

Code of Virginia

Title 45.1 - MINES AND MINING.

Chapter 14.2 - Coal Mine Safety Act

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§ 45.1-161.7. Short title.

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

(1984, c. 590, § 45.1-1.10; 1994, c. 28; 1997, c. 390.)

§ 45.1-161.8. Definitions.

As used in this chapter and in Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title, unless the context requires a different meaning:

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

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

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

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

“Approved” means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Chief or Director.

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

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

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

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

“Circuit” means a conducting part or a system of conducting parts through which an electric current is intended to

flow.

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

“Coal mine” means a surface coal mine or an underground coal mine.

“Coal Mine Safety Act” or “Act” shall mean this chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title, and shall include any regulations promulgated thereunder, where applicable.

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

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

“Experienced underground miner” means a person with more than six months of underground mining experience.

“Federal mine safety law” means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

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

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

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

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

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

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

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

“Intake air” means air that has not passed through the last active working place of the split of any working section or any worked-out area whether pillared or nonpillared, and by analysis contains not less than nineteen and one-half percent oxygen nor more than one-half of one percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

“Interested persons” means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this Act, any other person.

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

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

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

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

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

“Miner” means any individual working in a mine.

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

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

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

“Panel entry” means a room entry.

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

“Return air” means air that has passed through the last active working place on each split, or air that has passed through worked-out areas, whether pillared or nonpillared.

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

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

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

“Surface coal mine” means (i) the pit and other active and inactive areas of surface extraction of coal; (ii) on-site preparation plants, shops, tipples and related facilities appurtenant to the extraction and processing of coal; (iii) surface areas for the transportation and storage of coal extracted at the site; (iv) impoundments, retention dams, tailing ponds, and refuse disposal areas appurtenant to the extraction of coal from the site; (v) equipment, machinery, tools, and other property used in, or to be used in, the extraction of coal from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used to prepare a site for surface coal extraction activities. A site shall

commence being a surface coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity that does not disturb the surface, and shall cease to be a surface coal mine upon completion of initial reclamation activities.

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

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

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

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

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

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

“Working place” means the area of an underground mine in by the last open crosscut.

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

(Code 1950, § 45-0.2; 1954, c. 191; 1966, c. 594, § 45.1-2; 1975, c. 520; 1978, cc. 120, 489; 1980, c. 442; 1984, c. 590; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 1999, c. 256; 2005, c. 3.)

§ 45.1-161.9. Safety and health.

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

(1984, c. 590, § 45.1-1.7; 1994, c. 28.)

§ 45.1-161.10. Special safety rules.

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

(Code 1950, § 45-87; 1966, c. 594, § 45.1-31; 1984, c. 590; 1994, c. 28; 1996, c. 774.)

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

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

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

(Code 1950, § 45-16; 1954, c. 191; 1966, c. 594, § 45.1-32; 1972, c. 154; 1994, c. 28.)

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

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

B. Each miner at any mine shall comply fully with the provisions of this Act and other mining laws of the Commonwealth that pertain to his duties.

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

(Code 1950, § 45-72; 1954, c. 191; 1966, c. 594, § 45.1-26; 1978, cc. 489, 729; 1994, c. 28; 2005, c. 3.)

§ 45.1-161.13. Safety materials and supplies.

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

(Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28.)

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

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

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

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

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

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

(Code 1950, §§ 45-7, 45-8, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83 to 45-85; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-21, 45.1-30, 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 320; 1976, c. 598; 1978, cc. 120, 222, 489, 729; 1982, cc. 118, 255; 1984, cc. 178, 590; 1988, c. 577; 1990, c. 963; 1993, cc. 171, 442; 1994, c. 28; 2005, c. 3.)

§ 45.1-161.15. Appointment of Chief.

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

(Code 1950, §§ 45-1 through 45-3; 1954, c. 191; 1966, c. 594, § 45.1-3; 1984, c. 590; 1994, c. 28.)

§ 45.1-161.16. Qualification of Chief.

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

(Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28.)

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

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

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

(Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 1999, c. 256.)

§ 45.1-161.18. Appointment of mine inspectors.

Mine inspectors shall be appointed by the Director.

(Code 1950, §§ 45-1 through 45-3; 1954, c. 191; 1966, c. 594, § 45.1-3; 1984, c. 590; 1994, c. 28.)

§ 45.1-161.19. Qualifications of mine inspectors generally.

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

(Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 1997, c. 390.)

§ 45.1-161.20. Qualifications of inspectors of coal mines.

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

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

(Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 1997, c. 390; 2005, c. 3.)

§ 45.1-161.21. Duties of the Chief.

A. The Chief shall supervise execution and enforcement of all laws pertaining to the health and safety of persons employed within or at coal mines within the Commonwealth, and the protection of property used in connection therewith, and to perform all other duties required pursuant to this Act.

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

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

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

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

(Code 1950, §§ 45-1 to 45-6; 1954, c. 191; 1966, c. 594, §§ 45.1-3, 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32;

1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 2005, c. 3; 2011, cc. 826, 862.)

§ 45.1-161.22.

Repealed by Acts 1997, c. 390.

§ 45.1-161.23. Technical specialists.

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

(Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28.)

§ 45.1-161.24. Board of Coal Mining Examiners.

A. There is hereby created the Board of Coal Mining Examiners which shall consist of five members. One member shall be the Chief, and four members shall be appointed by the Governor. One appointed member shall be a miner holding a first class mine foreman's certificate with at least five years of experience in underground coal mining and who is employed at an underground coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be a miner with at least five years of experience in surface coal mining and who is employed at a surface coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be an individual holding a first class mine foreman's certificate with at least five years of experience in the operation of underground coal mines, who is (i) an operator of an underground coal mine, (ii) an officer or director of a corporation operating an underground coal mine, (iii) a general partner of a partnership operating an underground coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of an underground coal mine in the Commonwealth at the time of appointment. One appointed member shall be an individual with at least five years of experience in the operation of surface coal mines, who is (i) an operator of a surface coal mine, (ii) an officer or director of a corporation operating a surface coal mine, (iii) a general partner of a partnership operating a surface coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of a surface coal mine in the Commonwealth at the time of appointment. All appointed members shall be residents of the Commonwealth.

B. The terms of office of the appointed members of the Board shall be as follows: one shall be appointed for an initial term of one year; one shall be appointed for an initial term of two years; one shall be appointed for an initial term of three years; and one shall be appointed for an initial term of four years. Thereafter, the members shall be appointed for terms of four years. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term.

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

(Code 1950, §§ 45-18 to 45-21; 1954, c. 191; 1966, c. 594, § 45.1-7; 1978, c. 729; 1984, c. 590, § 45.1-7; 1994, c. 28.)

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

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

the Board, except the Chief who shall serve without extra pay, reimbursement for expenses and compensation as is provided by § 2.2-2813.

(Code 1950, § 45-26; 1954, c. 191; 1960, c. 61; 1966, c. 594, § 45.1-10; 1978, c. 120; 1980, c. 728; 1994, c. 28.)

§ 45.1-161.26. Records of Board of Coal Mining Examiners.

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

(Code 1950, § 45-27; 1954, c. 191; 1966, c. 594, § 45.1-11; 1994, c. 28.)

§ 45.1-161.27. Nominations for Board of Coal Mining Examiners.

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

(Code 1950, §§ 45-18 to 45-21; 1954, c. 191; 1966, c. 594, § 45.1-7; 1978, c. 729; 1984, c. 590, § 45.1-7; 1994, c. 28.)

§ 45.1-161.28. Certification of certain persons employed in coal mines; powers of Board of Coal Mining Examiners.

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

1. First class mine foreman;
2. First class shaft or slope foreman;
3. Surface foreman;
4. Preparation plant foreman;
5. Electrical maintenance foreman;
6. Dock foreman;
7. Top person;
8. Underground shot firer;
9. Surface blaster;
10. Hoisting engineer;
11. Electrical repairman;
12. Automatic elevator operator;

13. Mine inspector;
14. Qualified gas detector;
15. Diesel engine mechanic;
16. Diesel engine mechanic instructor;
17. First aid instructor;
18. Advanced first aid;
19. Chief electrician; and
20. General coal miner.

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

C. The Board shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

D. The Board is authorized to promulgate regulations establishing guidelines for on-site examinations of mine foremen conducted by mine inspectors pursuant to § 45.1-161.35.

(Code 1950, §§ 45-23, 45-28, 45-31, 45-33.1; 1954, c. 191; 1966, c. 594, §§ 45.1-12, 45.1-14; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1993, c. 442; 1994, c. 28.)

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

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

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

(Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. 28.)

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

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

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

(1972, c. 784, § 45.1-12.1; 1994, c. 28.)

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

A. A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed \$50, shall be paid to the Chief by each person examined before the commencement of examination. All such fees collected, together with moneys collected pursuant to §§ 45.1-161.32 and 45.1-161.34, shall be retained by the Department and shall be promptly paid by the Chief into the state treasury and shall constitute the Coal Mining Examiners' Fund. The fund shall be administered by the Chief to cover the costs of administering the miner certification, for which purposes such moneys are hereby appropriated.

B. The cost of printing certificates and other necessary forms and the incidental expenses incurred by the Board in conducting examinations, reviewing examination papers and conducting its other duties pursuant to this article shall also be paid out of the Coal Mining Examiners' Fund. The Chief shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

(Code 1950, §§ 45-24, 45-25; 1954, c. 191; 1966, c. 594, §§ 45.1-8, 45.1-9; 1972, c. 440; 1978, c. 120; 1984, c. 590; 1994, c. 28; 1996, c. 774; 2007, cc. 894, 914.)

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

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

(Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. 28; 1999, c. 256; 2007, cc. 894, 914.)

§ 45.1-161.33. Reciprocal acceptances of other certifications.

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

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

(Code 1950, §§ 45-31, 45-33.1; 1954, c. 191; 1966, c. 594, § 45.1-14; 1972, c. 784; 1993, c. 442; 1994, c. 28; 2005, c. 3.)

§ 45.1-161.34. Continuing education requirements.

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

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

(1994, c. 28.)

§ 45.1-161.35. Revocation of certificates.

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

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

C. Any person holding a certification issued by the Board shall report to the Chief, within 30 days of any criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber. This conviction shall result in the immediate temporary suspension of all certificates held by such person pending hearing before the Board.

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

E. All information regarding substance abuse test results of certified persons, written or otherwise received by the Department or Board, shall be confidential. Any hearing of the Board in which this information is presented shall be

conducted as a closed session in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

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

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

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

(Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. 28; 2004, c. 855; 2007, cc. 894, 914.)

§ 45.1-161.36. Reexamination.

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

(Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. 28.)

§ 45.1-161.37. General coal miner certification.

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

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

(1994, c. 28; 2005, c. 3; 2007, cc. 894, 914.)

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

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

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

C. Applicants for a first-class mine foreman certificate shall be not less than twenty-three years of age and have had at least five years of experience in a coal mine (at least three years shall have been in an underground coal mine). A graduate of an approved four-year college course in mining engineering shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of practical experience required. If the applicant meets the above requirements, makes eighty-five percent or more on each of the subjects of the written examination, and passes required map and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written examination shall address, among other relevant topics, the theory and practice of coal mining; nature and properties of noxious, poisonous, and explosive gases, and methods for their detection and control; requirements of the coal mining laws of this Commonwealth; and responsibilities and duties of a mine foreman under state law.

D. Each candidate for certification as a first-class mine foreman shall complete the course or courses of instruction in first aid as provided in subsection A of § 45.1-161.101 and pass an examination relating thereto, approved by the Board of Coal Mining Examiners.

(Code 1950, §§ 45-7, 45-12, 45-29, 45-30, 45-31, 45-33.1, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-13 to 45.1-15, 45.1-21, 45.1-101.2; 1972, c. 784; 1974, c. 686; 1976, c. 598; 1977, c. 679; 1978, cc. 94, 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1997, c. 274.)

§ 45.1-161.39. Surface foreman certification.

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

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

C. All holders of a surface foreman certification issued prior to July 1, 2010, except those holding a current higher level of emergency medical certification from the Virginia Department of Health, shall complete by December 31, 2011, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor

in accordance with subsection A of § 45.1-161.101.

(Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. 28; 2007, cc. 894, 914; 2010, cc. 809, 857.)

§ 45.1-161.40. Chief electrician certification.

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

(Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. 28.)

§ 45.1-161.41. Top person certificate.

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

(1980, c. 442, § 45.1-20.1; 1994, c. 28.)

§§ 45.1-161.42. through 45.1-161.56.

Repealed by Acts 1997, c. 390.

§ 45.1-161.57. License required for operation of coal mines; term.

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

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

(Code 1950, § 45-17.1; 1958, c. 306; 1966, c. 594, § 45.1-22; 1978, c. 489; 1984, c. 590; 1988, c. 577; 1994, c. 28; 1996, c. 774; 1997, c. 390.)

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

Each application for a license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of \$180. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mining industry. All expenditures from this fund must be approved by the Director.

(Code 1950, § 45-17.2; 1958, c. 306; 1966, c. 594, § 45.1-23; 1972, c. 235; 1978, c. 489; 1983, c. 356; 1984, c. 590; 1994, c. 28; 1999, c. 256; 2003, cc. 542, 550.)

§ 45.1-161.59. Application for license.

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

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

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

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

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

5, 6. [Repealed.]

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

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

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

(Code 1950, §§ 45-7, 45-12, 45-17.3, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1958, c. 306; 1966, c. 594, §§ 45.1-21, 45.1-24; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 1999, c. 256.)

§ 45.1-161.60. Denial or revocation of license.

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

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

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

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

(1993, c. 247, § 45.1-22.1, c. 389, § 45.1-98.4; 1994, c. 28; 1997, c. 390.)

§ 45.1-161.61. Operating without license; penalty.

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

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

(Code 1950, § 45-17.4; 1958, c. 306; 1966, c. 594, § 45.1-25; 1978, c. 489; 1994, c. 28; 1997, c. 390.)

§ 45.1-161.62. Annual reports; condition to issuance of license following transfer of ownership.

A. The operator or his agent of every mine shall annually, by February 15, mail or deliver to the Department a report

for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the operator, any agent, and their officers, of the mine; (ii) the quantity of coal mined; and (iii) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

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

C. The operator or his agent of every coal mine shall annually, by February 15, mail or deliver to the Department (i) an affidavit, certified by the Commissioner of Revenue of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-3712, and 58.1-3713 due with respect to the coal mining operations have been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations are conducted, stating that all personal property, real estate and mineral land taxes due with respect to coal mining operations have been paid.

(Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1997, c. 390.)

§ 45.1-161.63. Notices to Department; resumption of mining following discontinuance.

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

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

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

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

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

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

(Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 1999, c. 256; 2005, c. 3.)

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

posting of map.

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

B. Underground coal mine maps shall show:

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

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

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

1. Mine name, company name, mine index number, and name of the person responsible for information on the map;
2. The scale and orientation of the map and symbols used on the map;
3. The property or boundary lines of the mine;
4. All known drill holes that penetrate the coalbed being mined;
5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the coalbed being mined;
6. The location of all surface mine ventilation fans; the location may be designated on the mine map by symbols;

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

8. The location and description of a least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

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

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

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

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

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

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

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

2. Pillars mined or other such second mining;

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

4. Escapeways designated by means of symbols.

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

G. Surface coal mine maps shall show:

1. Name and address of the mine;

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

3. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The Chief may approve alternate means of delineating seam elevations where multiple seams are being mined. Contour lines may be placed on overlays or tracings attached to mine maps;
4. The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;
5. Either producing or abandoned oil and gas wells and gas transmission lines located on the mine property;
6. The location and elevation of any body of water dammed or held back in any portion of the mine: provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps;
7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;
8. All auger and surface mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;
9. All worked out and abandoned areas;
10. The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;
11. Underground mine workings underlying and within 1,000 feet of the active areas of the mine;
12. The location and description of at least two permanent baseline points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;
13. The scale of the map; and
14. Such other information required by the Chief.

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

1. The location of each working pit or pits;
2. Auger or highwall miner workings; and
3. Other information that may affect the safety of miners including, but not limited to, updates of gas well or gas line locations.

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

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

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

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

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

(Code 1950, § 45-10; 1954, c. 191; 1966, c. 594, §§ 45.1-27, 45.1-91; 1978, c. 118; 1980, c. 5; 1984, c. 590; 1986, c. 222; 1994, c. 28; 1995, c. 265; 1996, c. 774; 1997, c. 390; 1999, c. 256; 2005, c. 3; 2007, cc. 894, 914; 2011, cc. 826, 862; 2012, cc. 109, 241.)

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

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

(Code 1950, § 45-11; 1954, c. 191; 1966, c. 594, § 45.1-28; 1994, c. 28; 1999, c. 256.)

§ 45.1-161.66. Making false statements; penalty.

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

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

(Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28; 1999, c. 256.)

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

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

(1975, c. 432, § 45.1-33.1; 1984, c. 590; 1994, c. 28.)

§ 45.1-161.68. Mine rescue crews.

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

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

(1975, c. 432, § 45.1-33.1; 1984, c. 590; 1994, c. 28; 1996, c. 774.)

§ 45.1-161.69. Duty to train crew.

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

(1975, c. 432, § 45.1-33.2; 1984, c. 590; 1994, c. 28.)

§ 45.1-161.70. Qualification for crew membership; direction of crews.

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

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

(1975, c. 432, § 45.1-33.3; 1984, c. 590; 1994, c. 28; 1999, c. 256; 2004, c. 855; 2006, c. 396.)

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

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

(1975, c. 432, § 45.1-33.4; 1994, c. 28.)

§ 45.1-161.72. Requirements of recovery work.

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

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

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

D. Two-way communication, life lines or their equivalent shall be provided by the fresh air base to all crews and no crew member shall be permitted to advance beyond such communication system.

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

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

(1975, c. 432, § 45.1-33.5; 1984, c. 590; 1994, c. 28.)

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

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

(1985, c. 496, § 45.1-33.5:1; 1994, c. 28; 1996, c. 774.)

§ 45.1-161.74. Mine Rescue Fund.

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from operators pursuant to agreements entered into by the Director shall be paid into the Mine Rescue Fund. Moneys in the Mine Rescue Fund shall be used only for mine rescue services under such agreements. No moneys in the Mine Rescue Fund shall revert to the general fund.

(1985, c. 496, § 45.1-33.5:2; 1994, c. 28; 2011, cc. 826, 862.)

§ 45.1-161.75. Inspections; Mine Rescue Coordinator.

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

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

(1985, c. 496, § 45.1-33.5:3; 1994, c. 28.)

§ 45.1-161.76. Workers' compensation; liability.

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

curred or the training exercise is to be or was conducted.

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

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

(1985, c. 496, § 45.1-33.5:4; 1994, c. 28; 2007, cc. 894, 914.)

§ 45.1-161.77. Reports of explosions and mine fires; procedure.

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

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

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

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

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

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

(Code 1950, § 45-14; 1954, c. 191; 1966, c. 594, § 45.1-6; 1984, c. 590; 1994, c. 28; 1997, c. 390; 1999, c. 256; 2011, cc. 826, 862.)

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

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

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

C. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in

the investigation. An employee if so designated by the employees of the mine will be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity.

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

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

(Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1997, c. 390; 1999, c. 256; 2007, cc. 894, 914.)

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

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

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

(Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28.)

§ 45.1-161.80. Duties of mine inspectors.

Each mine inspector shall:

1. Report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident involving serious personal injury or death to his supervisor;
2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable; and
3. Provide assistance to mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall monitor the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause in accordance with a plan approved by the Chief.

(Code 1950, §§ 45-4.1, 45-7, 45-9, 45-12, 45-68.4, 45-69, 45-73, 45-74, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-5, 45.1-21; 1976, c. 598; 1978, cc. 120, 222, 489; 1982, c. 255; 1984, cc. 178, 236, 590; 1985, c. 448; 1987, c. 470; 1988, c. 577; 1990, c. 963; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.)

§ 45.1-161.81. Frequency of mine inspections.

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

(Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1997, c. 390.)

§ 45.1-161.82. Evaluation of risks at mines.

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

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

(1994, c. 28; 1997, c. 390.)

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

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

(1994, c. 28; 1997, c. 390; 1999, c. 256; 2005, c. 3.)

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

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

B. All information reported to or otherwise obtained by the Chief or the Director or his authorized representative in connection with any inspection or proceeding under this title which contains or might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except

that such information may be disclosed to the Chief or the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court, the Chief or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(1973, c. 425, § 40.1-51.3:1; 1976, c. 607, § 40.1-51.4:1; 1994, c. 28.)

§ 45.1-161.85. Scheduling of mine inspections.

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

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

(1994, c. 28; 2011, cc. 826, 862.)

§ 45.1-161.86. Denial of entry.

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

(Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28.)

§ 45.1-161.87. Duties of operator.

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

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

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

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

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

a. Amphetamines,

b. Cannabinoids/THC,

c. Cocaine,

d. Opiates,

e. Phencyclidine (PCP),

f. Benzodiazepines,

g. Propoxyphene,

h. Methadone,

i. Barbiturates, and

j. Synthetic narcotics.

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

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

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

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

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

(Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1999, c. 256; 2007, cc. 894, 914; 2010, cc. 809, 857.)

§ 45.1-161.88. Duties of inspectors.

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice or equipment per-

taining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground mine. In mines operating more than one shift in a twenty-four-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

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

(Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1996, c. 774; 1999, c. 256.)

§ 45.1-161.89. Certificates of inspection.

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

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

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

(Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1996, c. 774; 1997, c. 390.)

§ 45.1-161.90. Notices of violations.

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

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

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

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Chief, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding has been waived, or if it has failed to dispose of the case by

consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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

(Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1997, c. 390.)

§ 45.1-161.91. Closure orders.

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

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

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

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

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

(Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236;

1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1996, c. 774.)

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

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

(1994, c. 28.)

§ 45.1-161.93. Injunctive relief.

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

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

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

(Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. 28.)

§ 45.1-161.94. Violations; penalties.

Any person convicted of willfully violating any provisions of this Act or any regulation promulgated pursuant to this Act, unless otherwise specified in this Act, shall be guilty of a Class 1 misdemeanor.

(Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28.)

§ 45.1-161.95. Prosecution of violations.

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

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

(Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28.)

§ 45.1-161.96. Fees and costs.

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

(1994, c. 28.)

§ 45.1-161.97. Reports of violations.

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

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

C. The operator of every mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, which may be used to report any violation of this Act.

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

(1994, c. 28; 2005, c. 3.)

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

A. The Virginia Mine Safety Board is continued as the Virginia Coal Mine Safety Board. The Board shall be composed of nine members appointed by the Governor, subject to the confirmation of the General Assembly, as follows: three shall be appointed from a list of individuals nominated by the Virginia Coal Association, three shall be appointed from a list of individuals nominated by the United Mine Workers of America, and three shall be appointed from the Commonwealth at large. All members of the Board shall serve at the pleasure of the Governor and shall be residents of the Commonwealth.

B. The members of the Board shall elect its chairman. Members shall serve for terms of four years and their successors shall be appointed for terms of the same length, but vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Any member may be reappointed for successive terms. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses.

(1990, c. 963, § 45.1-5.2; 1994, c. 28.)

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

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

meeting. The chairman and any four or more members of the Board shall constitute a quorum for the transaction of any business of the Board.

(1990, c. 963, § 45.1-5.3; 1994, c. 28.)

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

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

(1990, c. 963, § 45.1-5.3; 1994, c. 28.)

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

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

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

(1977, c. 679, § 45.1-101.2; 1978, c. 94; 1984, c. 590; 1994, c. 28.)

§ 45.1-161.102. Training programs.

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

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

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

(1994, c. 28; 1997, c. 390.)

§ 45.1-161.103. Additional coal mining training programs.

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

(1994, c. 28.)

§ 45.1-161.104.

Repealed by Acts 1997, c. 390.
