

1 PUBLIC PROTECTION CABINET

2 Department of Housing, Buildings and Construction

3 Division of Fire Prevention

4 (Amendment)

5 815 KAR 30:060. Certification of underground petroleum storage tank contractors.

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

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

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135(5) requires the State Fire
9 Marshal to promulgate administrative regulations requiring a person or organization who installs,
10 repairs, [~~interior lines, installs corrosion protection,~~] closes₂ or removes an underground
11 [~~petroleum~~] storage tank for a an petroleum storage tank owner or operator to demonstrate
12 financial capability, including maintenance of pollution liability insurance₂ and technical
13 competency and proficiency. This administrative regulation establishes the minimum requirements
14 for determining technical competency and proficiency of a company who is responsible for the
15 installation, repair, interior lining, installation of corrosion protection, removal or closure of a
16 system by a qualifying individual and for determining financial capability through proof of
17 insurance.

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

20 (a) Engage in the business of installing, repairing, interior lining, installing corrosion protection,

1 removing or closing a UPST system; or

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

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

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

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

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

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

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

16 (6) “Underground storage tank” is defined by KRS 224.60-100(1).

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

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

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

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

23 (b) Assures the State Fire Marshal’s Office, in writing, that the installation shall comply with

1 all applicable requirements of 815 KAR 10:060 and ~~[the Natural Resources and Environmental~~
2 ~~Protection Cabinet promulgated in]~~ 401 KAR Chapter 42.

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

6 (a) Is made by a certified contractor; and

7 (b) Complies with all~~[the]~~ applicable requirements~~[administrative regulations]~~ of 815 KAR
8 10:060 and~~[the Natural Resources and Environmental Protection Cabinet, promulgated in]~~ 401
9 KAR Chapter 42.

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

12 (a) Applies for the certification; and

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

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

15 and

16 2. Shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (4) Removal of a UPST system shall require a certified contractor to be present on site during

1 each of the following activities:

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

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

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

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

6 (5) The interior tank lining of a UPST system shall require a certified contractor to be present

7 on site during each of the following activities:

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

9 (b) The excavation of the tank top;

10 (c) The cutting of the top of the tank;

11 (d) The entry of the tank;

12 (e) The preparation of the interior of the tank;

13 (f) The application of the lining of the tank; and

14 (g) The closing and testing of the tank.

15 (6) The installation of corrosion protection to a UPST system shall require a certified contractor

16 to be present on site during each of the following activities:

17 (a) Excavation; and

18 (b) The installation of an approved corrosion protection system.

19 Section 4. Certificate Availability. Each certified contractor shall have a copy of the current

20 certificate issued by the State Fire Marshal at the location where he is supervising work. Upon

21 request of a fire official or agent of the Energy and Environment~~[Natural Resources and~~

22 ~~Environmental Protection]~~ Cabinet, a certified contractor shall make the current certificate

23 available for inspection.

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

3 (1) Submit an application accompanied by a nonrefundable fee of \$300, to the State Fire
4 Marshal, on application form “SFM/UPST #01, May, 2020[~~2001~~]” which is incorporated by
5 reference in Section 11 of this administrative regulation;

6 (2) Be an individual at least eighteen (18) years of age;

7 (3) Verify to the State Fire Marshal the individual’s experience in the installation of,
8 performance of repairs on site to, interior lining of, installation of corrosion protection, closure and
9 removal of UPST systems, as required by Section 6 of this administrative regulation;

10 (4) Complete the examination requirements of Section 7 of this administrative regulation;

11 (5) Provide proof of financial capability for taking corrective action and for compensating a
12 third party for bodily injury or property damage by submitting certificates of general liability
13 insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of
14 financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and

15 (6) If the individual wishes the certificate to be issued with a company name, indicate the
16 company name on the application form. The company shall provide the insurance certificates
17 required by subsection (5) of this section and be subject to this administrative regulation.

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

23 (a) Technical training of the type provided and documented by the manufacturer of the

1 underground storage tanks and approved by the State Fire Marshal shall reduce the experience
2 requirements of this subsection by one-third (1/3); or

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

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

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

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

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

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

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

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

23 (1) An applicant shall obtain a minimum score of eight-five (85) percent on the written

1 examination;

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

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

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

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

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

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

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

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

23 (4) An applicant who requests to be a certified contractor for the limited function of interior

1 lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of an
2 underground petroleum storage tank.

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

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

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

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

15 (9) An examination shall be given at least monthly in the State Fire Marshal's Office located at
16 500 Mero Street, Frankfort, Kentucky 40601.

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

18 An examination paper:

19 (a) Shall not be returned to the applicant; and

20 (b) May be reviewed by the applicant on the day of the examination.

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

1 Section 9. Certification and Renewal Procedures. (1) The State Fire Marshal shall issue a
2 certificate to each individual as required by Sections 5 through 7 of this administrative regulation.
3 Each certificate shall be renewed annually for a fee of \$100 on Form SFM/UPST #02, May,
4 2020[2001].

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

7 (a) Fails to provide the:

- 8 1. Information required by the application form SFM/UPST #01;
- 9 2. Insurance or financial responsibility certificates; or
- 10 3. The[~~the~~] fee required for application and examination;

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

13 (c) Fails to successfully pass the examination required by this administrative regulation; or

14 (d) Makes a misrepresentation or submits a false statement with the application.

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

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

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

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

1 closure or removal;

2 (2) The certified contractor recklessly or intentionally caused or permitted a person under the
3 contractor's supervision to install, perform a repair on site to, interior line, install corrosion
4 protection, close, or remove a UPST system in violation of 815 KAR 10:060;

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

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

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


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

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

15 (b) SFM/UPST #02, "Installer/Remover Certification Renewal Form", May[5] 2020.

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

815 KAR 30:060:



KERRY B. HARVEY, SECRETARY
PUBLIC PROTECTION CABINET

7/6/2021
Date



RICK W. RAND, COMMISSIONER
DEPARTMENT OF HOUSING, BUILDINGS
AND CONSTRUCTION

7/1/2021
Date

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 head 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

Administrative

Regulation: 815 KAR 30:060
Contact Person: Benjamin Siegel
Phone Number: (502) 782-0604
Email: Benjamin.Siegel@ky.gov

(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 necessary 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? Explain why or why not:** Tiering is not applied as all licensees and applicants will be subject to the same amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

815 KAR 30:060

Contact Person: Benjamin Siegel, General Counsel, phone: (502) 782-0604, email: Benjamin.siegel@ky.gov

(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