

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 95:040. Radon Contractor Registration[~~Certification~~] Program.

RELATES TO: KRS Chapter 13B, 211.180(1)(a), 211.9101, 211.9107, 211.3113, 211.9119
[~~211.9135~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.9109, 211.9111, 211.9115,
211.9121, 211.9125[~~211.9127~~], 211.9135(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes requirements for the registration[~~certification~~] of an individual or laboratory to perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Registration[~~Definitions~~. (1) "~~AARST~~" means the ~~American Association of Radon Scientists and Technologists~~.

(2) "~~ANSI~~" means the ~~American National Standards Institute~~.

(3) "~~ASTM~~" means the ~~American Society for Testing and Materials International~~.

(4) "~~Mitigation system~~" is defined by KRS ~~211.9101(21)~~.

(5) "~~NRPP~~" means the ~~National Radon Proficiency Program~~.

(6) "~~NRSB~~" means the ~~National Radon Safety Board~~.

(7) "~~Picocuries per liter~~" or "~~pCi/L~~" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

Section 2. Certification] Requirements. (1) A person seeking registration[~~shall be eligible to be certified~~] as a radon measurement contractor or a radon mitigation contractor shall submit[~~if the individual~~:

(a) ~~Submits~~] to the cabinet:

1]- A completed DFS-375, Application for Registration[~~Certification~~] for Radon Contractors and Laboratories;

2]- ~~Verification of completion of a cabinet-approved course and exam pursuant to Section 5(3) of this administrative regulation;~~

3]- The fee established in Section 2(2)[~~3(2)~~] of this administrative regulation; and

4]- A quality control program plan that meets the requirements established in Section 4(1) or (2) of this administrative regulation; and

5]- Evidence of financial responsibility in accordance with KRS 211.9109 (1)(b)[~~(f)~~] or 211.9111(1)(b)[~~(f)~~]; and

(b) ~~Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky~~].

(2) A radon laboratory seeking registration shall submit[~~be eligible for certification if the entity~~:

(a) ~~Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor~~;

~~(b) submits~~ to the cabinet:

~~(a)[1.] A completed DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories;~~

~~(b)[2.] The fee established in Section 2(2)[3(2)] of this administrative regulation; and~~

~~(c) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b)[3. A quality control program plan as established in Section 4(3) of this administrative regulation; and~~

~~(c) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity].~~

(3) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall submit[:

~~(a) maintain~~] a separate registration[certificate] for each discipline.

(4)(a) All potential registrants as a radon measurement or radon mitigation contractor shall have a background check performed by:

1. The Administrative Office of the Courts; and

2. The Division of Protection and Permanency within the Cabinet for Health and Family Services.

~~(b) The required background check results shall be submitted directly to the cabinet.~~

~~(c) The cabinet shall review the Kentucky Sex Offender Registry prior to the registration of a radon measurement or radon mitigation contractor.~~

~~(d) In accordance with KRS 211.9125(1)(a) the cabinet may refuse or revoke a registration based on the results of the background check[; and~~

~~(b) Adhere to the limitations established in KRS 211.9117(1) and (2).~~

~~(4) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party].~~

(5) A registered[certified] radon measurement contractor employee working exclusively for a registered[certified] radon laboratory shall not be required to meet:

~~(a) The insurance [and quality control program] requirements established in subsection (1) of this section; and~~

~~(b) The background check requirements established in subsection (4) of this section.~~

Section 2[3]. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable;

~~(b) Submitted with an application for initial registration or registration[certification or certification] renewal; and~~

(c) Made payable to the Kentucky State Treasurer.

(2)(a) The fee for initial registration[certification] shall be \$500[250].

(b) The biennial[annual] renewal fee shall be \$500[250].

~~(c) [The annual fee for reciprocity meeting the requirements of KRS 211.9123 shall be \$250.~~

~~(d) The fee for a duplicate certificate shall be twenty (20) dollars.~~

~~(e)] The fee for late renewal shall be \$500[100].~~

~~(d)[(f)] The [annual] fee for inactive registration[certification] status shall be \$200[100].~~

Section 3. Registration Renewal. (1) Each registration shall be renewed every odd-numbered year.

(2) An individual seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9109(2)(a) or 211.9111(2)(a);

(c) The background checks required under Section 1(4) of this administrative regulation;

(d) The fee established in Section 2 of this administrative regulation; and

(e) Evidence of financial responsibility in accordance with KRS 211.9109(2)(b) or 211.9111(2)(b).

(3) A laboratory seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9115(2)(a);

(c) The fee established in Section 2 of this administrative regulation; and

(d) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b).

(4) A registration not renewed within thirty (30) days after the renewal date shall lapse and may only be reinstated:

(a) By meeting the requirements of subsections (2) or (3) of this section; and

(b) Payment of the late renewal fee required by Section 2(2)(c) of this administrative regulation.

~~Section 4. [Quality Control Program Plan and Standard Operating Procedures. (1) A person certified as a radon measurement contractor shall submit for cabinet approval a quality control program plan that includes:~~

~~(a) A statement committing to provide quality work;~~

~~(b) A listing of personnel and personnel qualifications and training;~~

~~(c) A description of types of radon measurements performed and other related services offered;~~

~~(d) A description of measurement types and devices the measurement contractor will utilize in conducting measurements;~~

~~(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation; and~~

~~(f) The location where records are retained in accordance with KRS 211.9131(3).~~

~~(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:~~

~~(a) A statement committing to provide quality work;~~

~~(b) A listing of personnel and personnel qualifications and training;~~

~~(c) A description of all types of radon mitigation methods performed and other related services offered;~~

~~(d) A description of diagnostic testing methods utilized in designing mitigation systems; and~~

~~(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation.~~

~~(3) A certified radon laboratory shall submit to the cabinet a quality control program plan that includes:~~

~~(a) A statement committing to provide quality work;~~

~~(b) A listing of personnel and personnel qualifications and training;~~

~~(c) A description of laboratory services performed and other related services offered;~~

~~(d) Documentation of enrollment and good standing within an independent laboratory accreditation program; and~~

~~(e) A requirement that all radon laboratory analyses shall be conducted in compliance with applicable state and federal laws.~~

~~(4) A mitigation system shall achieve a radon level below the U.S. Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.~~

~~(5) Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is as low as reasonably achievable (ALARA).~~

~~(6) Prior to mitigation, educational material about radon levels shall be provided to the client.~~

~~(7) Upon modification to a component of the quality control program plan, the radon measurement or mitigation contractor shall resubmit the plan to the cabinet.~~

~~(8) If a deviation from cabinet-approved standard operating procedures occurs, the radon measurement or mitigation contractor shall document the reason for the deviation in the inspection report provided to the client.~~

~~Section 5. Training and Continuing Education Requirements. (1) Continuing Education.~~

~~(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.~~

~~(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year.~~

~~(c) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.9111, 211.9115, or 211.9127.~~

~~(d) A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.~~

~~(e) Continuing education units shall be obtained from a cabinet-approved course in accordance with subsection (3) of this section.~~

~~(2) Certification Courses.~~

~~(a) Measurement contractor initial certification courses shall be a minimum of sixteen (16) hours of in-person instruction.~~

~~(b) Mitigation contractor initial certification courses shall:~~

~~1. Be a minimum of sixteen (16) hours of in-person instruction; and~~

~~2. Include an additional four (4) hours of hands-on field work at a mitigation site.~~

~~(3) A radon training course, exam, or standard operating procedure shall be cabinet-approved if issued by the:~~

~~(a) AARST;~~

~~(b) ANSI;~~

~~(c) ASTM;~~

~~(d) NRPP; or~~

~~(e) NRSB.~~

~~Section 6. Renewal of Certification. (1) Each annual certification shall expire on June 30.~~

~~(2) A person seeking renewal of certification shall:~~

~~(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and~~

~~(b) Submit to the cabinet a minimum of thirty (30) calendar days prior to certification expiration:~~

~~1. A completed renewal application on DFS-375, Application for Certification for Radon Contractors and Laboratories;~~

~~2. The fee established in Section 3 of this administrative regulation;~~

~~3. Proof of fulfillment of continuing education requirements as established in Section 5(1) of this administrative regulation;~~

~~4. An updated quality control program plan that meets the applicable requirements established in Section 4 of this administrative regulation; and~~

~~5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f) or 211.9111(1)(f).~~

~~(3) A certification not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3(2)(e) of this administrative regulation.~~

~~(4) A certification not renewed within ninety (90) days after the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).~~

~~Section 7.] Termination of Registration[Certification] and Inactive Registration[Certification].~~

~~(1) A registered[certified] radon measurement contractor or radon mitigation contractor shall notify the cabinet in writing upon electing to terminate registration[certification].~~

~~(2) A person previously registered with[certified by] the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain registration[certification] may request and be granted inactive status.~~

~~(a) If inactive status is granted, the person shall[:~~

~~1.] pay the registration[certification] fee established in Section 2(2)(d)[3(2)(f)] of this administrative regulation[; and~~

~~2. Be exempt from the continuing education requirements].~~

~~(b) A registered[certified] radon measurement contractor or radon mitigation contractor on inactive status may petition the cabinet for renewal of active registration[certification]. If a registered[certified] radon measurement contractor or radon mitigation contractor on inactive status wishes to renew active registration[certification], the petitioner shall meet the requirements of this administrative regulation.~~

~~Section 5[8]. Registration[Certification] Denial, Suspension, or Revocation. A registration[certification] shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.~~

~~Section 6[9]. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on an annual basis for each[a semi-annual basis after a]:~~

~~(a) Radon measurement activity [or radon progeny test];~~

~~(b) Radon mitigation activity; or~~

~~(c) Laboratory analysis[Modification to any component of the radon contractor's quality control program plan]; or~~

~~(d) Request from the cabinet].~~

~~(2) The result of each measurement activity conducted shall include:~~

~~(a) The location of the building;~~

~~(b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;~~

~~(c) The start and end date of the measurement activity;~~

~~(d) The type of measurement activity conducted;~~

~~(e) The registrant responsible for supervising the measurement; and~~

~~(f) The type of building measured, including the foundation type.~~

~~(3) The result of each mitigation activity conducted shall include:~~

~~(a) The location of the building;~~

~~(b) The result of the post-mitigation measurement in picocuries per liter (pCi/L) of radon gas;~~

~~(c) The date of the mitigation activity;~~

~~(d) The type of mitigation conducted;~~

~~(e) The registrant responsible for supervising the mitigation; and~~

- (f) The type of building mitigated, including the foundation type.
- (4) The result of each laboratory analysis conducted shall include:
 - (a) The location of the building;
 - (b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;
 - (c) The date of the measurement activity and laboratory analysis;
 - (d) The type of laboratory analysis conducted;
 - (e) The registrant responsible for supervising the measurement and laboratory analysis; and
 - (f) The type of building measured, including the foundation type~~[The report shall include the:~~
 - ~~(a) ZIP Code or location of the building; and~~
 - ~~(b) Results of tests performed.~~
- ~~(3) The results for each measurement conducted shall include the:~~
 - ~~(a) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;~~
 - ~~(b) Date on which the test or tests were conducted; and~~
 - ~~(c) Type of structure measured].~~

Section ~~7~~7[40]. Administrative Hearings. A person, business entity, or analytical laboratory shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section ~~8~~8[44]. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

Section ~~9~~9[42]. Incorporation by Reference. (1)"DFS-375, Application for Registra-
tion~~[Certification]~~ for Radon Contractors and Laboratories", ~~7/2020~~8/2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 4, 2020

FILED WITH LRC: December 9, 2020 at 2:52 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 15, 2021, five (5) 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 canceled. This hearing is open to the public. Any person who attends virtually 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 this proposed administrative regulation until February 28, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration process for an individual or laboratory to perform radon measurement, radon mitigation, or laboratory analysis.

(b) The necessity of this administrative regulation: KRS 211.9109 requires a radon measurement contractor to register with the cabinet, KRS 211.9111 requires a radon mitigation contractor to register with the cabinet, and KRS 211.9115 requires a laboratory performing radon analysis to register with the cabinet. This administrative regulation is necessary to ensure individuals or business entities engaged in radon measurement, mitigation or laboratory analysis are properly registered with the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9107 prohibits a person or business entity from conducting radon measurement, mitigation, or laboratory analysis without the appropriate certification. Certification is issued by a proficiency program as defined by KRS 211.9101(22).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures individuals or business entities engaged in radon measurement, mitigation, or laboratory analysis are properly certified and registered with the cabinet. Part of the registration process is to ensure the individual or business entity maintains general liability insurance sufficient to meet the requirements of KRS 211.9113.

(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: The amendment to this administrative regulation updates the registration process to a biennial registration, adds the requirement that an individual seeking registration submit a background check before registration is granted, removes the continuing education requirements as those requirements will be met through the national certification process with an approved proficiency program, removes the requirements for a registrant to submit a quality control program, updates the reporting requirements, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to address changes in the authorizing statutes, KRS 211.9101 to 211.9135. House bill 420 from the 2019 legislative session revised the certification requirements for radon measurement, radon mitigation, and radon laboratory analysis by requiring individuals and business entities engaged in these activities to meet the requirements of a national proficiency program. The annual certification requirement was revised to a biennial registration. The requirement for submitting documentation of a cabinet-approved course and exam, continuing education requirements, and a quality control plan were removed from the authorizing statutes. The requirement to submit a background check is necessary for compliance with KRS 211.9125.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation ensures the registration process meets the requirements of the authorizing statutes by reflecting a biennial registration, removing the requirement to

submit proof of continuing education, removing the requirement to submit a quality control plan, and requiring the submission of background checks as part of the registration process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure individuals or business entities engaged in radon measurement, mitigation, or laboratory analysis are meeting the national proficiency program standards, are registered with the cabinet, and have sufficient general liability insurance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact eighty-five (85) professionals registered with the National Radon Proficiency Program (NRPP), and twenty-three (23) professionals registered with the National Radon Safety Board (NRSB). Thirty-four (34) individuals have dual certification as both a radon measurement professional and a radon mitigation professional. There are five (5) persons in Kentucky that are listed as accredited radon laboratories.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Individuals and business entities seeking registration with the cabinet must submit the required background checks prior to registration being granted, and must maintain certification through either the National Radon Proficiency Program or the National Radon Safety Board. Both proficiency programs require continuing education credits as part of the certification renewal process. Individuals and business entities engaged in radon measurement, mitigation, or laboratory analysis will need to be aware of the change in the registration process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Individuals seeking registration would be required to pay \$500 biennial registration costs and will be required to pay the costs associated with the required background checks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Radon measurement, mitigation, and laboratory contractors will be required to register with the state on a biennial basis and will not be required to submit proof of continuing education credits. This will result in a reduction in paperwork for contractors. By obtaining background checks as part of the registration process the cabinet will be able to implement the requirements of KRS 211.9125.

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

(a) Initially: The initial costs associated with the development of a data systems for the registration of radon professionals and laboratories is approximately \$140,000. The program costs associated with monitoring the registration process is approximately \$111,000 per year.

(b) On a continuing basis: The ongoing costs associated with monitoring the registration process is approximately \$111,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for this administrative regulation comes from the fees collected as part of the certification process and from state general fund dollars.

(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: Because the registration has been changed to a biennial registration an increase in the fee is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The change to a biennial registration process will decrease the yearly revenue received from the fees by half; therefore, the cabinet is proposing to increase the registration fee to \$500.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation impacts all radon contractors for measurement, mitigation, or laboratory analysis equally.

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? This administrative regulation will impact the local health departments who participate in the radon program and the Environmental Management Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 211.090(3), and 211.9101 to KRS 211.9135.

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 administrative regulation will generate approximately \$56,000 in 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 administrative regulation will generate approximately \$56,000 on a biennial basis.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$251,000 to implement this program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$111,000 to implement this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: