

**400 KAR 1:110. Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.375.**

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.0305, 350.032, 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, 351.335, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapter 351 authorizes the cabinet to promulgate rules and administrative regulations pertaining to explosives and blasting operations. This administrative regulation establishes hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS Chapter 350, and the hearing procedures pursuant to KRS Chapter 351.

**Section 1. Definitions.**

- (1) "Applicant" is defined by 405 KAR 7:001.
- (2) "Application" is defined by 405 KAR 7:001.
- (3) "Cessation order" is defined by 405 KAR 7:001.
- (4) "Coal" is defined by 405 KAR 7:001.
- (5) "Coal exploration" is defined by 405 KAR 7:001.
- (6) "Department" is defined by KRS 351.310(7).
- (7) "Knowingly" is defined by 405 KAR 7:001.
- (8) "Notice of noncompliance and order for remedial measures" is defined by 405 KAR 7:001.
- (9) "Operations" is defined by KRS 350.010(6).
- (10) "Operator" is defined by KRS 350.010(8).
- (11) "Permit" is defined by 405 KAR 7:001.
- (12) "Permit area" is defined by 405 KAR 7:001.
- (13) "Permittee" is defined by KRS 350.010(21).
- (14) "Reclamation" is defined by KRS 350.010(12).
- (15) "Secretary" is defined by KRS 350.010(11).
- (16) "Significant, imminent environmental harm" is defined by 405 KAR 7:001.
- (17) "Surface coal mining and reclamation operations" is defined by KRS 350.010(3).
- (18) "Transfer, assignment, or sale of permit rights" is defined by 405 KAR 7:001.
- (19) "Willfully" and "willful violation" is defined by 405 KAR 7:001.

**Section 2. Applicability.** This administrative regulation shall govern the conduct by the cabinet of all administrative hearings:

- (1) And conferences arising under KRS Chapter 350 relating to surface coal mining and reclamation operations and coal exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017; and
- (2) Authorized by KRS Chapter 351 relating to explosives and blasting operations.

**Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing.**

- (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order in writing of the cabinet's proposed

penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration to:

- (a) History of previous violations of the permittee or operator at the particular surface coal mining and reclamation operation;
- (b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
- (c) Whether or not the permittee, operator, or person was negligent; and
- (d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.

(3) Service method; time.

(a) The department shall serve the notice of proposed penalty assessment along with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

- 1. A service method established in 400 KAR 1:090, Section 5(3) and (4); or
- 2. Electronic mail pursuant to KRS 350.130.

(c) Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

(d) Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

- 1. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and
- 2. The person makes a timely written objection to the delay on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

- 1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.
- 2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:
  - a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;
  - b. The fact of the violation is deemed admitted; and
  - c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

- 1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

- a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and
- b. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(c) Request for an assessment conference. The person shall request in writing an assessment conference within thirty (30) days:

1. Of receipt of the notice of proposed penalty assessment; or
2. From the date the notice of proposed penalty assessment is returned to the department as undeliverable, unclaimed or refused.

(d) Petition for administrative hearing.

1. The person shall contest the proposed penalty assessment or the fact of the violation by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Sections 6 and 7.
2. The fact of the violation shall not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraph (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;
2. The fact of the violation shall be deemed admitted; and
3. The proposed penalty shall be due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and
2. The proposed penalty shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

#### Section 4. Procedures for Assessment Conference.

(1) Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet shall schedule the assessment conference within sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

- (b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.
1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.
  2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.
- (c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.
- (d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation order.
- (2) Service; public participation.
- (a) The cabinet shall serve notice of the assessment conference by mail, postage prepaid.
  - (b) The cabinet shall also send a copy of the notice of the assessment conference to any person who filed a report that led to the issuance of the notice of noncompliance and order for remedial measures or cessation order being contested.
  - (c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the proposed penalty assessment at least five (5) days before the assessment conference.
  - (d) Any person shall have the right to attend and participate in the assessment conference.
- (3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.
- (4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.
- (5) Service of report; documentation. The conference officer's report shall be served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.
- (6) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.
- (7) Statements not to be introduced at an administrative hearing. In any administrative hearing commenced under Section 6 or 7 of this administrative regulation, evidence as to statements made by a party at an assessment conference shall not be introduced by another party as evidence or to impeach a witness.
- (8) Challenge to conference officer's report.
- (a) Any person issued a proposed penalty assessment may file a petition requesting an administrative hearing to contest the conference officer's recommended penalty. A petition shall comply with Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to timely file a petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraph (a) or (b) of this subsection.

(a) If the person also did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;
2. The fact of the violation shall be deemed admitted; and
3. The proposed penalty shall be due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and
2. The proposed penalty shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

#### Section 5. Administrative Hearing Initiated by the Cabinet.

(1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing if:

1. The cabinet has reason to believe that a violation of KRS Chapter 350 or 405 KAR Chapters 7 through 24 has occurred or is occurring;
2. A violation of a permit condition has occurred or is occurring;
3. A permittee, operator, or person has failed to:
  - a. Pay a civil penalty assessed by the cabinet;
  - b. Undertake remedial measures mandated by an order of the cabinet; or
  - c. Abate violations the permittee, operator, or person was determined to have committed by an order of the cabinet;
4. The provisions of KRS 350.990(9) apply;
5. The cabinet has reason to believe additional remedies should be sought or an order should be entered against a person to protect the environment or the health and safety of the public;
6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply;
7. The cabinet has determined that revocation of a license under KRS 351.345 is warranted; or
8. An explosive user or seller notified the cabinet pursuant to KRS 351.350 that they intend to challenge a citation issued under KRS 351.315 to 351.375.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit pursuant to KRS Chapter 350 if:

1. The permittee, operator, or person has willfully failed to comply with a cessation order; or
2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies.

(a) In an administrative hearing pursuant to KRS Chapter 350 initiated by the cabinet or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9 of this administrative regulation, the cabinet may seek one (1) or a combination of the following:

1. Permit suspension or revocation;
2. Bond forfeiture;
3. Civil penalty;
4. A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person shall not be eligible to receive another permit or conduct future operations;
5. A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or
6. Any other relief to which the cabinet may be entitled by KRS Chapter 350.

(b) In an administrative hearing pursuant to KRS Chapter 351 initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

1. Revocation of license or permit pursuant to KRS 351.345 or KRS 351.315;
2. Civil penalty pursuant to KRS 351.350; or
3. Any other relief to which the cabinet may be entitled by KRS 351.315 to 351.375.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;
2. A request for specific relief;
3. A copy of any notice, order, citation, or determination upon which relief is sought; and
4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.

(i) A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his or her own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment.

(1) Who may file. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to Section 4 of this administrative regulation shall file the petition in the office within thirty (30) days of:

1. Receipt of the proposed penalty assessment; or

2. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused.

(b) If the person made a timely request for an assessment conference pursuant to Section 4 of this administrative regulation, the person shall file a petition for review in the office within thirty (30) days of:

1. Receipt of the conference officer's report; or

2. The return receipt date in the office of the conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused;
- (c) The hearing officer shall not grant an extension of time for filing a petition for review of a proposed penalty assessment.
- (d) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) of this administrative regulation.
- (3) Content of the petition. The petition shall include:
  - (a) A short and plain statement indicating the reasons why the amount of the penalty is being contested;
  - (b) If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and
  - (c) Identification by reference to the number for the notice of noncompliance and order for remedial measures or cessation order number.
- (4) Answer or responsive pleading.
  - (a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.
  - (b) The answer shall contain:
    1.
      - a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or
      - b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;
    2. Any defense to each claim for relief; and
    3. Any other matter to be considered on review.
  - (c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.
  - (d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.
  - (e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.
- (5) Amended petition.
  - (a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.
  - (b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.
  - (c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed, which shall be set forth in the order granting the motion.
- (6) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.
- (7) Default.



- (a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.
  - (b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.
  - (c) If the person against whom the proposed penalty is assessed fails to appear at an administrative hearing, the person shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.
- (8) Hearing officer report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in the report and recommended order concerning a civil penalty, findings of fact on each of the four (4) criteria set forth in 405 KAR 7:095, Section 3 and conclusions of law.

#### Section 7. Administrative Review of a Notice of Noncompliance and Order for Remedial Measures and a Cessation Order.

- (1) Who may file. A person who considers himself aggrieved by the issuance of a notice of noncompliance and order for remedial measures or cessation order by the cabinet pursuant to the provisions of KRS Chapter 350 or 405 KAR Chapters 7 through 24 and 805 KAR Chapter 4 may file a petition for review with the office.
- (2) Time for filing.
  - (a) A person filing a petition for review under this section shall file in the office a petition within:
    - 1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;
    - 2. Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order;
    - 3. Thirty (30) days of the return receipt date in the department of the notice of noncompliance and order for remedial measures or cessation order if the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed, or refused;
    - 4. Thirty (30) days of:
      - a. Receipt of the proposed penalty assessment; or
      - b. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused; or
    - 5. Thirty (30) days of:
      - a. Receipt of the penalty assessment conference officer's report; or
      - b. The return receipt date in the office of the penalty assessment conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused.
  - (b) The hearing officer shall not grant an extension of time for filing a petition for review.
  - (c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding that the person waived the right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order.

(3) Content of the petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief:

- (a) A statement of facts entitling that person to administrative relief;
- (b) A request for specific relief;
- (c) An explanation of each specific alleged error in the cabinet's determination;
- (d) A copy of the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed; and
- (e) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.

a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order that modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed.

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order for failure to timely abate the violation that is the subject to the notice sought to be reviewed.

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order, the petitioner shall file:

1. A separate petition for review in accordance with this section; or

2. A motion to amend a pending petition with the amended petition attached in accordance with this section and within the time requirements of subsection (2) of

this section.

(d) A petition for review of a related notice of noncompliance and order for remedial measures or cessation order shall be subject to consolidation.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the person shall be deemed to have waived the right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(8) Burden of proof. In review of a notice of noncompliance and order for remedial measures or cessation order or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations Pursuant to KRS Chapter 350.

(1) Who may file. The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application for a new permit;

(b) Application for a permit revision and amendment, permit renewal, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision and amendment ordered by the cabinet, except challenges of permit revision ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 7 of this administrative regulation; and

(d) Application for a coal exploration permit.

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review with the office within thirty (30) days from the date the permit applicant, permittee, or person had actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his or her own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived the right to an administrative hearing.

(3) Content of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

- (d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.
- (4) Answer or responsive pleading.
- (a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.
- (b) The answer shall contain:
1.
    - a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or
    - b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;
  2. Any defense to each claim for relief; and
  3. Any other matter to be considered on review.
- (c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or a responsive pleading.
- (d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.
- (e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.
- (5) Amended petition.
- (a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.
- (b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.
- (c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.
- (6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.
- (7) Default.
- (a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.
- (b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.
- (c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.
- (8) Burden of proof.
- (a) Petition to review application for a new permit.
1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:
    - a. The permit application complies with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24; or
    - b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:
  - a. The permit application fails to comply with the requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24; or
  - b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.
- (b) Petition to review the approval or disapproval of an application for a permit renewal.
  1. A party opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and
  2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.
- (c) Petition to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.
  1. If the permit applicant is seeking review, the permit applicant shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.
  2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.
- (d) Petition to review a permit revision or amendment ordered by the cabinet.
  1. The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and
  2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.
- (e) Petition to review a decision on an application for a coal exploration permit.
  1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.
  2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

#### Section 9. Review of a Cabinet Determination.

- (1) Who may file. A person who considers himself or herself aggrieved by a determination of the cabinet made under KRS Chapter 350 for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.
- (2) Time to file; waiver.
  - (a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.
  - (b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

- (c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing.
- (3) Content of the petition. The petition for review shall contain:
- (a) A statement of the facts entitling the person to administrative relief;
  - (b) An explanation of each specific alleged error in the cabinet's determination;
  - (c) A copy of the written determination to be reviewed if applicable; and
  - (d) A request for specific relief.
- (4) Answer or responsive pleading.
- (a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.
  - (b) The answer shall contain:
    - 1.
      - a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or
      - b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;
    - 2. Any defense to each claim for relief; and
    - 3. Any other matter to be considered on review.
  - (c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.
  - (d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.
  - (e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.
- (5) Amended petition.
- (a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.
  - (b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.
  - (c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.
- (6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.
- (7) Default.
- (a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why that person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.
  - (b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.
  - (c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he or she has waived the right to an administrative hearing and dismissing the petition.

(8) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

#### Section 10. Proceeding for the Suspension or Revocation of a Permit Pursuant to KRS Chapter 350 Because of a Pattern of Violations.

(1) Initiation of the proceeding.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that contribute to a pattern of violations;
2. A copy of each order or notice that contains the violations listed as contributing to a pattern of violations;
3. The basis for determining the existence of a pattern of violations; and
4. A recommendation whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;
2. The willfulness of the violations; or
3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived the right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

- (c) That a pattern of violations exists; and
- (d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

#### Section 11. Temporary Relief.

(1) Temporary relief available. Except as established in subsection (2) of this section and pending the completion of the investigation and hearing provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from:

- (a) Notice of noncompliance and order for remedial measures or a cessation order issued pursuant to KRS Chapter 350 or 405 KAR Chapters 7 through 24 or 805 KAR Chapter 4;
- (b) A permit or bond release decision of the cabinet; or
- (c) Any action taken by the cabinet pursuant to KRS Chapter 351.

(2) Temporary relief not available. A hearing officer shall not grant temporary relief for:

- (a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or
- (b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the petition. A person shall file a written petition for relief with the office. The petition shall contain:

- (a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;
- (b) A detailed statement setting forth reasons why relief should be granted;
- (c) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;
- (d) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;
- (e) If the petition relates to a cessation order issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and
- (f) A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition in the office. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed in the office and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.



1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.
2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.
3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.
4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.
- (d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.
- (e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.
- (6) Standard of review. A hearing officer may grant temporary relief if:
  - (a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and
  - (b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.
- (7) Timing of hearing officer's determination.
  - (a) A hearing officer shall grant or deny relief expeditiously.
  - (b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:
    1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or
    2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.
  - (c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:
    1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or
    2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

## Section 12. Petition for Recovery of Costs and Expenses.

- (1) Who may file and time to file.

- (a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation for an action brought pursuant to KRS Chapter 350 that results in an order of the secretary.
  - (b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a petition for an award of costs and expenses, including attorneys' fees.
  - (c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.
- (2) Content of the petition. A person shall include in the petition filed under this section the name of the party from whom costs and expenses are sought and the following:
- (a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;
  - (b) Receipts or other evidence of the costs and expenses; and
  - (c) If attorneys' fees are claimed, evidence concerning:
    - 1. The hours expended on the case;
    - 2. The customary commercial rate of payment for the services in the area; and
    - 3. The experience, reputation, and ability of the individual or individuals performing the services.
- (3) Answer.
- (a) The respondent shall file with the office within thirty (30) days from service of the petition an answer or other responsive pleading.
  - (b) The answer shall contain:
    - 1.
      - a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or
      - b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;
    - 2. Any defense to each claim for relief; and
    - 3. Any other matter to be considered on review.
  - (c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.
  - (d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.
  - (e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.
- (4) Criteria for awarding of costs.
- (a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:
    - 1. The person initiated an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:
      - a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405 or a permit condition; or
      - b. An imminent hazard existed; or
    - 2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

- a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405, or a permit condition; or
  - b. An imminent hazard existed; and
  - c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.
- (b) Appropriate costs and expenses including attorneys' fees may be awarded to a person other than a permittee or his representative from the cabinet, if:
  1. The person initiated or participated in any proceeding under KRS Chapter 350; and
  2. The hearing officer finds and the secretary concurs that the person made a substantial contribution to a full and fair determination of the issues.
- (c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order:
  1. In bad faith; and
  2. For the purpose of harassing or embarrassing the permittee.
- (d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if the permittee demonstrates that the person initiated an administrative hearing under this administrative regulation or participated in an administrative hearing or conference:
  1. In bad faith; and
  2. For the purpose of harassing or embarrassing the permittee.
- (e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet demonstrates that:
  1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or
  2. A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.
- (5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

#### Section 13. Location of an Administrative Hearing.

- (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.
- (2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.
- (3) An administrative hearing pursuant to KRS Chapter 351.315 to 351.375 shall be held in Frankfort at the location designated by the hearing officer.

#### Section 14. Judicial Review, Effect, and Subsequent Proceeding.

- (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305, as applicable.
- (2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.
- (3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.

(19 Ky.R. 551; 931; 1352; eff. 11-23-1992; TAm eff. 8-9-2007; 43 Ky.R. 1876; 44 Ky.R. 80; eff. 8-4-2017; Recodified from 405 KAR 7:092; eff. 8-4 2017; TAm eff. 5-4-2018; 45 Ky.R. 453; eff. 10-4-2018; 46 Ky.R. 1019\*, 1832; eff. 3-3-2020.)