



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Office of Mine Safety and Licensing

4 (Amendment)

5 805 KAR 5:030. Prohibition against working or traveling under an unsupported roof; penalties.

6 RELATES TO: KRS 351.010(1)(r), 351.020, 352.201, EO 2009-0538

7 STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 351.070(13), 352.201

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.201 requires each underground
9 mine to have an approved roof control plan and directs that a person shall not [~~no person shall~~]
10 proceed beyond temporary or permanent roof support. EO 2009 - 0538, effective June 12, 2009,
11 abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and
12 Environment Cabinet. This administrative regulation establishes procedures for the department's
13 response in [~~these~~] circumstances in which a person works or travels [~~persons work or travel~~]
14 under an unsupported roof.

15 Section 1. Definitions. [~~Definition.~~]

16 (1) "Mine Foreman" is defined by KRS 351.010(1)(r).

17 (2) "Unsupported roof" means the roof in a [~~any~~] portion of an underground coal mine in
18 which [~~no~~] temporary or permanent roof support system has not been installed and shall include
19 [~~any and~~] all areas of an underground coal mine, including breaks, fall areas, and pillar lines; but
20 [~~"unsupported roof"~~] shall not refer to a roof which has [~~adequate natural support and has been~~

1 ~~determined to have~~] adequate natural support either initially or following the installation of
2 artificial roof support.

3 Section 2. (1)(a) A ~~[No]~~ person shall not work or travel under an unsupported roof in an
4 ~~[any]~~ underground coal mine.

5 (b) Mining-related ~~[No mining-related]~~ activities, including equipment installation and
6 maintenance, clean-up or activities preparatory to the installation of temporary or permanent roof
7 support shall not be performed under an unsupported roof, and ~~[no]~~ justification for performing
8 these ~~[any such]~~ acts ~~[act(s)]~~ shall not be accepted by the department.

9 (2)(a) A person ~~[Within sixty (60) days from the effective date of this administrative~~
10 ~~regulation, all persons]~~ working in an underground coal mine shall be instructed by ~~[the]~~
11 management of the mine of ~~[in]~~ the hazards of proceeding beyond temporary or permanent roof
12 support.

13 (b) A ~~[Any]~~ person who proceeds beyond temporary or permanent roof support shall be
14 personally liable for ~~[any]~~ violation of proceeding beyond temporary or permanent roof support.
15 ~~[Without regard to individual responsibility, however, each]~~

16 (c) A mine ~~[mine's]~~ foreman or section foreman shall exercise primary and ultimate
17 responsibility to ensure that a person shall not work or travel ~~[no person(s) under the authority of~~
18 ~~that foreman works or travels]~~ under an unsupported roof.

19 (3) (a) If an inspector for the department does not ~~[Unless an inspector of the department]~~
20 observes a person ~~[persons]~~ working or traveling under an unsupported roof, the inspector ~~[he]~~
21 shall ~~[otherwise]~~ determine if the area below an unsupported roof appears to have been used or
22 otherwise occupied by mining personnel.

1 (b) Use or occupancy shall be deemed to have occurred if there is physical evidence
2 indicating to the inspector that a person has [~~persons have~~] worked or traveled under an
3 unsupported roof.

4 Section 3. (1) If [~~Whenever~~] an inspector of the department observes or [~~otherwise~~]
5 determines that mine personnel have proceeded under an unsupported roof, the inspector shall
6 document the observation [~~that~~] in a report to the [~~his~~] district supervisor. That report shall include:

7 (a) The [~~the~~] name and location of the mine at which the violation is alleged to have
8 occurred;

9 (b) The [~~the~~] time and date of the violation, if known;

10 (c) The [~~the~~] person [~~or persons~~] observed or believed to have worked or traveled under an
11 unsupported roof;

12 (d) The [~~the~~] basis for that belief if conduct was not [~~no conduct was~~] actually observed;

13 (e) The [~~the~~] name of the mine foreman or section foreman under whose responsibility the
14 person was [~~person(s) were~~] working at the time the conduct occurred; and

15 (f) The [~~the~~] name of the instructor who administered the most recent training to the person
16 alleged to have proceeded under an unsupported roof, the date of that training, and the location at
17 which the training [~~it~~] was administered. [~~administered; and a recommendation of the action to be~~
18 ~~taken by the department with respect to the violation(s) alleged. The report shall be tendered to the~~
19 ~~district supervisor within two (2) working days of the date upon which the inspector observes or~~
20 ~~becomes aware of the violation alleged.]~~

21 (2) Upon [~~his~~] receipt of the report from the inspector, the district supervisor shall forward
22 to the Executive Director of the Office of Mine Safety and Licensing, a copy of the report and a
23 letter describing the severity of the violation and naming personnel who are responsible for the

1 violation. ~~[attempt to verify the matters set out in the inspector's report and in making that~~
2 ~~verification, may enter upon the premises of the underground mine at which the violation is alleged~~
3 ~~to have occurred, pursuant to KRS 351.140(8). Within five (5) working days of his receipt of the~~
4 ~~report from the inspector, the district supervisor shall tender to the commissioner a report of the~~
5 ~~alleged violation, together with a summary of the efforts undertaken by the district supervisor to~~
6 ~~verify the information set out in the inspector's report, and a recommendation to the commissioner~~
7 ~~as to any response to the violation alleged which the department should make.~~

8 ~~(3) Within thirty (30) days of his receipt of the report and recommendation from the district~~
9 ~~supervisor, the commissioner shall determine whether the violation alleged is to be made subject to~~
10 ~~hearing. If the commissioner determines that a hearing is required to adjudicate the violation~~
11 ~~alleged, he shall cause a notice of violation to be prepared and delivered to all persons named in the~~
12 ~~district supervisor's report who appear to have responsibility, in some capacity, for that violation,~~
13 ~~which notice shall describe the violation alleged and establish a time and place for the hearing to~~
14 ~~consider it. Any person alleged to have worked or traveled under unsupported roof, or to otherwise~~
15 ~~have some responsibility for that violation, shall be given not less than thirty (30) days notice of~~
16 ~~the hearing at which he will be required to appear and respond to the allegation made.~~

17 ~~(4) Not more than thirty (30) days following a hearing, at which the commissioner or his~~
18 ~~designee shall preside, the department shall issue findings of fact, conclusions of law and an order~~
19 ~~with respect to the matters heard at the hearing, copies of which shall be provided to the mine~~
20 ~~operator and to all parties to the hearing. If the person charged with working or traveling under~~
21 ~~unsupported roof is found guilty of that charge, he shall be required to complete an eight (8) hour~~
22 ~~course of roof control methods and safety procedures, including roof control plans and the hazards~~
23 ~~of working or traveling under unsupported roof. The course of instruction shall be developed by~~

1 the department, which shall administer it in the office of the district in which the violation is found
2 to have occurred. An employer shall not be responsible for paying the salary of any person
3 required to complete the eight (8) hour course following a finding of that person's having worked
4 or traveled under unsupported roof, although the eight (8) hour period required to complete the
5 course shall be treated as an excused absence by the mine operator. A person found guilty of
6 having worked or traveled under unsupported roof or having permitted or contributed to that
7 violation shall not be permitted to resume employment in any underground coal mine until he has
8 completed the eight (8) hour course of instruction, which shall be timely provided by the
9 department to the person required to complete it.

10 (5) ~~If any person fails to complete the eight (8) hour course of instruction, he shall be~~
11 ~~required to enroll for and complete another such course. At the discretion of the department,~~
12 ~~however, the Board of Miner Training, Education and Certification, established in KRS 351.105,~~
13 ~~may also be advised of his failure to complete the eight (8) hour course of instruction and may~~
14 ~~commence whatever action it deems appropriate with respect to the failure to complete the eight~~
15 ~~(8) hour course of instruction.~~

16 (6) ~~Upon the department's determination that a person has proceeded beyond temporary or~~
17 ~~permanent roof support, the management of the mine at which he was employed at the time of the~~
18 ~~violation shall conduct, with all mine employees and in the presence of a representative of the~~
19 ~~department, a training session of not less than thirty (30) minutes duration concerning roof control~~
20 ~~methods and safety procedures, specifically including a discussion of the prohibition against~~
21 ~~working or traveling under unsupported roof.~~

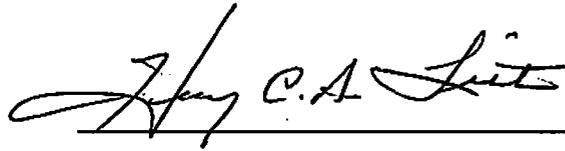
22 Section 4. ~~The following procedure shall apply to any person who has been found by the~~
23 ~~commissioner to have worked or traveled under unsupported roof and who has thereafter~~

1 ~~completed the eight (8) hour course on roof control methods and safety procedures described~~
2 ~~above, and who is alleged to have again worked or traveled under unsupported roof: the~~
3 ~~department's inspector shall make his report and recommendation to the district supervisor within~~
4 ~~two (2) working days of observing or becoming aware of the alleged violation. The contents of that~~
5 ~~report shall be identical to those described in Section 3(1) of this administrative regulation. Upon~~
6 ~~his receipt of the inspector's report and recommendation, the district supervisor shall, within five~~
7 ~~(5) working days, make the determination and forward to the commissioner the recommendation~~
8 ~~described in Section 3(2) of this administrative regulation. Upon his receipt of the district~~
9 ~~supervisor's report and recommendation, the commissioner shall, within thirty (30) days of his~~
10 ~~receipt of it, make the determination required of him in Section 3(3) of this administrative~~
11 ~~regulation. If the commissioner determines that a person has, following his completion of the eight~~
12 ~~(8) hour course of instruction in roof control methods and safety procedures, again worked or~~
13 ~~traveled under unsupported roof, the commissioner shall immediately make a written report of that~~
14 ~~determination to the Board of Miner Training, Education and Certification. Accompanying that~~
15 ~~report shall be the commissioner's recommendation as to possible action by the board with respect~~
16 ~~to the second alleged violation, that action to potentially include the board's requiring that the~~
17 ~~person alleged to have worked or traveled under unsupported roof appear at a hearing convened by~~
18 ~~the board to show cause why he should not be decertified as an underground miner or as the holder~~
19 ~~of a certificate to practice a mining specialty in this Commonwealth, or both. Any hearing ordered~~
20 ~~by the Board of Miner Training, Education and Certification shall be conducted in accordance with~~
21 ~~KRS 351.102(11) and 352.390.]~~

805 KAR 5:030 approved for filing.
Pages (1-6)

7/29/09

Date



A handwritten signature in cursive script, reading "Henry C. A. List", written over a horizontal line.

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

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

CONTACT PERSON: Johnny Greene, Executive Director
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Frankfort, KY 40601
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REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 805 KAR 5:030

Contact Person: Johnny Greene, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for the department's response to circumstances in which persons work or travel under an unsupported roof.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent accidents occurring due to unsupported roof collapses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 352.201 requires each underground mine to have an approved roof control plan that directs no person shall proceed beyond temporarily or permanently supported roofs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 352.201 requires each underground mine to have an approved roof control plan that states no person shall proceed beyond temporarily or permanently supported roofs. This administrative regulation details the department's course of actions concerning individuals working in unsupported roof situations.

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

(a) How the amendment will change this existing administrative regulation: This amendment will alter the penalty process in order to better align with the statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulation to incorporate the changes established by SB 200 of the 2006 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 352.201 requires each underground mine to have an approved roof control plan that states no person shall proceed beyond temporarily or permanently supported roofs. SB 200 changed the penalties and procedure for assessing penalties (KRS 351.070 (15)). This amendment will update the administrative regulation to include the changes from SB 200.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will alter the process the department takes relating to individuals working or traveling under unsupported roofs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect underground mines and individuals which will be in areas where roof support is required to maintain a safer working environment.

(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: The amendments contained within this administrative regulation will have minimal bearing on the entities listed above. The changes are mainly related to the department's response to violations of working or traveling under unsupported roofs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this administrative regulation to the entities listed in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will work in safer conditions due to compliance with this administrative regulation.

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

(a) Initially: There will be no additional costs associated with the implementation of this amendment.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General 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 funding to implement the amendments in this administrative regulation.

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

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

No. All individuals that work in underground mine will be exposed to the same roof control requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 805 KAR 5:030 Contact Person: Johnny Greene, Executive Director

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

Yes X No

If yes, complete questions 2-4.

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 352.201 requires each underground mine to have an approved roof control plan that directs no person shall proceed beyond temporarily or permanently supported roofs.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

(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? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The costs associated with this program are minimal.

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

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

Revenues (+/-):

Expenditures (+/-): NA

Other Explanation: NA