an a land~~ area as unsuitable for all or certain types of coal surface mining operations if ~~he the~~
7309 Director determines that reclamation pursuant to the requirements of this chapter is not
7310 technologically and economically feasible.

7311 3. Upon petition pursuant to subsection C ~~of this section~~, the Director may designate a
7312 surface area ~~may be designated as~~ unsuitable for certain types of coal surface mining
7313 operations if such operations will (i) be incompatible with existing land use plans or
7314 programs; ~~or~~ (ii) affect fragile or historic lands in which such operations could result in
7315 significant damage to important historic, cultural, scientific ~~and, or~~ aesthetic values ~~and or~~
7316 natural systems; ~~or~~ (iii) affect renewable resource lands, including aquifers and aquifer
7317 recharge areas, in which such operations could result in a substantial loss or reduction of long-
7318 range productivity of water supply or ~~of~~ food or fiber products, ~~and such lands to include~~
7319 ~~aquifers and aquifer recharge areas~~; or (iv) affect natural hazard lands, including areas subject
7320 to frequent flooding and areas of unstable geology, in which such operations could
7321 substantially endanger life and property, ~~such lands to include areas subject to frequent~~
7322 ~~flooding and areas of unstable geology~~.

7323 4. ~~Determinations~~ Any determination of the unsuitability of a land area for coal
7324 surface mining, ~~as provided for in~~ made pursuant to this section, shall be integrated as closely
7325 as possible with present and future land use planning and regulation processes at the federal,
7326 state, and local levels.

7327 5. The requirements of this section shall not apply to ~~lands~~ any land area (i) on which
7328 a coal surface mining ~~operations were~~ operation was being conducted on August 3, 1977, ~~or;~~
7329 (ii) on which a coal surface mining operation was being conducted under a permit issued
7330 pursuant to the provisions of the federal act; ~~or~~ (iii) where substantial legal and financial
7331 commitments in either such operation were in existence prior to January 4, 1977.

7332 B. Prior to designating any land ~~areas~~ area as unsuitable for a coal surface mining
7333 ~~operations~~ operation, the Director shall cause to be prepared a detailed statement on (i) the

7334 potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of
7335 such designation on the environment, the economy, and the supply of coal.

7336 C. Any person having an interest ~~which that~~ is or ~~may could~~ be adversely affected
7337 ~~shall have~~ has the right to petition the Director to have an area designated as unsuitable for
7338 coal surface mining operations, or to have such a designation terminated. Such ~~a~~ petition shall
7339 contain allegations of facts with supporting evidence ~~which that~~ would tend to establish the
7340 allegations. Within ~~ten~~ 10 months after receipt of the petition, the Department shall hold a
7341 public hearing in the locality ~~of in which~~ the affected area is located, after appropriate notice
7342 and publication of the date, time, and location of the hearing. After a person having an interest
7343 ~~which that~~ is or ~~may could~~ be adversely affected has filed a petition ~~and but~~ before the
7344 hearing, ~~as~~ required by this subsection, any person may intervene by filing allegations of facts
7345 with supporting evidence ~~which that~~ would tend to establish the allegations. The Director
7346 shall issue and furnish to the petitioner and any other party to the hearing, within ~~sixty~~ 60
7347 days after such hearing, a written decision regarding the petition and the reasons therefor. In
7348 the event that all petitioners stipulate agreement prior to the hearing and withdraw their
7349 ~~request~~ requests, such hearing need not be held.

7350 D. ~~On and after March 20, 1979, and subject~~ Subject to valid existing rights, no coal
7351 surface mining ~~operations~~ operation, except ~~those which were existing~~ an operation that
7352 existed on August 3, 1977, shall be permitted:

7353 1. On any lands within the boundaries of ~~units~~ any unit of the National Park System,
7354 the National Wildlife Refuge ~~Systems~~ System, the National Trails System ~~of Trails~~, the
7355 National Wilderness Preservation System, or the Wild and Scenic Rivers System, including
7356 study rivers designated under § 5(a) of the Wild and Scenic Rivers Act ~~and;~~ any National
7357 Recreation ~~Areas~~ Area designated by act of Congress ~~and;~~ or any federal lands within the
7358 boundaries of any national forest, except as otherwise provided by federal law;

7359 2. ~~Which~~ That will adversely affect any publicly owned park or ~~places included~~ any
7360 site listed in the National Register of Historic ~~Sites~~ Places unless approved jointly by the
7361 Director and the federal, state, or local agency with jurisdiction over the park or historic site;

7362 3. Within 100 feet of the outside right-of-way line of any public road, except where a
7363 mine access ~~roads~~ road or haulage ~~roads join~~ road joins such right-of-way line ~~and except that~~
7364 ~~the~~. However, the Director may permit such ~~roads~~ mine access or haulage road to be relocated
7365 or the area affected to lie within 100 feet of such public road; if, after public notice and
7366 opportunity for hearing in the locality, a written finding is made that the interests of the public
7367 and landowners affected thereby will be protected; or

7368 4. Within 300 feet ~~from~~ of any occupied dwelling, unless waived by the owner thereof;
7369 ~~nor~~; within 300 feet of any public building, school, church, community; or institutional
7370 building, or public park; or within 100 feet of a cemetery.

7371 **Drafting note: The names of the National Trails System and the National**
7372 **Register of Historic Places are corrected and the meaning of subdivision A 5 is clarified**
7373 **as referring to, among others, any land area on which a coal surface mining operation**
7374 **was being conducted under federal permit. An obsolete reference to March 20, 1979, is**
7375 **proposed for deletion from subsection D. References to January 4 and August 3, 1977,**
7376 **are retained because they could apply to current operations established earlier.**
7377 **Language is updated for modern usage and technical changes are made, including**
7378 **changes pursuant to § 1-227, which states that throughout the Code any word used in**
7379 **the singular includes the plural and vice versa.**

7380 Article 3.

7381 ~~Miscellaneous Provisions~~ National Pollutant Discharge Elimination System Permit;
7382 Replacement of Water Supply.

7383 **Drafting note: Existing Article 3, concerning miscellaneous provisions, is retained**
7384 **as proposed Article 3. Existing §§ 45.1-253, 45.1-256, 45.1-257, and 45.1-259 are**
7385 **relocated.**

7386 § ~~45.1-254~~ 45.2-xxx. National ~~pollutant discharge elimination system~~ Pollutant

7387 Discharge Elimination System permits.

7388 ~~H. A.~~ For the purpose of this section, ~~the terms "sewage,"~~:

7389 "Board" means the State Water Control Board.

7390 ~~"industrial-Industrial wastes" and~~ means the same as that term is defined in § 62.1-

7391 44.3.

7392 "NPDES" means the National Pollutant Discharge Elimination System.

7393 ~~"other-Other wastes" shall have~~ means the same as that term is defined in § 62.1-44.3.

7394 "Sewage" means ~~the meanings ascribed to them~~ same as that term is defined in § 62.1-

7395 44.3.

7396 ~~A. B.~~ The authority to issue, amend, revoke, and enforce ~~national pollutant discharge~~

7397 ~~elimination system~~ National Pollutant Discharge Elimination System permits under the State

7398 Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes, and

7399 other wastes from coal surface mining operations, to the extent delegated by the U.S.

7400 Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-

7401 500, as amended, is vested solely in the Director, notwithstanding any provision of law

7402 contained in Title 62.1, except as provided ~~herein~~ in this section. For the purpose of

7403 enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to

7404 permits, orders, and regulations issued by the Director in accordance with this section.

7405 ~~B. C.~~ The Director shall transmit to the State Water Control Board a copy of each

7406 application for ~~a national pollutant discharge elimination system~~ an NPDES permit received

7407 by the Director, and provide written notice to the ~~State Water Control~~ Board of every action

7408 related to the consideration of such permit application.

7409 ~~C. D.~~ Prior to the issuance or reissuance of a permit, ~~applicants~~ each applicant shall

7410 submit an application on a form approved by the Director and a fee of \$300 for each discharge

7411 outfall point under ~~the~~ such permit. If an application is approved, the permittee shall, on the

7412 anniversary of the permit approval for each year of the permit term, submit \$300 for each

7413 discharge outfall point under ~~the~~ such permit. Each permit shall remain valid for five years.

7414 All fees provided for under this section shall be in addition to any other fees levied pursuant

7415 to this chapter.

7416 ~~D.~~ E. No ~~national pollutant discharge elimination system~~ NPDES permit shall be

7417 issued if, within 30 days of the date of the transmittal of the complete application and the

7418 proposed ~~national pollution discharge elimination system~~ NPDES permit, the ~~State Water~~

7419 ~~Control~~ Board objects in writing to the issuance of such permit. Whenever the ~~State Water~~

7420 ~~Control~~ Board objects to the issuance of such permit under this section, such written objection

7421 shall contain a statement of the reasons for such objection and the effluent limitations and

7422 conditions ~~which~~ that such ~~permits~~ permit would include if it were issued by the ~~State Water~~

7423 ~~Control~~ Board.

7424 ~~E.~~ F. An applicant who is aggrieved by an objection made under subsection ~~D~~ E of

7425 ~~this section shall have~~ has the right to a hearing before the ~~State Water Control~~ Board

7426 pursuant to § 62.1-44.25. If the ~~State Water Control~~ Board withdraws, in writing, its objection

7427 to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by

7428 a final decision of the ~~State Water Control~~ Board made pursuant to this subsection, ~~shall have~~

7429 has the right to judicial review in accordance with the provisions of the Administrative

7430 Process Act (§ 2.2-4000 et seq.).

7431 ~~F.~~ G. Whenever, on the basis of any information available to it, the ~~State Water~~

7432 ~~Control~~ Board finds that any person is in violation of any condition or limitation contained in

7433 ~~a national pollutant discharge elimination system~~ an NPDES permit issued by the Director, it

7434 shall notify the person allegedly in ~~alleged~~ violation and the Director. If ~~beyond~~ after the

7435 thirtieth day ~~after~~ following notification by the ~~State Water Control~~ Board, the Director has

7436 not commenced appropriate enforcement action, the ~~State Water Control~~ Board may take

7437 appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

7438 ~~G.~~H. The Director shall ~~promulgate~~ adopt such regulations as deemed necessary for
7439 the issuance, administration, monitoring, and enforcement of ~~national pollutant discharge~~
7440 ~~elimination system~~ NPDES permits for coal surface mining operations.

7441 I. The Director, by examining the available and relevant data, shall determine whether
7442 a discharge ~~may~~ could cause or contribute to an instream excursion above the narrative or
7443 numeric criteria of a water quality standard.

7444 J. If a total maximum daily load (TMDL) has been established by the ~~State Water~~
7445 ~~Control~~ Board for the receiving water body, then there shall be consideration of the TMDL in
7446 the reasonable potential determination as to whether a discharge ~~may~~ could cause or
7447 contribute to an instream excursion above the narrative or numeric criteria of a water quality
7448 standard. If the receiving water body does not have a TMDL established, the Director may
7449 consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to
7450 determine whether a discharge ~~may~~ could cause or contribute to an instream excursion above
7451 the narrative or numeric criteria of a water quality standard. The Director may require whole
7452 effluent toxicity testing if he determines that the discharge adversely affects the biological
7453 condition of the receiving water body.

7454 **Drafting note: Subsection H, which contains definitions, is moved to the**
7455 **beginning of the section and the frequently recurring phrases National Pollutant**
7456 **Discharge Elimination System and State Water Control Board are given short**
7457 **references. Language is updated for modern usage and technical changes are made,**
7458 **including changes pursuant to § 1-227, which states that throughout the Code any word**
7459 **used in the singular includes the plural and vice versa.**

7460 ~~§ 45.1-255.~~

7461 ~~Repealed.~~

7462 **Drafting note: Repealed by Acts 1984, c. 714.**

7463 ~~§ 45.1-255.1.~~

7464 ~~Repealed.~~

7465 **Drafting note: Repealed by Acts 1988, c. 489.**

7466 § ~~45.1-258~~ 45.2-xxx. Replacement of water supply.

7467 A. The operator of any coal surface mining operation shall replace the water supply of
7468 an owner of interest in real property who obtains all or part of ~~his~~ such owner's supply of
7469 water for domestic, agricultural, industrial, or other legitimate use from an underground or
7470 surface source where such supply has been affected by contamination, diminution, or
7471 interruption proximately resulting from such coal surface ~~mine~~ mining operation.

7472 B. ~~Underground~~ Every underground coal mining ~~operations conducted after October~~
7473 ~~24, 1992,~~ operation shall promptly replace any drinking, domestic, or residential water supply
7474 from a well or spring that was in existence prior to the application for a surface coal mining
7475 and reclamation permit ~~which~~ and that has been affected by contamination, diminution, or
7476 interruption resulting from underground coal mining operations. ~~Until amendments to the~~
7477 ~~regulations governing the permanent state regulatory program implementing the provisions of~~
7478 ~~this subsection are effective, the Director shall issue guidelines in accordance with subsection~~
7479 ~~A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection.~~

7480 Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining
7481 operations.

7482 C. Each operator of an underground coal mine shall record the daily progress of
7483 mining operations on ~~a~~ one or more mine ~~map or~~ maps maintained at the mine site or in the
7484 company office. ~~The~~ Such map ~~or maps~~ shall, at a minimum, include information on the daily
7485 progress of mining operations ~~conducted after October 24, 1992,~~ and be maintained until the
7486 completion of the mining. The operator shall provide ~~the~~ such map ~~or maps~~ to the Division
7487 upon completion of mining and upon request of the Director.

7488 D. If the Director has ordered replacement of a water supply under subsection B ~~of~~
7489 ~~this section~~ and the operator subject to the order has failed to provide the required map ~~or~~
7490 ~~maps~~ in accordance with subsection C ~~of this section~~, then the Director's replacement order
7491 shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion

7492 of an investigation, if the Director does not order replacement under the provisions of
7493 subsection B ~~of this section~~ and reasonable access for a pre-mining survey was denied, the
7494 Director's determination shall not be overturned absent clear and convincing evidence to the
7495 contrary.

7496 ~~E. Each operator of an underground coal mine shall provide a certificate issued by an~~
7497 ~~insurance company licensed to do business in the Commonwealth certifying that the operator~~
7498 ~~has a public liability insurance policy in force for the underground coal mining operation~~
7499 ~~which shall provide for protection in an amount adequate to replace any water supply as~~
7500 ~~required by subsection B of this section. The policy shall be maintained in full force during~~
7501 ~~the term of the permit, including any renewal thereof, and including the liability period~~
7502 ~~necessary to complete all reclamation operations under this chapter. The provisions of this~~
7503 ~~subsection shall expire on the date the amendments to the regulations governing the~~
7504 ~~permanent state regulatory program implementing the provisions of subsection B of this~~
7505 ~~section are approved for the Commonwealth by the Secretary of the Interior of the United~~
7506 ~~States.~~

7507 **Drafting note: Obsolete pre-1992 provisions are proposed for deletion from**
7508 **subsections B and C, and subsection E is proposed for deletion because it expired when**
7509 **state primacy was approved by the federal government on December 15, 1981. Technical**
7510 **changes are made, including changes pursuant to § 1-227, which states that throughout**
7511 **the Code any word used in the singular includes the plural and vice versa.**

7512 **Article 4.**

7513 **Abandoned Mine Reclamation.**

7514 **Drafting note: Existing Article 4, concerning abandoned mine reclamation, is**
7515 **retained as proposed Article 4.**

7516 ~~§ 45.1-260~~ [45.2-xxx](#). State Reclamation Program.

7517 A. The Commonwealth's program for the reclamation of land and water adversely
7518 affected by past mining shall include the State Reclamation Plan and fund and annual
7519 reclamation projects, as provided for in this article.

7520 B. The Director is authorized to develop and submit to the Secretary for ~~his~~ approval a
7521 State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of
7522 this article. The plan shall generally identify the areas to be reclaimed, the purposes for which
7523 the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed
7524 reclamation to surrounding areas, the specific criteria for ranking and identifying projects to
7525 be funded, and the programmatic capability of the Division to perform such work, and shall
7526 include such regulations, policies, and procedures as may be necessary to establish and
7527 implement the plan and annual reclamation projects, and to carry out the provisions of this
7528 article. The Director may from time to time develop and submit to the Secretary amendments
7529 and revisions to the plan, consistent with this article.

7530 C. The Director is authorized to:

7531 1. ~~To prepare~~ Prepare and submit to the Secretary annual applications for the support
7532 of the State Reclamation Program and implementation of specific reclamation projects;

7533 2. ~~To enter~~ Enter into agreements with the Secretary for the emergency restoration,
7534 reclamation, abatement, control, or prevention of the adverse effects of coal mining practices;

7535 3. ~~To administer~~ Administer the State Reclamation Plan and the annual reclamation
7536 projects and ~~to~~ receive and administer grants from the Secretary therefor; and

7537 4. ~~To prepare~~ Prepare and submit such information and reports as the Secretary ~~may~~
7538 ~~request~~ requests.

7539 D. The Director and the Department, in carrying out the functions of preparing and
7540 revising the State Reclamation Plan and developing annual reclamation projects, shall provide
7541 appropriate opportunities for public involvement.

7542 **Drafting note: Technical changes are made.**

7543 § ~~45.1-261~~ 45.2-xxx. Abandoned Mine Reclamation Fund.

7544 A. There is hereby created in the ~~State Treasurer's office~~ state treasury a special
7545 nonreverting fund to be known as the Abandoned Mine Reclamation Fund, referred to in this
7546 article as ~~the fund, which~~ "the Fund." The Fund shall be established on the books of the
7547 Comptroller and shall be administered by the Director.

7548 B. ~~The fund shall consist of deposits, made from time to time, of:~~

7549 ~~1. Amounts~~ All funds granted by the Secretary for purposes of conducting the
7550 approved State Reclamation Plan and annual reclamation projects;

7551 ~~2. Use~~ use fees charged for uses of lands acquired or reclaimed pursuant to this article,
7552 after expenditures for maintenance have been deducted;

7553 ~~3. Moneys~~ moneys recovered through the satisfaction of liens filed against privately
7554 owned land pursuant to this article;

7555 ~~4. Moneys~~ moneys recovered from sale of lands acquired by the Director pursuant to
7556 this article; and

7557 ~~5. Donations~~ donations made for the purposes of this article and other moneys made
7558 available or appropriated to the Director for such purposes shall be paid into the state treasury
7559 and credited to the Fund.

7560 C. Interest earned on moneys in the Fund shall remain in the Fund and be credited to
7561 it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal
7562 year shall not revert to the general fund but shall remain in the Fund.

7563 D. Moneys ~~deposited~~ in the ~~fund~~ Fund shall be used ~~to carry~~ solely for the purpose of
7564 carrying out the State Reclamation Program as approved by the Secretary. Expenditures and
7565 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
7566 Comptroller upon written request signed by the Director.

7567 **Drafting note: The nonreverting fund language for the Abandoned Mine**
7568 **Reclamation Fund is updated to reflect current language requested by the Department**
7569 **of the Treasury for nonreverting funds in the Code. Technical changes are made.**

7570 § ~~45.1-261.1~~ 45.2-xxx. ~~Operators~~ Operator may perform reclamation; bidding;
7571 conditions; adjustment of required bonds; regulations.

7572 A. Notwithstanding any licensing requirement under Title 54.1, an operator ~~shall be~~ is
7573 eligible to bid on contracts to conduct reclamation projects under the State Reclamation
7574 Program and the Coal Surface Mining Reclamation Fund in accordance with this article and
7575 Article 5 (§ ~~45.1-270.1~~ 45.2-xxx et seq.); ~~provided if~~ the Director finds that the following
7576 conditions have been met: (i) the operator has had at least three years of relevant mining
7577 experience in the Commonwealth pursuant to ~~Chapter 19 (§ 45.1-226 et seq.)~~ this chapter and
7578 (ii) the operator meets all other applicable requirements of federal, state, and local law.

7579 B. Notwithstanding the provisions of Title 11 (§ 11-1 et seq.), the Director may adjust
7580 the ~~amount~~ amounts of required bid or performance bonds for such contracts upon a finding
7581 that such amounts are sufficient to protect the public interest.

7582 C. The Director shall ~~promulgate~~ adopt regulations to implement this section.

7583 **Drafting note: The term "promulgate regulations" is changed to "adopt**
7584 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
7585 **and includes the promulgation process. Technical changes are made, including changes**
7586 **pursuant to § 1-227, which states that throughout the Code any word used in the**
7587 **singular includes the plural and vice versa.**

7588 § ~~45.1-262~~ 45.2-xxx. Eligible lands and water; priorities for expenditures.

7589 A. Lands and water eligible for reclamation or drainage abatement expenditures under
7590 this article are those ~~which~~ that were (i) mined for coal or ~~which were~~ (ii) affected by ~~such~~
7591 coal mining, waste banks, coal processing, or other coal mining processes, and were
7592 abandoned or left in an inadequate reclamation status and for which there is no continuing
7593 reclamation responsibility under state or federal ~~laws~~ law.

7594 B. The Director shall establish priorities in the State Reclamation Plan for the
7595 expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

7596 **Drafting note: Technical changes are made.**

7597 § ~~45.1-263~~ 45.2-xxx. Right of entry, acquisition, disposition, and reclamation of land
7598 adversely affected by past coal mining practices.

7599 A. The Director shall take all reasonable actions to obtain written consent from the
7600 owner or owners of record of the land or property to be entered onto to perform an inspection
7601 for purposes of reclamation or for conducting studies or exploratory work pertaining to the
7602 need for and feasibility of reclamation, prior to such entry.

7603 B. ~~If~~ The provisions of subsection C shall apply if the Director, pursuant to an
7604 approved state program, makes ~~a finding~~ findings of fact that:

7605 1. Land or water resources have been adversely affected by past coal mining practices;

7606 2. The adverse effects are ~~at a state where~~ significant enough that, in the public
7607 interest, action to restore, reclaim, abate, control, or prevent such effects should be taken; and

7608 3. The owners of the land or water resources where entry ~~must~~ will be made to restore,
7609 reclaim, abate, control, or prevent the adverse effects of past coal mining practices (i) are not
7610 known, or readily available; or

7611 ~~4. The owners~~ (ii) will not give permission for the Director or his agents, employees,
7612 or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the
7613 adverse effects of past coal mining practices, ~~then, upon~~.

7614 C. Upon making the findings of fact required by subsection B and giving notice by
7615 certified mail to the owners if known or, if not known, by posting notice upon the premises
7616 and advertising once in a newspaper of general circulation in the ~~municipality or~~ county or
7617 city in which the land lies, the Director, his agents, employees, or contractors shall have the
7618 right to enter upon the property adversely affected by past coal mining practices and any other
7619 property to have access to such property to do all things necessary or expedient to restore,
7620 reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an
7621 exercise of the police power for the protection of public health, safety, and general welfare
7622 and shall not be construed as an act of condemnation of property ~~nor of~~ or trespass thereon.

7623 The moneys expended for such work and the benefits accruing to any such premises so

7624 entered upon shall be chargeable against such land to the extent provided in § ~~45.1-264~~, 45.2-
7625 xxx and shall mitigate or offset any claim in or any action brought by any owner of any
7626 interest in such premises for any alleged damages by virtue of such entry; ~~provided, however,~~
7627 ~~that this.~~ Such provision regarding the mitigation or offsetting of a claim or action by an
7628 owner is not intended to create new rights of action or eliminate the existing sovereign
7629 immunity of the Commonwealth and its agents and employees.

7630 ~~C-D.~~ D. The Director, and his agents, employees, or contractors shall have the right to
7631 enter upon any property for the purpose of conducting studies or exploratory work to
7632 determine the existence of adverse effects of past coal mining practices and to determine the
7633 feasibility of restoration, reclamation, abatement, control, or prevention of such adverse
7634 effects. Such entry shall be construed as an exercise of the police power for the protection of
7635 public health, safety, and general welfare and shall not be construed as an act of
7636 condemnation of property ~~nor~~ or trespass thereon.

7637 ~~D-E.~~ D-E. The Director, pursuant to an approved state program, may acquire title in the
7638 name of the Commonwealth to any land or interest therein by purchase, donation, or
7639 condemnation, if such land or interest is adversely affected by past coal mining practices,
7640 after approval of the Secretary and upon ~~a determination~~ determinations that acquisition of
7641 such land is necessary ~~to~~ for successful reclamation; and that:

7642 1. The acquired land, after restoration, reclamation, abatement, control, or prevention
7643 of the adverse effects of past coal mining practices, will serve ~~recreation and historic purposes~~
7644 recreational, historical, conservation ~~and,~~ or reclamation purposes or provide open space
7645 benefits; and

7646 2. ~~Permanent~~ Either (a) permanent facilities, such as a treatment plant or a relocated
7647 stream channel, will be constructed on the land for the restoration, reclamation, abatement,
7648 control, or prevention of the adverse effects of past coal mining practices; or

7649 ~~3. Acquisition~~ (b) acquisition of coal refuse disposal sites and all coal refuse thereon
7650 will serve the purposes of this article or that public ownership is desirable to meet emergency
7651 situations and prevent recurrences of the adverse effects of past coal mining practices.

7652 F. The price paid for land acquired under this section shall reflect the market value of
7653 the land as adversely affected by past coal mining practices.

7654 ~~E.~~ G. The Director, with the approval of the Secretary, and in accordance with the
7655 State Reclamation Plan, may:

7656 1. Transfer the administrative responsibility for land acquired under this section to any
7657 state, regional, or local agency, department, or institution, with or without cost, upon ~~such~~
7658 terms ~~as that~~ will ~~insure~~ ensure that the use of the land is consistent with the authorization
7659 under which the land was acquired;

7660 2. Sell land acquired under this section ~~which that~~ is suitable for industrial,
7661 commercial, residential, or recreational development, by public sale under a system of
7662 competitive bidding, at not less than fair market value and under ~~such~~ regulations
7663 ~~promulgated~~ adopted to ~~insure~~ ensure that such lands are put to proper use consistent with
7664 local, state, or federal land use ~~plan~~ plans, if any, for the area in which the land is located; and

7665 3. Transfer land acquired under this section to the United States to be reclaimed by the
7666 Secretary ~~and after~~ After such reclamation is completed, any state, regional, or local agency,
7667 department, or institution may purchase such land from the Secretary for governmental,
7668 educational, recreational, historical, open-space, or other public ~~purposes~~ purpose upon such
7669 terms as the Secretary ~~may require~~ requires.

7670 ~~F.~~ H. Prior to the disposition of any land acquired under this section, the Director,
7671 pursuant to the State Reclamation Plan, when requested and after appropriate public notice,
7672 shall hold a public hearing in the ~~city or county~~ or city or ~~cities or counties~~ or cities where the
7673 land is located. The hearing shall be held at a time ~~which that~~ shall afford local citizens and
7674 governments the maximum opportunity to participate in the decision concerning the use or

7675 disposition of the lands after restoration, reclamation, abatement, control, or prevention of the
7676 adverse effects of past coal mining practices.

7677 ~~G-I.~~ G-I. The Director may authorize the use, pending disposition, of land acquired under
7678 this section, for any lawful purpose that is not inconsistent with the reclamation and post-
7679 reclamation uses for which the land was acquired. The Director shall charge any user of the
7680 land a reasonable use fee, ~~which that~~ shall go toward the purpose of operating and
7681 maintaining improvement of the land, and any excess thereof shall be deposited in the State
7682 Reclamation Fund. The Director may waive the fee if ~~he~~ the Director finds in writing that a
7683 waiver is in the public interest.

7684 ~~H-J.~~ H-J. Any state, regional, or local agency, department, or institution may purchase or
7685 otherwise acquire and develop lands ~~which that~~ the Secretary is authorized to dispose of
7686 pursuant to § 407(h) of the federal act.

7687 **Drafting note: Language is updated for modern usage and technical changes are**
7688 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
7689 **word used in the singular includes the plural and vice versa. Proposed subsection E is**
7690 **reorganized for clarity.**

7691 § ~~45.1-264~~ 45.2-xxx. Commonwealth to have lien for reclamation work.

7692 The Commonwealth shall have a lien, if perfected as ~~hereinafter~~ provided in § 45.2-
7693 xxx [§ 45.1-265], on land reclaimed by the Director pursuant to this article for the amount of
7694 the increase in the appraised market value of the land resulting from the reclamation, ~~except~~
7695 ~~that.~~ However, no such lien shall attach to or be filed against the property of any person who
7696 owned the surface of the land prior to May 2, 1977, and who ~~neither consented~~ did not
7697 consent to, ~~nor participated~~ participate in, ~~nor exercised~~ or exercise control over the mining
7698 operation ~~which that~~ necessitated the reclamation performed under this article, ~~nor.~~ Nor shall
7699 any such lien attach to or be filed against any property if the Director waives the lien as
7700 ~~hereinafter~~ provided in § 45.2-xxx [§ 45.1-265].

7701 **Drafting note: Changes are proposed for clarity, including the division of the**
7702 **section's single sentence into three sentences and, to avoid ambiguity, the replacement of**
7703 **"hereinafter" with a more specific description in the first sentence and the last sentence.**
7704 **Language is updated for modern usage.**

7705 § ~~45.1-265~~ 45.2-xxx. Perfection of lien; waiver of lien.

7706 A. The Director shall perfect the lien given under the provisions of § ~~45.1-264~~, 45.2-
7707 xxx by filing, within six months after completion of the reclamation, in the clerk's office of
7708 the court of the county or city in which the land or any part thereof is ~~situate~~ located, a
7709 statement consisting of the ~~names~~ name of the owner ~~or owners~~ of record of the property
7710 sought to be charged; an itemized account of moneys expended for the reclamation work;
7711 ~~and~~; notarized copies of appraisals, made by an independent appraiser, of the fair market
7712 value of the land both before and upon completion of the reclamation work; and a brief
7713 description of the property to which the lien attaches.

7714 B. The Director shall waive a lien if he determines that the direct and indirect costs of
7715 filing such lien ~~exceeds~~ exceed the increase in fair market value resulting from reclamation; or
7716 that the reclamation primarily benefits health, safety, or environmental values of the
7717 community or area in which the land is located, ~~or if~~. If reclamation is necessitated by an
7718 unforeseen occurrence, the Director shall waive a lien if he determines that the reclamation
7719 will not result in a significant increase in the market value of the land.

7720 **Drafting note: Language is updated for modern usage and technical changes are**
7721 **made by dividing the single sentence of subsection B into two sentences for clarity and a**
7722 **change made pursuant to § 1-227, which states that throughout the Code any word used**
7723 **in the singular includes the plural and vice versa.**

7724 § ~~45.1-266~~ 45.2-xxx. Recordation and indexing of lien; notice.

7725 It ~~shall be~~ is the duty of the clerk in whose office the statement described in § ~~45.1-~~
7726 ~~265~~ 45.2-xxx is filed to record ~~the same~~ such statement in the deed books of such office; and
7727 to index ~~the same~~ such recording in the general index of deeds; Such indexing shall be made

7728 in the name of the Commonwealth as well as the owner of the property, and ~~showing~~ shall
7729 show the type of such lien. From the time of such recording and indexing, all persons shall be
7730 deemed to have notice thereof.

7731 **Drafting note: Language is updated for modern usage and technical changes are**
7732 **made.**

7733 § ~~45.1-267~~ 45.2-xxx. Priority of lien.

7734 ~~Liens~~ Any lien acquired under this article shall have priority as a lien second only to
7735 the lien of real estate taxes imposed upon the land.

7736 **Drafting note: A technical change is made pursuant to § 1-227, which states that**
7737 **throughout the Code any word used in the singular includes the plural and vice versa.**

7738 § ~~45.1-268~~ 45.2-xxx. Hearing to determine amount of lien.

7739 Any party having an interest in the real property against which a lien has been filed
7740 may, within ~~sixty~~ 60 days of such filing, petition the circuit court ~~of equity~~ having jurisdiction
7741 wherein the property or some portion thereof is located to hold a hearing to determine the
7742 increase in the market value of the land as a result of reclamation. After reasonable notice to
7743 the Director, the court shall hold a hearing to determine such increase. If the court determines
7744 such increase to be erroneously excessive, it shall determine the proper amount and order that
7745 the lien and the record be amended to show this amount.

7746 **Drafting note: The reference to a court of equity is updated to refer to a circuit**
7747 **court and technical changes are made.**

7748 § ~~45.1-269~~ 45.2-xxx. Satisfaction of lien.

7749 ~~Liens~~ Any lien acquired under this article shall be satisfied to the extent of the value of
7750 the consideration received at the time of transfer of ownership. Any unsatisfied portion shall
7751 remain as a lien on the property and shall be satisfied in accordance with this section. If an
7752 owner fails to satisfy a lien as provided ~~herein~~ in this article, the Director may proceed to
7753 enforce the lien by a bill filed in a circuit court ~~of equity~~ having jurisdiction wherein the
7754 property or some portion thereof is located.

7755 **Drafting note: The reference to a court of equity is updated to refer to a circuit**
7756 **court and technical changes are made, including a change made pursuant to § 1-227,**
7757 **which states that throughout the Code any word used in the singular includes the plural**
7758 **and vice versa.**

7759 § ~~45.1-270~~ 45.2-xxx. Miscellaneous powers of Director.

7760 A. In addition to any other remedies provided for in this chapter, the Director may
7761 petition any court of competent jurisdiction for an injunction to restrain any interference with
7762 the exercise of the right to enter or to conduct any work pursuant to this chapter.

7763 B. The Director is authorized, to the extent of funds available for the purposes herein,
7764 to construct and operate plants for the control and treatment of water pollution resulting from
7765 mine drainage. Such plants may include major interceptors and other facilities appurtenant to
7766 ~~the~~ each plant. No such control or treatment shall in any way be less than that required under
7767 the federal Clean Water ~~Pollution Control~~ Act.

7768 C. The Director may transfer funds to other appropriate state or local agencies in order
7769 to carry out the reclamation authorized by this article.

7770 **Drafting note: The name of the Clean Water Act is updated and a technical**
7771 **change is made.**

7772 Article 5.

7773 Coal Surface Mining Reclamation Fund.

7774 **Drafting note: Existing Article 5, concerning the Coal Surface Mining**
7775 **Reclamation Fund, is retained as proposed Article 5.**

7776 § ~~45.1-270.1~~ 45.2-xxx. ~~Creation of~~ Coal Surface Mining Reclamation Fund.

7777 There is hereby created in the ~~office of the State Treasurer~~ state treasury a special
7778 nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, ~~hereinafter~~
7779 referred to in this article as "the Fund, ~~which shall be administered as set forth in this article.~~"
7780 The Fund shall ~~consist of all~~ be established on the books of the Comptroller. All payments
7781 made into the Fund in accordance with the provisions of this article, ~~as well as all interest~~

7782 shall be paid into the state treasury and credited to the Fund. Interest earned on ~~money~~
7783 ~~contained~~ moneys in the Fund shall remain in the Fund and be credited to it. Any moneys
7784 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
7785 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for
7786 the purposes set forth in this article. Expenditures and disbursements from the Fund shall be
7787 made by the State Treasurer on warrants issued by the Comptroller upon written request
7788 signed by the Director.

7789 **Drafting note: The nonreverting fund language for the Coal Surface Mining**
7790 **Reclamation Fund is updated to reflect current language requested by the Department**
7791 **of the Treasury for nonreverting funds in the Code. Technical changes are made.**

7792 § ~~45.1-270.2~~ 45.2-xxx. Participation in Fund.

7793 A. Participation in the Fund shall be open to ~~all operators~~ any operator applying for a
7794 permit under ~~Chapter 19 (§ 45.1-226 et seq.) of this title, this chapter~~ who can demonstrate to
7795 the Director a history of at least ~~a three~~ three consecutive ~~three-year history years~~
7796 under this ~~act~~ chapter or any other comparable state or federal act.

7797 B. Participation in the Fund ~~shall be~~ is optional as to each permit application, and
7798 approval of such participation by the Division, upon payment by the operator of all entrance
7799 fees to the Fund required by this article, shall constitute compliance with all requirements of §
7800 ~~45.1-241~~ 45.2-xxx and regulations issued pursuant thereto. Such participation shall relieve the
7801 operator of all bonding requirements except those set forth in this article. Nothing ~~herein in~~
7802 this article shall preclude compliance with § ~~45.1-241~~ 45.2-xxx in lieu of participation in the
7803 Fund, prior to commencement of ~~the~~ such participation. Commencement of participation in
7804 the Fund, as to the applicable permit, ~~shall constitute~~ constitutes an irrevocable commitment
7805 to participate therein as to the applicable permit and for the duration of the coal surface
7806 mining operations covered thereunder.

7807 C. For any mining ~~operations~~ operation bonded under this article, the total cumulative
7808 amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall

7809 be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the
7810 most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and
7811 grading.

7812 D. The Director may allow extended distances for rough backfilling and grading
7813 beyond those established in this section ~~provided if~~ (i) the applicant can demonstrate to the
7814 Director a history of at least ~~a~~ seven consecutive ~~year history years~~ of compliance with this
7815 ~~act chapter~~ or with any other comparable state or federal act; or (ii) the applicant submits a
7816 bond for the proposed additional area. The additional bond shall be equal to the ratio of the
7817 extended distance to the distance specified in subsection C ~~above~~, times an approved cost
7818 estimate of reclamation prepared for the permit.

7819 **Drafting note: Language is updated for modern usage and technical changes are**
7820 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
7821 **word used in the singular includes the plural and vice versa.**

7822 § ~~45.1-270.3~~ 45.2-xxx. Initial payments into Fund; renewal payments; bonds.

7823 A. ~~Operators~~ Any operator filing a permit ~~applications~~ application for a coal surface
7824 mining ~~operations~~ operation participating in the pool fund shall ~~be required to~~ pay into the
7825 Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An
7826 entrance fee of \$5,000 shall be required of ~~all operators~~ each operator who ~~elect~~ elects to
7827 participate in the Fund ~~when if~~ the Director has determined that the total balance of the Fund
7828 is less than ~~\$1,750,000~~ \$1.75 million. The entrance fee shall be reduced to \$1,000 when the
7829 total Fund balance is greater than \$2 million. A renewal fee of \$1,000 shall be required of ~~all~~
7830 permittees each permittee in the Fund at permit renewal.

7831 1. For the purposes of this section, all planned expenditures shall be deducted from the
7832 balance of the Fund during each calendar quarter, including ~~forfeitures~~ any forfeiture on
7833 which engineering cost estimates have been prepared; but no money from the Fund has
7834 actually been expended ~~from the Fund~~.

7835 2. ~~Should~~ If the actual expenditures from the Fund ~~be~~ are less than the engineering
7836 cost estimate, ~~then~~ the difference shall be credited to the balance of the Fund during the
7837 calendar quarter in which the final expenditure is made from the Fund to accomplish the
7838 reclamation.

7839 B. In addition to the initial payments into the Fund described in subsection A ~~of this~~
7840 ~~section, all operators that participate,~~ every operator who participates in the Fund shall furnish
7841 to the Fund a bond ~~which~~ that meets the criteria of § ~~45.1-241~~ 45.2-xxx and regulations issued
7842 pursuant thereto as follows:

7843 1. For ~~those~~ an underground mining ~~operations~~ operation participating in the Fund
7844 prior to July 1, 1991, the amount of \$1,000 per acre covered by each permit. In no event shall
7845 such total bond be less than \$40,000, except that on ~~permits which have~~ a permit that has
7846 completed all mining and for which a completion ~~reports have been~~ report was approved prior
7847 to July 1, 1991, the total bond shall not be less than \$10,000.

7848 2. For an underground mining ~~operations~~ operation entering the Fund on or after July
7849 1, 1991, and for any additional acreage bonded ~~on or after July 1, 1991~~ such date, the amount
7850 of \$3,000 per acre. In no event shall the total bond for such underground ~~operations~~ operation
7851 entering the Fund on or after July 1, 1991, be less than \$40,000.

7852 3. For any other coal mining ~~operations~~ operation participating in the Fund prior to
7853 July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such
7854 total bond be less than \$100,000, except that on ~~permits which have~~ a permit that has
7855 completed all mining and for which a completion ~~reports have been~~ report was approved prior
7856 to July 1, 1991, the total bond shall not be less than \$25,000.

7857 4. For any other coal mining ~~operations~~ operation entering the Fund on or after July 1,
7858 1991, and for any additional acreage bonded ~~on or after July 1, 1991~~ such date, the amount of
7859 \$3,000 per acre. In no event shall the total bond for such ~~operations~~ operation entering the
7860 Fund on or after July 1, 1991, be less than \$100,000.

7861 C. All fees and payments provided in this article shall be in addition to initial permit
7862 application and anniversary payments provided pursuant to § ~~45.1-235~~ 45.2-xxx or any other
7863 payments required in compliance with this chapter.

7864 D. Each Fund ~~participants~~ participant shall be allowed to post incremental bonds as set
7865 forth in § ~~45.1-241~~ 45.2-xxx. Such bonds ~~will~~ shall be posted in annual increments according
7866 to a schedule contained in the permit application and approved annually by the Director on the
7867 anniversary date.

7868 E. Any mining operation participating in the Fund that has been in temporary
7869 cessation for more than six months as of July 1, 1991, shall within 90 days of that date post
7870 bond equal to the total estimated cost of reclamation for all portions of the permitted site
7871 ~~which~~ that are in temporary cessation. Any mining operation participating in the Fund that has
7872 been in temporary cessation for six months or less as of July 1, 1991, shall within 90 days
7873 after the date on which the operation has been in temporary cessation for more than six
7874 months post bond equal to the total estimated cost of reclamation for all portions of the
7875 permitted site ~~which~~ that are in temporary cessation. Any mining operation participating in
7876 the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on
7877 which the operation has been in temporary cessation for more than six months, post bond
7878 equal to the total estimated cost of reclamation for all portions of the permitted site ~~which~~ that
7879 are in temporary cessation. Such bond shall remain in effect throughout the remainder of the
7880 period during which the site is in temporary cessation. At such time as the site returns to
7881 active status, the bond posted under this subsection may be released, ~~provided~~ if the permittee
7882 has posted bond pursuant to subsection B ~~of this section~~.

7883 **Drafting note: Language is updated for modern usage and technical changes are**
7884 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
7885 **word used in the singular includes the plural and vice versa.**

7886 ~~§ 45.1-270.3:1. Repealed.~~

7887 **Drafting note: Repealed by Acts 1991, c. 495.**

7888 § ~~45.1-270.4~~ 45.2-xxx. Assessment of reclamation tax revenues for Fund.

7889 A. There is hereby levied a reclamation tax upon the production of coal by ~~operators~~
7890 each operator participating in the Fund under ~~permits~~ a permit issued under this chapter as set
7891 forth ~~herein~~ in this article.

7892 B. Thirty days after the end of each calendar quarter during which the total balance of
7893 the Fund, including interest thereon, is less than \$20 million, ~~all operators~~ each operator shall
7894 pay into the Fund an amount equal to:

7895 1. Four cents per clean ton of coal produced by a surface mining operation permitted
7896 under this chapter ~~;~~ ;

7897 2. Three cents per clean ton of coal produced by a deep mining operation permitted
7898 under this chapter ~~;~~ and

7899 3. One and one-half cents per clean ton of coal processed or loaded by a preparation or
7900 loading ~~facilities~~ facility permitted under this chapter.

7901 C. At the end of each calendar quarter during which the total balance in the Fund,
7902 including interest thereon, exceeds \$20 million, payments under this section shall cease until
7903 again required pursuant to subsection B.

7904 D. In no event shall any operator pay reclamation tax under this section on total coal
7905 production in excess of five million tons per calendar year, regardless of the number of
7906 permits held by that operator. In no event shall any operator holding more than one type of
7907 permit pay tax at a rate in excess of five and one-half cents per ton on coal originally ~~surface~~
7908 ~~mined~~ surface-mined by that operator or in excess of four and one-half cents per ton on coal
7909 originally ~~deep-mined~~ deep-mined by that operator. Any operator holding one permit upon
7910 which coal is mined and processed or loaded shall pay only the tax applicable under this
7911 section to the surface mining operation or deep mining operation.

7912 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
7913 **227, which states that throughout the Code any word used in the singular includes the**
7914 **plural and vice versa.**

7915 § ~~45.1-270.5~~ 45.2-xxx. Collection of reclamation tax and penalties for nonpayment.

7916 A. Payment of taxes under this section shall be made no later than ~~thirty~~ 30 days after
7917 the end of each calendar quarter when taxes are applicable in accordance with § ~~45.1-270.4~~
7918 45.2-xxx. The Division shall notify each operator holding a permit under ~~Chapter 19 (§ 45.1-~~
7919 ~~226 et seq.) of this title~~ this chapter of those periods during which the taxes are applicable,
7920 ~~and shall~~ provide forms for reporting coal production figures subject to taxes, and ~~shall~~ collect
7921 all taxes for the Fund.

7922 B. Pursuant to regulations ~~promulgated~~ adopted by the Director, and consistent with
7923 the provisions of § ~~45.1-248~~ 45.2-xxx, all funds paid into the Fund, and interest accrued to the
7924 Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to §
7925 ~~45.1-236~~ 45.2-xxx. From the interest accrued to the Fund, amounts sufficient to properly
7926 administer the Fund are hereby appropriated to the Division. The Director shall also
7927 ~~promulgate~~ adopt regulations for the implementation of this article and for the collection of
7928 taxes hereunder.

7929 C. The Division, upon advance written request to an operator, may audit the relevant
7930 books and records of the operator upon which taxes paid under this section are based. Failure
7931 to consent to a reasonable request for the audit shall be deemed a violation of this article by
7932 the operator.

7933 D. Upon the failure of an operator to pay taxes when due under this section, the
7934 Division shall issue a notice of violation pursuant to subsection B of § 45.1-245-B ~~45.2-xxx~~.
7935 The notice of violation shall state that upon failure of payment within ~~fifteen~~ 15 days
7936 thereafter, the Division shall issue a cessation order to the operator for failure to abate the
7937 notice of violation. Upon the issuance of the cessation order, the enforcement procedures set
7938 forth in ~~§ 45.1-245 et seq.~~ Article 2 shall apply. Civil penalties imposed upon an operator
7939 pursuant to a violation of this article shall be placed in the Fund.

7940 **Drafting note: The term "promulgate regulations" is changed to "adopt**
7941 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
7942 **and includes the promulgation process. Technical changes are made.**

7943 § ~~45.1-270.5:1~~ 45.2-xxx. Forfeiture of bonds on operations participating in the Fund;
7944 alternative remedies.

7945 A. Forfeiture of bonds of ~~operations~~ an operation participating in the Fund shall be
7946 accomplished as set forth in § ~~45.1-247~~ 45.2-xxx and the regulations ~~promulgated~~ adopted by
7947 the Director.

7948 B. In addition to forfeiture, the Director may proceed against the permittee of ~~the a~~ a
7949 surface coal mining operation; under the provisions of subsection E of § ~~45.1-245 E,~~ 45.2-xxx
7950 by filing a civil action for injunctive or other relief in any court of competent jurisdiction to
7951 compel the permittee to perform the reclamation work in full compliance with this chapter,
7952 the regulations, and ~~the~~ approved permit plans. Any injunctive relief shall be granted without
7953 the necessity of pleading or proving inadequate remedy at law or irreparable harm, and no
7954 bond shall be required.

7955 C. Proceedings under either subsection A or ~~subsection~~ B shall not constitute a waiver
7956 by the Director to proceed under the other subsection, nor shall the commencement of action
7957 under one subsection constitute an election to proceed solely under that subsection.

7958 **Drafting note: The term "promulgate regulations" is changed to "adopt**
7959 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
7960 **and includes the promulgation process. Technical changes are made.**

7961 § ~~45.1-270.6~~ 45.2-xxx. Reinstatement to the Fund; recovery of Fund expenditures.

7962 A. An operator who has defaulted on any reclamation obligation and has thereby
7963 caused the Fund to incur reclamation expenses ~~as a result thereof~~ shall not be eligible to
7964 participate in the Fund thereafter until restitution for such default has been made. Compliance
7965 with this requirement shall be a prerequisite to the filing by the operator of any new permit

7966 application under this chapter but shall not affect the operator's ~~need~~ obligation to comply
7967 with all other requirements of this chapter in applying for a permit.

7968 B. The Director may file a motion for judgment in any court of competent jurisdiction
7969 against the permittee to recover all moneys expended by the Fund to accomplish ~~the a~~
7970 reclamation. Such expenditures shall include ~~but not be limited to~~ construction costs,
7971 engineering costs, administrative costs, and legal costs. In any action to recover these costs,
7972 the defendant ~~may~~ shall not relitigate the facts giving rise to the forfeiture ~~nor may the~~
7973 ~~defendant or~~ defend by claiming the forfeiture was improper.

7974 **Drafting note: Language is updated for modern usage and technical changes are**
7975 **made. In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218,**
7976 **which states that throughout the Code "'Includes' means includes, but not limited to."**

7977 § ~~45.1-270.7~~ 45.2-xxx. ~~Coal Surface Mining Reclamation Fund Advisory Committee~~
7978 ~~continued as~~ Coal Surface Mining Reclamation Fund Advisory Board.

7979 A. The ~~Coal Surface Mining Reclamation Fund Advisory Committee is continued and~~
7980 ~~shall hereafter be known as the~~ Coal Surface Mining Reclamation Fund Advisory Board (the
7981 Advisory Board) is established as an advisory board in the executive branch of state
7982 government. The purpose of the Advisory Board is to formulate recommendations for the
7983 Director concerning oversight of the general operation of the Fund.

7984 B. The ~~Reclamation Fund~~ Advisory Board shall have a total membership of eight
7985 members that shall consist of seven nonlegislative citizen members and one ex officio
7986 member. Nonlegislative citizen members shall be appointed by the Governor and subject to
7987 confirmation by the General Assembly; as follows: at least four ~~of whom~~ shall represent the
7988 coal industry, one ~~of whom~~ shall be a representative of the Director, and two ~~of whom~~ shall
7989 represent conservation interests and ~~such~~ any other public ~~and or~~ private interests as ~~may be~~
7990 are appropriate in accordance with Article V of the Interstate Mining Compact (§ ~~45.1-271~~
7991 45.2-xxx). The Director of the Division or his designee shall ~~be a continuing~~ serve ex officio
7992 with nonvoting ~~member of the Reclamation Fund Advisory Board~~ privileges and shall serve

7993 as Secretary ~~thereto~~ to the Advisory Board. Nonlegislative citizen members of the Advisory
7994 Board shall be citizens of the Commonwealth.

7995 C. The ex officio member of the Advisory Board shall serve a term coincident with his
7996 term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for
7997 the unexpired terms. Vacancies shall be filled in the same manner as the original
7998 appointments.

7999 ~~B.-D.~~ The voting nonlegislative citizen members of the ~~Reclamation Fund~~ Advisory
8000 Board ~~shall initially be appointed for terms of one, two, three, four, and five years, such terms~~
8001 ~~to be assigned by lot. Thereafter, all members~~ shall be appointed for five-year staggered
8002 terms. No person shall serve more than two consecutive terms. The remainder of any term to
8003 which a member is appointed to fill a vacancy shall not constitute a term in determining the
8004 member's eligibility for reappointment.

8005 ~~C.-E.~~ The Reclamation Fund Advisory Board shall annually elect a chairman and vice-
8006 chairman from among its membership and shall formulate rules for its organization and
8007 procedure. A majority of the members shall constitute a quorum.

8008 ~~D.-F.~~ The voting nonlegislative citizen members of the ~~Reclamation Fund~~ Advisory
8009 Board shall serve without compensation or reimbursement for expenses incurred in the
8010 performance of their duties.

8011 ~~E.-G.~~ The Reclamation Fund Advisory Board shall meet not less than twice each year
8012 ~~for the purpose of formulating recommendations to the Director concerning oversight of the~~
8013 ~~general operation of the Fund,~~ with such meetings held at the call of the chairman or
8014 whenever the majority of the members so request.

8015 H. ~~The Reclamation Fund~~ Advisory Board shall ~~report~~ have the following powers and
8016 duties:

8017 1. Report biannually to the Director and to the Governor on the status of the Fund ~~and~~
8018 ~~shall recommend;~~ and

8019 2. Recommend to the Director regulations or changes ~~thereto~~ to the Fund for the
8020 administration or operation of the Fund.

8021 I. The Department shall provide staff support to the Advisory Board. All agencies of
8022 the Commonwealth shall provide assistance to the Advisory Board, upon request.

8023 J. The Director, ~~in his discretion,~~ may adopt the recommendations of the ~~Reclamation~~
8024 ~~Fund~~ Advisory Board through regulatory action from time to time in accordance with the
8025 provisions of ~~Chapter 19 (§ 45.1-226 et seq.)~~ this chapter and otherwise in accordance with
8026 law.

8027 ~~F.-K.~~ F.-K. The ~~Reclamation Fund~~ Advisory Board shall serve as the advisory body required
8028 by Article V of the Interstate Mining Compact (§ ~~45.1-271~~ 45.2-xxx).

8029 **Drafting note: The membership and activity language for the Coal Surface**
8030 **Mining Reclamation Fund Advisory Board is updated to reflect preferred Code style.**
8031 **An obsolete reference to the Coal Surface Mining Reclamation Fund Advisory**
8032 **Committee is removed. Language is updated for modern usage and technical changes**
8033 **are made.**

8034 #