

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Fire Prevention
(Amendment)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135, 227.300

STATUTORY AUTHORITY: KRS 224.60-135(5)[, ~~227.300~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, [~~interior lines, installs corrosion protection,~~] closes, or removes an underground [~~petroleum~~] storage tank for a an petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance, and technical competency and proficiency. This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system by a qualifying individual and for determining financial capability through proof of insurance.

Section 1. Definitions. (1) "Certified contractor" means an individual or organization certified by the State Fire Marshal as qualified to:

(a) Engage in the business of installing, repairing, interior lining, installing corrosion protection, removing or closing a UPST system; or

(b) Supervise an employee engaged in an activity listed in paragraph (a) of this subsection.

(2) "Close" or "closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a UPST system or component and does not include routine maintenance or corrosion protection applied to an existing installation, or the application of interior lining[~~that:~~

~~(a) Has caused a release of a product from the system or the modification of the tank or a system component; and~~

~~(b) Does not include routine maintenance or corrosion protection applied to an existing installation, or the application of interior lining.]~~

(4) "Remove" or "removal" means permanently taking an underground storage tank or a component out of service by removing it from the ground.

(5) "Routine maintenance" means servicing the UPST system or a component without excavation [~~or making or the breaking of a connection below ground~~].

(6) "Underground storage tank" is defined by KRS 224.60-100(1).

(7) "Upgrade" means a modification or addition to a UPST system except routine maintenance.

(8) "UPST system" means an underground storage tank that is used solely for the storage of petroleum or a petroleum product.

Section 2. (1) A permit for the installation of a UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:

(a) Is certified by the State Fire Marshal's office; and

(b) Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of 815 KAR 10:060 and [~~the Natural Resources and Environmental~~

~~Protection Cabinet promulgated in]~~ 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, install corrosion protection, or close a UPST system unless the installation, removal, interior lining, installation of corrosion protection repair or closure:

(a) Is made by a certified contractor; and

(b) Complies with ~~all[the]~~ applicable ~~requirements[administrative regulations]~~ of 815 KAR 10:060 and ~~[the Natural Resources and Environmental Protection Cabinet, promulgated in]~~ 401 KAR Chapter 42.

(3) A certificate authorizing a company to engage in an activity regulated by this administrative regulation shall be issued under the name of the company if the company:

(a) Applies for the certification; and

(b) Has in its employ at least one (1) certified contractor who:

1. Meets the supervision requirements established in Section 3 of this administrative regulation; and

2. Shall:

a. Direct an employee engaged in an activity regulated by this administrative regulation; and

b. Exercise independent judgment regarding the recommendation of an activity to an employee acting under his direction.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or a component of the UPST system;

(b) Setting of the UPST system, including placement of an anchoring device, backfilling to the level of the UPST system and strapping;

(c) Installing piping and its components, field coating, or corrosion protecting piping and its components;

(d) Final inspection and pressure testing of a component of the tank or piping component of the UPST system; and

(e) Completion of the backfilling and filling of the excavation.

(2) A repair to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of an existing UPST system;

(b) The actual performance of a repair to the UPST system;

(c) The connection of a component of the piping during the repair project;

(d) The pressure testing of the UPST or its associated piping during the repair project;

(e) The replacement of a piping valve, fill pipe, vent, leak detection device, or spill and overfill protection device; and

(f) The addition of a leak detection device or spill and overfill device.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes; and

(d) The disconnection or capping of a component of the UPST system during the closing.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or a component;

- (c) All testing associated with the cleaning and purging ~~process~~[processes]; and
- (d) The disconnection or capping of a component of the UPST system during the removal.
- (5) The interior tank lining of a UPST system shall require a certified contractor to be present on site during each of the following activities:
 - (a) The cleaning and purging of the UPST system;
 - (b) The excavation of the tank top;
 - (c) The cutting of the top of the tank;
 - (d) The entry of the tank;
 - (e) The preparation of the interior of the tank;
 - (f) The application of the lining of the tank; and
 - (g) The closing and testing of the tank.
- (6) The installation of corrosion protection to a UPST system shall require a certified contractor to be present on site during each of the following activities:
 - (a) Excavation; and
 - (b) The installation of an approved corrosion protection system.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Energy and Environment~~[Natural Resources and Environmental Protection]~~ Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall:

- (1) Submit an application accompanied by a nonrefundable fee of \$300, to the State Fire Marshal, on application form "SFM/UPST #01, May, 2020~~[2004]~~" which is incorporated by reference in Section 11 of this administrative regulation;
- (2) Be an individual at least eighteen (18) years of age;
- (3) Verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site to, interior lining of, installation of corrosion protection, closure and removal of UPST systems, as required by Section 6 of this administrative regulation;
- (4) Complete the examination requirements of Section 7 of this administrative regulation;
- (5) Provide proof of financial capability for taking corrective action and for compensating a third party for bodily injury or property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and
- (6) If the individual wishes the certificate to be issued with a company name, indicate the company name on the application form. The company shall provide the insurance certificates required by subsection (5) of this section and be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site to, closure of, interior lining of, installation of corrosion protection to, or removal of a minimum of six (6) underground storage tanks, except that:

- (a) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2)(a) An applicant requesting installer or remover certification shall:

1. Have installed at least three (3) UPST systems;
2. Meet the experience requirements established in subsections (3), (4), and (5) of this section.

(b) A certified installer or remover shall be qualified to perform work on a UPST system.

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

(4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of six (6) underground storage tanks or provide proof of certification from the tank interior lining manufacturer or supplier of lining material.

(5) An applicant requesting certification pursuant to this administrative regulation for the limited function of installing corrosion protection shall demonstrate experience in the installation of six (6) corrosion protection systems.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6 of this administrative regulation, the applicant shall receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination;

(2) An applicant shall complete three (3) applicable UPST activities for which the applicant seeks certification within one (1) year of the issuance of the certificate;

(3) All UPST activities shall comply with applicable codes and statutes;

(4) An applicant shall not install, interior line, install corrosion protection, remove, close, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed, installed, upgraded or repaired by the applicant.

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a fifty (50) dollar nonrefundable fee at least ten (10) days prior to the date of the examination.

(2) The examination for certification as an installer or remover shall be a written multiple choice examination covering all aspects of the installation, repair, interior lining, installation of corrosion protection, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, interior lining, installation of corrosion protection, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing a UPST system shall be tested on knowledge of closure and removal.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of an

underground petroleum storage tank.

(5) An applicant who requests to be a certified contractor for the limited purpose of installing corrosion protection shall be tested on the installation, monitoring and general knowledge of a cathodic protection system.

(6) An applicant may request permission to take the examination orally, upon good cause shown.

(7) An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(8) An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(9) An examination shall be given at least monthly in the State Fire Marshal's Office located at 500 Mero Street, Frankfort, Kentucky 40601.

(10) An examination shall be graded and the applicant notified on the day of the examination. An examination paper:

- (a) Shall not be returned to the applicant; and
- (b) May be reviewed by the applicant on the day of the examination.

(11) With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) The State Fire Marshal shall issue a certificate to each individual as required by Sections 5 through 7 of this administrative regulation. Each certificate shall be renewed annually for a fee of \$100 on Form SFM/UPST #02, May, 2020[~~2004~~].

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant:

- (a) Fails to provide the:
 - 1. Information required by the application form SFM/UPST #01;
 - 2. Insurance or financial responsibility certificates; or
 - 3. The[~~the~~] fee required for application and examination;

(b) Fails to comply with the experience and education requirements of this administrative regulation;

- (c) Fails to successfully pass the examination required by this administrative regulation; or
- (d) Makes a misrepresentation or submits a false statement with the application.

(3) A certified contractor who fails to renew his certification with[~~within~~] a one (1) year period from the most recent expiration date of his certification shall:

- (a) Be treated as a new applicant;
- (b) Retake the examination; and
- (c) Comply with the new applicant requirements.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation shall be suspended or revoked by the State Fire Marshal if:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated a provision of this administrative regulation or a required code relating to installation, repair, lining, closure or removal;

(2) The certified contractor recklessly or intentionally caused or permitted a person under

the contractor's supervision to install, perform a repair on site to, interior line, install corrosion protection, close, or remove a UPST system in violation of 815 KAR 10:060;

(3) The certified contractor obtained the certification through fraud or misrepresentation;

(4) The individual who took the examination, provided the experience requirements and requested the certificate be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form SFM/UPST #01, "Application for Certification as an Underground Tank Contractor", May 2020; and

(b) ~~[Form]~~ SFM/UPST #02, "Installer/Remover Certification Renewal Form", May^[1] 2020.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law at the State Fire Marshal's Office, Division of Hazardous Materials, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by five working days 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 canceled. The 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 through September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system by a qualifying individual and for determining financial capability through proof of insurance.

(b) The necessity of this administrative regulation: This administrative regulation is neces-

sary to ensure technical competency and financial capability of companies that install, repair, interior line, install corrosion protection, remove or close a system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, closes, or removes an underground storage tank for a petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance, and technical competency and proficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system by a qualifying individual and for determining financial capability through proof of 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 updates definitions, makes grammatical and technical changes, and updates outdated language and references.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to keep the administrative regulation up to date, easier to read, and more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, closes, or removes an underground storage tank for a petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance, and technical competency and proficiency.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates definitions, makes grammatical and technical changes, updates outdated language and references, and will make the administrative regulation easier to read and understand for department personnel, licensees, and applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: UPST Contractor licensees, applicants, and Department of Housing, Buildings and Construction personnel.

(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 impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 30:060 will be more clear, up to date, and user friendly.

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

(a) Initially: There are no anticipated initial additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this

amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(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: This amendment will not necessitate an increase in fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all licensees and applicants will be subject to the same amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 Department of Housing, Buildings and Construction will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 224.60-135(5).

3. 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 is not anticipated to generate additional revenue for the state or local government for the first year.

(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 amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None