**138.330 Dealer's and transporter's financial instrument.**

(1) Every dealer or transporter required to be licensed under KRS 138.310 shall file with the Department of Revenue a financial instrument in an amount not to exceed three (3) months' estimated liability as computed by the department or five thousand dollars ($5,000) whichever is greater, or in the case of a new licensee in the minimum amount of five thousand dollars ($5,000) until such time as an estimated three (3) months' liability can be established, provided that the maximum amount of any financial instrument may be reduced to an amount sufficient in the opinion of the department, considering the financial rating and reputation of the company, to insure payment to the department of the amount of tax, penalties and interest for which the dealer or transporter may become liable. The financial instrument shall be on a form and with a surety approved by the department. The dealer or transporter shall be the principal obligor and the state the obligee. The financial instrument shall be conditioned upon the prompt filing of true reports by the dealer and transporter and the payment by the dealer to the State Treasurer of all gasoline and special fuel excise taxes now or hereafter imposed by the state, together with all penalties and interest thereon, and generally upon faithful compliance with the provisions of KRS 138.210 to 138.340.

(2) If liability upon the financial instrument is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the department any surety on the financial instrument has become unsatisfactory or unacceptable, the department may require the licensee to file a new financial instrument with satisfactory sureties in the same amount, failing which the department shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If a new financial instrument is furnished as provided above, the department shall cancel and surrender the financial instrument for which the new financial instrument is substituted.

(3) If upon hearing, of which the licensee shall be given five (5) days' notice in writing, the department decides that the amount of the existing financial instrument is insufficient to insure payment to the state of the amount of tax, penalties, and interest for which the licensee is or may become liable, the licensee shall, upon the written demand of the department, file an additional financial instrument in the same manner and form with a surety thereon approved by the department, in any amount determined by the department to be necessary, failing which the department shall cancel the license of the licensee in accordance with the provisions of KRS 138.340.

(4) Any surety on a financial instrument furnished as required by this section shall be released from all liability to the state accruing on the financial instrument after the expiration of sixty (60) days from the date upon which the surety has lodged with the department a written request to be released, but this request shall not operate to release the surety from any liability already accrued or which shall accrue before the expiration of the sixty (60) day period. The department shall promptly, upon receipt of a request, notify the licensee who furnished the financial instrument, and unless the licensee, before the expiration of the sixty (60) day period, files with the

department a new financial instrument with a surety satisfactory to the department in the amount and form prescribed in this section, the department shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If an approved new financial instrument is filed, the department shall cancel and surrender the financial instrument for which the new bond is substituted.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 367, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 267, sec. 4, effective July 15, 2002. -- Amended 1996 Ky. Acts ch. 318, sec. 39, effective July 15, 1996. -- Amended 1988 Ky. Acts ch. 285, sec. 13, effective August 1, 1988. -- Amended 1962 Ky. Acts ch. 203, sec. 3. -- Amended 1952 Ky. Acts ch. 193, sec. 6. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4281g-18.