

**KENTUCKY REVISED STATUTES**  
**Division of Mine Safety**  
**KRS Chapter 351**

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| <p>351.010 Definitions for Chapter.</p> <p>351.020 Commissioner of the Department for Natural Resources -- Functions.</p> <p>351.025 Duties of department relating to mine safety -- Administrative Regulations</p> <p>351.030 Hearings before department -- Petition for intervention.</p> <p>351.040 Action to vacate order of department -- Appeal.</p> <p>351.060 Qualifications of division director of Division of Mine Safety.</p> <p>351.070 Duties of Commissioner -- Division of Mine Safety -- Secretary may promulgate regulations -- Financial liaison -- Civil monetary penalties.</p> <p>351.075 Exceptions to mandatory mine safety standards.</p> <p>351.080 Offices of mine inspectors.</p> <p>351.090 Mine Inspectors -- Appointment -- Qualifications -- Oath and bond.</p> <p>351.101 Declaration of legislative finding of fact.</p> <p>351.102 Certificate of competency and qualification or permit as trainee required -- Proof of drug -- and alcohol-free status to be submitted -- Examinations -- Hearing -- Appeals.</p> <p>351.103 Eligibility of mining specialists to work as miners.</p> <p>351.1041 Mine Safety Review Commission.</p> <p>351.1045 Required new miner training course and site visits for members of the Mine Safety Review Commission and the Mining Board.</p> <p>351.105 Mining Board -- Membership -- Hearings -- Administrative regulations.</p> <p>351.1055 Mine Equipment Review Panel -- Membership -- Recommendations.</p> <p>351.106 Education and training program -- Alcohol and substance abuse training and education -- Retraining and reeducation requirements -- Administrative regulations -- Implementation of program for training and examination -- Records.</p> <p>351.107 Requirements for certification as shotfirer.</p> <p>351.1071 Training program -- Certification as shotfirer and driller for solid blasting.</p> <p>351.108 Superintendent to hold a mine foremen certificate.</p> <p>351.109 Requirements for qualification and certification to perform electrical work -- Written tests.</p> <p>351.110 Examination prerequisites -- Fees -- Moneys from licenses and examination fees for use of department.</p> <p>351.120 Issuance of certificates -- Form and content -- Classification -- Duty of applicant.</p> <p>351.122 Reciprocity for miners certified in other states -- Requirements -- Reciprocal disciplinary action.</p> <p>351.125 First-aid training.</p> <p>351.127 Employment of certified emergency medical technicians or mine emergency technicians required at underground coal mine.</p> <p>351.1291 Course of instruction for surface coal miners.</p> <p>351.130 Duplicate certificates.</p> <p>351.140 Duties and authority of mine inspectors -- Frequency of inspections.</p> <p>351.150 Reports of mine inspectors.</p> <p>351.160 Annual report of Commissioner -- Record and index of inspection and reports -- Certified copies.</p> <p>351.170 Reports of licensees -- Alcohol and substance abuse reports.</p> <p>351.173 Notice of possibility of subsidence -- Language required in deed of conveyance.</p> | <p>351.175 Provisions concerning license to operate mine -- Submissions required for license -- Revocation of license.</p> <p>351.182 Drug- and alcohol-free status required for miner certification -- Proof -- Costs of testing -- Breath alcohol device at examination site -- Eleven panel urine test</p> <p>351.183 Contracts for specimen collection and laboratory testing services -- Standards, procedures, and protocol -- Criteria for proof from other sources -- Annual publication of certified collection and testing providers.</p> <p>351.184 Office to notify applicant of test results when granting or denying certification -- Retesting after denial -- Evaluation and treatment - Right of appeal.</p> <p>351.185 Confidentiality of drug and alcohol test results -- Exceptions -- Use of results in criminal proceeding against applicant prohibited.</p> <p>351.186 Workers' compensation premium -- Credit for certified drug-free workplace program at coal mine.</p> <p>351.190 Mine rescue divisions and stations -- Supplies and equipment.</p> <p>351.191 Trained mine rescue team to be available within specified driving time of each mine.</p> <p>351.192 Qualified or operator-designated person performing mine rescue acts not liable for damages for such acts -- Persons not exempt.</p> <p>351.193 Safety rights of miners -- Settlement of disputes.</p> <p>351.194 Hearing regarding licensee, coal operation, or other person -- Order -- Enforcement.</p> <p>351.195 Miners required to wear safety glasses.</p> |
|--|--|
- MINE SAFETY ANALYSIS**
- |   |  |
|---|--|
| <p>351.241 Statement of General Assembly.</p> <p>351.242 Mine safety analyst program -- Responsibility and powers of mine safety analysts.</p> <p>351.243 Responsibilities of mine safety analysts not to limit those provided in KRS Chapters 351 and 352 for other persons.</p> |  |
|---|--|
- BLASTING**
- |  |  |
|--|--|
| <p>351.310 Definitions.</p> <p>351.315 Licensing of blaster.</p> <p>351.325 Classification of blaster.</p> <p>351.330 Requirements governing blasting operations.</p> <p>351.335 Rules and regulations -- Authority of commissioner or his representative.</p> <p>351.345 Revocation of license -- Hearings.</p> <p>351.350 Citation for violation -- Action against violator.</p> <p>351.355 Notification of accident -- Investigation.</p> <p>351.360 Records required.</p> <p>351.365 Supplier of explosives to keep register and to register with department.</p> <p>351.367 Permit to purchase, receive, or take possession of explosives -- Procedures -- Restrictions -- Records.</p> <p>351.370 Purchase of explosives.</p> <p>351.375 Restriction of sale and use of hazardous explosives.</p> <p>351.380 Agreements with Natural Resources and Environmental Protection Cabinet.</p> |  |
|--|--|
- PENALTIES**
- |   |  |
|---|--|
| <p>351.990 Penalties.</p> <p>351.9901 Moratorium ending April 8, 1996, on levying of mandatory fines and penalties pursuant to KRS 351.990 -- Exceptions.</p> |  |
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**KRS Chapter 351****351.010 Definitions for chapter -- Applicability.**

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Adulterated specimen" means a specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration;
  - (b) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
  - (c) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
  - (d) "Board" means the Mining Board created in KRS 351.105;
  - (e) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
  - (f) "Commission" means the Mine Safety Review Commission created by KRS 351.1041;
  - (g) "Commissioner" means commissioner of the Department for Natural Resources;
  - (h) "Department" means the Department for Natural Resources;
  - (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
  - (j) "Excavations and workings" means the excavated portions of a mine;
  - (k) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
  - (l) "Gassy mine." All mines shall be classified as gassy or gaseous;
  - (m) "Illicit substances" includes prescription drugs used illegally or in excess of therapeutic levels as well as illegal drugs;
  - (n) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
  - (o) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
  - (p) "Medical review officer" or "MRO" means a licensed physician with knowledge of substance abuse disorders, laboratory testing, chain of custody, collection procedures, and the ability to verify positive, confirmed test results. The MRO shall possess the necessary medical training to interpret and evaluate a positive test result in relation to the person's medical history or any other relevant biomedical information;
  - (q) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine;
  - (r) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein;
  - (s) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
  - (t) "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal;
  - (u) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
  - (v) "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency;
  - (w) "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any oncoming shift;
  - (x) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
  - (y) "Serious physical injury" means an injury which has a reasonable potential to cause death;
  - (z) "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;

- (aa) "Slope" means an inclined opening used for the same purpose as a shaft;
  - (ab) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
  - (ac) "Supervisory personnel" means a person certified under the provisions of this chapter to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
  - (ad) "Division" means the Division of Mine Safety;
  - (ae) "Director" means the director of the Division of Mine Safety;
  - (af) "Probation" means the status of a certification or license issued by the Division of Mine Safety that conditions the validity of the certification or license upon compliance with orders of the Mine Safety Review Commission; and
  - (ag) "Final order of the commission" means an order which has not been appealed to the Franklin Circuit Court within thirty (30) days of entry, or an order affirming the commission's order that has been entered by any court within the Commonwealth and for which all appeals have been exhausted.
- (2) Except as the context otherwise requires, this chapter applies only to commercial coal mines.
- (3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.

**351.020 Commissioner of Department for Natural Resources -- Functions.**

- (1) The Department for Natural Resources shall be headed by the commissioner of the Department for Natural Resources.
- (2) The department shall administer all laws of the Commonwealth relating to mines.

**351.025 Duties of department relating to mine safety -- Administrative regulations.**

The department shall:

- (1) Promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified and noncertified personnel and owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. These criteria shall include but not be limited to the following:
- (a) In the case of individuals that are certified miners, the Mine Safety Review Commission may revoke or suspend an individual's certification, or probate an individual's certification for first offenses, and the Mine Safety Review Commission shall establish a maximum penalty for subsequent offenses;
  - (b) In the case of individuals that are owners or part-owners of licensed premises, the Mine Safety Review Commission may impose civil monetary penalties against individuals not to exceed ten thousand dollars (\$10,000); and
  - (c) In the case of noncertified personnel, the Mine Safety Review Commission may impose civil monetary fines equivalent to the value of the wages they receive for up to ten (10) working days for first offenses and the commission shall establish maximum penalties for subsequent offenses;
- (2) Notwithstanding KRS 351.070(15), promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. These penalties shall include but not be limited to the revocation or suspension of the mine's license, the probation of a mine's license, or the imposition of a penalty against the licensee not to exceed the gross value of the production of the licensed premise for up to ten (10) working days;
- (3) Direct that an employer shall not directly or indirectly reimburse a sanctioned miner or mine supervisor for days of work lost as a result of sanctions imposed by the Mine Safety Review Commission;
- (4) Establish procedures by which the department shall communicate with the Federal Mine Safety and Health Administration (MSHA) concerning allegations of mine safety violations against Kentucky coal operators and miners and for reports made to the division under KRS 351.193;
- (5) Jointly with the Mine Safety Review Commission establish a process for referring allegations of mine safety violations to the Mine Safety Review Commission for adjudication and for the hearing of appeals from penalties imposed by the division, and the underlying violation, authorized under KRS 351.070(15); and
- (6) Establish procedures to distribute quarterly reports to every licensed entity describing mine fatalities, serious mine accidents, and penalties imposed on certified and noncertified personnel and licensed premises and to require the report to be distributed to every certified working miner employed by the licensed entity, posted at work sites, and reviewed at regular mine safety meetings.

**351.030 Hearings before department -- Petition for intervention.**

- (1) All administrative hearings conducted by the department shall be conducted in accordance with KRS Chapter 13B and this section. Following the hearing, the department shall decide each matter in controversy. No person shall be discharged or otherwise discriminated against by his or her employer for testifying, or for his failure to testify, at these hearings.

(2) The executor or administrator of a deceased miner's estate, or his or her designee, in the case of a fatality, miners that are injured as a result of an accident, and miners that are significantly affected by the conduct that gave rise to a disciplinary proceeding shall be granted the right of intervention in the penalty phase of that proceeding. The petition for intervention shall be made in accordance with KRS 13B.060(3). All hearings before the Mine Safety Review Commission shall be open proceedings. Any party with pertinent information regarding a mine accident may submit that information directly to the division's chief accident investigator.

**351.040 Action to vacate order of department -- Appeal.**

(1) Any party in interest dissatisfied with an order of the department may commence an equitable action against the department and other interested parties as defendants, to vacate or set aside, in whole or in part, any such order. The action shall be brought in the Circuit Court of the county where the subject matter involved in the order, or the well or workable coal bed or part thereof, is located. The court may grant relief from any unlawful or unreasonable order of the department, and render such judgment as appears to it to be equitable and just.

(2) The pendency of the action shall not of itself suspend the operation of the order of the department, but during the pendency of the action any party may secure from the court an order suspending or staying the operation of the order of the department pending the action by giving to the other parties adequate security, approved by the court, against loss due to the delay in enforcement of the order, in case the order under review is not set aside, and the court may, without security being given, suspend the operation of the order, in whole or in part, on such terms as it deems just and in accordance with the practice of courts of equity; provided, however, that the operation of an order pertaining to safety in coal mines shall not be suspended temporarily pending final decision of the court.

(3) Appeals may be taken to the Court of Appeals as in other cases.

**351.060 Qualifications of director of Division of Mine Safety.**

(1) The director of the Division of Mine Safety shall be a citizen of Kentucky and shall be thoroughly familiar with all methods of safety pertaining to the operation of mines.

(2) The director shall have a practical knowledge of:

- (a) The different systems of working and ventilating coal mines;
  - (b) The nature, chemistry, and properties of noxious, poisonous, and explosive gases, the dangers due to these gases, and the prevention of these dangers;
  - (c) The dangers incident to blasting and the prevention of these dangers;
  - (d) The methods for the management and extinguishment of mine fires;
  - (e) The methods for rescue and relief work in mine disasters;
  - (f) The application of electricity in mining operations;
  - (g) The application of mechanical loading in mining operations;
  - (h) The equipment and explosives manufactured for use in coal mines;
  - (i) The methods used in locating oil and gas wells when drilled through any coal seam;
  - (j) The proper manner of drilling and plugging oil and gas wells;
  - (k) Mining engineering; and
- (l) The methods for the prevention of explosions in mines due to gas or dust.
- (3) The director shall be capable of efficiently reporting on any proposed development in mining operations or the possibility of operating any coal or clay seam.
- (4) The director shall hold a mine inspector's or mine safety specialist's certificate.

**351.070 Duties of the commissioner -- Division of Mine Safety -- Secretary may promulgate administrative regulations -- Family liaison -- Civil monetary penalties.**

(1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine safety specialists and other personnel of the department. There is created within the Department for Natural Resources a Division of Mine Safety.

(2) The secretary shall appoint a director to the Division of Mine Safety in accordance with KRS 224.10-020(2) and prescribe his or her powers and duties.

(3) The commissioner may, whenever necessary, divide the coal fields of the state into as many inspection regions as necessary, so as to equalize as nearly as practicable the work of each mine safety specialist, and may assign to the specialists their respective regions.

(4) The commissioner may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine safety specialists or change specialists from one (1) region to another.

(5) The commissioner shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.

- (6) The commissioner shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) The commissioner shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) The commissioner shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) The commissioner shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) The commissioner shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) The commissioner may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.
- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The secretary of the Energy and Environment Cabinet shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the secretary only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality and any accidents involving serious physical injury and, within sixty (60) days of completion of the investigation, shall report his or her findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. Accident interviews conducted by the division shall be closed proceedings. The recommendations may include without being limited to the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality. Effective January 1, 2009, the division shall appoint an existing full-time employee to act as a family liaison. The family liaison shall have the responsibility during an accident investigation to keep the families of miners informed of the progress and findings of the accident investigation. The family liaison shall be trained in mining and in grief counseling.
- (15) The commissioner shall assess civil monetary penalties against licensed facilities for violations of laws in this chapter and KRS Chapter 352 pertaining 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. The Energy and Environment Cabinet shall promulgate administrative regulations within ninety (90) days of July 12, 2006, providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed five thousand dollars (\$5,000). Nothing contained in this subsection shall be construed to impair or contravene the authority granted under KRS 351.025(2) for imposing penalties against licensed facilities.

**351.075 Exceptions to mandatory mine safety standards.**

- (1) Upon petition by the operator or the representative of miners, the commissioner may modify the application of any mandatory safety standard to a mine if the commissioner determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition, the commissioner shall give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such standard.
- (2) The commissioner shall issue a decision incorporating his findings of fact therein, and shall send a copy thereof to the operator or the representative of the miners, as appropriate. Before granting any exception to a mandatory safety standard, the findings of the commissioner or his authorized representative shall be made available to the representative of the miners at the affected coal mine.

**351.080 Offices of mine inspectors.**

The offices of the mine inspectors shall be at such places within their respective districts as the commissioner designates, and each mine inspector shall be provided with a suitable office.

**351.090 Mine safety specialists -- Appointment -- Qualifications -- Oath and bond.**

- (1) The Governor shall appoint an adequate number of mine safety specialists to ensure at least two (2) inspections annually at all surface mines, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the Commonwealth and sufficient additional mine safety specialists to enable the commissioner to provide adequate surveillance of coal mines where conditions or management policy dictate that more inspections are needed to ensure the safety of miners; except the commissioner shall inspect all underground coal mines not less than six (6) times annually. Two (2) of the six (6) general inspections of underground mines shall be full electrical inspections. One (1) or more of the appointees shall be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety specialists to perform safety analysis and safety instruction. The term of office of each mine safety specialist shall be during the period of capable, efficient service and good behavior.
- (2) All mine safety specialists shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough and practical knowledge of mining gained by at least five (5) years' experience in coal mines in the Commonwealth. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. A person desiring to use a mining engineering or technology degree for practical experience credit shall file proof of having received a degree prior to examination.
- (3) No person shall be appointed to the office of mine safety specialist unless he or she holds a current mine foreman's certificate. A person appointed as mine safety specialist shall pass an examination administered by the board. The commissioner may recommend to the Governor applicants for the positions of mine safety specialist who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.
- (4) Mine safety specialists shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.
- (5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by mine safety specialists who shall verify upon oath that the expenses were incurred in the discharge of their official duties.
- (6) Each mine safety specialist shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.
- (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.
- (8) Each mine safety specialist shall provide authorization to the division to perform a criminal background check by means of a fingerprint check by the Department of Kentucky State Police. The results of the state criminal background check shall be sent to the director of the division. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.

**351.101 Declaration of legislative finding of fact.**

The General Assembly hereby finds and declares the following:

- (1) The highest priority and concern of the Commonwealth must be the health and safety of the coal industry's most valuable resource, the miner.
- (2) The continued prosperity of the coal industry is of primary importance to the state.
- (3) A high priority must be given to increasing the productivity and competitiveness of the mines in this state.
- (4) An inordinate number of miners are killed or injured during the first few months of their experience in a mine and upon acquiring new work assignments in a mine.
- (5) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of the state's coal industry.
- (6) Mining is a technical occupation with various specialties requiring individualized training and education.
- (7) Injuries can be reduced through proper miner training, education, and certification.
- (8) Mine safety can be improved by the imposition and enforcement of sanctions against licensed premises and certified and noncertified personnel whose willful and repeated violations of mine safety laws place miners in imminent danger of serious injury or death.
- (9) Abuse of illicit substances and alcohol in the mining industry represents a serious threat to the health and safety of all miners. Substance and alcohol abuse adversely affect the health and safety of miners. Mine safety can be significantly improved by establishing as a condition of certification that miners remain drug and alcohol free.

**351.102 Certificate of competency and qualification or permit as trainee required -- Proof of drug- and alcohol-free status to be submitted -- Examinations -- Hearing -- Appeals.**

- (1) No person shall be assigned mining duties by a licensee as a laborer or supervisor unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.
- (2) The division shall require that all applicants for certified miner and initial applicants for other mining certifications pursuant to this chapter shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183.
- (3) A permit as trainee miner shall be issued by the commissioner to any person who has submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183, and has completed a program of education of a minimum of forty (40) hours for underground mining or twenty-four (24) hours for surface mining comprised of sixteen (16) hours of classroom training and eight (8) hours of mine specifics or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form approved by the commissioner. This education and training program shall be determined and established by the board, as provided in KRS 351.106. A requirement for a permit as a trainee miner shall be one (1) hour of classroom training dedicated to alcohol and substance abuse education.
- (4) Trainee miners shall work within the sight and sound of a certified miner.
- (5) Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman or assistant mine foreman shall have no more than five (5) persons working under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.
- (6) A certificate of competency and qualification as a miner shall be issued by the commissioner to any person who has a minimum of forty-five (45) working days' experience within a thirty-six (36) month period as a trainee miner and demonstrated competence as a miner. Any trainee miner who exceeds six (6) months in obtaining the forty-five (45) working days of experience required in this section, shall submit proof of alcohol- and drug-free status in accordance with the provisions of KRS 351.182 and 351.183.
- (7) All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees. The examination may be given orally, upon approval by the commissioner, if the miner is unable to read or comprehend a written examination.
- (8) Examinations shall be held in any regional office during regular business hours.
- (9) If the commissioner or his authorized representative finds that an applicant is not qualified and competent, he shall notify the applicant as soon as possible, but in no case more than thirty (30) days after the date of examination.
- (10) Any applicant aggrieved by an action of the commissioner or his authorized representative in failing or refusing to issue a certificate of qualification and competency shall, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall either affirm the action or issue the certificate to the applicant.
- (11) If the applicant is aggrieved by the action of the commissioner, he may appeal to the commission which shall hold a hearing on the matter in accordance with KRS Chapter 13B.
- (12) The applicant may appeal from the final order of the commission by filing in the Franklin Circuit Court a petition for appeal in accordance with KRS Chapter 13B.

**351.103 Eligibility of mining specialists to work as miners.**

- (1) All persons possessing valid certificates as mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or certified miner shall be eligible to work at any time as miners, provided they fulfill the annual requirements for retraining and reeducation as provided in KRS 351.106.
- (2) Supervisory, clerical, and technically trained employees of the mine operator whose work contributes only indirectly to mine operations shall not be required to possess a miner's certificate of competency and qualification.

**351.1041 Mine Safety Review Commission.**

- (1) The Mine Safety Review Commission is created as an independent governmental entity attached to the Energy and Environment Cabinet, Office of the Secretary, for administrative purposes. The commission shall:
  - (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194;
  - (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, allegations of unsafe working conditions, violation of a miner's drug- and alcohol-free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury to the commission for adjudication;

(c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:

1. All reports of coal mining fatalities and serious physical injuries provided by the commissioner under KRS 351.070(14);
2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious physical injury or death resulting from the violations;
3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and
4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter.

(2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the board shall be appointed for terms of four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified.

(3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission.

(4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair.

(5) The Governor may remove any member for good cause, including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member.

(6) The commission shall meet on the call of the chair or a majority of the members of the commission.

(7) The Energy and Environment Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the Energy and Environment Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B and this chapter, notwithstanding the provisions of KRS 13B.030(2)(b).

(8) The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.

(9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.

(10) The secretary of the Energy and Environment Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

#### **351.1045 Required new miner training course and site visits for members of the Mine Safety Review Commission and the Mining Board.**

The members of the Mine Safety Review Commission and the Mining Board shall complete a forty (40) hour new miner training course if they have not completed the course within the previous two (2) years. In addition, they shall participate in a site visit of an underground mine and a surface coal mine and thereafter make a site visit of an underground mine at least every three (3) years.

#### **351.105 Mining Board -- Membership -- Hearings -- Administrative regulations.**

(1) The Mining Board is created.

(2) The board shall be made up of eight (8) persons, all of whom shall be citizens of Kentucky and from the coal industry in Kentucky. The board's membership shall reflect a fair representation from eastern Kentucky and western Kentucky, large and small operations, and union and nonunion coal production. The Governor shall appoint the members of the board to include:

(a) Three (3) members representing management; the Alliance of Kentucky Coal shall submit three (3) nominees for each management position on the board;



- (b) Three (3) members representing labor; the United Mine Workers of America shall submit three (3) nominees for each labor position on the board;
  - (c) One (1) citizen member with knowledge of mining who is not a coal operator and is not employed in a supervisory or nonsupervisory position in a mine; and
  - (d) The director of the Division of Mine Safety or his or her designee.
- The board shall elect one (1) of its members to serve as chairman. The director or his or her designee shall be a nonvoting member.
- (3) Excluding the citizen member and the director or his or her designee, initial appointments to the board shall be made in the following manner and shall reflect equal representation as to number and term regarding both the management and the labor positions: two (2) members for a period of two (2) years; two (2) members for a period of three (3) years; and two (2) members for a period of four (4) years. After the initial appointments, members of the board shall be appointed to four (4) year terms. The citizen member shall be appointed for a term of four (4) years. Members of the board may be reappointed at the expiration of their previous appointment at the pleasure of the Governor. Members shall continue to serve until a successor is appointed and qualified.
  - (4) Two (2) of the persons appointed to the board shall be employed in nonsupervisory positions at mines in this Commonwealth and shall have a minimum of five (5) years' underground experience in the industry and a mine foreman's certificate. Two (2) of the persons shall be employed in supervisory positions by coal companies operating in the Commonwealth and shall have a minimum of five (5) years' experience in the coal mining industry and a mine foreman's certificate. One (1) of each of the members holding supervisory and nonsupervisory mine positions shall have a minimum of five (5) years' practical experience working in a surface or underground coal mine. The director shall have a minimum of five (5) years' practical underground mining experience.
  - (5) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section. The vacancy shall be filled by the Governor within thirty (30) days from the date the vacancy occurs.
  - (6) A quorum of the board shall be five (5) voting members; the board may act officially by a majority of those members who are present, except that no action shall be taken without a majority of affirmative votes.
  - (7) Each member of the board shall receive one hundred fifty dollars (\$150) each day while actually engaged in the performance of the work of the board, shall receive mileage at the rate provided by the state's travel regulation for each mile actually traveled from the home of the member to the place of the meeting and returning therefrom, and shall receive reimbursement for food and lodging at a reasonable and customary rate, which shall be paid out of the State Treasury upon proper requisition approved by the commissioner.
  - (8) The board shall act on all matters it deems appropriate for board action or brought before it by the department.
  - (9) The board shall meet periodically on the call of the chair or a majority of the members of the board. The Governor shall remove any member who fails to appear at three (3) consecutive meetings of the board, or at one-half (1/2) of the meetings held in a one (1) year period.
  - (10) The board shall review this chapter and KRS Chapter 352 and make recommendations regarding the amendment of those chapters.
  - (11) The board shall review and approve all administrative regulations, including administrative regulations required by KRS 351.025, proposed by the department that relate to the mining of coal, penalties, or the certification of miners before those administrative regulations are promulgated in accordance with KRS Chapter 13A.
  - (12) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
  - (13) The board may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its programs and standards.

**351.1055 Mine Equipment Review Panel -- Membership -- Recommendations.**

- (1) There is hereby established a Mine Equipment Review Panel attached to the Department for Natural Resources in the Energy and Environment Cabinet.
- (2) The Mine Equipment Review Panel shall be a permanent panel of recognized experts who shall review and make recommendations annually to the director of the division and the Interim Joint Committee on Natural Resources and Environment regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. Subject to budgetary constraints and approval by the United States Mine Safety and Health Administration (MSHA), if there is no existing law to the contrary, the commissioner may implement the recommendations of the panel. Based on the recommendations provided by the panel, the director shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.
- (3) The panel shall meet at the call of the chair. The chair of the panel shall be the director of the division. Members of the panel shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.
- (4) The Mine Equipment Review Panel shall be composed of the following members, who shall be appointed by the commissioner not less than thirty (30) days after July 12, 2006:

- (a) One (1) member shall represent the National Institute of Occupational Safety and Health;
  - (b) One (1) member shall represent the federal Mine Safety and Health Administration;
  - (c) One (1) member shall represent the coal industry;
  - (d) One (1) member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a Kentucky mine rescue team;
  - (e) One (1) member shall represent the Department of Mining Engineering at the University of Kentucky; and
  - (f) One (1) member shall be the director of the division.
- (5) Periodically, the panel shall review and make recommendations to the director on changes to or innovations in mine safety equipment that could be deployed in coal mines.

**351.106 Education and training program -- Alcohol and substance abuse training and education -- Retraining and reeducation requirements -- Administrative regulations -- Implementation of program for training and examination -- Records.**

- (1) The Mining Board shall establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the board, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments, and at least sixteen (16) hours of annual retraining and reeducation for all certified persons, of which thirty (30) minutes annually shall be dedicated to alcohol and substance abuse education. Effective January 1, 2009, in addition, six (6) hours of annual training on changes in mine safety laws, safe retreat mining practices, disciplinary cases litigated before the Mine Safety Review Commission, changes in mine safety technology, and ways to improve safe working procedures shall be required for all mine foremen. This annual training for mine foremen shall be provided exclusively by the division.
- (2) One (1) hour of initial substance abuse training and education shall be required as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement shall not apply to certified persons who received the one (1) hour initial substance abuse training and education as part of their forty (40) hour or twenty-four (24) hour new miner training.
- (3) In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to receive an additional thirty (30) minutes of alcohol and substance abuse awareness training annually.
- (4) Beginning with the first full calendar year after the effective date established by the board and during each calendar year thereafter, each certified miner shall receive at least sixteen (16) hours of retraining and reeducation.
- (5) Newly hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.
- (6) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.
- (7) The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department.
- (8) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.
- (9) If the department discovers a miner working without proper training or the licensee cannot provide proof of training, the miner shall be withdrawn immediately from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.
- (10) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.
- (11) The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter.
- (12) The secretary may promulgate administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the board. This program shall include but not be limited to implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.
- (13) The commissioner shall keep and maintain current records on all certified miners, all of which shall be maintained by computer for ready access. The commissioner shall not grant certification to any person that, at the time of application, had his or her miner certification, foreman certification, electrician certification, or any other

mining specialty certification suspended or revoked by another state. If a person has his or her miner certification, foreman certification, electrician certification, or other mining specialty certification probated in another state, the commissioner or the Mining Board may, at his or its discretion, grant the equivalent certification. However, that certification shall be placed on probation in Kentucky until the probationary period in the other state has expired.

(14) The commissioner is authorized and directed to utilize state mine safety specialists, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.

(15) The commissioner may make recommendations to the board as he may deem appropriate. The commissioner shall provide information to the board at the board's request. The commissioner is authorized and directed to utilize state and federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter.

(16) All training and education required by this section may be conducted in classrooms, on the job, or in simulated mines.

**351.107 Requirements for certification as shotfirer.**

(1) A person desiring to obtain experience as a shotfirer may not charge or detonate explosives in an underground mine unless he or she is under the direction and within sight and sound of a certified shotfirer. No person shall charge or detonate explosives within an underground mine unless that person has successfully completed a training program and passed a test administered by the department. The test shall include at a minimum a determination of the person's ability to test for mine gases and to safely handle and detonate explosives in an underground coal mine.

(2) The commissioner shall issue a shotfirer's certificate to the person upon successfully passing the test.

**351.1071 Training program -- Certification as shotfirer and driller for solid blasting.**

(1) No person shall drill coal or detonate explosives within a mine using the method of shooting coal from the solid until that person successfully completes a training program administered by the department and has passed a test prescribed by the commissioner.

(2) No person shall be issued a certificate in accordance with subsection (1) of this section unless he or she presents valid evidence to the commissioner of having one (1) year of practical underground coal mine experience.

**351.108 Superintendent to hold a mine foreman certificate.**

Mine superintendents shall hold a mine foreman certificate issued by the commissioner.

**351.109 Requirements for qualification and certification to perform electrical work -- Written tests.**

(1) An individual is a qualified and certified person, within the meaning of this chapter, to perform electrical work, other than work on energized surface, high voltage lines, if he has at least one (1) year of experience under direct supervision of a qualified electrician in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and he attains a satisfactory grade on each of the series of written tests administered by the department and required in subsection (2) of this section.

(2) The series of written tests shall include, but not be limited to, the following subjects:

- (a) Direct current theory and application;
- (b) Alternating current theory and application;
- (c) Electric equipment and circuits;
- (d) Permissibility of electric equipment;
- (e) Requirements of both federal and state laws; and
- (f) Pertinent sections of the National Electrical Code.

(3) A score of at least eighty (80) percent on each of the written tests shall be deemed to be a satisfactory grade. Recognition shall be given to practical experience in that one (1) percentage point shall be added to an individual's score in each test for each additional year of experience beyond the one (1) year minimum requirement specified in subsection (1) of this section; however, in no case shall an individual be given more than five (5) percentage points for such practical experience.

(4) An individual may, within thirty (30) days from the date on which he received notification from the department of his test scores, repeat those sections on which he received an unsatisfactory score. If further retesting is necessary after this initial repetition, a minimum of thirty (30) days from the date of receipt of notification of the initial retest scores shall elapse prior to such further retesting, whereupon the entire series of written tests shall be retaken.

(5) An individual qualified and certified in accordance with this section shall, in order to retain qualification and certification, satisfactorily complete annually a retraining program approved by the department.

**351.110 Examination prerequisites -- Fees -- Moneys from licenses and examination fees for use of department.**

- (1) The board shall not admit any applicant for certification as a mine inspector, mine safety analyst, electrical inspector, mine safety instructor, mine foreman, or assistant mine foreman to take an examination given by it unless the applicant has the experience required by this chapter, and has submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183, and has presented to the examiner at the time of registration for the examination a United States postal money order or certified check in the amount of fifty dollars (\$50). All money orders or certified checks required herein shall be made payable to the State Treasurer, Frankfort, Kentucky.
- (2) All money paid to the State Treasurer for licenses and fees required by this chapter shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (3) The board may refuse to examine any applicant who cannot readily understand the written English language or cannot express himself intelligently in English, or who is obviously intoxicated.

**351.120 Issuance of certificates -- Form and content -- Classification -- Duty of applicant -- Drug- or alcohol-test-related suspension or revocation of certification or license -- Notification of options -- Reissuance after evaluation, treatment, and testing.**

- (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position, and who has met the requirements for drug- and alcohol-free status.
- (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such.
- (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows:
  - (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and
  - (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman.
- (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.
- (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant.
- (6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. The applicant also shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183. For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination.
- (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.
- (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from

direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.

(9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section.

(10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination and submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183 may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting.

(11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.

(12) The commissioner immediately shall suspend any certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test authorized by KRS 351.182, 351.183, 351.184, 351.185, and 352.180. The commissioner shall, by certified mail, notify the holder of the certification of his or her suspension and of the following:

(a) The right to pursue one (1) of the following options:

1. Appeal the suspension to the Mine Safety Review Commission within thirty (30) days of the notification; or
2. Notify the commissioner of the Department for Natural Resources or the director of the Division of Mine Safety within thirty (30) days of the notification that the holder intends to be evaluated by a medical professional trained in substance treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by KRS 351.182;

(b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the director of the Division of Mine Safety of the holder's intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Division of Mine Safety for a period of not less than three (3) years, and the holder shall remain ineligible for any other certification issued by the Division of Mine Safety during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:

1. Compliance with all training and testing requirements;
2. Satisfying the requirements of KRS 351.182 and 351.183; and
3. Compliance with all orders of the Mine Safety Review Commission; and

(c) The completion of the evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.

(13) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the director of the Division of Mine Safety of his or her intent to comply with subsection (12)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by KRS 351.182 to the division. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the division, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of his or her notification pursuant to subsection (12)(a)2. of this section, the miner's licenses and certifications issued by the division shall be revoked for a period prescribed under KRS 351.990(8). The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional.

(14) If the suspension described in subsection (12) of this section occurs following the miner's first offense as described in this section or KRS 351.184, the notification sent to the miner shall not include the option of notifying the division of the miner's intent to seek an evaluation and treatment. The miner shall only have the right to appeal the suspension to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the suspension, the penalty shall be assessed according to KRS 351.990(8)(b) or (c).

### **351.122 Reciprocity for miners certified in other states -- Requirements -- Reciprocal disciplinary action.**

(1) In lieu of an examination prescribed by law or regulation, the board may enter into a reciprocal agreement with another state regarding the certification of miners. The board may, pursuant to a reciprocal agreement, issue to any person holding a certificate issued by another state a certificate permitting him or her to perform similar tasks in the Commonwealth if:

- (a) The board finds that the requirements for certification in the other state are substantially equivalent to those of Kentucky;
  - (b) The person passes only the applicable part of the examination with regard to Kentucky law which is uniquely different from the other state;
  - (c) The person has submitted proof, in accordance with KRS 351.182, that he or she is drug and alcohol free;
  - (d) The person's retraining is sufficient to meet Kentucky requirements; and
  - (e) The person's certification in Kentucky or in any other state has not been suspended, revoked, or probated.
- (2) Upon receipt of notice from a reciprocal state of a disciplinary action relating to any of the certifications or licenses issued to a miner who also holds corresponding licenses or certifications issued by the Division of Mine Safety, the commissioner shall impose analogous sanctions against the miner's Kentucky licenses or certifications. These sanctions shall terminate upon proof of compliance with the orders from the reciprocal state.

#### **351.125 First-aid training.**

The department shall provide first-aid training incorporating all training required by the state's approved program for emergency medical technicians or the department's mine emergency technician program which is applicable to mines. Each candidate for certification as a mine foreman shall complete the department's first-aid course of instruction and shall pass an examination on the course as a prerequisite for certification. The course of instruction and examination shall have prior approval of the board.

#### **351.127 Employment of certified emergency medical technicians or mine emergency technicians required at underground coal mine.**

- (1) Certified emergency medical technicians or mine emergency technicians shall be employed at every licensed coal mine whose employees are actively engaged in the extraction, production, or preparation of coal. Persons employed as mine emergency technicians shall be trained in a manner established in an administrative regulation promulgated by the department. Persons seeking certification as a mine emergency medical technician or mine emergency technician shall be subject to the following additional requirements:
- (a) All persons seeking certification as a mine emergency technician shall demonstrate drug- and alcohol-free status in accordance with KRS 351.182 and 351.183;
  - (b) The drug and alcohol testing for those seeking certification as mine emergency technicians shall be administered prior to the examination for the certification, in accordance with KRS 351.182 and 351.183; and
  - (c) Certification as a mine emergency technician shall not be issued until the results of the drug and alcohol testing have been obtained. Notification shall be given to the person in accordance with KRS 351.184.
- (2) These emergency medical technicians or mine emergency technicians shall be employed in the following manner:
- (a) At least two (2) emergency medical or mine emergency technicians shall be employed on every shift engaged in the production of coal, and at least one (1) emergency medical or mine emergency technician shall be employed on every nonproduction shift;
  - (b) For underground mines, at least one (1) of the two (2) emergency or mine emergency technicians shall be underground at all times while miners are working in the mines. An additional emergency medical technician or mine emergency technician shall be employed for every additional fifty (50), or any portion thereof, employees per shift who are actively engaged in the extraction, production, or preparation of coal.
  - (3) If these emergency medical technicians or mine emergency technicians are also employed in other capacities at the coal mine, they shall be available for quick response to emergencies and shall have available to them at all times the equipment necessary to respond to emergencies, as prescribed by the commissioner.
  - (4) If the licensee selects existing employees to be trained as emergency medical technicians or mine emergency technicians, the employees selected shall be paid their regular wages during training.
  - (5) Certified emergency medical technicians and mine emergency technicians shall receive annual retraining in the manner established in an administrative regulation promulgated by the department, during which they shall receive their regular wages.

#### **351.1291 Course of instruction for surface coal miners.**

- (1) All inexperienced surface coal miners shall complete a twenty-four (24) hour course of instruction composed of sixteen (16) hours of classroom training and eight (8) hours of mine specifics that is devised or approved by the department in subjects including but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including the statutory rights of miners, safety around bins and hoppers, alcohol and substance abuse education and training, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least forty-five (45) days at a surface coal mine in this Commonwealth.

(2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section, thirty (30) minutes of which shall be dedicated to alcohol and substance abuse education.

(3) One (1) hour of initial substance abuse training and education shall be provided as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement does not apply to a certified person who received the one (1) hour initial substance abuse training and education as part of his or her forty (40) hour or twenty-four (24) hour new miner training.

(4) In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to undergo an additional thirty (30) minutes of alcohol and substance abuse awareness training annually.

(5) Each applicant for a certified surface miner, in addition to meeting the educational requirements of this chapter, shall pass a drug and alcohol test in accordance with KRS 351.182 and 351.183.

(6) The commissioner shall certify all surface coal miners who complete the courses of instruction and show proof of drug- and alcohol-free condition of certification required in this section.

#### **351.130 Duplicate certificates.**

If any person loses his certificate or it is destroyed which was earned under KRS 351.120, he shall apply to the commissioner for a duplicate certificate, including with his application an affidavit stating in full how the certificate was destroyed or misplaced. If the commissioner deems it proper he shall furnish the applicant with a duplicate certificate. Any person applying for a duplicate certificate shall pay a fee of five dollars (\$5) to the State Treasurer.

#### **351.140 Duties and authority of mine inspectors -- Frequency of inspections.**

Each mine inspector shall give his entire time and attention to the duties of his office, which shall consist of the following:

(1) Inspecting mines and aiding, under the direction of the commissioner, in carrying out and enforcing the provisions of the law relating to the inspection of mines;

(2) Training officials and workmen in and about the mines in first aid and mine rescue methods;

(3) Advising officials and workmen in methods pertaining to safety in all its phases and in methods pertaining to the prevention of mine fires and explosions;

(4) Taking charge of mine rescue and recovery work whenever a mine fire, mine explosion or other serious accident occurs within his district, and the commissioner is not present, and assisting in such work in other districts when so directed by the commissioner;

(5) Reopening mines or portions of mines that have been sealed on account of fire or any other cause, when directed by the commissioner to do so;

(6) Inspecting each underground coal mine in his district at least six (6) times a year and all other mines once every six (6) months. For underground coal mines, two (2) of the six (6) general inspections conducted annually shall be full electrical inspections. The commissioner may cause inspections more often if practicable and if funds permit, and whenever any danger to the workmen may exist; making a personal examination of the interior of each mine with respect to ventilation, drainage, roof control, blasting, electricity, escapeways, and general security, and also a personal examination of the outside facilities of the mine; and in gassy mines below the water table, inspections shall be more frequent, and as often as practical whenever any danger to workmen is indicated by a previous inspection. Such inspections shall involve at least two (2) inspectors. The inspectors shall locate themselves in different sections of the mine in order to determine the effectiveness and reliability of the ventilation system. Each section of the mine shall be so inspected;

(7) It shall be permissible for a mine inspector to inspect any coal preparation plant or surface facility of any mining operation of coal including any overland coal belts; and

(8) A mine inspector shall have the express authority to enter upon the premises of and inspect any coal mine, including any overland coal belts, at any reasonable time.

#### **351.150 Reports of mine inspectors.**

(1) Each mine inspector shall each week report in writing to the commissioner of the department the number and condition of all mines inspected by him during the week.

(2) Each mine inspector shall each week deliver to the commissioner of the department a written report showing the condition of each mine inspected by him and, at the same time, shall deliver a copy of such report to the operator or the superintendent of each mine inspected and another copy thereof to the mine committee at such mine so inspected if requested and at the same time each mine inspector shall post a copy of such inspection report on a bulletin board at a prominent place of the operating company or mine where it may conveniently be read by any of the mine employees.

(3) Each mine inspector shall, within fifteen (15) days after the close of each calendar year, file with the commissioner a report of his proceedings during the calendar year, and give such information concerning the mines and mining conditions in his district as is appropriate and required by the commissioner.

**351.160 Annual report of commissioner -- Record and index of inspections and reports -- Certified copies.**

(1) The commissioner of the department shall annually make a report to the Governor and the Legislative Research Commission of his proceedings during the preceding calendar year. The annual report shall be prepared and printed as soon as possible after the close of the calendar year. The annual report shall cover the complete operation of the mines in this Commonwealth during the preceding calendar year, enumerating all accidents occurring in or about any such mines during that year, and giving such other information as the commissioner deems useful, and making such suggestions as he deems important as to further legislation on the subject of mining.

(2) The commissioner shall keep and index a permanent record of all inspections made by himself and of all reports relating to inspection of mines furnished to him by mine inspectors. All such records of the department shall be public records and shall, at all times, be open to the inspection of the public, and shall be laid before the Governor or the Legislative Research Commission upon their request at any time.

(3) The department shall furnish certified copies of any such records, when requested to do so, upon payment of such fee as is generally charged by courts of record for certified copies. Such fee shall be paid into the Treasury of the state.

**351.170 Reports of licensee -- Alcohol and substance abuse reports.**

(1) All reports of any facility licensed pursuant to this chapter shall be made to the director. The licensee of each commercial coal mine shall give at the end of each calendar year accurate information, on blank forms furnished by the commissioner, as to the number of accidents that have occurred, the number of persons employed, the tons of coal mined, and any other related information that the commissioner requests.

(2) The operator or superintendent of each licensed facility shall report, by the close of the next business day, any certified persons who:

(a) Have been discharged for violation of a company's substance or alcohol abuse policies;

(b) Refused to submit to a test required by the company's substance or alcohol abuse policies or KRS 351.182, 351.183, 351.184, 351.185, and 352.180; or

(c) Tested positive and failed to complete an employee assistance program.

**351.173 Notice of possibility of subsidence -- Language required in deed of conveyance.**

(1) Any person may file a notice in the alphabetical cross-index in the county clerk's office in the county where underground coal mining has occurred stating that the mineral has been extracted and that the surface overlying or adjacent to the underground workings may be subject to subsidence. The notice shall be indexed under the name of the current surface owner or lessee of record whose land overlies the underground workings, as well as that of the mineral owner and lessee, and shall be noted on the deed of conveyance in each future conveyance of both the surface and mineral estate. The language in the deed of conveyance shall state the following:

"THE COAL UNDERLYING THIS PROPERTY HAS BEEN EXTRACTED AND THE SURFACE OVERLYING OR ADJACENT TO THE UNDERGROUND WORKINGS MAY BE SUBJECT TO SUBSIDENCE. ANY STRUCTURES ERECTED HEREAFTER SHOULD BE DESIGNED AND CONSTRUCTED SO AS TO PREVENT OR MINIMIZE ANY SUBSIDENCE DAMAGE."

(2) The failure to include the required language in the deed shall not affect the validity of the deed as between the parties or constructive notice upon the recording of the deed.

**351.175 Provisions concerning license to operate mine -- Submissions required for license -- Revocation of license.**

(1) The operation of a coal mine in Kentucky is a privilege granted by the Commonwealth of Kentucky to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this Commonwealth.

(2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the owner, operator, lessee, or licensee of each mine shall procure from the department a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.

(3) The license shall be in printed form as the commissioner may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.

(4) Requests for a license shall be made to the department and shall be accompanied by a United States postal money order or cashier's check drawn in favor of the State Treasurer in an amount established by administrative



regulations of a minimum of one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The license shall be issued when the following are properly submitted to the commissioner:

- (a) The annual report of the licensee and the annual mine map required in KRS 351.170 and 352.450;
  - (b) A certification from the commissioner of the Department of Workers' Claims that the licensee has provided positive proof of compliance with the provisions of KRS Chapter 342;
  - (c) A certification from the commissioner of the Department of Revenue that the licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
  - (d) Mine seal construction plan filed with the state and approved by MSHA;
  - (e) Roof control plan filed with the state and approved by MSHA;
  - (f) The ventilation plan required in KRS 352.020; and
  - (g) An approved emergency action plan required by KRS 352.640.
- (5) The department shall immediately revoke any license if the department receives:
- (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued by the commissioner of the Department of Workers' Claims; or
  - (b) Notice from the commissioner of the Department of Revenue that the licensee is a "delinquent taxpayer" as defined in KRS Chapter 131.
- (6) The commissioner, the director of the Division of Mine Safety, or the mine safety specialist shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a certification of workers' compensation coverage as required under this section.
- (7) The department shall be authorized to seek injunctive relief for any violation of this section. Revocation of a license by the department shall be an administrative function of the department. Appeals from revocation by the department shall be brought in Franklin Circuit Court.
- (8) A license which has been revoked under the "delinquent taxpayer" provision shall not be reissued until a written tax clearance has been received from the commissioner of revenue.
- (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-thirds (2/3) of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

**351.182 Drug and alcohol-free status required for miner certification -- Proof -- Costs of testing -- Breath alcohol device at examination site -- Ten panel urine test.**

- (1) All applicants for certification as new miners and all initial applicants for all other certifications provided for in this chapter shall provide proof of drug- and alcohol-free status prior to certification in accordance with the provisions of this section.
- (2) Proof of drug- and alcohol-free status shall be provided in one (1) of two (2) methods:
- (a) By participation in a drug and alcohol testing program offered by the division and paid for by the applicant, in accordance with this section and KRS 351.183; or
  - (b) By the submission of drug and alcohol test results from other sources, as provided in KRS 351.183(2).
- (3) If a newly certified miner gains employment in the coal industry, the initial employer shall reimburse the certified miner for the cost of one (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185.
- (4) If the applicant is currently certified in any category other than that for which he is applying by the division and the applicant is currently employed in the coal industry, the applicant's employer shall reimburse the applicant for the cost of one (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185.
- (5) The fee charged to an applicant for the drug and alcohol tests offered by the division shall not exceed the actual cost of collection, analysis, and medical review officer (MRO) review.
- (6) The division shall provide, at each site of examinations for the certifications provided for in Chapter 351, a breath alcohol testing device and a person certified in the operation of the breath alcohol testing device. The breath alcohol test shall be administered prior to examination to determine the applicant's alcohol-free status. The division may satisfy the requirement to furnish an alcohol testing device and certified personnel by:
- (a) The use of equipment and appropriately certified personnel of the division;
  - (b) A memorandum of agreement with state or local police agencies for the provision of equipment and appropriately trained personnel at the examination site; or
  - (c) Inclusion of breath alcohol testing as part of the contract to provide drug testing and collection services set out in KRS 351.183(1).
- (7) A breath alcohol concentration of .04 shall be the maximum acceptable level of concentration for participation in the examination and subsequent certification.

(8) Except for an alternative testing protocol provided for post-accident victims under KRS 352.180(5) to (7), the minimum testing protocol acceptable for the establishment of drug-free status for certification under KRS Chapter 351 shall be at least a ten (10) panel urine test that shall include testing for the following substances:

- (a) Amphetamines;
- (b) Cannabinoids/THC;
- (c) Cocaine;
- (d) Opiates;
- (e) Phencyclidine (PCP);
- (f) Benzodiazepines;
- (g) Propoxyphene;
- (h) Buprenorphine;
- (i) Methadone;
- (j) Barbiturates; and
- (k) The remaining panels to be used in the urine test shall be set by order of the Mine Safety Review Commission no later than June 1 of each year.

**351.183 Contracts for specimen collection and laboratory testing services -- Standards, procedures, and protocol -- Criteria for proof from other sources -- Annual publication of certified collection and testing providers.**

(1) The division may contract with qualified companies to provide the collection of samples and administer the required drug and alcohol tests. The contract may provide that the collection of samples or testing be subcontracted, except that the contract shall require:

- (a) The contractor and any subcontractors to follow all standards, procedures, and protocols set forth by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) for the collection and testing required by KRS 351.182 and this section;
- (b) The contractor's or subcontractor's drug-testing protocol shall be a ten (10) panel test described in KRS 351.182(8) and any other test required by order of the Mine Safety Review Commission; and
- (c) The contractor or the subcontractor shall provide a medical review officer (MRO) who shall:
  1. Possess the ability and medical training necessary to verify positive confirmed test results and evaluate those results in relation to an applicant's medical history or other biomedical information; and
  2. Follow all procedures outlined in the SAMHSA Medical Review Officer Manual.

(2) The director of the Division of Mine Safety may accept proof of drug- and alcohol-free status from other sources whose tests conform to the requirements set forth in KRS 351.182(7) and (8) and in accordance with KRS 351.182(2)(b) under the following conditions:

- (a) An applicant shall submit a request for acceptance of his or her drug- and alcohol-free status to the director accompanied by pass/fail results of a drug and alcohol test taken within thirty (30) days prior to the request; and
  - (b) The test results shall have been performed by laboratories certified in accordance with the National Laboratory Certification Program (NLCP) by the United States Department of Health and Human Services Administration's SAMHSA and in accordance with subsection (1) of this section.
- (3) The division shall maintain and publish annually a list of certified specimen collection services and testing laboratories from which it will accept data.

**351.184 Division to notify applicant of test results when granting or denying certification -- Notification of options -- Issuance after evaluation, treatment, and testing -- Right of appeal.**

(1) The results of any testing performed by the division shall be given to the applicant at the time of his or her notification of the granting or denial of certification.

(2) Certification of an applicant shall be denied if any one (1) or more of the following occur:

- (a) The applicant's positive drug test results for any of the substances either listed in KRS 351.182(8) or otherwise required to be tested for by order of the Mine Safety Review Commission are deemed to fail by a medical review officer;
- (b) The applicant's blood alcohol level is above .04 concentration at the time of testing;
- (c) The applicant's test results demonstrate the submission of an adulterated specimen; or
- (d) The applicant refuses to submit to a drug or alcohol test as required by KRS 351.182.

(3) (a) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may:

1. Appeal to the Mine Safety Review Commission within thirty (30) days of receiving the notification required under KRS 351.120(12); or
2. Notify the commissioner of the Department for Natural Resources or the director of the division within thirty (30) days of receiving the notification required under KRS 351.120(12) that the applicant intends to be evaluated by a medical

professional trained in substance abuse treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by KRS 351.182.

(b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the director of the division of his or her intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the division for a period of not less than three (3) years, and the holder shall remain ineligible for any other certification issued by the division during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:

1. Compliance with all training and testing requirements;
2. Satisfying the requirements of KRS 351.182 and 351.183; and
3. Compliance with all orders of the Mine Safety Review Commission.

(c) For the purposes of this subsection, the completion of evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.

(4) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the director of the division of his or her intent to comply with subsection (3)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by KRS 351.182 to the division. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the division, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of the notification required under KRS 351.120(12), the miner's licenses and certifications issued by the division shall be revoked for a period prescribed under KRS 351.990(8). The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional.

(5) If the denial described in subsection (3) of this section occurs following the miner's first offense as described in this section or KRS 351.120, the miner shall not have the option of notifying the division of his or her intent to comply with subsection (3)(a)2. of this section. The miner shall only have the right to appeal the denial to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the denial, the penalty shall be assessed according to KRS 351.990(8)(b) or (c).

**351.185 Confidentiality of drug and alcohol test results -- Exceptions -- Use of results in criminal proceeding against applicant prohibited.**

(1) Records of drug or alcohol test results, written or otherwise, received by the division, its contractors, subcontractors, or other employees are confidential communications and exempt from disclosure under the Kentucky Open Records Act, except as follows:

(a) Where release of the information is authorized solely pursuant to a written consent form signed voluntarily by the person tested. The consent form shall contain the following:

1. The name of the person who is authorized to obtain the information;
2. The purpose of the disclosure;
3. The precise information to be disclosed;
4. The duration of the consent; and
5. The signature of the person authorizing the release of the information;

(b) Where release of the information is compelled by a hearing officer or court of competent jurisdiction pursuant to an appeal taken under KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and 352.390;

(c) Where release of the information is relevant to a legal claim asserted by the applicant;

(d) Where the information is used by the entity conducting drug or alcohol testing when consulting with legal counsel in connection with matters brought under or related to KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and 352.390, or in its defense of civil or administrative actions related to the testing or results; or

(e) Where release of the information is deemed appropriate by the Mine Safety Review Commission or a court of competent jurisdiction in disciplinary proceeding brought under the terms of KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.180, 352.210, and 352.390.

(2) Information on drug and alcohol test results for tests administered pursuant to KRS 351.182, 351.183, 351.184, 351.185, 351.102, 351.103, 351.1041, 351.106, 351.110, 351.120, 351.127, 351.1291, 351.170, 352.010, 352.180, 352.210, and 352.390 shall not be released or used in any criminal proceeding against the applicant.

**351.186 Workers' compensation premium -- Credit for certified drug-free workplace program at coal mine.**

- (1) Any employer who is also a licensee that has implemented a drug-free workplace program certified by the division shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.
- (2) Each insurer authorized to write workers' compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:
  - (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or
  - (b) Apply to minimum premium policies.
- (3) The Department of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug-free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the Department of Insurance determines that five percent (5%) is actuarially unsound.
- (4) The credit on the workers' compensation premium may be applied by the insurer at the final audit.

**351.190 Mine rescue divisions and stations -- Supplies and equipment.**

The commissioner of the department shall partition the coal fields of the state into mine rescue divisions. In each division there shall be a station, the location of which shall be determined by the commissioner, and there shall be kept at each station apparatus, appliances, and supplies for use in the work of rescue and relief upon the occurrence of entrapments, roof falls, inundation of liquids or gases, explosions or mine fires, and for the training of officials and miners in mine rescue work. The commissioner shall provide each station and himself with the necessary instruments, appliances, apparatus, chemicals, trucks, and automobiles, and shall designate one (1) of the inspectors to have charge of each station.

**351.191 Trained mine rescue team to be available within specified driving time of each mine.**

Each underground coal mine operator shall submit documentation to the commissioner that a trained mine rescue team is within sixty (60) minutes' driving time of each of his mines. In the event that a trained mine rescue team is not available as required, the department shall provide a trained mine rescue team which would be available to the mine within sixty (60) minutes' driving time and shall so notify in writing the appropriate official of the United States Mine Safety and Health Administration.

**351.192 Qualified or operator-designated person performing mine rescue acts not liable for damages for such acts.**

Any person who is qualified by a federal or state agency to perform mine rescue planning and recovery operations, including mine rescue instructors and mine rescue team members, and any person designated by an operator furnishing a mine rescue team to supervise, assist in planning, or provide service thereto, who in good faith performs, or fails to perform, any act or service in connection with such mine rescue planning and recovery operations shall not be liable for any civil damages as a result of any such acts or omissions.

**351.193 Safety rights of miners -- Settlement of disputes.**

No miner shall be required to operate any equipment or work in any condition which he reasonably believes to be unsafe. If the miner invokes his or her safety rights under this section, the miner shall have the right to be relieved from the assignment in dispute. The employee may be assigned to correct the condition or may be assigned to other duties until such time as the condition is resolved or corrected. No other miner shall be assigned to perform this job until the condition is corrected. The miner or his authorized representative and the company shall review the condition immediately and attempt to resolve the dispute. Should the miner not have an authorized representative, he may represent himself in the dispute. If the dispute is not settled by the company and the miner or his or her authorized representative, either party reserves the right to call in the commissioner or his authorized representative immediately and the dispute shall be settled on the basis of the inspector's finding with a written copy of his finding given to the company and the miner and his authorized representative. In the event no representative of the miner exists, the employee shall have the right to have the dispute resolved based on the inspector's findings. No disciplinary action shall be taken against a miner by a licensee unless the miner is found by the commissioner or his authorized representative to have acted in bad faith and without good cause in making an allegation as to unsafe equipment or working conditions.

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

- (1) The Mine Safety Review Commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish administrative hearing procedures to be followed in determining if violations of mine

safety laws, including, but not limited to, violations that meet the criteria established in KRS 351.025(1) or (2), have occurred and to establish a process to review recommended orders from any hearing officers acting on behalf of the commission. The procedures shall follow the requirements of KRS Chapter 13B and this chapter.

(2) The chair or a majority of the Mine Safety Review Commission may convene a meeting of the commission at which it shall consider whether to schedule a hearing regarding any licensee, coal operation, or other person involved in the mining of coal.

(3) If the commission determines that there is probable cause to believe that the licensee, coal operation, or other person against whom the department has made allegations of unsafe work practices or other violation of applicable law is guilty of an alleged violation, the commission shall schedule a hearing at which the department shall offer evidence in support of the allegations made by it. The licensee, coal operation, or other person against whom the allegations are made shall be given not less than twenty (20) days' written notice of the charges against him, together with the date, time, and place at which the charges shall be heard, and of his opportunity to be represented by counsel, produce evidence and witnesses on his behalf, and examine the evidence and documents that may be produced against him. The commission may also be represented by counsel and shall not be bound by the technical rules of evidence, but its order shall be based upon competent evidence. Any licensee or other person summoned to appear at a hearing in the manner established in this subsection may, in writing, waive the notice required to be given to him.

(4) The commission may proceed with its hearing of charges made by the department against any licensee, coal operation, or other person who, after being duly notified in accordance with the requirements of this section, fails to appear at or participate in the hearing and who fails to assert any legitimate basis for the failure.

(5) Within ninety (90) days after hearing, the commission shall issue an order in which it sets out its determinations concerning each matter coming before it. Copies of the order shall be provided to all parties to the hearing. The department shall carry out or enforce, as appropriate, the order of the commission, which may include, though not be limited to, the imposition of civil penalties, revocation, suspension, or probation of the mine license or the miner's certification.

(6) The commission may modify a civil penalty or fine established under this chapter, under criteria established by the commission by administrative regulations.

(7) In assessing monetary penalties within the limits provided in KRS 351.025, the commission shall consider the operator's history of previous violations, the appropriateness of the penalty to the size of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation, and whether a penalty has been imposed by the Federal Mine Safety and Health Act for a violation that arose out of the same set of facts or circumstances.

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

## **Mine Safety Analysis**

### **351.241 Statement of General Assembly.**

The General Assembly hereby finds and declares the following:

- (1) Thousands of Kentuckians enter underground mines each day to produce coal that is so vital to the economy of our nation and the well-being of its people.
- (2) The underground coal mine is a hazardous environment that constantly requires the highest degree of safety consciousness on the part of every individual.
- (3) Despite training and a variety of safety efforts, each year coal mines continue to take a heavy human toll: large numbers of miners are injured; many are left permanently disabled; and a lesser number pay the ultimate price-- death.
- (4) Many activities are performed by a variety of persons; therefore, each coal miner is expected to learn and perform a large number of tasks.
- (5) Miners frequently become engaged in unfamiliar tasks when substituting for others or assisting a fellow worker.
- (6) The American zeal for work and productivity very frequently causes the miner to give second priority to normal safety measures and precautions.
- (7) Studies have demonstrated that experienced persons observing and providing on-the-job counseling to individual miners regarding their work habits can bring about a significant reduction in underground mine accidents and fatalities.

### **351.242 Mine safety analysis program -- Responsibility and powers of mine safety specialists.**

- (1) There is hereby created in the department a mine safety analysis program.
- (2) Mine safety specialists employed in the department and conducting underground or surface mine safety analysis shall satisfy the applicable requirements established in KRS 351.090.
- (3) A primary responsibility of the mine safety specialist is to prevent mine accidents and fatalities by observing and evaluating the work habits of persons involved in the direct production of coal and to contact, advise, and assist these persons in correcting their unsafe or potentially hazardous actions.
- (4) Each time a mine safety specialist enters a mine to perform mine safety analysis, he or she shall confer with the foreman as to the conditions of the mine and the work practices of the employees.
- (5) The mine safety specialist shall keep mine management, representatives of the employees, and the commissioner informed about all hazardous conditions and all matters which may improve the safety of mines.
- (6) The division shall assist the department in assessing the effectiveness of miner training programs.
- (7) The commissioner shall at his or her discretion assign mine safety specialists to all mines in the state taking into consideration such factors as the history of accidents at the mine, experience of the workforce, physical condition of the mine, and size of the mine.
- (8) The commissioner may coordinate the assignment of mine safety specialists with the appropriate federal authorities to minimize duplication of accident prevention efforts.
- (9) The commissioner shall report annually to the General Assembly and to the Governor on the effectiveness of the mine safety specialists in improving mine safety.

### **351.243 Responsibilities and duties of mine safety analysts not to limit those provided in KRS Chapters 351 and 352 for other persons.**

The responsibilities and duties assigned to the mine safety analyst shall not be construed to limit in any way the responsibilities and duties provided in KRS Chapters 351 and 352 for any other person.

## **Blasting Regulations**

### **351.310 Definitions for KRS 351.315 to 351.375.**

As used in KRS 351.315 to 351.375 unless the context clearly indicates otherwise:

- (1) "Explosives" means any chemical compound or other substance or mechanical system intended for the purpose of producing an explosion, or that contains oxidizing and combustible units or other ingredients in such proportions or quantities that ignition by detonation may produce an explosion, capable of causing injury to persons or damage to property;
- (2) "Blasting operation" means the use of explosives in the surface blasting of stone, rock, ore or any other natural formation, or in any construction or demolition work, but shall not include its use in agricultural operations;
- (3) "Blaster" means a person licensed to fire or detonate explosives in blasting operations;
- (4) "Charge" means a quantity of explosive or equivalent that is to be detonated within a period of five (5) seconds;
- (5) "Subcharge" means a quantity of explosive or equivalent that is to be detonated within a period of less than eight (8) milliseconds;
- (6) "Detonation time" means the time at which the detonation is initiated;
- (7) "Department" means the Department for Natural Resources; and
- (8) "Commissioner" means the commissioner of the Department for Natural Resources.

### **351.315 Licensing of blaster -- Training requirements.**

- (1) No person shall detonate explosives in any blasting operation in which more than five (5) pounds of explosives or the equivalent are used in a single charge or in which less than five (5) pounds of explosives are used by a regular user, excluding blasting for agriculture and underground coal, unless he is licensed by the department. The department shall issue a license to use explosives to any person who:
  - (a) Has worked in blasting operations for at least twenty-four (24) months under the immediate supervision of an experienced blaster or has worked in blasting operations for twelve (12) months and has completed a formal training program approved by the department; and
  - (b) Has passed an examination prescribed by the department which shall test the examinee's practice of blasting operations and the storage, moving, handling, and detonation of explosives.
- (2) Application for license shall be in writing upon a form furnished by the department and shall be accompanied by a photograph of the applicant. If the applicant is successful in passing the examination, a license indicating his competency to detonate explosives shall be issued upon the payment of a fee of twenty-five dollars (\$25).
- (3) Any person who is a licensed blaster in another state where the qualifications prescribed at the time of licensing were, in the opinion of the commissioner, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the department are granted to licensees of the Commonwealth, may be granted a license without an examination, upon the payment of a fee.
- (4) Each blaster shall be required to renew his license every three (3) years by application to the department, which application shall be accompanied by a fee and subject to the following training requirements:
  - (a) Each applicant for renewal of a Kentucky blaster's license shall furnish proof that during the preceding three (3) years, the blaster annually has attended a minimum of eight (8) hours of department-approved blaster's training. No more than four (4) hours of the annual blaster training may be attributed to attending a conference unless otherwise approved by the department; and
  - (b) Each applicant for renewal of a limited Kentucky blaster's license shall furnish proof that during the preceding three (3) years, the blaster has attended a minimum of four (4) hours of blaster's training approved by the department.
- (5) The department shall not issue a blaster's license to any person not entitled to transport or receive explosives under existing federal law, including persons who:
  - (a) Are less than twenty-one (21) years of age; or
  - (b) Have been convicted in any court of a crime punishable by imprisonment for a term exceeding one (1) year, unless the conviction has been specifically exempted by the United States Bureau of Alcohol, Tobacco and Firearms or its successor.
- (6) All fees provided in this section shall be set by the department by administrative regulation; however, the fee for an application shall not exceed forty dollars (\$40), the fee for license renewal shall not exceed sixty dollars (\$60), and the fee for reciprocal licensing shall not exceed sixty dollars (\$60).
- (7) The commissioner may suspend any license for due cause, but no license may be revoked until the licensee has been granted adequate opportunity for a hearing conducted in accordance with KRS Chapter 13B.

### **351.325 Classification of blasters.**

The department may institute classifications of blasters for the purpose of insuring adequate skill in different types of blasting operations. Classification will be determined by passage of a corresponding examination.

**351.330 Requirements governing blasting operations.**

- (1) Blasting of explosives for use in the neighborhood of any public highway, stream of water, dwelling house, public building, school, church, commercial or institutional building, pipeline, or utility shall be done in accordance with the provisions of this section, and rules and regulations promulgated by the department.
- (2) Where necessary in a blasting operation, the department may require that the operator submit a blasting plan to the department for approval.
- (3) In all blasting operations, except as hereinafter otherwise provided, the maximum peak particle velocity of the ground motion in any direction shall not exceed two (2) inches per second at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, and the particle velocity at such location immediately after a period of one (1) second following the peak particle velocity produced by any charge shall not continuously exceed one-half (1/2) inch per second.
- (4) Blasting operations without instrumentation will be considered as being within the limits set forth in this subsection if such blasting operations are conducted in accordance with rules and regulations of the department establishing the maximum amount of explosives to be used in a single charge and in a single subcharge within specified distances from any location provided by subsection (1) of this section. No more than 40,000 pounds of explosives may be used in any charge except with the approval of the commissioner. Regulations promulgated by the department pursuant to this subsection shall be in such terms that compliance therewith will assure compliance with the provisions of subsection (3) of this section.
- (5) No two (2) consecutive subcharges containing the maximum permitted by the department pursuant to this subsection shall have a detonation time separated by less than eight (8) milliseconds, except that if the amount of explosive used in any subcharge is less than maximum permitted by the department pursuant to subsection (4) of this section, the time delay between detonation times may be decreased in the same ratio.
- (6) Any blasting operation may be conducted without reference to any maximum amount or period provided by or pursuant to subsection (4) of this section if the operator of such blasting operation demonstrates by instrumentation that maximum particle velocity of the ground motion in any direction does not exceed the limits provided in subsection (3) of this section.
- (7) Instruments for determining particle velocity as set forth in this subsection shall be limited to such specific types of devices as shall have been expressly approved by the department and the commissioner or his duly authorized agent may enter upon any premises for the purpose of conducting or supervising any necessary instrumentations provided by KRS 351.315 to 351.375.
- (8) When blasting operations are contemplated which would result in ground vibrations that would have a particle velocity in any direction in excess of two (2) inches per second at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, blasting operations may proceed after receiving written consent from the property owner or owners affected.
- (9) When blasting operations, other than those conducted at a fixed site as a part of any industry or business operated at such site, are to be conducted within the vicinity of a pipeline or public utility, the blaster or person in charge of the blasting operations shall take due precautionary measures for the protection of the pipeline or utility, and shall give adequate notice to the owner or his agent that such blasting operations are intended. The blaster shall be subject to regulations promulgated by the department concerning such a blasting operation.
- (10) Blasting operations near streams shall be prohibited in all cases where the effect of the blasting is liable to change the course or channel of any stream without first obtaining a permit from the department which has been approved by the Division of Water in the Energy and Environment Cabinet.
- (11) Blasting operations shall not be conducted within eight hundred (800) feet of any public highway, unless due precautionary measures are taken to safeguard the public.
- (12) Mudcapping in blasting operations shall be permitted only where it would endanger the safety of the workers to drill the rock or material to be blasted. If mudcapping is necessary, no more than ten (10) pounds of explosives shall be used for each charge.
- (13) When the use of detonating cord would cause severe air blast the department may cause all trunk lines to be covered by five (5) to six (6) inches of loose earth.
- (14) In blasting operations, flying rocks shall not be allowed to fall greater than one-half (1/2) the distance between the blast and a dwelling house, public building, school, church, or commercial or institutional building. Protective material shall be used to insure this limit.
- (15) When a blast is about to be fired, ample warning shall be given to allow all persons to retreat to a safe place, and care shall be taken to ascertain that all persons are in the clear. Each operator shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area. The operator shall inform all employees at the operation as to the established procedure.
- (16) No person shall use explosives in such manner that safety to persons or property is threatened.



(17) The two (2)-inch-per-second maximum peak particle velocity as specified in subsections (3) and (8) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. However, the department shall have the authority to promulgate regulations requiring more restrictive levels of maximum peak particle velocity when necessary to maintain consistency with federal statutes or regulations.

**351.335 Rules and regulations -- Authority of commissioner or his representative.**

(1) The department shall have the authority for promulgating regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives including, but not limited to, airblasts, preblast surveys, and blasting schedules, and the maintenance of such explosives which has a direct bearing on safety to life and property, and any other rules and regulations necessary to effectuate the provisions of KRS 351.315 to 351.375 or which are consistent with the provisions of the Federal Surface Mining Control and Reclamation Act of 1977, and amendments thereto, pertaining to blasting or explosives, or any rule or regulation promulgated thereunder pertaining to blasting or explosives. No portion of KRS 351.315 to 351.375 shall apply in any manner to the manufacture, transportation, sale, storage, possession, or use of:

- (a) Loaded ammunition for use in small arms or other weapons; or
- (b) Propellant powders for use in small arms or other weapons; or
- (c) Primers for small arms ammunition; or
- (d) Any other component part of small arms ammunition; or
- (e) Tools, equipment, or devices for the manufacture of small arms ammunition; or
- (f) Grades of blackpowder suitable primarily for use in firearms.

(2) To promote compatible, uniform, and consistent laws and regulations concerning blasting, all local ordinances, rules, and regulations concerning blasting and explosives promulgated by units of local government within the Commonwealth shall be reviewed and approved, by the department, prior to implementation. Any not so approved shall be invalid. Any local ordinance, rule, or regulation in force on June 19, 1976, shall become invalid, null, and void one hundred twenty (120) days after June 19, 1976, unless it is submitted to the department and is approved as being consistent with the provisions of this section.

(3) In order to carry out the purposes of KRS 351.315 to 351.375, the commissioner or his authorized representative shall have the authority:

(a) To enter without delay and advance notice any place where explosives are in use or stored or where blasting records are kept, during regular working hours and at other reasonable times in order to inspect such places, question any explosive user or seller for the purpose of ascertaining compliance or noncompliance with KRS 351.315 to 351.375.

(b) To administer oaths, take depositions, conduct hearings, take photographs, review any and all blasting records, and secure any other evidence deemed necessary to evaluate any safety hazard in KRS 351.315 to 351.375 or regulations issued pursuant thereto.

(4) If an explosive user or seller refuses such entry, then the commissioner or his authorized representative may apply to the Franklin Circuit Court, or to the Circuit Court within the county wherein the premises to be entered are located, for an order to enforce the right of entry.

(5) If, during the course of a lawful inspection, the commissioner or his authorized representative discovers explosives stored or kept in an unlawful manner and such unlawfully stored or kept explosives constitute an imminent and substantial danger to life or property, then the commissioner or his authorized representative may, upon proper affidavit before a magistrate with authority and jurisdiction to issue search warrants, obtain a warrant authorizing seizure of such unlawfully stored or kept explosives and thereby seize and store such explosives in a lawful and safe manner.

(a) No warrant pursuant to this section shall be issued unless the commissioner or his authorized representative has made arrangements with public or private sources for the lawful and safe storage of the explosives to be seized.

(b) No warrant pursuant to this section shall be issued upon an affidavit that does not aver that an arrangement has been made between the commissioner or his authorized representative and public or private sources for the lawful and safe storage of the explosives to be seized.

(c) No warrant pursuant to this section shall be issued upon an affidavit that does not specifically state the place in which the explosives are to be stored in terms of city, county, street address, and name of person, company, or agency accepting the explosives for storage.

(d) Any owner or person entitled to lawful possession of explosives seized pursuant to this section shall be entitled to recovery of the seized explosives upon written or verbal notification to the commissioner or his authorized representative stating his capability to lawfully and safely store the seized explosives, and upon an inspection by the commissioner or his representative of his storage facilities and methods that reveals his capability to lawfully and safely store the explosives.

(e) The commissioner or his authorized representative shall make the inspection within five (5) days of receipt of said notification.

(f) If the commissioner or his authorized representative receive no communication from the owner or person entitled to lawful possession of the seized explosives within thirty (30) days after the seizure of such explosives, then the commissioner or his authorized representative may dispose of the seized explosives in a safe and lawful manner.

**351.345 Revocation of license -- Hearing.**

- (1) The commissioner, before revoking any license shall set the matter down for a hearing to be conducted in accordance with KRS Chapter 13B.
- (2) No person shall blast once his license has been revoked by the department.

**351.350 Citation for violation -- Action against violator.**

- (1) If upon inspection an authorized representative of the commissioner finds that an explosive user or seller has violated any requirement of KRS 351.315 to 351.375, a citation shall be issued to the violator. Each citation shall describe the alleged violation, establish the time period permitted for correction by fixing a reasonable date by which the alleged violation shall be eliminated, if applicable, and propose the civil penalty to be paid. If within fifteen (15) working days from the receipt of the citation the explosive user or seller fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed a final order and not be subject to review by any court or agency.
- (2) If the explosive user or seller notifies the commissioner that he intends to challenge a citation issued under KRS 351.315 to 351.375, then it shall be the duty of the department or the Attorney General upon the request of the commissioner, to bring an action for the recovery of the penalties provided for herein.
- (3) It shall be the duty of the Attorney General, upon the request of the commissioner, to bring an action for a restraining order, temporary or permanent injunction against any operator or other person violating or threatening to violate any of the provisions of KRS 351.315 to 351.375.

**351.355 Notification of accident -- Investigation.**

Whenever serious injury, as defined in KRS 500.080, or loss of life occurs in a blasting operation, the blaster shall immediately give notice forthwith to the department stating the particulars of the accident. To aid in making an investigation of the accident, the commissioner may compel the attendance of witnesses and administer oaths.

**351.360 Records required.**

A record of each blast shall be kept. All records including seismograph reports shall be retained at least five (5) years and shall be available for inspection by the department and shall contain such data as the commissioner determines.

**351.365 Supplier of explosives to keep register and to register with department.**

Any person who sells, lends, or gives any explosives or blasting agents shall keep a register showing the amount sold, lent, or given, the date of the sale, loan, or gift and for what purpose it is to be used. Such person shall also be required to register with the department.

**351.367 Permit to purchase, receive, or take possession of explosives -- Procedures -- Restrictions -- Records.**

- (1) No person, firm, association, or corporation shall purchase, receive, or take possession of explosives without first obtaining a permit from the department.
- (2) The application for a permit to purchase, receive, or take possession of explosives shall be on a form prescribed by the department and shall be accompanied by an application fee of twenty dollars (\$20). The application shall indicate the applicant's name, address, type of business, the location at which the explosives will be used and stored, and the purpose for which the explosives will be used. On those operations for which licensed blasters or certified shotfirers are required, their names and license numbers or certification numbers shall be included on the application.
- (3) Any person, firm, association, or corporation who procures a license from the department to operate a coal or clay mine, pursuant to KRS 351.175, and who at the time of application for license requests a permit to purchase, receive, or take possession of explosives, shall be issued a permit by the department without cost to the applicant.
- (4) Permits to purchase, receive, or take possession of explosives shall be valid for a period not to exceed one (1) year from the date of issue and shall not be transferable.
- (5) Permits shall be issued only to those persons, firms, associations, or corporations who have proper facilities to store explosives, or to those who provide to the department a written plan documenting the manner in which any excess explosives shall be handled and returned to proper storage facilities.
- (6) Explosive materials shall not be sold, given, delivered, or transferred to any person not possessing a valid permit to purchase or receive them.

(7) Anyone who sells, gives, or distributes explosives shall maintain accurate records for each sale or gift of explosives, listing the name, address, and permit number of the person or company receiving the explosives and the quantity and types of explosives received.

(8) The commissioner may suspend a permit for a period of twenty (20) days for due cause; however, a permit may not be revoked until completion of a hearing, which shall be conducted in accordance with KRS 351.345.

(9) Explosives which are transferred, sold, or distributed, for the purpose of resale, by a registered explosive dealer or manufacturer to another registered dealer or manufacturer shall be exempt from the provisions of this section.

**351.370 Purchase of explosives.**

Any person who is a resident of this Commonwealth and who uses explosive materials in the conduct of business or occupation may lawfully purchase explosive materials from a seller located or residing in a state contiguous to this Commonwealth; provided, such person is properly licensed or registered under KRS 351.315 to 351.375.

**351.375 Restriction of sale and use of hazardous explosives.**

The department may promulgate regulations restricting the sale and use of certain hazardous explosive compounds including, but not limited to, liquid nitroglycerin, fulminate of mercury, and lead azide.

**351.380 Agreements with Natural Resources and Environmental Protection Cabinet.**

The department shall have the authority to enter into agreements with the Natural Resources and Environmental Protection Cabinet for the purpose of the administration of state laws and regulations pertaining to the use of explosives in surface mining activities.

## Penalties

### 351.990 Penalties.

(1) Any person who violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 shall be subject to a civil fine not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for each violation.

(2) Any person who willfully violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 which has become final shall be guilty of a Class A misdemeanor.

(3) Any person who violates any of the provisions of KRS 351.330(16) shall be guilty of a Class B misdemeanor.

(4) Any person who violates any of the provisions of KRS 351.345(2) shall be guilty of a Class D felony.

(5) Any operator who fails to obtain his license as required by KRS 351.175 shall be guilty of a Class A misdemeanor as defined in KRS 532.090. Each day the mine is operated without a license constitutes a separate offense. Venue for the offenses shall lie in the county in which the offense occurred.

(6) Any operator operating a mine with knowledge that the mine has been placed under a valid closure order pursuant to KRS 351.175 shall be guilty of a Class D felony. Jurisdiction shall lie in the Circuit Court of the county in which the offense occurred.

(7) Any blasting operation that results in the death or serious physical injury of a person may be subject to a civil fine not more than twenty thousand dollars (\$20,000). For the purposes of this subsection, "serious physical injury" means an injury which has a reasonable potential to cause death.

(8) Any person who fails a drug or alcohol test required by KRS 351.182, 351.183, 351.184, 351.185, or 352.180 shall be subject to the following penalties if an appeal to the Mine Safety Review Commission is chosen and the appeal is not successful:

(a) A first offense shall result in probation, suspension, or combination of both, as well as other conditions and time constraints as ordered by the Mine Safety Review Commission. During this time, the person shall be ineligible for any license or certification issued by the division. All licenses and certifications shall be restored upon compliance with the orders of the Mine Safety Review Commission. The failure to pursue an appeal will result in revocation of all licenses or certifications issued by the division for three (3) years;

(b) A second offense shall result in the revocation of all certifications and licenses issued by the division for a period of five (5) years. During this time, the person shall be ineligible for any license or certification issued by the division. Certifications and licenses revoked under this provision may be reissued by:

1. Compliance with all training and testing requirements;
2. Satisfying the requirements of KRS 351.182 and 351.183;
3. Compliance with all orders of the Mine Safety Review Commission; and

(c) A third offense shall result in the permanent revocation of all licenses and certifications issued by the division. The person shall be permanently ineligible for licenses and certifications issued by the division.

The Mine Safety Review Commission shall not have the authority to reconsider any order permanently revoking a miner's license or certifications issued by the division if the commission's order is final unless, at the time of the entry of the order, the miner was incarcerated or hospitalized, or the miner did not receive actual notice of the motion or other filing seeking permanent revocation, or did not actually receive notification by the commissioner of the Department for Natural Resources pursuant to KRS 351.120.

### 351.9901 Moratorium ending April 8, 1996, on levying of mandatory fines and penalties pursuant to KRS 351.990 -- Exceptions.

Notwithstanding any provision of this chapter to the contrary, there shall be, beginning on April 8, 1994, a two (2) year moratorium on the levying of any mandatory fines or penalties pursuant to KRS 351.990 against the operator or miner who violates any provision of this chapter, except the two (2) year moratorium shall not apply to the penalty provisions of KRS 351.990(1), (2), (3), (4), (5), and (6).

**KENTUCKY REVISED STATUTES****Division of Mine Safety****KRS Chapter 352**

- |         |  |         |  |
|---------|--|---------|--|
| 352.010 | Definitions.   | 352.280 | Examination of mine by properly certified person -- Duties -- Frequency of examinations.   |
| 352.020 | Methods of ventilation --Amount of air required.   | 352.290 | Record book to be kept by fire boss -- Report of danger -- Accessibility of records to mine inspector and miner. Accessibility of records to mine inspector and miner. |
| 352.030 | Number of persons permitted to work in same air current or split ventilation -- Repair.  | 352.300 | Stations for fire bosses -- Persons not to pass or remove danger signals.  |
| 352.040 | Working places not to be driven in advance of air current.   | 352.310 | Suspension of fire boss -- Revocation of certificate.  |
| 352.045 | Cutting or welding inby last open break prohibited.  | 352.320 | Mine foreman -- Assistants.  |
| 352.050 | Permissible rating for underground machinery -- Transportation of mining equipment.  | 352.330 | General duties of mine foreman -- Duty of operator.  |
| 352.060 | Rock-dusting.  | 352.340 | Examination of mine by mine foremen or assistants -- Removal of dangers -- Record.   |
| 352.070 | Checking employees in and out.   | 352.350 | Mine foreman to notify operator or superintendent of dangers -- Duties as to reports -- Compliance with inspector's recommendations.                                   |
| 352.080 | New or additional openings -- Map to be filed.   | 352.360 | Duty of mine foreman as to breakthroughs, measurement of air current, designation of escapeways and installation of man doors.   |
| 352.090 | Abandoned parts of mine to be posted -- Sealing.   | 352.371 | Boreholes in advance of working face required.   |
| 352.100 | Abandoned mine not to be entered -- Exception.   | 352.380 | Death or resignation of mine foreman.  |
| 352.110 | Mines to have two openings -- Exception -- Condemnation of land for opening.   | 352.390 | Revocation of certificates -- Procedure.   |
| 352.120 | Stairway or hoisting devices in shafts -- Passageways to be unobstructed -- Direction signs --Height and width of escapeway outlets. | 352.400 | Mine rules.  |
| 352.130 | Safety and hoisting devices in shafts -- Certified hoistman.   | 352.410 | Duties of mine superintendent and operator.  |
| 352.133 | Approved self-rescuer devise.  | 352.420 | Required notice to commissioner.   |
| 352.135 | Lifeline cords.  | 352.430 | Inspection and closing of mines by department Hearings.  |
| 352.140 | Drum runners and engineers -- Operation of cages and cars.   | 352.440 | Appeal by miners from inspection by mine inspectors.   |
| 352.145 | Restrictions on work where hazardous conditions exist.   | 352.450 | Map of mine to be filed annually -- Additional maps.   |
| 352.150 | Provisions concerning haulage roads, transportation of men, and first-aid equipment.   | 352.460 | Procedure when no map filed or map filed incorrect.  |
| 352.161 | Examination of conveyor belts.   | 352.470 | Certification of map.  |
| 352.170 | Safety of electric lamps required -- Unauthorized devices for making lights and fires forbidden.                                     | 352.480 | Duplicate maps -- Survey of abandoned or closed mine.  |
| 352.175 | Miners required to wear safety glasses.  | 352.490 | Mine not to extend within twenty-five feet of property line -- Liability for damages.  |
| 352.180 | Accidents in mine -- Notice, investigation, assistance, and records.   | 352.500 | Rights of adjoining owners.  |
| 352.190 | First-aid equipment.   | 352.510 | Mining near oil or gas wells -- Hearing.   |
| 352.201 | Roof control plan.   | 352.540 | Payment of miners.   |
| 352.210 | Conduct in mine -- Intoxication, alcoholic beverage or controlled substance prohibited.  | 352.550 | Coercion of trade of miners prohibited.  |
| 352.220 | Electricity in mines and surface installations.  | 352.630 | Telephone service or equivalent two-way communication facilities -- Locations -- Alarms.   |
| 352.230 | Use of electrical face equipment.  | 352.640 | Emergency action plans -- Components -- Copies -- Training -- Evacuation and firefighting programs.  |
| 352.241 | Explosives and blasting devices in mines.  | 352.650 | Mine maps -- Posting -- Escape drills -- Frequency -- Locations -- Information.  |
| 352.251 | Magazines for storage of explosives -- Requirements for construction and operation.  | 352.660 | Prohibition of termination or disciplining of miners for reporting unsafe mines or violations.   |
| 352.260 | Shotfirers -- Solid blasting.  |         |  |
| 352.270 | Storage of oils or similar flammable material.   |         |  |

**KRS Chapter 352****352.010 Definitions for chapter.**

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
  - (b) "Active workings" means all places in a mine that are ventilated and inspected regularly;
  - (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
  - (d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
  - (e) "Board" means the Mining Board created in KRS 351.105;
  - (f) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
  - (g) "Commissioner" means commissioner of the Department for Natural Resources;
  - (h) "Department" means the Department for Natural Resources;
  - (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
  - (j) "Director" means the director of the Division of Mine Safety;
  - (k) "Excavations and workings" means the excavated portions of a mine;
  - (l) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;
  - (m) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
  - (n) "Gassy mine." All underground mines shall be classified as gassy or gaseous;
  - (o) "High voltage" means any voltage of one thousand (1,000) volts or more;
  - (p) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical injury before the condition or practice can be abated;
  - (q) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;
  - (r) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
  - (s) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
  - (t) "Low voltage" means up to and including six hundred sixty (660) volts;
  - (u) "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;
  - (v) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
  - (w) "Mine foreman" means a certified person whom the licensee, mine manager, or superintendent places in charge of the workings of the mine and of persons employed therein;
  - (x) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
  - (y) "NAD 83" means the North American Datum, 1983 version, in feet units;
  - (z) "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;
  - (aa) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
  - (ab) "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;
  - (ac) "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any oncoming shift;

- (ad) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
  - (ae) "Serious physical injury" means an injury which has a reasonable potential to cause death;
  - (af) "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
  - (ag) "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal Conical map projection with double standard parallels on the North American Datum, 1983 version, as established in 10 KAR 5:010;
  - (ah) "Slope" means an inclined opening used for the same purpose as a shaft;
  - (ai) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
  - (aj) "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
  - (ak) "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;
  - (al) "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;
  - (am) "Working place" means the area of a coal mine in by the last open crosscut;
  - (an) "Working section" means all areas of a coal mine from the loading point to and including the working faces; and
  - (ao) "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.
- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 and shall not apply to electrical facilities owned, operated, or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESC) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property.

### **352.018 Required maps and plans -- Format.**

All maps and plans required under this chapter shall be submitted by the coal operator providing coordinates in feet units using NAD 83, with Single Zone Projection, as those terms are defined in KRS 352.010.

### **352.020 Mine ventilation plans -- Methods of ventilation -- Amount of air required -- Plan requirements.**

- (1) A mine ventilation plan and any revision of an existing mine ventilation plan shall be suitable to the ventilation conditions and mining system of each mine. The mine ventilation plan and any revisions to the mine ventilation plan approved by the United States Mine Safety and Health Administration shall be submitted to the director or his or her authorized representative and incorporated into the license. All mine ventilation plans shall be set forth in printed form. The mine ventilation plan shall require the air quality throughout the mine to contain at least nineteen and one-half percent (19.5%) oxygen and not more than one-half of one percent (0.5%) of carbon dioxide, and the volume and velocity of the air current shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases and dust, smoke, and fumes. A copy of the mine ventilation plan and any revisions to that plan shall be available to the miners and their representatives.
- (2) The ventilation of all underground coal mines shall be produced by means of mechanically operated fans located outside the mine in fireproof housing and offset at least fifteen (15) feet to one (1) side or above the opening, protected by explosion doors or weak walls and arranged so that ventilating current may be reversed if necessary. The fan shall be installed so as to prevent recirculation of mine air. The main fan shall be operated from a power circuit independent from the mine circuit. If inside auxiliary fans are required to ventilate working places the commissioner must first approve the installation.
- (3) The licensee, superintendent, or foreman of every coal mine worked by shaft, slope, or drift shall provide and maintain for every mine two (2) separate and distinct escapeways, one (1) of which is vented by the intake air. However, if a mine was originally licensed prior to January 1, 1990, the commissioner may approve an alternate ventilation plan. Each active working section shall be ventilated by a separate split of intake air. In all mines the

quantity of air passing through the last open crosscut between the intake and return in any pair or sets of entries shall be not less than nine thousand (9,000) cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces from which coal is being cut, mined, or loaded in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand (3,000) cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand (9,000) cubic feet of air per minute if at least nine thousand (9,000) cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases.

(4) All mines shall maintain at least nine thousand (9,000) cubic feet of air per minute at the points mentioned in subsection (3) of this section. The commissioner shall have the authority to require additional air in any mine when he deems it necessary for the safety of the employees.

(5) When the air from a split has passed through and has ventilated all the working places in an air split of a mine it shall then be designated as return air. Return-air courses shall not be designated as primary escapeways.

(6) As working places advance, breakthroughs for air shall be made not more than ninety (90) feet apart, except that where longwall or modern systems of mining are used the commissioner or his authorized representative may approve a greater distance between breakthroughs or the method of ventilating such longwall or modern systems of mining. If any breakthroughs between intake and return airways are not required for the passage of air or the travel of equipment, they shall be closed with stoppings. All permanent stoppings shall be substantially built with suitable incombustible or fire resistant material subject to the approval of the mine inspector so as to keep the working places well ventilated. All brattice cloth and ventilation tubing shall be flame resistant. Doors on the main haulways shall be avoided where practicable, and overcasts, built of concrete or other suitable material and of ample strength, shall be adopted. Where doors are used they shall be built in a substantial manner, and shall be hung so as to close automatically when unobstructed.

(7) In a mine where methane can be found to an extent of one percent (1%) or more on the return of any one (1) split, the mine safety specialist, with the approval of the commissioner, may require the mine to be ventilated by the exhaust system, requiring the haulage roads and all feed wires to be located on the intake air and the electrical system to be so arranged that no wires carrying electrical current shall be on return air. A period of not more than ninety (90) days from date of notification shall be allowed to make the changes required.

(8) The ventilation plan shall require all fans utilized in the ventilation plan to be in continuous operation unless the fan must be turned off for repairs or maintenance, during which time all persons must be withdrawn from the mine. After the mine fan is restarted following the completion of repairs or maintenance, it must be in operation for a sufficient period to ensure air quality and the equalization of the mine atmosphere. Within fifteen (15) minutes after a fan has been unintentionally stopped, all miners must begin withdrawing from the mine. If the fan is restarted before the miners reach the surface, the miners shall remain at the point of their retreat, and the area inby shall be preshifted prior to the miners returning to the section.

### **352.030 Number of persons permitted to work in same air current or split-ventilation -- Repair.**

(1) As many as sixty (60) persons may work in the same air current or split, and with the approval of the mine inspector and the commissioner, as many as eighty (80) persons may work in the same air current. Each active section in a mine shall be ventilated by a separate split of intake air. Every mine, and all portions thereof, shall be ventilated by one (1) or more currents of air, which shall contain not less than nineteen and one-half percent (19.5%) of oxygen, nor any dangerous quantities of flammable gas, nor any harmful amount of poisonous gases or dust, when the current of air enters into each split. The ventilation shall be sufficient to prevent methane accumulations, so far as practicable, and to keep the methane percentage in the return of any split to not more than two percent (2%).

(2) The ventilating current shall be circulated through the haulageways, travelways, and airways to reach all portions of the mine, except sealed sections; and it shall be circulated through the entries and rooms around the ends of line brattice and along pillar lines. It shall be conducted to the last breakthrough, or to the working faces if required, by means of stoppings, check doors, curtains, and brattice that may be necessary or required, in order to dilute, render harmless, and carry away the noxious and dangerous gases, smoke, and dust liberated therein, and to supply a sufficient quantity of ventilation for all emergencies. The ventilating current in the area of a mine's belt entries shall be directed to an air return before the ventilating current reaches the face area, unless the department, under certain conditions issues a permit for belt air to be used at the coal face. The department shall render a final written decision within sixty (60) calendar days of receipt of the permit application.

(3) When mine ventilation, formerly satisfactory and adequate, becomes deficient in quality or quantity, the department shall have authority to order improvement of the ventilation.



(4) No licensee, superintendent, or mine foreman shall permit any person to work at a place where sufficient ventilation cannot be maintained, except persons employed to make the places of employment safe in compliance with the requirements of this chapter, and while repair work necessary to comply with the requirements is in progress no person shall be permitted to enter that part of the mine affected except those actually employed in doing the repair work. The repair work shall be done under the constant supervision of a certified official designated by the mine foreman.

(5) Each licensee shall adopt a plan which shall provide that when any mine fan stops, immediate action shall be taken by the licensee or his agent:

- (a) To withdraw all persons from the working sections;
- (b) To cut off the power in the mine in a timely manner;
- (c) To provide for restoration of power and resumption of work if ventilation is restored within a reasonable period, of not more than fifteen (15) minutes, as set forth in the plan after the working places and other active workings where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of one percent (1%) or more exists therein; and
- (d) To provide for withdrawal of all persons from the mine if ventilation cannot be restored within a reasonable time, of not more than fifteen (15) minutes.

The plan and revisions thereof approved by the commissioner or his authorized representative shall be set out in printed form and a copy shall be furnished to the commissioner or his authorized representative.

**352.040 Working places not to be driven in advance of air current.**

If the mine inspector discovers any working place being driven in advance of the air current contrary to the requirements of this chapter he shall notify the mine foreman to cease work in the place at once and not resume such work until the law is complied with.

**352.045 Cutting or welding in by last open break prohibited.**

There shall be no cutting or welding in by the last open break, except in case of emergency.

**352.050 Permissible rating for underground machinery -- Transportation of underground mining equipment.**

- (1) After June 16, 1972, no machinery powered by an internal combustion engine shall be placed in use in underground workings unless the equipment is rated "permissible" as described in KRS 352.010 for underground use, and the use of the machinery is approved by the commissioner of the Department for Natural Resources.
- (2) Mining equipment being transported or trammed underground, where energized trolley wires or trolley feeder wires are present, other than ordinary sectional movements, shall be transported or trammed by qualified personnel under the supervision of a certified foreman. When the equipment is being transported or trammed, no person, except those persons directly engaged in moving the equipment, shall be permitted to be in by the equipment in the ventilating split that is passing over the equipment. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

**352.060 Rock-dusting.**

The following rules shall govern in the rock-dusting of mines:

- (1) All mines, or parts of mines, or sections thereof, shall be rock-dusted if conditions are found to be dusty or hazardous, after proper inspection. In the event such conditions are found to exist, then the commissioner or his authorized representative shall require the necessary rock-dusting to make the mine, part of the mine, or section safe.
- (2) In all mines, accumulations of excessive loose coal and fine dry coal dust shall be removed from the mine, and all operating sections kept thoroughly rock-dusted, and the dust on the mine floor allayed by methods approved by the commissioner, but in every mine, or in any part or section thereof, rock-dusting shall be applied to maintain at all times a minimum percentage of sixty-five percent (65%) of noncombustible matter to within forty (40) feet of the faces, including last open crosscuts, and under certain special conditions the department may require that places be rock-dusted to the faces, and that additional rock-dust be added.

**352.070 Checking employees in and out.**

The licensee or superintendent of every underground mine shall install a uniform system of checking the employees in and out of the mine. Each employee shall have a positive means of identification upon his person while inside the mine and a record shall be kept on the surface of all persons underground at all times.

**352.080 New or additional openings -- Map to be filed.**

- (1) No new or additional openings to any underground mine shall be made without the approval of the commissioner.

(2) Each operator or superintendent of an underground mine shall, before making any new or additional opening submit to the commissioner of the department, for his information and approval, a map or plan showing the proposed systems of mining the coal seam, the proposed system of ventilation and equipment of the openings, and their locations and relative positions to adjacent developments.

**352.090 Abandoned parts of mine to be posted -- Sealing.**

(1) All unused workings and abandoned parts of mines shall be protected by safeguards that will prevent the accumulation or overflow of gas, and all avenues leading thereto shall be so arranged and conducted as to give warning to all persons of the danger of entering, and notice shall be posted warning all unauthorized persons not to enter these parts of the mine. If the area cannot be adequately ventilated, and examined, or evaluated it shall be sealed in a timely manner.

(2) No person, except persons authorized to make examination thereof, shall enter any unused or abandoned part of a mine after the warning has been posted.

(3) Where the practice is to seal abandoned workings, the sealing shall be done in accordance with a mine seal construction plan approved by MSHA and submitted to the Division of Mine Safety. Seal construction shall be done immediately in an effective manner with noncombustible material. In every sealed area, one (1) or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure. When required by the mine inspector and commissioner, drill holes shall be extended from the surface to the sealed area, or vent pipes shall be extended from the sealed area to a return air course. Sufficient ventilation shall be provided at each seal to prevent dangerous gases from accumulating.

**352.100 Abandoned mine not to be entered -- Exception.**

No person shall attempt to enter, explore, or survey an abandoned mine or portion thereof without the approval of the mine inspector or the commissioner and unless he adheres to conditions prescribed by the commissioner.

**352.110 Mines to have two openings -- Exception -- Condemnation of land for opening.**

(1) No licensee, superintendent, mine manager, or mine foreman of any mine opened after June 16, 1972, shall permit persons to work therein unless there are to every seam of coal worked in the mine at least two (2) separate outlets, separated by natural strata of not less than one hundred fifty (150) feet in breadth if the mine is worked by shaft or slope, and separated by a pillar of natural strata of not less than two thousand (2,000) square feet if the mine is worked by drift, by which outlets distinct means of ingress and egress are readily available to persons employed in the mine, but it shall not be necessary for the two (2) outlets to belong to the same mine. This subsection does not apply to the openings of a new entry that is being worked for the purpose of making connection between the two (2) outlets so long as not more than twenty (20) persons are employed at one (1) time in making the connection or driving the second opening, or to any mine in which the second opening has been rendered unavailable by reason of final robbing or removal of pillars so long as not more than twenty (20) persons are employed therein at one (1) time, and the workings are no farther than five hundred (500) feet from the bottom of the shaft or slope or from the drift opening.

(2) If any mine has but one (1) means of ingress or egress for persons employed therein, and the owner does not own suitable ground for another opening, the owner may select appropriate adjacent ground for that purpose and have it condemned pursuant to the Eminent Domain Act of Kentucky.

**352.120 Stairways or hoisting devices in shafts -- Passageways to be unobstructed -- Direction signs -- Height and width of escapeway outlets.**

(1) In every shaft designated as an escape outlet there shall be provided a stairway or ladderway of suitable strength, design, and angle, with platforms or landings at each turn, the stairway or ladderway to be approved by the mine inspector, or in lieu thereof a properly equipped hoisting arrangement, consisting of facilities suitable for hoisting men, a wire hoisting rope of ample strength, and an adequate and safe hoisting engine and drum, which hoisting arrangement shall be ready for use at any time of emergency.

(2) All shafts by which men enter or leave the mine and all passageways to escape outlets shall be carefully examined by the mine foreman, or by a person designated by him, at least once each week that the mine is operating, and the date and findings of the examination shall be entered in a book at the mine and for that purpose.

(3) No debris, water, or other material that would obstruct the free passage of men shall be allowed to accumulate in the passageway to the escape outlet, and if any obstructions accumulate or exist they shall be promptly removed.

(4) At points where the passageway to the escape outlet is intersected by roadways or entries calculated to produce doubt as to the proper direction to the outlet, conspicuous signboards shall be placed indicating the direction to escape outlets.

(5) The height of the escapeway outlets shall be maintained to at least the height of the coal seam and at least six (6) feet in width, where practicable.

**352.130 Safety and hoisting devices in shafts -- Certified hoistman.**

(1) At every mine operated by shaft, there shall be an approved safety catch, and on all cages used for lowering and hoisting persons there shall be a sufficient and substantial overhead cover. At the top of each shaft a safety gate shall be provided. An adequate brake, so adjusted that it may be operated by the engineer without leaving his post at the levers, shall be attached to every drum or equivalent machine used for lowering or raising persons at any shaft or slope, and in connection with the hoisting engine an efficient indicator or dial, which will show the engineer the positions of the cages in the shaft at any time, shall be used. An effective means of communication from the bottom of the shaft or slope to the hoisting engineer shall be provided.

(2) Cages and incline cars on which men are transported shall be raised or lowered at a rate of speed consistent with the equipment and the physical conditions of the mine, subject to the approval of the mine inspector.

(3) The hoisting rope, the safety catches, and the cage attachments shall be examined daily by the mine foreman, or by some competent person designated by him, and care shall be taken to keep them in good working condition at all times.

(4) No person shall ride on any cage when coal, slate, or similar material is being raised.

(5) No person shall enter a cage at the bottom to be raised to the top during the running hours of the mine, or when leaving work at the close of the day's run, without first being authorized by the bottom man or cager to do so, the bottom man or cager having first signaled to the engineer that men are to be raised.

(6) At every underground landing where persons enter or leave the cage and where persons must pass from one side of the shaft to the other there shall be a passageway not less than three (3) feet wide and of suitable height, kept free from obstruction and as dry as possible, around the shaft; and all employees when passing from one side of the shaft to the other side shall use the passageway only.

(7) Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety. Ropes used to hoist or lower coal and other materials shall have a factor of safety of not less than five (5) to one (1); ropes used to hoist or lower men shall have a factor of safety of not less than ten (10) to one (1). Load tests shall be made at least once each month and a record kept. The rope shall be replaced as soon as there is evidence of possible failure.

(8) Any rope attached to a cage, man-car, or trip used for hoisting or lowering men shall be provided with two (2) bridle chains or cables connected securely to the rope at least three (3) feet above the socket or thimble and to the crosspiece of the cage or to the man-car or trip.

(9) A certified hoistman shall be on the mine site of a shaft or slope mine when persons are underground, including fire bosses and pumpers on idle shifts, except when automatic, self-service facilities with all safety devices are provided.

**352.133 Approved self-rescuer devices -- Caches of devices -- Locations -- Requirements -- Felony for removal.**

(1) All underground miners shall be provided with an approved self-contained self-rescuer device and shall have that device within twenty-five (25) feet of them at all times. The self-contained self-rescuer shall be provided to the miners by the licensee at no cost to the miners.

(2) In addition to the requirements for self-contained self-rescuers set forth in this section, all licensed premises shall maintain caches of self-contained self-rescuer devices which shall be stored in locations readily accessible to the primary and secondary escapeways or provide proof of an order for self-contained self-rescuers through the submission of a valid purchase order that clearly names the vendor, contact information for the vendor, the number of devices purchased, and the date of the order, which shall not be later than thirty (30) days after July 12, 2006. In all cases, the self-contained self-rescuers shall be in place by July 1, 2007, or shall be extended by the commissioner upon substantiated proof of unavailability.

(a) The caches shall be maintained in sufficient numbers and locations determined in accordance with the most recent rules, standards, and regulations issued by the United States Mine Safety and Health Administration and this section.

(b) The caches shall be maintained in storage units capable of protecting the self-contained self-rescuers from water, dust, and any other condition which will cause deterioration of the self-contained self-rescuers.

(c) The storage unit locations shall have reflective signs that read "SELF-RESCUERS" conspicuously posted as to be visible from the primary and secondary escapeways.

(d) In addition to the requirements set forth in this section for self-contained self-rescuers, the mine operator shall provide for each person who is underground at least one (1) additional self-contained self-rescuer device which provides protection for a period of one (1) hour or longer, to cover all persons in the mine.

(e) If a mantrip or mobile equipment is used to enter or exit the mine, additional self-contained self-rescuer devices, each of which provides protection for a period of one (1) hour or longer, shall be available for all persons who use the transportation from portal to portal.

(3) It shall be a Class D felony for any person to remove a self-rescuer from the cache for purposes other than use during an emergency, or for repair, maintenance, or replacement or as authorized by the licensee.

#### **352.135 Lifeline cords and directional devices.**

In all designated escapeways, each operator shall provide lifeline cords, with attached reflective material at not to exceed twenty-five (25) foot intervals and devices indicating the direction to the surface at not to exceed one hundred (100) foot intervals, from outby the loading point; provided, that in case of a shaft mine, such lifeline cords shall extend from outby to the loading point to the bottom of the designated escape shaft. Such lifeline cord shall be of flame-resistant material sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency. All lifeline cords shall be made of flame resistant material within one hundred eighty (180) days of June 26, 2007.

#### **352.140 Operation of cages and cars.**

(1) Only a certified hoistman shall be placed in charge of any mechanism used for lowering or hoisting any persons employed in the mine. Where automatic elevators are used and all safety devices are provided, the services of a hoistman are not required. A certified hoistman shall pass a test as to his knowledge of hoisting equipment and the precautions to be taken when raising or lowering men or materials. Certification of hoistmen shall be under such conditions and by tests prescribed by the commissioner.

(2) No hoistman in charge of such machinery shall allow any person except such as may be designated for this purpose by the operator or superintendent to interfere with any part of the machinery.

(3) In a mine worked by shaft, slope, or incline, no more than twenty (20) persons shall ride in any cage or car at one (1) time, without the approval of the mine inspector and the commissioner of the department, and no person shall ride on a loaded cage or car, except that where special man-cars or cages are employed to haul workmen on inclines the commissioner may regulate the method and procedure of handling of man-cars, cages, and workmen. Each cage or elevator installed after June 16, 1972, which is used for lowering and raising men shall have at least two and one-half (2-1/2) square feet of floor space for each person.

#### **352.145 Restrictions on work where hazardous conditions exist -- Requirement of visible warning devices and enclosed operator's cabs at stockpiles with underground feeders or draw-off tunnels -- Barrier requirements for haulage roadways -- Examinations and equipment checks.**

(1) No employee of a surface coal mining operation shall be assigned, allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

(2) At stockpiles with underground feeders or draw-off tunnels, the licensee shall install and maintain a visible warning device that shall be activated when the feeders are in operation.

(3) The operator's cab of all equipment being operated on or in the immediate area of a stockpile with underground feeders or draw-off tunnels shall be enclosed by a compartment and shall be furnished with a self-contained self-rescuer that is capable of providing oxygen for a period of not less than one (1) hour.

(4) On all haulage roadways, berms, guardrails, concrete barriers, or other suitable devices shall be installed in such a manner that they extend to at least the mid-wheel height of the highest vehicle or equipment that regularly travels that type of roadway.

(5) A surface preshift examination shall be conducted within three (3) hours prior to men working. A certified foreman shall check the areas where men are required to work or travel during the shift. Roadways, pit areas, highwalls, and dumping points shall be checked. If any hazardous conditions are found, they shall be corrected prior to men working in the area. A suitable record book shall be kept in the control of the mine foreman. Immediately after the examination of the mine or portion thereof, the mine foreman shall enter and sign a record of the examination in the book with ink. The record shall clearly show any danger discovered at the mine, and the action taken to correct the dangerous conditions. The record book shall, at all times during the working hours, be accessible to the mine inspector or analyst and the miner or his representative.

(6) All equipment operators shall conduct a preoperational check of their equipment. All preoperational checks shall be recorded by the equipment operator and kept with the equipment and, if a hazard is found to exist on any piece of equipment that would render it unsafe to operate, the hazardous condition shall be reported to the mine foreman or mine superintendent. All appropriate repairs shall be made before the equipment is put back into operation, except for moving the equipment to a safe place for repairs. The record book of all hazardous conditions and repairs made shall be kept in the control of the mine foreman or mine superintendent at all times.

**352.150 Provisions concerning haulage roads, transportation of men, and first-aid equipment.**

- (1) After June 16, 1972, on single-track haulage roads in mines, which the persons employed in the mine must use while performing their work or while traveling on foot to and from their work, there shall be places of refuge on one (1) side not less than five (5) feet in depth from the side of the mine car, and five (5) feet wide, and not more than ninety (90) feet apart. Refuge holes of the same dimensions shall also be provided at switch throws.
- (2) Special places of refuge are not required on haulage roads on which room necks or breakthroughs occur at regular intervals not exceeding ninety (90) feet, and thus furnish places of refuge, or on haulage roads in which the track is so laid as to give a minimum clearance on one (1) side of not less than thirty (30) inches from the side of any haulage engine or any mine car, the clearance to be on the side of the road opposite that upon which electric wires are strung, if electric wires are strung in the road.
- (3) No unauthorized person shall travel on foot to or from work upon any haulage road or slope where transportation is by track, when other roads in proper condition for travel are available.
- (4) On all main haulage roads where hauling is done by machinery the mine foreman shall provide a proper system of signals, and a conspicuous light or marker approved by the commissioner on the front and rear of every trip or train of cars when in motion in the mine.
- (5) Mantrips shall be operated at safe speeds consistent with the condition of roads and type of equipment used and shall be so controlled that they can be stopped within the limits of visibility, in no event at a speed in excess of twelve (12) miles per hour.
- (6) Each mantrip consisting of more than one (1) mine car of men shall be under the charge of a certified official, and it shall be operated independently of any loaded trip of coal or other material.
- (7) Cars on the mantrip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.
- (8) No material or tools except small hand tools shall be transported in the same car with men on any mantrip unless in a separate, enclosed compartment of the car, and all persons shall ride inside of mantrip cars, except the motorman and brakeman or trip rider.
- (9) Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from mantrips.
- (10) A waiting station shall be provided where men are required to wait for mantrips or man-cages. It shall have sufficient room, ample clearance from moving equipment, and adequate seating facilities.
- (11) Power wires shall be guarded effectively at mantrip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the mantrip.
- (12) Cars used for transporting men on slopes shall be equipped with a safety device capable of stopping the trip in event of failure of the rope or couplings. The device shall be approved by the commissioner.
- (13) Where belts are used for transporting men, unless the commissioner finds that a safety hazard exists which cannot be corrected, the belt transport will be allowed, and a minimum clearance of eighteen (18) inches shall be maintained between the belt and the roof or cross bars, projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than twenty-four (24) inches.
- (14) Unless a greater speed is allowed by special permission from the commissioner, in which event the conditions, limitations, and rules imposed in connection with the grant of permission shall be observed, the belt speed shall not exceed two hundred fifty (250) feet per minute where the minimum overhead clearance is eighteen (18) inches, or three hundred (300) feet per minute when the minimum overhead clearance is twenty-four (24) inches, while men are loading, unloading, or being transported.
- (15) The space between men riding on a belt line shall not be less than six (6) feet.
- (16) Loading and unloading stations shall be illuminated properly.
- (17) A certified official or some other supervisory personnel appointed by the mine foreman shall supervise all mantrips.
- (18) At all mines utilizing track haulage or transportation, there shall be developed a safe and uniform system of traveling through all switch points to prevent collisions. This system shall be designed in a manner which ensures that all persons can determine who has the right of way in all circumstances. Information concerning this system shall be included in annual retraining.
- (19) Efficient equipment, either mobile or self-propelled, equipped with sufficient first-aid equipment and supplies, shall be available on all underground sections where men are present to transport all injured workers to the surface.
- (20) At those mines that do not have a contract or other arrangement for providing ambulance service, a 4-wheel-drive vehicle or other vehicle suitable to the terrain equipped with sufficient first-aid equipment and supplies shall be available to the mines or preparation facilities for the transportation of injured workers. At those mines that have a contract or other arrangement for providing ambulance service, the access road to the mine or preparation facility shall be kept in a condition which is passable by the ambulance vehicle or other emergency rescue equipment.
- (21) The commissioner shall be empowered to draft additional administrative regulations providing for transportation of men when necessary.

**352.161 Examination of conveyor belts.**

All mines utilizing conveyor belts shall have one (1) or more persons to examine the conveyor belts while in operation in the mine to determine that no coal or mine refuse is being transported on the conveyor belt in a manner which would pose a threat to the health and safety of the employees or to the safety of the mine.

**352.170 Approved electric lamps and multigas detectors required -- Unauthorized devices for making lights and fires forbidden.**

(1) All underground mines shall be worked exclusively by the use of approved electric lamps for personal lighting.

(2) A mine operator shall provide an MSHA-approved, handheld, multigas detector that can measure methane, oxygen, and carbon monoxide to each group of two (2) or more miners working in close proximity of each other underground, the foreman, fireboss, and to each person who works alone, such as pumpers, examiners, and outby miners. The mine operator shall make available one (1) multigas detector at the working face for use by any miner working on the section. Miners shall be trained in the proper use and calibration of the multigas detectors and shall document that the training has been provided. Signs shall be prominently posted at places miners gather with instructions on the proper use of multi-gas detectors.

(3) No person shall at any time carry into any mine any intoxicants. No person shall at any time enter any underground mine with matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved, and the licensee shall at frequent intervals search, or cause to be searched, any person entering or about to enter the mine or inside the mine, to prevent the person from taking, carrying, or using the articles therein.

**352.175 Miners required to wear safety glasses.**

All miners shall wear safety glasses as needed. The safety glasses shall be supplied to the miners by the coal operator at no cost to the miner.

**352.180 Accidents, fire, explosion, entrapment in mine -- Notice, investigation, assistance, and records -- Failure to comply -- Testing post-accident -- Investigative powers of commissioner.**

(1) Whenever a serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than thirty (30) minutes, inundation of a mine by water or gases occurs, the superintendent of the mine, or, if he is absent, the mine manager, or if he is absent, the mine foreman in charge of the mine or his designee, shall within fifteen (15) minutes of having actual knowledge of the occurrence and access to the communication system as required under KRS 352.630(3) give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger.

(2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, the mine safety specialist shall immediately go to the scene of the accident and make an investigation and suggestions and render the assistance as he deems necessary for the future safety of the employees, investigate the cause of the fire, explosion, or accident, make a record thereof, and forward it to the commissioner.

(3) The record of the investigations shall be preserved with the other records of the commissioner's office. To aid in making the investigations, the commissioner or the mine safety specialist may compel the attendance of witnesses and administer oaths.

(4) Failure to comply with the reporting requirements set forth in this section shall create a rebuttable presumption of an intentional order to violate mine safety laws that places miners in imminent danger of serious physical injury or death and shall be subject to revocation, suspension, or probation of the mine license and a civil monetary penalty of not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).

(5) The Division of Mine Safety may require testing of certified persons to determine whether the presence of intoxicants or controlled or illicit substances are a contributing factor in any mine accident in which serious physical injury or loss of life occurs or which was reported under this section. The director or his or her designee may order the testing of certified persons who:

(a) Were working in the immediate area of the accident; or

(b) In the judgment of the director or his designee, may reasonably have contributed to or witnessed the accident or fatality.

(6) The post-accident testing permitted by subsection (5) of this section shall:

(a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185;

(b) Be paid for by the Division of Mine Safety; and

(c) Be performed on samples obtained within eight (8) hours of the accident.

(7) Toxicology screens and eleven-panel drug testing shall be performed on victims when death occurs on mine property. The testing pursuant to this subsection may be performed on specimens of either blood, saliva, or other appropriate bodily fluids.

(8) The commissioner or his or her authorized representative may compel the attendance of witnesses and administer oaths to investigate allegations of unsafe mining conditions or violations of mining laws even if no accident or injury has occurred.

**352.190 First-aid equipment.**

For every fifty (50) men and fraction thereof employed underground, the operator of each mine shall keep on hand at the mine one (1) properly constructed stretcher, one (1) waterproof and one (1) woolen blanket, and all other necessary equipment required by the department.

**352.201 Roof control plan -- Retreat mining or pillaring operations.**

(1) The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revision thereof suitable to the roof conditions and mining system of each mine and approved by the commissioner or his authorized representative shall be adopted and set out in printed form within six (6) months after June 16, 1972, and shall be kept on file in the regional office of the region where the mine is located. The plan shall show the type of support and spacing approved by the commissioner. No person shall proceed beyond the last permanent support unless adequate temporary support is provided. A copy of the plan shall be furnished the commissioner or his authorized representative and shall be available to the miners and their representatives.

(2) The method of mining followed in any mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(3) The licensee, in accordance with the approved plan, shall provide at or near each working face and at other locations in the mine as the commissioner or his authorized representative may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in other circumstances that may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

(4) Roof bolt recovery for reuse shall not be permitted.

(5) Where workmen are exposed to danger from falls of roof, face, and ribs they shall examine and test the roof, face, and ribs before any other work is performed or machinery is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

(6) Within forty-eight (48) hours before the commencement of any retreat mining or pillaring operations, the mine operator shall notify the Division of Mine Safety of its intention of beginning or resuming retreat mining or pillaring. The Division of Mine Safety shall document such notification in writing. Upon notification within the forty-eight (48) hour period from a mine operator, and, before retreat mining or pillaring operations can begin, the Division of Mine Safety shall ensure that every person who will be participating in the retreat mining operations is trained in the operator's pillar removal plan.

**352.210 Conduct in mine -- Intoxication, alcoholic beverage or controlled substance prohibited -- Notification to director of violations of substance- or alcohol-abuse policies.**

(1) No person shall knowingly injure any shaft, lamp, instrument, air course, or brattice; obstruct or throw open airways; disturb any part of the machinery or appliances; open a door used for directing ventilation without closing it afterwards; enter any part of a mine against caution; disobey any order given in carrying out any of the provisions of KRS Chapter 351 or 352; or do any act endangering the life or health of any person employed in the mine or endangering the security of the mine.

(2) No person shall enter or be on any licensed facility while intoxicated or under the influence of alcohol or a controlled substance or be in possession of any alcoholic beverage or controlled substance at any licensed facility; provided, however, this shall not apply to private vehicles driven to and from the mine.

(3) The licensee shall notify the director, by the close of the next business day, of any certified persons who have been discharged for violation of the company's substance-abuse or alcohol-abuse policies or who tested positive and failed to complete an employee assistance program.

**352.220 Electricity in mines and surface installations.**

For purposes of this section, "approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

(1) The following shall apply to underground installations:

- (a) Nonconductive or insulated materials shall be used when trailing cables or high voltage feeder cables are suspended;
- (b) Suitable circuit-interrupting devices shall be provided for all power circuits and equipment at the mine;
- (c) All power wires and cables shall be properly insulated and protected by proper installation or guarding;
- (d) Ground wires for circuits shall have a total cross-sectional area of not less than one-half (1/2) the power conductor;
- (e) Extra length or long trailing cables shall be spread out in long open loops or in a figure-eight configuration on a clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables suspended in long open loops shall be acceptable;
- (f) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Splices made in cables shall provide continuity of all components;
- (g) Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;
- (h) The frames of hand-held electrically driven tools shall be properly grounded or double-insulated by design. The frames of all pumps shall be properly grounded. Hand-held tools and all pumps shall be properly protected by suitable fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;
- (i) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work under or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with other circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half (1/2) the power conductor, and with an insulated internal conductor not smaller than No. 10 (AWG) or an insulated external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit. All cables shall be suitable for the current and voltage and shall be properly maintained;
- (j) Power circuits shall have suitable disconnecting devices and short-circuit protective devices at or near the supply end of the circuit. Suitable disconnecting devices shall be provided at the beginning of all branch circuits;
- (k) Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas or be equipped with a suitable fire-suppression system.
  - 1. When a noncombustible structure or area is used, these installations shall be:
    - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
    - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system (AMS) installed and operated in a suitable manner. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or
    - c. Ventilated with intake air and equipped with sensors to monitor for heat, carbon monoxide, or smoke.
  - 2. The sensors used for monitoring shall de-energize power to the installation, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors that will automatically close when any of the following occurs:
    - a. The temperature in noncombustible structure reaches one hundred sixty-five (165) degrees Fahrenheit;
    - b. The carbon monoxide concentration reaches ten (10) parts per million above the ambient level for the area; or
    - c. The optical density of smoke reaches 0.022 per meter.
  - 3. At least every thirty (30) days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.
  - 4. When a fire suppression system is used, the installation shall be:
    - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
    - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system installed and operated in a suitable manner.
  - 5. All monitoring systems used to monitor intake air ventilating battery charging stations under subparagraphs 1. and 4. of this paragraph shall be done with sensors not affected by hydrogen.
  - 6. This paragraph shall not apply to:



- a. Rectifiers and power centers with transformers that either are dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;
- b. Submersible pumps;
- c. Permissible pumps, and associated permissible switchgear;
- d. Pumps located on or near the section that are moved as the working section advances or retreats; or
- e. Small portable pumps. Underground stations containing transformers or circuit breakers filled with flammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occurs, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with nonflammable liquid or inert gas. Portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places outby the last open crosscuts;
  - (l) Electrically powered locomotives shall be provided with suitable electrical protective devices;
  - (m) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with start and stop controls at intervals not to exceed one thousand (1,000) feet. The controls shall be properly installed and positioned so as to be readily accessible;
  - (n) Communication wires and cables shall be adequately insulated and protected by proper installation or guarding;
  - (o) Telephone wires shall be provided with lightening arresters where the wires enter the mine and at the buildings on the surface;
  - (p) Insulating mats shall be placed in front of disconnecting devices and all electrical installations where required;
  - (q) Ground wires in trailing cables shall be tested weekly for open circuit and high resistance;
  - (r) Power circuits in tipples, buildings, cleaning plants, etc., and all underground electrical circuits shall be deenergized when not in use over a long period;
  - (s) All underground power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by the persons who installed them, or if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustment;
  - (t) Where electric circuits cross over or pass under belt conveyors the wiring shall be suitably protected; and
  - (u) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust.
- (2) The following shall apply to trolley wires and trolley feeder wires:
  - (a) On all haulage roads, landings, and partings where persons are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;
  - (b) All machine feed conductors shall be placed on suitable insulators which shall be so placed as to prevent the conductors coming in contact with combustible or conductive materials;
  - (c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons are required to travel shall be safely guarded or protected against persons coming in contact therewith, as required by paragraph (a) of this subsection;
  - (d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as required by paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;
  - (e) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track; and
  - (f) All mine locomotives shall be fused or otherwise protected at the switch or at the nip.
- (3) The following shall apply to surface installations:
  - (a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;
  - (b) Electrical circuits, wires, and cables shall be supported on insulators except when cables, which are of a design that can be safely used without insulators, are used;

- (c) Lightning arresters shall be installed on all ungrounded, exposed power conductors and telephone wires entering a mine, regardless of voltage. Overload protection and disconnect switches of suitable sizes and ratings approved by the department shall also be provided, except that they shall not be required of telephone wires;
  - (d) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;
  - (e) All transformer tanks shall be effectively grounded;
  - (f) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust that create a fire hazard;
  - (g) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height; and
  - (h) All surface power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by persons who installed them or, if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. When disconnects for stationary low and medium voltage equipment that do not provide visual evidence that the power is disconnected are used, an adequately rated voltage detector shall be used to test each phase conductor or circuit part to verify they are de-energized before any work is performed. When practical, confirmation that the voltage detector is operating satisfactorily shall be made before each test.
- (4) (a) Notwithstanding any provisions of subsection (1), (2), or (3) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsection (1), (2), or (3) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsection (1), (2), or (3) of this section; and
- (b) The department may prescribe administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.
- (5) All electrical work shall be performed by a certified electrician, or an electrical trainee under the direct supervision of a certified electrician, at all underground mines and surface mines operating draglines or highwall miners.

### **352.230 Use of electrical equipment.**

For purposes of this section: "approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

- (1) All electrical equipment and all other electric-driven equipment except intrinsically safe equipment which is taken into or used in by the last open crosscut and in return airways in underground mines shall be permissible. The commissioner or his authorized representative shall reject any modification to mining equipment which would endanger the health or safety of employees.
- (2) Headlights shall be properly installed and maintained in a workmanlike manner and working order on all mobile and face equipment at all times the equipment is in operation.
- (3) Headlights shall be mounted to provide maximum illumination where it will be most effective and shall be protected from damage by guarding or locations.
- (4) At all times when mining equipment is being used, it shall be maintained in safe working order. Electrical equipment and circuits shall be examined and tested in a suitable manner by certified electricians to ensure safe working order.
- (5) Combustible materials, grease, lubricants, or flammable liquids shall not be allowed to accumulate where they can create a fire hazard.
- (6) All electrical equipment utilized in intake airways out by the last open crosscut shall be maintained in safe operating condition and in accordance with the manufacturer's instructions.

**352.232 Definitions -- Safety requirements governing use of electrical face equipment -- Examination for methane gas.**

For purposes of this section, "approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources or accepted by a nationally or federally recognized testing laboratory or the United States Department of Labor Mine Safety and Health Administration; "suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the United States Department of Labor Mine Safety and Health Administration.

(1) No person shall be placed in charge of electrical face equipment in any mine unless he is a qualified person capable of determining the safety of the roof, face, and ribs of the working places and detecting the presence of explosive gas. Operators of electrical face equipment shall undergo an examination to determine their fitness to detect explosive gas and shall have a minimum of forty-five (45) days of actual mining experience before they are permitted to have charge of electric face equipment. Safety committeemen, shotfirers, and others whose duty may require them to make inspections for gas shall undergo and pass an examination or possess a mine foreman's certificate before using an approved multi-gas detection device underground. The examination shall be given by the mine inspector. Blank forms for the examination shall be furnished by the department. A copy shall be retained on file at the mine office and the original shall be sent to the department fully made out and signed by the applicant and approved by the mine inspector.

(2) No electric face equipment shall be brought in by the last breakthrough next to the working face until the equipment operator has made an inspection for explosive gas using an approved gas detection device or instrument in the place where the equipment is to work unless the inspection is then made by some other competent person authorized and appointed for that purpose by the mine foreman. If any explosive gas in excess of one percent (1%) is found in the place, the electrical equipment shall not be taken in until the gas is removed.

(3) While the electric equipment is operating at the face, an examination for gas shall be made at not more than twenty (20) minute intervals. If methane gas is found in excess of one percent (1%) at any time, the power shall be de-energized from the equipment and left de-energized until the gas is reduced to less than one percent (1%) and the place determined safe by a foreman.

**352.241 Explosives and blasting devices in mines.**

(1) Explosives or detonators carried anywhere underground by any person shall be in containers constructed substantially of nonconductive material, maintained in good condition, and kept closed.

(2) When explosives or detonators are transported underground in cars moved by means of a locomotive or rope, or in shuttle cars, they shall be in substantial covered cars or in special substantial covered containers used specifically for transporting detonators or explosives.

(a) The bodies and covers of the cars and containers shall be constructed or lined with nonconductive material.

(b) If explosives and detonators are hauled in the same explosives car or in the same special container, they shall be separated by at least a four (4) inch substantially fastened hardwood partition or the equivalent.

(c) Explosives, detonators, or other explosive items shall not be transported on the same trip with men.

(d) When explosives or detonators are transported in special cars or containers in cars, they shall be hauled in special trips not connected to any other trip. However, this does not prohibit the use of the additional cars as needed to lower a rope trip or to haul supplies including timbers. Materials so transported shall not project above the top of the car. Exposed highly flammable materials such as oil or grease shall not be hauled on the same trip with explosives.

(e) Explosives or detonators shall not be hauled into or out of a mine within five (5) minutes preceding or following a man trip or any other trip.

(3) Explosives and detonators shall be transported underground by belt only under the following conditions:

(a) In the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers;

(b) Clearance requirements shall be the same as those for transporting men on belts;

(c) Suitable loading and unloading stations shall be provided; and

(d) Stop controls shall be provided at loading and unloading points, and an attendant shall supervise the loading and unloading of explosives and detonators.

(4) Neither explosives nor detonators shall be transported on flight or shaking conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, track drills, or any self-propelled mobile equipment. However, this does not prohibit the transportation of explosives or detonators in special substantial covered containers as used in subsection (2) of this section in shuttle cars or in equipment designed especially to transport explosives or detonators.

(5) When supplies of explosives and detonators for use in one (1) or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five (25) feet from roadways and power wires, and in a reasonably dry, well-rock-dusted location

protected from falls of roof. In pitching beds, where it is not possible to comply with the location requirement, the boxes shall be placed in niches cut into the solid coal or rock.

(6) When explosives or detonators are stored in the section, they shall be kept preferably in separate boxes or magazines not less than five (5) feet apart; if kept in the same box or magazine, they shall be separated by at least a four (4) inch substantially fastened hardwood partition or the equivalent. Not more than a forty-eight (48) hour supply of explosives or detonators shall be stored underground in any one (1) section in the boxes or magazines.

(7) Explosives and detonators stored near the working faces shall be in separate closed containers, and shall be in a location out of line of blast not less than fifty (50) feet from the face and fifteen (15) feet from any pipeline, powerline, rail, or conveyor; except that if kept in niches in the rib, the distance from pipeline, powerline, rail, or conveyor shall be at least fifteen (15) feet. Explosives and detonators, when stored, shall be separated by a distance of at least ten (10) feet.

(8) Explosives and detonators shall be kept in their containers until immediately before use at the working faces.

(9) Only nonmetallic tools shall be used for opening wooden explosives containers. Tools or other materials shall not be stored with explosives or detonators.

(10) All explosives used underground in underground mines, except in sinking shafts and slopes from the surface, shall be of the permissible type, specifically designed and manufactured for underground use, and shall be used as follows:

(a) Fired only with electric detonators of proper strength;

(b) Fired with a permissible shot-firing unit of adequate capacity to fire all caps; however, if firing is done from the surface when all men are out of the mine, the firing unit does not need to meet specifications of permissibility;

(c) Where the coal is cut, shots shall not be fired if the blast hole is drilled beyond the limits of the cut;

(d) Boreholes shall be cleaned, and they shall be checked to see that they are placed properly and are of correct depth, in relation to the cut, before being charged;

(e) All blasting charges shall have a burden of at least eighteen (18) inches in all directions if the height of the seam permits;

(f) Boreholes shall be stemmed with at least twenty-four (24) inches of incombustible material, or at least one-half (1/2) of the length of the hole shall be stemmed if the hole is less than four (4) feet in depth unless other permissible stemming devices or methods are used;

(g) Examinations for gas shall be made immediately before firing each shot or group of multiple shots and after blasting is completed;

(h) Shots shall not be fired in any place where methane greater than one percent (1%) can be detected with approved gas detection devices when tested at a point not less than twelve (12) inches from the roof, face, or rib;

(i) Charges exceeding one and one-half (1-1/2) pounds, but not exceeding three (3) pounds, shall be used only if boreholes are six (6) feet or more in depth, the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed, with all cartridges in contact with each other, and with the end cartridges touching the back of the hole and the stemming respectively. However the three (3) pound limit does not apply to special solid rock work if the mine is evacuated or if approved by the department;

(j) Shots shall be charged and fired by certified shotfirers designated by the mine foreman;

(k) Boreholes shall not be charged while any other work is being done at the face, and the shot or shots shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the employees;

(l) Only nonmetallic tamping bars shall be used for charging and tamping boreholes. This does not prohibit the use of a nonmetallic tamping bar with a nonsparking metallic scraper on one (1) end;

(m) The leg wires of electric detonators shall be kept shunted until ready to connect to the firing cable;

(n) Shots shall not be fired from the power of signal circuit while any men are in the mine;

(o) The roof and ribs of working places shall be tested before and after firing each shot or group of multiple shots;

(p) Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all persons are in the clear. Men shall be removed from adjoining working places when there is danger of a shot blowing through;

(q) Mixed types or brands of explosives shall not be charged or fired in any borehole;

(r) Mudcaps (adobes) or other unconfined shots shall not be fired underground in a mine;

(s) Before blasting, the continuity of the blasting circuits shall be tested with a permissible blaster's galvanometer specifically designed for this purpose;

(t) No instantaneous detonator shall be connected in a circuit containing short-period delay detonators. The first charge in a sequence shall be initiated by a short period delay detonator having a nominal delay period of not less than twenty-five (25) milliseconds;

(u) All short period delay detonators shall be wired in series;

(v) Each primer shall be made with care to insure that the detonator is inserted properly and does not protrude from the wrapping and that the leg wires are secured to the cartridge in a manner so that the detonator will not become dislodged in handling and charging;

(w) In making a primer, a powder punch of nonsparking material shall be used. The hole in the cartridge shall be at least one-half (1/2) inch deeper than the detonator used. Rolling the end of a cartridge to receive a detonator is prohibited;

(x) The primer shall be placed in the borehole first pointing outward and the rest of the charge shall be pushed in a continuous train to the back of the borehole to prevent cuttings from getting between the cartridges; and

(y) Suitable clean-up of loose coal and coal dust with adequate rock-dusting or wetting down at the face of each working place shall be completed prior to charging shot holes.

(11) Blasting cables shall be:

(a) Well insulated and as long as may be necessary to permit the shotfirer to get in a safe place around a corner;

(b) Short-circuited at the battery end until ready to attach to the blasting unit;

(c) Staggered as to length or the ends kept well separated when attached to the detonator leg wires; and

(d) Kept clear of power wires and all other possible sources of active or stray electric current.

(12) Where misfires occur with electric detonators, a waiting period of at least five (5) minutes shall elapse before anyone returns to the shot. After the failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

(13) Explosives shall be removed by firing a separate charge at least two (2) feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

(14) A very careful search of the working place and, if necessary, of the blasted material after it reaches the surface shall be made after blasting a misfired hole, to recover any undetonated explosive.

(15) The handling of a misfired shot shall be under the direct supervision of the mine foreman or a competent person designated by him.

### **352.251 Magazines for storage of explosives -- Requirements for construction and operation.**

(1) Separate surface magazines shall be provided for the storage of explosives and detonators.

(2) Surface magazines for storing and distributing explosives in amounts exceeding one hundred twenty-five (125) pounds shall be:

(a) Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by ceiling that forms a tray containing not less than a four (4) inch thickness of sand, or by other methods;

(b) Provided with doors constructed of three-eighths (3/8) inch steel plate lined with a two (2) inch thickness of wood, or the equivalent;

(c) Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine;

(d) Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;

(e) Provided with properly screened ventilators;

(f) Equipped with no openings except for entrance and ventilation;

(g) Kept locked securely when unattended.

(3) Surface magazines for storing detonators shall be in accordance with other provisions for storing explosives.

(4) The location of magazines shall be not less than two hundred (200) feet from any mine opening, occupied building, or public road. Where compliance with this provision is not practicable, the magazine shall be effectively barricaded. Where practicable, as determined by the mine inspector, future explosives magazines shall be placed in open pits, ravines or other recessed areas.

(5) The supply kept in distribution magazines shall be limited to approximately one (1) day's requirements, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a four (4) inch substantially fastened hardwood partition or the equivalent.

(6) The area surrounding magazines for not less than twenty-five (25) feet in all directions shall be kept free of rubbish, dry grass, or other materials of a combustible nature.

(7) Only permissible lights, worn or carried, shall be used inside magazines.

(8) Only nonmetallic tools shall be used for opening wooden containers. Extraneous materials shall not be stored in an explosives or detonator magazine.

(9) Smoking, carrying smokers' articles, or open flame shall be prohibited in or near any magazine.

### **352.260 Shotfirers -- Solid blasting.**

(1) Any operator of a mine shall designate only certified persons as shotfirers to prepare the cartridge and set off and discharge the shots.

- (2) Shotfirers shall at all times be under the direction of a certified mine foreman.
- (3) The following conditions apply when shooting coal from the solid:
  - (a) All licensees engaged in shooting coal from the solid shall submit an application for a permit to the commissioner on a form prescribed by the department.
  - (b) Before said permit is issued by the commissioner he shall have an investigation conducted of the mine to determine the adequacy of the proposed solid blasting plan in complying with KRS Chapter 351 and this chapter and administrative regulations applicable to blasting coal in an underground mine.
  - (c) The mine inspector shall have the authority to stop production at the mine by the issuance of a closure order to any operator who fails to obtain a permit when shooting coal from the solid.
- (4) When using the method of solid blasting, no more than one (1) face shall be charged or detonated simultaneously.
- (5) When shooting coal from the solid, not more than two (2) adjacent openers or cut holes shall be primed with detonators having the same delay period. The nominal delay intervals between the succeeding rows of horizons shall not be less than fifty (50) milliseconds nor more than one hundred (100) milliseconds.

**352.270 Storage of oils or similar flammable material.**

Buildings used for the storage of oils or similar flammable material shall not be located within one hundred (100) feet of any hoisting or escape shaft or mine opening. Oil, grease or similar flammable material shall not be stored within one hundred (100) feet of any hoisting or escape shaft or mine opening. Oil and grease used in mines shall be taken into the mine from day to day with one (1) day's supply being the maximum. Oil and grease stored underground shall be kept in closed containers.

**352.280 Examination of mine by properly certified person -- Duties -- Frequency of examinations.**

- (1) In all mines the licensee, mine manager, or superintendent shall employ one (1) or more properly certified persons.
- (2) A properly certified person shall examine carefully, within three (3) hours before each shift enters the mine:
  - (a) Every working place;
  - (b) All places adjacent to live workings;
  - (c) Every roadway where persons are required to work or travel;
  - (d) All abandoned panels on the intake;
  - (e) Every set of seals on the intake; and
  - (f) All roof falls near active workings on the intake and on the working sections.
- (3) Before proceeding with the examination he shall see that the air current is traveling its proper course.
- (4) A properly certified person shall use approved gas detection devices in the performance of the required examination and shall examine the entrances to all worked-out and abandoned portions adjacent to the intake roadways and working places under his charge where explosive gas is likely to accumulate.
- (5) After examination, the properly certified person shall leave at or as close as possible to the face of every place examined the date and time of the examination and his initials as evidence that he has performed his duty.
- (6) If an explosive mixture of gas is discovered, the properly certified person shall place a danger signal across the entrance to every place where explosive gas is discovered or where immediate danger is found to exist from any other cause. The signal shall be sufficient warning to ensure that persons do not enter the area.
- (7) When the mine is idle and workmen are required to go into the mine, the section, portion, or part of the mine entered must be inspected by a properly certified person within three (3) hours before the workmen enter.
- (8) Each week, a properly certified person designated by the mine foreman shall examine each set of seals on the return, all designated intake and return entries, and all escapeways.

**352.290 Record book to be kept by fire boss -- Report of danger -- Accessibility of records to mine inspector and miner.**

A suitable record book shall be kept at the mine office of every mine wherein fire bosses are employed, and immediately after the examination of the mine or any portion thereof, by a fire boss, he shall enter and sign a record of the examination in the book with ink. The record shall clearly show the time taken in making the examination, the nature and location of any danger discovered in the mine, and what has been done to correct dangerous conditions. If any danger is discovered, the fire boss shall immediately report its location to the mine foreman, or in his absence to the assistant mine foreman in charge, who shall take immediate action to remove the danger. When a station is located inside a mine the fire boss shall enter and sign a report both in the record book kept there and in a record book in the mine office on the surface. The record books of the licensee shall at all times during working hours be accessible to the mine inspector and the miner or his representative.

**352.300 Stations for fire bosses -- Persons not to pass or remove danger signals.**

- (1) The mine foreman and the fire boss shall, at or near the main entrance to the mine, provide a permanent station with a proper danger signal, designated by suitable letters and colors placed thereon, and, if the working portions are one (1) mile or more from the entrance to the mine or from the bottom of the shaft or slope, a station of suitable dimensions for the use of the fire boss may be erected by the mine foreman in a location approved by the inspector.
- (2) No person, except the mine foreman, and in case of necessity other persons as are designated by him, and under his direct supervision for the purpose of correcting the dangerous condition, shall pass a danger signal until the dangerous condition has been corrected. No person shall enter a mine until the mine has been examined by a fire boss and the mine or the portions of it beyond the fire boss station reported by him to be safe.
- (3) The fire boss shall not allow any other person to enter or remain in any portion of the mine through which a dangerous accumulation of gas is being passed into the ventilating current from any portion of the mine. He shall report to the mine foreman at once any violations of KRS 352.280 to 352.310.
- (4) No person except a mine foreman, assistant mine foreman, fire boss or person designated by the mine foreman under subsection (2) of this section, shall pass or remove any danger signal before the mine has been examined and reported to be safe.
- (5) No person shall pass or remove any danger signal without permission from the mine foreman, the assistant mine foreman, or the fire boss.
- (6) If any mine foreman has knowledge of a violation of subsection (4) or (5) of this section, he shall immediately notify the licensee or superintendent who shall notify the mine inspector, in writing. The mine inspector shall then immediately institute proceedings against the offender.

**352.310 Suspension of fire boss -- Revocation of certificate.**

Any fire boss who fails to perform his duties, or who makes a false report of the condition of any place in the portion of the mine allotted to him for examination, shall be suspended by the mine foreman, and his name shall be given to the mine inspector for prosecution. If he is found guilty by the board, he shall return his certificate of qualification to the department.

**352.320 Mine foreman -- Assistants.**

- (1) All commercial coal mines shall employ a certified mine foreman therein to properly carry out the plans and rules when approved by the commissioner of the department and to be responsible for compliance with the provisions of KRS Chapter 351 and this chapter.
- (2) When the mine workings become so extensive that the mine foreman is unable personally to carry out the duties required of him by law, the operator, superintendent, or mine manager shall employ a sufficient number of persons holding suitable certificates of qualifications to act as assistants to the mine foreman, and under his instructions.

**352.330 General duties of mine foreman -- Duty of licensee.**

The mine foreman shall exercise general supervision over the ventilating apparatus and the airways, traveling ways, working places, pumps and drainage, and shall see that as the miners advance their excavations proper breakthroughs are made as required by law to properly ventilate the mine. He shall see that employees are provided with sufficient props, cap pieces, and timbers of suitable size, which shall be delivered to the working place and shall see that the props are cut as square as practicable at both ends and as near as practicable to the proper length required or designated for the places where they are to be used. The mine foreman shall see that the water is drained as nearly as practicable out of the working places, and that the working places are kept as free from water as practicable during working hours. He shall see that every person employed to work in the mine is, before beginning to work, instructed in the particular danger incident to his work in the mine and furnished a copy of the rules of the mine. He shall immediately report all violations of the mining laws to the operator or superintendent, who shall report the violations to the mine inspector.

**352.340 Examination of mine by mine foreman or assistants -- Removal of dangers -- Record.**

- (1) The mine foreman or his assistants shall:
  - (a) Visit and carefully examine each working place in the mine at least every four (4) hours while the mine employees are at work;
  - (b) Examine as live workings, on regular inspections, all places in live sections that are temporarily abandoned. If the mine foreman finds any place to be in a dangerous condition, he shall not leave the place until it is made safe, or until the employees working therein are removed until the place is made safe;
  - (c) Ensure that every mine liberating explosive gas is kept free of standing gas in all working places and roadways, and that all accumulations of explosive or noxious gases in the worked-out or abandoned portions of any mine are removed as soon as possible after discovery;

(d) Ensure that all preshift examinations are conducted by a certified person, that examinations of conveyor belts have been conducted, and that no person who may be endangered by the presence of explosive or noxious gases be allowed to enter that portion of the mine until the gases have been removed; and

(e) Direct and see that all dangerous places and the entrances to worked-out and abandoned places in all mines are properly barricaded across the openings, so that no person will enter, and that danger signs are posted upon the barricade to warn persons of existing danger. The mine foreman or his or her assistants shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any person working in the mine, and if it is impracticable to remove the danger at once, the mine foreman or his or her assistants shall notify every person whose safety is menaced thereby to remain away from the portion where the dangerous condition exists.

(2) The mine foreman or his assistants, fire bosses, or other certified persons shall, at least once every week, travel and examine all air courses, escapeways, the caches of self-contained self-rescuer devices required by KRS 352.133, the caches' contents, seals on the return, roads, and openings that give access to old workings or pillar falls, and make a record of the condition of all places where danger has been found. The record shall be made with ink pencil in the record book provided for that purpose.

(3) Examinations of conveyor belts shall be conducted by a certified foreman or a certified belt examiner. A certified belt examiner shall have a total of three (3) years of practical underground mining experience and successfully complete a certification examination administered by the Division of Mine Safety. The certification examination shall cover the topics of belt conveyor legal requirements; roof control practices; mine ventilation; mine gases and instruments; fire hazards; and inspection and reporting procedures. The belt examiner also shall demonstrate proficiency in the use of an anemometer, methane detector, and oxygen devices.

**352.350 Mine foreman to notify licensee or superintendent of dangers -- Duties as to reports -- Compliance with inspector's recommendations.**

(1) The mine foreman shall notify, in writing, the licensee or superintendent of the mine of his inability to comply with any of the requirements of the mining laws, and the licensee or superintendent shall at once attend to the matter complained of by the mine foreman so as to enable him to comply with the mining laws.

(2) The mine foreman shall each day enter and sign plainly with ink, in a book provided for that purpose, a report of the condition of the mine. The report shall clearly state any danger that comes under his observation during the day or is reported to him by his assistants or by the fire bosses, and shall state what action was taken to correct such danger, whether or not there is a proper supply of material on hand for the safe working of the mine, and whether or not the mining laws are being complied with. The mine foreman shall each day read carefully, and countersign with ink, all reports entered in the record book of the fire bosses.

(3) The mine superintendent, mine manager, mine foreman, and assistant foreman shall be held jointly responsible for the immediate compliance with the provisions of KRS Chapter 351 and this chapter.

**352.360 Duty of mine foreman as to breakthroughs, measurement of air current, designation of escapeways, and installation of man doors.**

(1) The mine foreman shall see that breakthroughs are made as required by law, and shall see that ventilation is conducted by means of the breakthroughs and through the rooms by means of check doors or curtains placed on the entries or other suitable places, and shall not permit any room to be opened in advance of the ventilating current.

(2) At least once each week while the mine is in operation the mine foreman, or some certified person designated by the mine foreman, with an anemometer furnished by the licensee, shall measure the air current at the inlet and outlet and at or near the faces of the advanced headings, and shall keep a record of the measurements in a book approved by the commissioner for the purpose.

(3) The mine foreman shall see that signboards directing the way to outlets or escapeways are conspicuously placed throughout the mine.

(4) Hinged man doors, installed after June 16, 1976, shall be at least thirty (30) inches square or the height of the coal seam, and shall be installed on the intake and the return air course at intervals not to exceed three hundred (300) feet when the height of the coal is below forty-eight (48) inches and at intervals not to exceed five hundred (500) feet when the height of the coal is above forty-eight (48) inches.

(5) Where it is necessary to cross a conveyer belt to reach an escapeway man door, unless another safe means is provided, there shall be a stop-start switch controlling the conveyer belt. The switch shall be located in such a manner that it may be reached from each side of the belt.

**352.371 Boreholes in advance of working face required.**

Whenever any working place approaches within fifty (50) feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer, or within two hundred (200) feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred (200) feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at



least twenty (20) feet in advance of the working face of the working place and shall be continually maintained to a distance of at least ten (10) feet in advance of the advancing working face. When there is more than one (1) borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than eight (8) feet apart in the rib of the working place to a distance of at least twenty (20) feet and at an angle of forty-five (45) degrees before additional cuts are taken. Rib holes shall be drilled in one (1) or both ribs of the working place as may be necessary for adequate protection of miners in such place. Alternative plans which afford equal or greater protection may be approved by the commissioner or his authorized representative.

**352.380 Death or resignation of mine foreman.**

In case of the death or resignation of a mine foreman, the superintendent shall select a competent certified man, if one (1) is available, and if not, he may temporarily select any other competent man who, if approved by the mine inspector and the commissioner, may serve until the next examination. He shall, while acting as mine foreman, have the same duties and be liable to the same penalties.

**352.390 Revocation of certificates -- Procedure.**

The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, failure to maintain drug- and alcohol-free condition of certification, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause. The same procedure provided in subsections (11) and (12) of KRS 351.102 shall apply to the certificate holder.

**352.400 Mine rules.**

- (1) The licensee of any mine may adopt special rules consistent with KRS Chapter 351 and this chapter for the government and operation of his mine, and covering all the work pertaining thereto in and out of the mine. Before the rules are put into effect they shall be approved in writing by the commissioner.
- (2) The mine rules shall be printed in a form prescribed by the commissioner.
- (3) The licensee shall furnish each employee a copy of the mine rules, and each employee shall sign a statement indicating his receipt of a copy of the rules and his agreement to comply with them.
- (4) The mine rules shall be included in the subjects taught during annual retraining of the mine's employees.

**352.410 Duties of mine superintendent, mine manager, and licensee.**

- (1) Each superintendent or mine manager shall, on behalf and at the expense of the licensee, keep on hand at or within convenient distance of the mine, not to exceed five hundred (500) feet, a sufficient quantity of all materials and supplies required to preserve the safety of employees, as ordered by the mine foreman and required by law. If the superintendent or mine manager cannot procure the necessary materials or supplies, he shall at once notify the mine foreman, who shall withdraw the men from the mine until the materials or supplies are received.
- (2) The superintendent or mine manager shall, at least once each week, read and examine carefully and countersign all reports entered in the mine record book of the mine foreman.
- (3) The licensee, superintendent, or mine manager shall cooperate with the mine foreman and other officials in the fulfillment of their duties under KRS Chapter 351 and this chapter, and shall direct that the mine foreman and all other employees under him comply with the law, especially when his attention is called by the mine inspector or by the commissioner to any violations of the laws.
- (4) The superintendent or mine manager shall keep on hand at the mine a supply of printed rules, notices, and record books required by this chapter. The superintendent or mine manager shall see that rules, notices, and record books are delivered to the proper persons at the mine and are properly cared for, and that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept legible.

**352.420 Required notice to commissioner.**

- (1) The operator, superintendent, or mine manager of each mine shall give the commissioner at least ten (10) days' notice of the following:
  - (a) Abandonment of a mine;
  - (b) Resumption of work in a mine after an abandonment or discontinuance for a period of two (2) weeks or more; and
  - (c) Change in the operator or name of a mine.
- (2) Each mine shall be inspected and approved by the department before operations are resumed after an abandonment.

**352.430 Inspection and closing of mines by department -- Hearings.**

- (1) The operator, superintendent, or mine manager of every mine shall furnish the mine inspector proper facilities for entering the mine and making examinations or obtaining information.
- (2) If any inspector discovers that any mine does not conform to the provisions of KRS Chapter 351 and this chapter in respect to the safety of employees, or that by reason of any defect or practice not specifically covered by these chapters in or about the mine, the lives or health of persons employed therein are endangered, he shall immediately issue an emergency order to the licensee or superintendent. If he deems it necessary for the immediate protection from imminent danger of bodily harm of the persons employed in the mine, he shall withdraw the men who may be endangered according to the following procedures:
  - (a) If the entire mine is affected by the dangerous condition, all men shall be withdrawn and production shall be halted until all defects causing the imminently dangerous condition are corrected;
  - (b) If an imminent danger affects only a portion of the mine, the persons whose safety may be menaced thereby shall be withdrawn from the affected part of the mine and production halted in that area until the dangerous condition is corrected;
  - (c) Where production is necessary to correct the unsafe condition, it shall be permitted to that extent, using only the necessary personnel; and
  - (d) Production at the affected area of a mine from which men are withdrawn pursuant to this section may be resumed upon reinspection by a mine inspector and a finding by that inspector that the mine is no longer imminently unsafe.
- (3) In all emergency hearings, a departmental attorney, the Attorney General, the Commonwealth's attorney, or the county attorney of the judicial circuit or county in which the mine is situated shall appear for the Commonwealth and defend the action.

**352.440 Appeal by miners from inspection by mine inspector.**

If seventy-five percent (75%) of the employees of any mine are dissatisfied with the inspection of the mine made by a mine inspector, they may appeal in writing to the department, setting forth clearly and in detail the reasons for their dissatisfaction. The commissioner of the department shall carefully consider the appeal and promptly take action by ordering another inspection to be made by the mine inspector, either alone or in company with another mine inspector detailed by the commissioner for the purpose, if that course appears to him to be warranted by the facts set forth in the appeal, or the commissioner may take such other action as appears to him just and proper. The appeal shall be signed by the dissatisfied persons.

**352.450 Map of mine to be filed initially and annually -- Additional maps.**

- (1) The operator or superintendent of each underground mine shall annually make or cause to be made a map of the workings of the mine which is accurate and of professional quality, on a scale of not less than one hundred (100) and not more than five hundred (500) feet to the inch, showing the area mined and the forms of the excavations up to January 1, together with the location and connection of the property and mineral lease lines of all adjoining lands within one thousand (1,000) feet of the excavations and, marked on each tract, the name of each owner or lessee of adjoining lands and of mine property for which the map is being filed. Such map shall also show:
  - (a) The proposed general plan of mining for the next twelve (12) months;
  - (b) All pillared, worked-out, and abandoned areas;
  - (c) Entries and aircourses with the direction of airflow indicated by arrows;
  - (d) Dip of the coal bed;
  - (e) Escapeways;
  - (f) Major roof falls;
  - (g) Any worked-out areas within one thousand (1,000) feet of the projections proposed for the next twelve (12) months, designating whether active, abandoned, or pillared, and showing precautions to be taken if mines are projected towards old workings which cannot be examined;
  - (h) Mines above or below;
  - (i) Water pools above;
  - (j) Location of all known oil and gas wells, both producing and abandoned, within the area required to be mapped, as well as owners and well numbers when possible;
  - (k) Such map shall identify those areas of the mine which are inaccessible or cannot be entered safely and on which no information is available;
  - (l) The name and address of the mine, the mine number, seam, and seam thickness;
  - (m) The scale and orientation of the map, longitude and latitude, and corresponding USGS 7.5 minute quadrangle map;
  - (n) The property or boundary lines of the mine, indicating the twenty-five (25) foot barrier required by KRS 352.490 between projections and property lines;

- (o) All known drill holes that penetrate the coal bed being mined;
- (p) All shaft, slope, drift, and tunnel openings and auger and strip-mined areas of the coal bed being mined;
- (q) The location of all surface mine ventilation fans; the location may be designated on the mine map by symbols;
- (r) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown, and watersheds near openings of the mine;
- (s) The location and description of at least two (2) permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two (2) permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys, and any other identifying permanent landmarks;
- (t) The location and elevation of any body of water dammed in the mine or held back in any portion of the mine; provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines;
- (u) The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;
- (v) The elevation of the floor at intervals of not more than two hundred (200) feet in:
  1. At least one (1) entry of each working section, main entry, and cross entries;
  2. The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned; and
  3. Rooms advancing toward or adjacent to property or boundary lines or adjacent mines; and
- (w) Contour lines passing through whole number elevations of the coal bed being mined. The spacing of such lines shall not exceed ten (10) foot elevation levels, except that a broader spacing of contour lines may be approved by the commissioner or his authorized representative for steeply pitching coal beds. Contour lines may be placed on overlays or tracings attached to mine maps.

The operator, superintendent, or mine manager shall deposit a true copy of the map with his license application to the commissioner within forty-five (45) days after January 1, and another copy of the map shall be kept at the office of the mine. A copy shall also be furnished the branch office of the department.

(2) After making and filing the map with the commissioner, the operator, superintendent, or mine manager thereafter is only required to file annually with the commissioner, within the time specified, such additional map and statement as is necessary to show the progress of the workings, the amount and forms of excavations, and the property lines within one thousand (1,000) feet of the excavations extended since the date of the preceding map. The commissioner shall annually, before January 1, give notice that the map is required.

(3) The commissioner may require any operator, superintendent, or mine manager to furnish a map other than those required in subsections (1) and (2) of this section or of a surface mine, and the operator or superintendent shall immediately comply with the requirement.

(4) The mine inspector shall have the authority to stop production at the mine of any operator who does not furnish within thirty (30) days of notification of specific deficiencies a map which fully complies with the requirements of this section.

#### **352.460 Procedure when no map filed or map incorrect.**

(1) If the operator, superintendent, or mine manager of any mine fails to furnish to the commissioner any map required by KRS 352.450 and 352.480, the commissioner may cause a correct survey and map of the mine or extensions thereof to be made at the expense of the owner, lessee, or operator of the mine, and the cost of the map shall be recoverable from the owner, lessee, or operator in the same manner as debts are recoverable by law.

(2) If at any time the commissioner has reason to believe that any map furnished under KRS 352.450 and 352.480 is materially incorrect, so that it will not serve the purpose for which it was intended, he may have a survey and map made or corrected, and the expense of making the survey, map, or correction shall be paid by the owner, lessee, or operator of the mine, or recovered in the same manner as debts are recoverable by law; but if the map furnished by the operator or superintendent is found to be correct, the expense of the survey and drafting of the map shall be paid by the Commonwealth.

#### **352.470 Certification of map.**

(1) The correctness of each map provided for by KRS 352.450 or 352.460 shall be certified only by a professional engineer or land surveyor registered in Kentucky. KRS 322.290 requires registrants to practice only in areas of competence. The certification shall read as follows:

"I, the undersigned, hereby certify that, to the best of my knowledge and belief, this map is correct, and that all the information required by the mining laws of this Commonwealth is set out within, and covers the period ending ....., .... Certifying Agent Acknowledged before me, a ....., this .... day of .....SEAL"

(2) The commissioner may reject any map as incomplete if its accuracy is not so attested.

**352.480 Duplicate maps -- Survey of abandoned or closed mine.**

- (1) The commissioner shall, upon the application therefor in written form by any person, make or cause to be made, at the expense of the applicant, a duplicate of any final or abandoned mine map on file with the department. The department also may make public or divulge any portion of a mine map submitted to the department by a licensee or operator.
- (2) When any underground mine is worked out or is about to be abandoned or indefinitely closed, the licensee shall make or cause to be made a final map of the mine, to show the entire worked-out area at the time the mine was abandoned or closed. A certified copy of the final map of the mine, on a scale of not less than one hundred (100) and not more than five hundred (500) feet to the inch, shall be filed with the commissioner.

**352.490 Mine not to extend within twenty-five feet of property line -- Liability for damages.**

- (1) No owner or tenant of any land containing coal shall engage in underground mining within twenty-five (25) feet of the line dividing the mineral owned or held by him from that of another person, without the written consent of every person interested in or having title to the adjoining land in possession, reversion, or remainder, or the guardians of such of those persons as are infants. The owner or tenant must also have the approval of the commissioner.
- (2) Any person who violates subsection (1) of this section is liable for damages to the persons injured who may pursue for remedies provided by law for the recovery of damages for injury to their property.

**352.500 Rights of adjoining owners.**

- (1) Each owner, tenant or occupant of land on which a mine is opened and worked, or his superintendent, shall permit any person interested in or having title to any land adjoining the mined property to have ingress and egress with surveyors and assistants to explore and survey the mine at his own expense once a month for the purpose of ascertaining whether or not KRS 352.490 has been violated.
- (2) If the right granted in subsection (1) is refused, complaint may be made before the District Court of the county in which the mine is located, and the court shall issue a summons to the owner, tenant, occupant or superintendent to answer the complaint. On the return of the summons executed, and proof that the complainant has right of entry and has been refused without sufficient cause, the court shall designate an early and convenient time for the entry to be made, and issue an order commanding the sheriff of the county to attend and prevent obstructions and impediments to the entry, exploration and survey. The cost of summons and the fee of the sheriff shall be paid by the person whose refusal occasioned the complaint, unless the court dismisses the complaint, in which case the party making the complaint shall pay the cost and sheriff's fee. Either party may appeal as in other actions.

**352.510 Mining near oil or gas wells -- Hearing.**

- (1) In any underground mine before removing any coal or other material or driving any entry or passageway within three hundred (300) feet of any surveyed natural gas or petroleum well, or before extending the workings in any mine beneath any tract of land on which these wells are also drilled, or within three hundred (300) feet of any of these wells or under any tract of land in visible possession of a well operator, the operator shall forward simultaneously to the well operator and to the Department for Natural Resources, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine workings and projected mine workings beneath the tract of land and within three hundred (300) feet of its outer boundaries. The operator may then proceed with his mining operations in the manner indicated on the copy of the map or plan; but if the conduct of his mining operations nearer than three hundred (300) feet to any surveyed natural gas or petroleum well, whether completed or being drilled, or to any proposed well where a derrick is being constructed for drilling, or proposed well will endanger the use of drilling of the well, the well owner or operator affected may, within fifteen (15) days from the receipt of the copy of the map by him and the department, file specific objections in writing to the mining operations within less than three hundred (300) feet of the well; and if the objection is filed, the department shall notify the operator of the character of the objections and fix a time and place for an informal hearing not more than ten (10) days from the end of the fifteen (15) day period. At the hearing, the operator and the well operator, in person or by a representative, shall consider the objections and agree upon the character and extent of operations to be conducted within less than three hundred (300) feet of the well to satisfy the objections raised and meet the approval of the department. And, if no agreement can be reached, the department, after an administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection of the use and operation of the well. The decision shall be subject to appeal by either party as provided in KRS 351.040. The department shall keep a complete record of all the hearings.
- (2) The mine operator shall, every six (6) months, while mining within three hundred (300) feet of the surveyed natural gas and petroleum well, bring up to date the maps and plans required by this section, or file new maps and plans complete to date.

(3) Prior to issuance of a waiver to mine within three hundred (300) feet of an oil or gas well, the Division of Mine Safety shall determine whether the oil or gas operator has been properly notified as required by subsection (1) of this section.

**352.540 Payment of miners.**

All persons employing persons in mining work shall, on or before the fifteenth and thirtieth days of each month pay to each employee, within fifteen (15) days of the aforesaid fifteenth or thirtieth day, respectively, in lawful money of the United States, the full amount of wages due him, unless prevented by an unavoidable casualty. If, at any time of payment, the employee is absent from his place of labor he shall be entitled to such payment at any reasonable time thereafter on demand.

**352.550 Coercion of trade of miners prohibited.**

- (1) No mine operator shall require any employee to deal with or purchase merchandise of any kind from any person at any place.
- (2) No such employer shall exclude from work, punish or blacklist any employee for failure to deal with or purchase merchandise of any kind from any person or at any place.

**352.630 Telephone service or equivalent two-way communication facilities -- Locations -- Alarms.**

(1) Effective September 1, 2006, each licensed underground facility shall provide telephone service or equivalent two-way communications facilities, approved by the director or his authorized representative, between the surface of each landing of main shafts and slopes, and between the surface and each working section that is more than one hundred (100) feet from a portal. Implementation of telephone or equivalent two-way communications facilities shall be subject to the following provisions:

- (a) Telephones or equivalent two-way communications facilities provided at each working section shall be located not more than five hundred (500) feet outby the last open crosscut and not more than eight hundred (800) feet from the farthest point of penetration of the working faces on the section;
- (b) Primary telephone or two-way communications systems and lines shall be located in the intake air course or adjacent entry, but shall not be located in the beltway or return air courses unless approved by the director of the Division of Mine Safety in seams with coal heights twenty-six (26) inches or less; and
- (c) The incoming communication signal on the telephone or other approved two-way communications system shall activate an audible alarm that is distinguishable from the surrounding noise level and a visual alarm that can be seen by a miner regularly employed on the working section.

(2) Effective September 1, 2006, each licensed underground facility shall have a telephone or equivalent two-way communications facility located on the surface within one thousand (1,000) feet of all main portals. The telephone or equivalent two-way communications system shall be installed in either a building or in a box-like structure designed to protect the communications equipment from damage by inclement weather. At least one (1) of these communications systems shall be at a location where a responsible person is available and authorized to respond to an emergency situation at all times when miners are working underground. The incoming communications signal on the telephone or other approved two-way communications system shall activate an audible alarm, distinguishable from the surrounding noise level and a visual alarm that can be seen by the responsible person stationed near the communications system.

(3) Effective September 1, 2006, each licensed underground facility shall have a telephone or equivalent two-way communications system located on the surface which can be used to activate the licensed facilities emergency action plan required in KRS 352.640 and to comply with reporting requirements contained in KRS 352.180. The telephone or equivalent two-way communications system shall be installed in either a building or in a box-like structure designed to protect the communications equipment from damage by inclement weather. At least one (1) of the communications systems shall be at a location where a responsible person is available and authorized to respond at all times to an emergency situation when miners are working. The incoming communications signal on the telephone or other approved two-way communications system shall activate an audible alarm, distinguishable from the surrounding noise level and a visual alarm that can be seen by the responsible person stationed near the communications facility.

**352.640 Emergency action plans -- Components -- Copies -- Training -- Evacuation and firefighting programs.**

(1) An emergency action plan shall be submitted with each application for a license to operate an underground mine. The emergency action plan shall be for use during emergencies at the licensed facility. The plan shall consist of the following components:

- (a) A certification, submitted by the applicant, that the telephone or equivalent two-way communications system will be in place and functioning at the facility when operation begins;

- (b) A listing of the telephone numbers of the facility personnel, state and federal regulatory agencies, and state, federal, and local emergency response agencies to be contacted in the event of a mine emergency;
  - (c) The positions and telephone numbers of the persons designated by the licensee to implement the emergency action plan during mine emergencies;
  - (d) The name of the ambulance service or first responder with which the licensee has made arrangements to provide twenty-four (24) hour emergency medical assistance for any person injured at the licensed facility;
  - (e) A copy of the licensed facility's mine emergency evacuation and firefighting plan, if one is required; and
  - (f) A training schedule for all personnel as to their responsibilities under the emergency action plan. On site, each licensed facility shall maintain a log containing training dates, the personnel trained, and their positions and shifts.
- (2) The licensee shall provide a revised copy of the plan to the regional office and the Frankfort office of the Division of Mine Safety within ten (10) days of a change in any of the information required in subsection (1) of this section becoming effective.
- (3) The licensee shall be responsible for ensuring that copies of the licensed facility's emergency action plan are submitted to the appropriate regional office and to the Frankfort office of the Division of Mine Safety. Copies of the plan also shall be kept on the premises of the licensed facility where it shall be made open to inspection by the licensee's employees and their independent contractors and inspectors.
- (4) Each licensed facility shall post in a prominent place at the mine office a copy of all emergency contact numbers. The list of emergency contact numbers shall be made available to the licensee's employees and their independent contractors during training on the emergency action plan.
- (5) Each licensed facility shall train all employees of the licensee, including their independent contractors, at the beginning of their employment with the licensed facility and on an annual basis on the emergency action plan and the persons responsible for the plan's implementation.
- (6) Each licensed facility on which an underground mine is operated shall develop and implement a mine emergency evacuation and firefighting program that instructs all miners and other personnel of the licensed facility in the proper evacuation procedures they must follow if a mine emergency occurs. The program, and any revisions thereto, must be submitted to the director or his designee. All personnel of the licensed facility, including independent contractors, shall be trained in the performance of the plan's revisions prior to any of the revisions being implemented. The program shall include a plan to train all miners on all shifts with procedures for:
- (a) Mine emergency evacuation for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas, or water inundation;
  - (b) Evacuation of all miners not required for a mine emergency response;
  - (c) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and
  - (d) Operation of fire suppression equipment available in the mine.

**352.650 Mine maps -- Posting -- Escape drills -- Frequency -- Locations -- Information.**

- (1) A map shall be posted or readily accessible to all miners in each working section, and in each area where mechanized equipment is being installed or removed. The map shall show the designated escapeways from the working section to the locations where miners must travel to satisfy the escapeway drill specified in subsection (4) of this section.
- (2) A map showing the main escapeways shall be posted at the surface location of the licensed facility where miners congregate.
- (3) All maps shall be kept up-to-date. Any changes in routes of travel, locations of doors, or directions of airflow shall be shown on the maps by the end of the shift. Miners affected by the changes shall be informed of the changes before entering the underground areas of the mine. Miners on a shift underground when any change is made shall be immediately notified of the change.
- (4) At least once every ninety (90) days, each miner, including those miners with working stations located between the working sections and main escapeways, shall participate in a practice escapeway drill.
- (5) During the drill, miners that do not have working stations located between the working sections and the main escapeways shall travel the greater distance of the two (2) following choices:
- (a) A path from the primary or alternate escapeway from the miner's working section or from the area where mechanized mining equipment is being installed or removed, to the area where the split of air ventilating the working section intersects a main air course; or
  - (b) A path which is two thousand (2,000) feet outby the section loading point.
- (6) Those miners who have working stations located between the working sections and the main escapeways shall participate in the escapeway drill by traveling in the primary or alternate escapeway for a distance of two thousand (2,000) feet from their working station toward the nearest escape facility or drift opening.

(7) (a) At least once every six (6) weeks and for each shift, at least two (2) miners on each coal-producing working section who work on that section, accompanied by the section foreman, shall participate in a practice escapeway drill and shall travel the primary or alternate escapeway:

1. From the location specified in paragraph (a) of subsection (5) of this section to the surface;
2. To mechanical escape facilities; or
3. To an underground entrance to a shaft or slope to the surface.

(b) Systematic rotation of section personnel shall be used so that all miners participate in this drill.

(8) (a) At least once every six (6) weeks, at least two (2) miners on each maintenance shift and a foreman or assistant foreman shall participate in a practice escapeway drill and shall travel the primary or alternate escapeway:

1. From the location specified in paragraph (a) of subsection (5) of this section to the surface;
2. To mechanical escape facilities; or
3. To an underground entrance to a shaft or slope to the surface.

(b) Systematic rotation of maintenance personnel and working sections shall be used so that all miners participate in the drill and so that the escapeways from all sections are traveled.

(9) For all escapeway drills required by this section, an escapeway drill shall not be conducted in the same escapeway as the drill proceeding immediately thereafter.

(10) Before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, changes in the routes of travel, caches of self-rescuers, and plans for diverting smoke from escapeways.

**352.660 Prohibition of termination or disciplining of miners for reporting unsafe mines or violations.**

No licensee, operator, mine superintendent, mine manager, or other supervisory personnel shall terminate or otherwise discipline a miner for reporting or documenting to or cooperating with regulatory agencies in their investigation of unsafe mining practices or conditions or violations of provisions of KRS Chapter 351 or 352.