



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Permits

4 (Amendment)

5 405 KAR 10:030. General Requirements for ~~[Types, terms and conditions of performance bonds~~
6 ~~and] liability insurance.~~

7 RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, 350.110, 350.465

8 STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 350.020, 350.028, 350.060, 350.064,
9 350.151, 350.465

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part
11 requires the cabinet to specify types, terms, and conditions for ~~[performance bonds and] liability~~
12 ~~insurance. [This administrative regulation sets forth the various types and conditions which the~~
13 ~~cabinet will accept in satisfaction of the bonding requirements. This administrative regulation sets~~
14 ~~forth that bonds shall be payable to the cabinet and other conditions. This administrative regulation~~
15 ~~specifies certain alternative types of bonds, in addition to the surety bond, and the conditions upon~~
16 ~~which the cabinet will accept them.]~~ This administrative regulation specifies the terms and
17 conditions of liability insurance.

18 Section 1. Requirement to File a Certificate of Liability Insurance. Each applicant for a
19 permit shall submit to the cabinet, as part of the permit application, a certificate issued by an
20 insurance company authorized to do business in Kentucky. The amount, duration, form, conditions
21 and terms of this insurance shall conform to Section 2 of this administrative regulation.

1 ~~[Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types~~
2 ~~which are set forth in this section.~~

3 ~~(2) The performance bond shall be either:~~

4 ~~(a) A surety bond;~~

5 ~~(b) A collateral bond;~~

6 ~~(c) A combination of the above bonding types; or~~

7 ~~(d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR~~
8 ~~10:200, KRS 350.595, and 350.700 through 350.755).~~

9 ~~Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be~~
10 ~~in an amount determined by the cabinet as provided in 405 KAR 10:020, Sections 1 and 2.~~

11 ~~(2) The performance bond shall be payable to the cabinet.~~

12 ~~(3) The performance bond shall be conditioned upon faithful performance of all of the~~
13 ~~requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the conditions of the~~
14 ~~permit and shall cover the entire permit area or such incremental area as the cabinet has approved~~
15 ~~pursuant to 405 KAR 10:010, Section 3(2).~~

16 ~~(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020,~~
17 ~~Section 3.~~

18 ~~(5) Surety bonds shall be subject to the following conditions:~~

19 ~~(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be~~
20 ~~cancelable by the surety at any time for any reason, including, but not limited to, nonpayment of~~
21 ~~premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for~~
22 ~~permitted lands not disturbed may be cancelled with the written approval of the cabinet, provided~~
23 ~~the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to~~

1 ~~the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective~~
2 ~~for lands subject to bond coverage which are affected after receipt of notice, but prior to approval~~
3 ~~by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been~~
4 ~~filed by the permittee, or if the permit area has been reduced by revision to the extent that the~~
5 ~~remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the~~
6 ~~completion of reclamation operations on the reduced permit area in accordance with 405 KAR~~
7 ~~10:020. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to~~
8 ~~cancel bond, whether the bond may be cancelled on an undisturbed area.~~

9 (b) ~~The bond shall provide that the surety and the permittee shall be jointly and severally~~
10 ~~liable.~~

11 (c)1. ~~The surety shall give prompt notice to the permittee and the cabinet of any notice~~
12 ~~received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any~~
13 ~~violations of regulatory requirements which could result in suspension or revocation of the surety's~~
14 ~~license to do business.~~

15 2. ~~In the event the surety becomes unable to fulfill its obligations under the bond for any~~
16 ~~reason, the surety shall promptly provide written notice to the permittee and the cabinet.~~

17 3. ~~Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or~~
18 ~~revocation of its license or certificate of authority, the permittee shall be deemed to be without~~
19 ~~proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve~~
20 ~~the permittee of responsibility under the permit or the surety of liability on its bond. The cabinet~~
21 ~~shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to~~
22 ~~exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the~~
23 ~~permittee shall cease coal extraction and coal processing operations and shall comply with the~~

1 ~~provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately~~
2 ~~begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction~~
3 ~~and coal processing operations shall not resume until the cabinet has determined that an acceptable~~
4 ~~bond has been posted. If an acceptable bond has not been posted by the end of the period allowed,~~
5 ~~the cabinet may suspend the permit until acceptable bond is posted.~~

6 ~~(d) A surety bond shall be executed by the operator and a corporate surety licensed to do~~
7 ~~business in the Commonwealth of Kentucky.~~

8 ~~(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and~~
9 ~~letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following~~
10 ~~conditions:~~

11 ~~(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all~~
12 ~~collateral deposited by the applicant, until authorized for release or replacement as provided in this~~
13 ~~chapter.~~

14 ~~(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its~~
15 ~~authorized agent in writing, and the assignment evidenced on the books of the bank issuing such~~
16 ~~certificates.~~

17 ~~(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a~~
18 ~~FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept a~~
19 ~~denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.~~

20 ~~(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff~~
21 ~~or liens which it has or might have against those certificates.~~

1 ~~(e) Persons with an interest in collateral posted as a bond, and who desire notification of~~
2 ~~actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the~~
3 ~~collateral is offered.~~

4 ~~(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of~~
5 ~~deposit, so as to assure that the cabinet will be able to liquidate these certificates prior to maturity,~~
6 ~~upon forfeiture, for the amount of the bond required by this chapter.~~

7 ~~(7) Letters of credit shall be subject to the following conditions:~~

8 ~~(a) The letter may only be issued by a bank organized or authorized to do business in the~~
9 ~~United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed~~
10 ~~by an approved Kentucky lending institution.~~

11 ~~(b) Letters of credit shall be irrevocable.~~

12 ~~(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a~~
13 ~~notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to~~
14 ~~terminate the letter on its expiration date, the cabinet may draw upon demand.~~

15 ~~(d)1. The issuer shall give prompt notice to the permittee and the cabinet of any notice~~
16 ~~received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any~~
17 ~~violations of regulatory requirements which could result in suspension or revocation of the issuer's~~
18 ~~charter or license to do business;~~

19 ~~2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit~~
20 ~~for any reason, notice shall be given immediately to the permittee and the cabinet;~~

21 ~~3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or~~
22 ~~revocation of its charter or license, the permittee shall be deemed to be without proper performance~~
23 ~~bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the~~

1 ~~permittee of responsibility under the permit or the issuer of liability on the letter of credit. The~~
2 ~~cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond~~
3 ~~coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period~~
4 ~~allowed, the permittee shall cease coal extraction and coal processing operations and shall comply~~
5 ~~with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall~~
6 ~~immediately begin to conduct reclamation operations in accordance with the reclamation plan.~~
7 ~~Coal extraction and coal processing operations shall not resume until the cabinet has determined~~
8 ~~that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of~~
9 ~~the period allowed, the cabinet may suspend the permit until acceptable bond is posted.~~

10 ~~(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or~~
11 ~~increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to~~
12 ~~be all parties, which sets forth the agreed distribution of bond amounts to be released or reduced~~
13 ~~under 405 KAR 10:040 and 405 KAR 10:020, Section 4, respectively. If no schedule is submitted,~~
14 ~~the cabinet may release equal percentages of each bond.~~

15 ~~Section 3. Substitution of Bonds. (1) The cabinet may allow permittees to substitute~~
16 ~~existing surety or collateral bonds for equivalent surety or collateral bonds, if the liability which~~
17 ~~has accrued against the permittee on the permit area or increment is transferred to such substitute~~
18 ~~bonds.~~

19 ~~(2) The cabinet shall not release existing performance bonds until the permittee has~~
20 ~~submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of~~
21 ~~performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR~~
22 ~~10:040.~~

1 ~~(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or~~
2 ~~suspension of the permit covered by the bond is pending or if there is a pending action for~~
3 ~~forfeiture of the bond.]~~

4 Section 2 ~~[Section 4]~~. Terms and Conditions for Liability Insurance. (1) The applicant shall
5 submit, as a part of the permit application at the time of bond submission, a certificate issued by an
6 insurance company authorized to do business in Kentucky certifying that the applicant has a public
7 liability insurance policy in force for the surface coal mining and reclamation operation for which
8 the permit is sought. The certification shall be on Certificate of Liability Insurance, SME-29,
9 October 2008 ~~[a form prescribed by the cabinet]~~. The policy shall provide for personal injury and
10 property damage protection in an amount adequate to compensate for all personal injury and
11 property damage resulting from surface coal mining and reclamation operations, including damage
12 caused by the use of explosives and damage to water wells. Minimum insurance coverage for
13 bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

14 (2) The policy shall be maintained in full force during the term of the permit or any renewal
15 thereof, and during the liability period necessary to complete all reclamation operations under 405
16 KAR Chapters 7 through 24, until full bond release has been granted.

17 (3) The policy shall include a clause requiring that the insurer notify the cabinet whenever
18 substantive changes are made in the policy, including any termination or failure to renew. This
19 notice shall be made on the ""Notice of Cancellation, Nonrenewal or Change of Liability
20 Insurance, Form SME-30, (June 2005)".

21 (4) In the event the insurer becomes unable to fulfill its obligations under the policy, notice
22 shall be given immediately to the permittee and the cabinet.

1 (5) Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or
2 revocation of its license or certificate of authority, the permittee shall be deemed to be without
3 insurance coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the
4 insurer of liability on its policy. The cabinet shall issue a notice to the permittee specifying a
5 reasonable period to replace such coverage, not to exceed ninety (90) days. If an adequate
6 insurance coverage is not posted by the end of the period allowed, the permittee shall cease coal
7 extraction and coal processing operations and shall comply with the provisions of 405 KAR
8 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct
9 reclamation operations in accordance with the reclamation plan. Coal extraction and coal
10 processing operations shall not resume until the cabinet has determined that an acceptable
11 insurance coverage has been posted. If an acceptable insurance coverage has not been posted by
12 the end of the period allowed, the cabinet may suspend the permit until acceptable insurance
13 coverage is posted.

14 Section 3. Incorporation by Reference. (1) The following material is incorporated by
15 reference:

16 (a) "Certificate of Liability Insurance, Form SME-29, (October 2008)"; and

17 (b) "Notice of Cancellation, Nonrenewal or Change of Liability Insurance, Form SME-30,
18 (June 2005)".

19 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
20 law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky
21 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

405 KAR 10:030 approved for filing.
Pages (1-8)

5/4/12
Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing June 14, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator
#2 Hudson Hollow
Frankfort, KY 40601
Telephone: (502) 564-6940 Fax (502) 564-5698
Email: Michael.Mullins@ky.gov

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 10:030

Contact Person: Michael Mullins, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the terms and conditions of liability insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to give regulated entities the necessary information on liability insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 requires the cabinet to specify types, terms, and conditions for liability insurance. This administrative regulation provides information on liability insurance to regulated entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing necessary information regarding liability insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the information related to bonding and places that information in the new regulation 405 KAR 10:015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to place all the information related to bonding in one administrative regulation. This will make this information easier to find for regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment removes the information related to bonding and places in the new administrative regulation which will contain all the bonding information for surface mining activities.

(d) How the amendment will assist in the effective administration of the statutes: Removal of information related to bonding will leave only information related to liability insurance. This separation will make the information easier for regulated entities to understand and to maintain compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 870 currently bonded.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not place new requirements on regulated entities. The information is simply being relocated into a different administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entity associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All the information related to liability insurance will be located in one place. Therefore the information will be easier to locate for regulated entities.

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

(a) Initially: This amendment will not cost the agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding to administer the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities are required to have liability insurance as part of their permit application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 405 KAR 10:030

Contact Person: Michael Mullins, Regulation Coordinator

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

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate funds for use by the cabinet.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate funds for use by the cabinet on a continuing basis.

(c) How much will it cost to administer this program for the first year? There are no additional costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation # 405 KAR 10:030

Agency Contact: Michael Mullins, Regulation Coordinator

- 1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730**
- 2. State Compliance Standards. KRS 350.064 and 405 KAR 10:030.**
- 3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.60**
- 4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No.**
- 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**

DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE
405 KAR 10:030

This administrative regulation incorporates the following documents:

I. Certificate of Liability Insurance, Form SME-29, (October 2008). An applicant for the surface coal mining and reclamation operation is required to submit, as a part of the permit application at the time of bond submission, a certificate issued by an insurance company authorized to do business in Kentucky certifying that the applicant has a public liability insurance policy. This form is required to be submitted by the applicant. This form was previously incorporated by reference in 405 KAR 10:010.

II. Notice of Cancellation, Nonrenewal or Change of Liability Insurance, Form SME-30, (June 2005). The insurance policy is required to include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew. The applicant is required to use this form to notify the cabinet. This form was previously incorporated by reference in 405 KAR 10:010.