

351.194 Administrative hearing procedures -- Hearing regarding licensee, coal operation, or other person -- Order -- Enforcement -- Civil penalty or fine.

- (1) The Mine Safety Review Commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish administrative hearings procedures to be followed in determining if violations of mine safety laws, including, but not limited to, violations that meet the criteria established in KRS 351.025(1) or (2), have occurred and to establish a process to review recommended orders from any hearing officers acting on behalf of the commission. The procedures shall follow the requirements of KRS Chapter 13B and this chapter.
- (2) The chair or a majority of the Mine Safety Review Commission may convene a meeting of the commission at which it shall consider whether to schedule a hearing regarding any licensee, coal operation, or other person involved in the mining of coal.
- (3) If the commission determines that there is probable cause to believe that the licensee, coal operation, or other person against whom the department has made allegations of unsafe work practices or other violation of applicable law is guilty of an alleged violation, the commission shall schedule a hearing at which the department shall offer evidence in support of the allegations made by it. The licensee, coal operation, or other person against whom the allegations are made shall be given not less than twenty (20) days' written notice of the charges against him, together with the date, time, and place at which the charges shall be heard, and of his opportunity to be represented by counsel, produce evidence and witnesses on his behalf, and examine the evidence and documents that may be produced against him. The commission may also be represented by counsel and shall not be bound by the technical rules of evidence, but its order shall be based upon competent evidence. Any licensee or other person summoned to appear at a hearing in the manner established in this subsection may, in writing, waive the notice required to be given to him.
- (4) The commission may proceed with its hearing of charges made by the department against any licensee, coal operation, or other person who, after being duly notified in accordance with the requirements of this section, fails to appear at or participate in the hearing and who fails to assert any legitimate basis for the failure.
- (5) Within ninety (90) days after hearing, the commission shall issue an order in which it sets out its determinations concerning each matter coming before it. Copies of the order shall be provided to all parties to the hearing. The department shall carry out or enforce, as appropriate, the order of the commission, which may include, though not be limited to, the imposition of civil penalties, revocation, suspension, or probation of the mine license or the miner's certification.
- (6) The commission may modify a civil penalty or fine established under this chapter, under criteria established by the commission by administrative regulations.
- (7) In assessing monetary penalties within the limits provided in KRS 351.025, the commission shall consider the operator's history of previous violations, the

appropriateness of the penalty to the size of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation, and whether a penalty has been imposed by the Federal Mine Safety and Health Act for a violation that arose out of the same set of facts or circumstances.

- (8) An appeal of an order of the commission shall be filed in the Franklin Circuit Court within thirty (30) days of entry of the order.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 94, sec. 11, effective June 26, 2007. -- Amended 2001 Ky. Acts ch. 149, sec. 11, effective March 20, 2001. -- Amended 1998 Ky. Acts ch. 480, sec. 3, effective July 15, 1998. -- Created 1996 Ky. Acts ch. 308, sec. 20, effective April 9, 1996.

Legislative Research Commission Note (4/9/96). The action taken with respect to this statute by 1996 Ky. Acts ch. 308 was to have become effective April 8, 1996, under Section 51 of that Act. The Act, however, did not become effective until April 9, 1996, when the Governor's signed copy of the Act was filed with the Secretary of State.