

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Office of Mine Safety and Licensing

4 (Amendment)

5 805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed
6 premises.

7 RELATES TO: KRS 351.010(1)(m), 351.1041, 351.175, 351.194, 352.010-352.550, EO
8 2009-0538

9 STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15)[~~352.180(4)~~]

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the
11 Secretary of the Environmental and Public Protection Cabinet to promulgate administrative
12 regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS
13 351.025(2) requires the Department for Natural Resources to promulgate administrative
14 regulations that establish comprehensive criteria for the Mine Safety Review Commission's
15 imposition of penalties against licensed premises for violations of Kentucky mine safety laws that
16 place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet
17 to promulgate administrative regulations providing for the manner and method of assessing
18 penalties by the Commissioner of the Department for Natural Resources against licensed facilities
19 for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction
20 plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or
21 serious physical injury. [KRS—352.180(4)—requires—the imposition—of—civil

1 ~~monetary penalties and other sanctions for failure to comply with the reporting requirements of~~
2 ~~KRS 352.180.] EO 2009 - 0538, effective June 12, 2009, abolishes the Environmental and Public~~
3 ~~Protection Cabinet and establishes the new Energy and Environment Cabinet.~~ This administrative
4 regulation establishes the criteria for the revocation, suspension, or probation of a mine's license,
5 and the imposition of civil monetary penalties against a licensed premises.

6 Section 1. Definitions. (1) "Commission" means the Mine Safety Review Commission.

7 (2) "First offense" means the first violation by a licensed premises of a mine safety law that
8 ~~[which]~~ places a miner in imminent danger of serious physical injury or death, as adjudicated by
9 the Mine Safety Review Commission, including:

10 (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1); ~~[; or]~~

11 (b) The violation of a roof control plan, mine seal construction plans, or mine ventilation
12 plan, or

13 (c) Violations pertaining to unsafe working conditions that may ~~[which could]~~ lead to
14 imminent danger or serious physical injury.

15 (3) ~~[(2)]~~ "Licensed facility" or "licensed premises" means "licensee", as defined by KRS
16 351.010(1)(o) and 352.010(1)(s). ~~[KRS 351.010(1)(m) and 352.010(1)(r).]~~

17 (4) ~~[(3)]~~ "Mine ventilation plan" means the ventilation plan, including any revisions as
18 approved by the United States Mine Safety and Health Administration.

19 (5) ~~[(4)]~~ "Related successor" means an entity that obtains a license for a mine, if that entity
20 is linked by common legal or equitable ownership through one (1) or more owners, to a previous
21 licensee for that same mine or location.

1 (6) [(5)] "Second offense" means the second violation by a licensed premises of a mine
2 safety law that [which] places a miner in imminent danger of serious physical injury or death, as
3 adjudicated by the Mine Safety Review Commission, including:

4 (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

5 (b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;
6 or

7 (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or
8 serious physical injury. [~~failure to comply with the reporting requirements set forth in KRS~~
9 ~~352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to~~
10 ~~imminent danger or serious physical injury.~~]

11 (7) [(6)] "Subsequent offense" means a [any] violation beyond the third offense by a
12 licensed premises of a mine safety law that [which] places a miner in imminent danger of serious
13 physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

14 (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

15 (b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;
16 or

17 (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or
18 serious physical injury. [~~failure to comply with the reporting requirements set forth in KRS~~
19 ~~352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to~~
20 ~~imminent danger or serious physical injury.~~]

21 (8) [(7)] "Third offense" means the third violation by a licensed premises of a mine safety
22 law that [which] places a miner in imminent danger of serious physical injury or death, as
23 adjudicated by the Mine Safety Review Commission, including:

1 (a) Failure to comply with the reporting requirements established in KRS 352.180(1);

2 (b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;

3 or

4 (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or
5 serious physical injury.

6 ~~[failure to comply with the reporting requirements set forth in KRS 352.180(1), or the~~
7 ~~violation of a roof control plan or mine ventilation plan which could lead to imminent danger or~~
8 ~~serious physical injury.]~~

9 (9) "Unsafe working conditions" means a condition that involves a hazard that:

10 (a) Can reasonably be expected to cause a miner serious injury or death;

11 (b) A foreman, superintendent or mine management was aware of or should have been
12 aware of; and

13 (c) Was allowed to exist, without being corrected or addressed.

14 Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed
15 Premises for Violations of Mine Safety Laws. (1)(a) If the Commission determines, pursuant to
16 KRS 351.194, that a licensed premises has committed a first offense, [If a licensed premises
17 ~~violates any mine safety law which places a miner in imminent danger of serious physical injury or~~
18 ~~death, which is a first offense, as adjudicated by the Kentucky Mine Safety Review Commission,]~~
19 the commission may place the licensed premises on probation for a period of time to be determined
20 by the commission, pursuant to KRS 351.194(5), which shall be [and] in proportion to the
21 seriousness of the violations and the facts of the case.

1 **(b)** The commission may also impose a civil monetary penalty against the licensed
2 premises [~~not to exceed the gross value of the production of the licensed premises for up to ten (10)~~
3 ~~working days~~], in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

4 **(2)(a)** If a licensed premises is placed on probation for a first offense violation pursuant to
5 subsection (1) of this section, the commission may impose the terms of the probation, and it may
6 impose penalties for the violation of the terms of probation, including the suspension or revocation
7 of the mine's license.

8 **(b)** If the licensed premises satisfies the terms of its probation, the probation shall
9 automatically expire at the end of the probationary period.

10 **(3)(a)** The department may file charges against a licensed premises for an [~~any~~] alleged
11 violation of its probationary terms.

12 **(b)** Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety
13 Review Commission, pursuant to 825 KAR 1:020.

14 **(4)(a)** If the Commission determines, pursuant to KRS 351.194, that a licensed premises
15 has committed a second offense, [~~If a licensed premises violates any mine safety law which places~~
16 ~~a miner in imminent danger of serious physical injury or death which is a second offense as~~
17 ~~adjudicated by the Kentucky Mine Safety Review Commission,~~] the commission may suspend or
18 revoke the mine's license for a period of not less than two (2) calendar years, up to and including
19 revocation, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the
20 violations and the facts of the case.

21 **(b)** The commission may also impose a civil monetary penalty against the licensed
22 premises [~~not to exceed the gross value of the production of the licensed premises for up to ten (10)~~
23 ~~working days~~], in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

1 (5)(a) If a mine license is suspended for a second offense violation pursuant to subsection
2 (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

3 (b) If the mine's license is revoked, the licensed premises may apply to the Office of Mine
4 Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.
5 The Office of Mine Safety and Licensing may grant or deny the application.

6 (c) The office shall grant the application only if the licensed premises is in full compliance
7 with ~~[any]~~ orders of the Mine Safety Review Commission and KRS 351.175.

8 (6)(a) Upon the adjudication by the Mine Safety Review Commission of a third offense by
9 a licensed premises ~~[for a violation of any mine safety law which places a miner in imminent
10 danger of serious physical injury or death]~~, the commission shall revoke the mine's license for a
11 period of not less than three (3) calendar years, up to and including a permanent revocation without
12 ~~[with no]~~ possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the
13 seriousness of the violations and the facts of the case.

14 (b) If the revocation is for a period of less than a permanent revocation without ~~[with no]~~
15 possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and
16 Licensing for the reinstatement of its mine license at the end of the revocation period.

17 (c) The Office of Mine Safety and Licensing may grant or deny the application. The office
18 shall grant the application only if the licensed premises is in full compliance with ~~[any]~~ orders of
19 the Mine Safety Review Commission and KRS 351.175.

20 (d) If a third offense is committed by a licensed premises, the commission may also impose
21 a civil monetary penalty against the licensed premises ~~[not to exceed the gross value of the
22 production of the licensed premises for up to ten (10) working days]~~, in accordance with KRS
23 351.025(2) and the factors established in KRS 351.194(7).

1 (7)(a) If a licensed premises commits a violation of a ~~any~~ mine safety law that ~~which~~
2 results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety
3 Review Commission may suspend or revoke the mine's license, including permanent revocation of
4 the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in
5 proportion to the seriousness of the violations and the facts of the case.

6 (b) If the commission suspends the mine's license, it shall be automatically reinstated at the
7 end of the period of suspension.

8 (c) If the commission revokes the mine's license for a period of less than a permanent
9 revocation ~~with no~~ possibility of reinstatement, the licensed premises may apply to the Office of
10 Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation
11 period.

12 (d) The Office of Mine Safety and Licensing may grant or deny the application. The office
13 shall grant the application only if the licensed premises is in full compliance with ~~any~~ Orders of
14 the Mine Safety Review Commission and KRS 351.175.

15 (e) The commission may also impose a civil monetary penalty against the licensed
16 premises ~~[not to exceed the gross value of the production of the licensed premises for up to ten (10)~~
17 ~~working days]~~, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

18 (8) If a licensed premises that has committed one (1) or more violations pursuant to
19 subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, ~~any~~
20 penalties imposed on that licensed premises for those violations shall be imposed upon an ~~any~~
21 entity that is determined by the commission to be a related successor to the licensed premises in
22 question, after a hearing conducted pursuant to KRS 351.194.

1 Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed
2 Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working
3 Conditions, or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or the
4 commissioner's [~~his or her~~] designee shall assess monetary penalties to a licensed facility that
5 [~~which~~] has been issued a noncompliance or closure order for a violation of the provisions of KRS
6 Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working
7 conditions, and mine ventilation plans that may [~~could~~] lead to imminent danger or serious
8 physical injury, or have resulted in serious physical injury or death, as follows:

9 (a) If the licensed facility has not had [~~no~~] previous violations during the previous twenty-
10 four (24) months relating roof control plans, mine seal construction plans, unsafe working
11 conditions, or mine ventilation plans that may [~~could~~] lead to imminent danger or serious physical
12 injury, the penalty shall not be [~~not~~] more than \$2,500; [-]

13 (b) If the licensed facility has had one prior offense during the previous twenty-four (24)
14 months relating to the violation of the roof control plans, mine seal construction plans, unsafe
15 working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant
16 to this section, the penalty for a violation that may [~~could~~] lead to imminent danger or serious
17 physical injury shall not be [~~not~~] more than \$4,000; [-]

18 (c) If the licensed facility has had two (2) or more offenses relating to a violation during the
19 previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe
20 working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to
21 this section, the penalty for a violation that may [~~could~~] lead to imminent danger or serious
22 physical injury shall not be [~~not~~] more than \$5,000; [-]

1 (d) If the violation of the roof control plans, mine seal construction plans, unsafe working
2 conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the
3 penalty shall be \$5,000, even if [~~notwithstanding whether~~] the licensed facility has been previously
4 cited for the [~~such~~] violation or assessed a penalty pursuant to this section; [-]

5 (e) Factors to be considered. In determining the amount of the penalty to be assessed,
6 consideration shall be given to the following:

- 7 1. The licensed premises' cooperation with investigators;
- 8 2. The severity of the harm done, such as whether the violation resulted in:
 - 9 a. Death;
 - 10 b. Serious physical injury; or
 - 11 c. The placement of an individual in imminent harm;
- 12 3. The licensed premises' acceptance of responsibility for its actions;
- 13 4. The licensed premises' history of violations;
- 14 5. The licensed premises' adjudicated violations in other states;
- 15 6. [~~Any~~] mitigating circumstances; and
- 16 7. [~~Any~~] aggravating circumstances.

17 (2) Notification. The commissioner or the commissioner's [~~his or her~~] designee shall notify
18 a licensed facility that has been assessed a penalty pursuant to this section of the amount of the
19 assessment.

20 (3) Service. (a) The notice of proposed penalty assessment shall be served on the licensed
21 facility within thirty (30) days after the proposed penalty assessment is completed.

1 **(b)** Failure to serve the proposed assessment within thirty (30) days shall not be grounds for
2 dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice
3 as a result of the delay.

4 **(c)** Service shall be made by one (1) or more of the following methods:

5 **1.a.** ~~[(a)]~~ The commissioner or the commissioner's ~~[his or her]~~ designee may place a copy
6 of the notice of proposed assessment in an envelope~~;~~ and address the envelope to the licensed
7 facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its
8 most recent license application.

9 **b.** The Office of Mine Safety and Licensing shall affix adequate postage and place the
10 sealed envelope in the United States mail as certified mail return receipt requested.

11 **c.** The Office of Mine Safety and Licensing shall maintain a record of each assessment and
12 shall include ~~[therein]~~ the fact of mailing and the return receipt, if ~~[when]~~ received.

13 **d.** If the envelope is returned with an endorsement showing failure of delivery, that fact
14 shall be entered in the record.

15 **e.** Service by certified mail shall be complete upon delivery of the envelope, upon
16 acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal
17 to accept by any person at the licensee address, upon the United States Postal Service's inability to
18 deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment
19 prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.

20 **f.** The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to
21 claim the assessment; or

22 **2.** ~~[(b)]~~ The commissioner or the commissioner's ~~[his or her]~~ designee may cause the
23 assessment, with necessary copies, to be transferred for service to a person authorized by the

1 Secretary, who shall serve the assessment, and the return thereon shall be proof of the time and
2 manner of service.

3 (4) Options of the licensed facility issued a notice of proposed assessment.

4 (a) Waiver. 1. The licensed facility issued a notice of proposed assessment may choose not
5 to contest the assessment.

6 2. Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a
7 waiver.

8 3. A final order shall be entered by the Mine Safety Review Commission finding that:

9 a. ~~[1-]~~ The licensed facility has waived its right to an administrative hearing on the amount
10 of the proposed assessment;

11 b. ~~[2-]~~ The fact of the violation cited in the noncompliance or closure order is deemed
12 admitted;

13 c. ~~[3-]~~ The proposed penalty is due and payable within thirty (30) days after the entry of the
14 final order; and

15 d. ~~[4-]~~ The violation is a first, second, third, or subsequent offense.

16 (b) Petition for administrative hearing. The licensed facility may contest the proposed
17 assessment and fact of violation by submitting a petition for administrative hearing within thirty
18 (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

19 (5) This ~~[Nothing contained within this]~~ section of this administrative regulation shall not
20 be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek
21 sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety
22 Review Commission from imposing the sanctions in Section 2 of this administrative regulation in
23 addition to the monetary penalties assessed pursuant to this Section.

1 Section 4. Criteria for the Imposition and Enforcement of Sanctions Against Licensed
2 Facilities for Failure to Comply with the Requirements for Reporting an Accident. [~~imposition and~~
3 ~~enforcement of sanctions against licensed facilities for failure to comply with the requirements for~~
4 ~~reporting an accident.~~] (1) General. (a) If the superintendent, mine manager, mine foreman, or a
5 mine foreman's designee fails to comply with the reporting requirements established [~~set forth~~] in
6 KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend, or probate the mine
7 license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and
8 in proportion to the seriousness of the violations and the facts of the case.

9 (b) The commission shall also assess a civil monetary penalty against the licensed premises
10 in accordance with KRS 352.180(4). [~~of not less than ten thousand dollars nor more than \$100,000~~
11 ~~for the failure.~~]

12 (2) Point system for computing the civil monetary penalty. The Mine Safety Review
13 Commission shall apply the point system described in this subsection to evidence produced by the
14 Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty
15 to assess against the licensee pursuant to this section. Points shall be assigned as follows:

16 (a) Appropriateness of the penalty. 1. Up to fifteen (15) points shall be assigned for the size
17 of the mine.

18 2. The size of the mine shall be based on the tonnage produced from the mine in the
19 previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar
20 year, the tonnage prorated to an annual basis.

21 3. Points shall be assigned as follows:

22 a. [~~1-~~] 0-300,000 tons, zero (0) points;[~~2-~~]

23 b. [~~2-~~] 300,000-500,000 tons, five (5) points;[~~3-~~]

1 c. [~~3-~~] 500,000-1 million tons, ten (10) points; or [-]

2 d. [~~4-~~] Over 1 million tons, fifteen (15) points; [-]

3 (b) History of previous violations. 1. Up to twenty (20) points shall be assigned based on
4 the history of violations at the mine, cited against the licensee during the preceding twenty-four
5 (24) month period.

6 2. Points shall be assigned as follows:

7 a. [~~1-~~] 1-5 previous violations, zero points; [-]

8 b. [~~2-~~] 6-10 previous violations, five (5) points; [-]

9 c. [~~3-~~] 11-20 previous violations, ten (10) points; [-]

10 d. [~~4-~~] 21-30 previous violations, fifteen (15) points; or [-]

11 e. [~~5-~~] Over 30 previous violations, twenty (20) points; [-]

12 (c) Negligence. 1. Up to twenty-five (25) points shall be assigned based on the degree of
13 negligence the licensee exhibited in failing to report the accident.

14 2. Points shall be assigned as follows:

15 a. [~~1-~~] No negligence. There shall not be [~~no~~] negligence on the part of the licensee if it
16 exercised diligence and could not have prevented the failure to comply with the reporting
17 requirements. Zero points shall be assigned for no negligence; [-]

18 b. [~~2-~~] Negligence. There shall be negligence if the licensee has mitigating circumstances
19 for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for
20 negligence; or [-]

21 c. [~~3-~~] Reckless disregard. There shall be reckless disregard if the licensee exhibits the
22 absence of the slightest degree of care in complying with the reporting requirements. Twenty- five
23 (25) points shall be assigned for reckless disregard; [-]

1 (d) Gravity. Gravity shall be the severity of the accident and whether persons were at risk
2 of serious physical injury or death based on the failure to comply with the reporting requirements.

3 1. A total of thirty (30) points shall be assigned for gravity.

4 2. Points shall be assigned as follows:

5 a. ~~1.~~ Severity. Up to twenty (20) points shall be assigned as follows for the severity of
6 ~~any~~ injuries:

7 (i) ~~a.~~ No serious physical injury occurred, zero points; ~~;~~

8 (ii) ~~b.~~ A serious physical injury occurred, ten (10) points; ~~or~~ ~~;~~

9 (iii) ~~e.~~ A fatality occurred, twenty (20) points; ~~and~~ ~~;~~

10 b. ~~2.~~ Persons at risk of serious physical injury or death. Up to ten (10) points shall be
11 assigned based on whether persons were at risk of serious physical injury or death by the failure to
12 comply with the reporting requirements, ~~and points~~ ~~[-Points]~~ shall be assigned as follows:

13 (i) ~~Personnel were not~~ ~~a. No personnel were~~ at risk, zero points; ~~or~~ ~~;~~

14 (ii) ~~A person was~~ ~~b. Person(s) were~~ at risk, ten (10) points.

15 (3) Determination of amount of penalty. The Mine Safety Review commission shall
16 determine the amount of penalty by converting the total number of points assigned under
17 subsection (2) of this section to a dollar amount, according to the schedule in the following table:

<u>POINTS</u>	<u>AMOUNT</u>
<u>0</u>	<u>\$10,000</u>
<u>5</u>	<u>\$15,000</u>
<u>10</u>	<u>\$20,000</u>
<u>15</u>	<u>\$25,000</u>
<u>20</u>	<u>\$30,000</u>
<u>25</u>	<u>\$35,000</u>
<u>30</u>	<u>\$40,000</u>
<u>35</u>	<u>\$45,000</u>
<u>40</u>	<u>\$50,000</u>
<u>45</u>	<u>\$55,000</u>
<u>50</u>	<u>\$60,000</u>

<u>55</u>	<u>\$65,000</u>
<u>60</u>	<u>\$70,000</u>
<u>65</u>	<u>\$75,000</u>
<u>70</u>	<u>\$80,000</u>
<u>75</u>	<u>\$85,000</u>
<u>80</u>	<u>\$90,000</u>
<u>85</u>	<u>\$95,000</u>
<u>90</u>	<u>\$100,000</u>

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~~[Appendix A of this administrative regulation.]~~

(4) Waiver of use of point system to determine civil penalty.

(a) 1. The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

2. The basis for every waiver shall be fully explained and documented in the record of the case.

(b)1. If the commission waives the use of the point system, it shall use the criteria established ~~[set forth]~~ in KRS 351.194(7) to determine the appropriate penalty.

2. If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation by ~~[of]~~ Reference. (1) "Notice of Proposed Assessment," July 12, 2006, OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

~~[APPENDIX A~~

POINTS	AMOUNT
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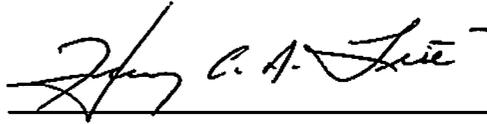
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

1]

805 KAR 8:060 approved for filing.
Pages (1-16)

7/29/09

Date



Henry C. A. List, Deputy Secretary
Signing for
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2009 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 30, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Johnny Greene, Executive Director
Office of Mine Safety and Licensing
1025 Capital Center Drive
Frankfort, KY 40601
Telephone: (502) 573-0140 Fax (502) 573-0152
Email: Johnny.Greene@ky.gov

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 805 KAR 8:060

Contact Person: Johnny Greene, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.

(b) The necessity of this administrative regulation: Imposition of civil monetary penalties against licensees for non-intentional violations of mine safety laws pertaining to mine seal construction plans and unsafe working conditions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will add a definition specific to the amendment. The amendment also adds violations of a mine seal construction plans and unsafe working conditions as items that will trigger a monetary civil penalty.

(b) The necessity of the amendment to this administrative regulation: The 2007 General Assembly amended 351.070 (15) expanding the authority of the Commissioner to

assess monetary civil penalties for violation of mine seal construction plans and unsafe working conditions. This administrative regulation includes those items into the violations that will trigger a monetary civil penalty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the mining of coal in the Commonwealth will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be subjected to the imposition of sanctions, including civil penalties for violations of mine seal construction plans and unsafe working conditions that could lead to imminent danger or serious physical injury.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities that comply with mine safety laws will not be subject to any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with mine safety laws will reduce the number of incidents that could result in an imminent danger, serious physical injury, or death.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The costs associated with introducing additions to the penalty assessment process will be minimal and will be absorbed by the agency.

(b) On a continuing basis: The number of administrative hearings may increase, but can be incorporated into current operations without additional staff or resources at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes. Tiering was applied as to the size of the mine based on coal tonnage produced in determining the imposition and enforcement of sanctions for failure to comply with accident reporting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 805 KAR 8:060 Contact Person: Johnny Greene, Executive Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. As contained in the enacted House Bill 207 of the 2007 General Assembly, the amended statute, KRS 351 070, allows for the addition of mine seal construction plans and unsafe working conditions as violations that will trigger monetary civil penalties.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue generated from the penalty assessments for violations of mine safety laws is unpredictable.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unchanged from the first year.

(c) How much will it cost to administer this program for the first year? The costs associated with introducing additional violations to the penalty assessment process will be absorbed by the agency without additional funds.

(d) How much will it cost to administer this program for subsequent years? The costs associated with administering this program are minimal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The agency cannot determine how many penalties will be assessed in a given year. Therefore, revenues generated from penalty assessments will be unpredictable.

Expenditures (+/-): NA

Other Explanation: NA