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Emily B Caudill
REGULATIONS COMPILER


STATEMENT OF EMERGENCY

401 KAR 6:320E

This emergency administrative regulation is being promulgated to implement the certification of water well driller assistants as required by Senate Bill 32 of 2019. This emergency regulation is necessary to protect human health and the environment while making the certification program immediately available. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.


MATTHEW G. BEVIN, Governor

7/9/2019
Date


CHARLES G. SNAVELY, Secretary
Energy and Environment Cabinet

7/9/2019
Date

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Emergency Amendment)

5 401 KAR 6:320E Certification of water well drillers and water well driller assistants.

6 RELATES TO: KRS 223.400 through 223.460~~[223.400-223.460]~~, 223.991, 224.10-010,
7 224.10-100, 224.10-410 through 224.10-470~~[224.10-410 - 224.10-470]~~, Chapter 322, Chapter
8 322A~~[, EO 2008-507, 2008-531]~~

9 STATUTORY AUTHORITY: KRS 223.410, 223.420(1)(e), 223.435, 224.10-100,
10 224.70-100, 224.70-110

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and
12 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.
13 KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning
14 examination and certification of water well drillers.~~[EO 2008-507 and 2008-531, effective June 16,~~
15 ~~2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and~~
16 ~~Environment Cabinet.]~~ This administrative regulation provides for the certification of water well
17 drillers and water well driller assistants, including the requirements for examination, application,
18 and disciplinary action.

19 Section 1. General Requirements. (1) The cabinet shall issue a water well driller or water
20 well driller assistant~~[drillers]~~ certificate ~~[pursuant to KRS Chapter 223]~~ to qualified applicants as

1 established in KRS Chapter 223 and~~[natural persons who qualify under]~~ this administrative
2 regulation.

3 (2) Certificate issuance.~~[The cabinet shall issue separate certificates for separate methods~~
4 ~~and activities as follows:]~~

5 (a) Monitoring well driller. A certificate~~[Separate certificates]~~ shall be issued for drilling
6 monitoring wells that~~[. The certificates]~~ shall specify the~~[for which]~~ methods for which the
7 certified driller is qualified to drill, including:

- 8 1. Cable tool drilling;
- 9 2. Air rotary drilling;
- 10 3.~~[Mud rotary drilling;~~
- 11 4.] Reverse rotary drilling;
- 12 4.~~[5.]~~ Jetting and driving wells in unconsolidated material;~~[or]~~
- 13 5. Sonic drilling;
- 14 6. Direct push; or
- 15 7.~~[6.]~~ Boring and auguring in unconsolidated materials.~~[; and]~~

16 (b) Water supply well driller. A certificate~~[Separate certificates]~~ shall be issued for drilling
17 water supply wells that~~[. The certificates]~~ shall specify the~~[for which]~~ methods for which the certified
18 driller is qualified to drill, including:

- 19 1. Cable tool drilling;
- 20 2. Air rotary drilling;
- 21 3. Mud rotary drilling;
- 22 4. Reverse rotary drilling;
- 23 5. Jetting and driving wells in unconsolidated material;~~[or]~~

1 6. Sonic drilling;

2 7. Direct push; or

3 8. Boring and augering in unconsolidated materials.

4 (c) A combined certificate may be issued for drilling monitoring wells and water supply
5 wells that shall specify the methods for which the water well driller is qualified to drill as
6 established in this subsection.

7 (3) A person shall not construct, alter, repair, or abandon a water well without first
8 obtaining a water well driller[driller's] or water well driller assistant certificate from the cabinet.

9 (4) Each water well driller or water well driller assistant certified to drill water[supply]
10 wells may construct, alter, repair, or abandon water[supply] wells using the drilling method or
11 methods specified on the[driller's] certificate.

12 (5) Each water well driller or water well driller assistant certified to drill monitoring wells
13 may construct, alter, repair, or abandon monitoring wells using the drilling method or methods
14 specified on the[driller's] certificate.

15 (6) In order to receive a water well driller or water well driller assistant certificate, an
16 applicant[a driller] shall:

17 (a) Submit a complete[Provide an] application as established in[pursuant to] this
18 administrative regulation;

19 (b) Earn a minimum passing score of seventy (70) percent on[Pass] applicable
20 examinations as established in[taken pursuant to] this administrative regulation;

21 (c) Demonstrate that the:

22 1. Applicant[Driller] has the education and experience to qualify for a certificate as
23 established in KRS Chapter 223 and[pursuant to] this administrative regulation; and

1 2. Applicant's~~(d) Demonstrate that the Driller's~~ certificate is not under suspension,
2 temporary revocation, or permanent revocation as established in~~[pursuant to]~~ Section 6~~(6(2))~~ of
3 this administrative regulation.

4 Section 2. Applications. (1) Water well driller application. Each person desiring a water
5 well driller certificate shall submit to the cabinet a complete~~[provide the Cabinet with an]~~
6 application which shall include:~~[-]~~

7 (a)~~[Each application for certification shall be accompanied by]~~ Payment of the
8 application fee as established~~[specified]~~ in KRS 223.447:~~[-]~~

9 (b)~~[The application shall be made on]~~ The~~[Water Well and Monitoring Well Driller's~~
10 ~~Certification]~~ Application for Certification:~~[-, provided by the cabinet.~~

11 ~~(2) The application shall include:~~

12 (c)~~(a)~~ All~~[The]~~ information required by KRS 223.425~~[-, including proof the applicant is~~
13 ~~eligible to be a driller pursuant to KRS 223.425(2)]~~;

14 (d)~~(b)~~ Proof of the insurance and bond required by~~[pursuant to]~~ KRS 223.430; and

15 (e)~~(e)~~ 1. A notarized statement from a certified water well driller, a driller in another state, or
16 another person who has directly supervised the applicant, that the applicant has worked under the
17 driller's supervision for a minimum of two (2) years as established in~~[the statutory period of time~~
18 ~~pursuant to]~~ KRS 223.425(2); or

19 2. Notarized proof of other qualifying experience, including:

20 a. Employment as an environmental professional working with the design and installation
21 of wells and well drilling operations for a minimum of two (2) years; and

22 b.~~[One (1) of the following:]~~

23 (i) Employment as a registered professional geologist as established in~~[accordance with]~~

1 KRS Chapter 322A;

2 (ii) Employment as a registered professional engineer as established in~~accordance with~~ KRS
3 Chapter 322; or

4 (iii) A graduate, bachelors, or associates degree in a natural science.

5 (2) Water well driller assistant application. An applicant desiring a water well driller
6 assistant certification shall submit a completed application to the cabinet which shall include:

7 (a) The Application for Certification;

8 (b) All information required by KRS 223.425(5); and

9 (c) Payment of the application fee as established in KRS 223.447.

10 Section 3. Examinations. (1) An applicant for a water well driller or water well driller
11 assistant certification shall earn a minimum passing score of seventy (70) percent on an
12 applicable examination in order to receive a certificate~~[All persons receiving a certification shall~~
13 ~~pass an exam].~~

14 (2) The cabinet shall prepare and administer the examinations that determine the
15 knowledge, ability, and judgment of approved applicants as established in~~in accordance with~~
16 Section 2 of this administrative regulation.

17 (a)1. Examinations shall be administered at least annually at a place and time scheduled
18 by the cabinet.

19 2. The applicant and cabinet shall schedule the cabinet-administered examination at a
20 mutually agreeable date and time~~[The cabinet shall an advanced announcement of each~~
21 ~~examination and the availability of National Groundwater Association examinations.]~~

22 (b) The applicant shall schedule to take other examinations required by this administrative
23 regulation directly with the National Groundwater Association.~~[Arrangements may be made with~~

1 ~~the cabinet to take the examination at an alternate time].~~

2 (3) The cabinet shall administer the examination only to a qualified applicant who has:

3 (a) Submitted a complete application;

4 (b) Met all requirements established in~~[of]~~ KRS 223.425;

5 (c) Met all requirements established in~~[of]~~ Sections 1 and 2 of this administrative
6 regulation; and

7 (d) Paid the examination fee~~[all applicable fees for the examination]~~ as
8 established~~[listed]~~ in KRS 223.447.

9 ~~(4)[The cabinet shall certify those applicants who pass the applicable examination.]~~

10 (a) ~~An~~[Each applicant shall achieve a score of not less than seventy (70) percent to pass each
11 examination administered.

12 ~~(b)1-~~Each] applicant who does not pass an examination may repeat the examination after
13 forty-five (45) days from the date the cabinet notifies the applicant~~[is notified]~~ of the results.

14 ~~(b)[2-~~An applicant shall not repeat an examination more than six (6) times per calendar
15 year.

16 (c) Examinations shall not be returned to the applicant, but the applicant may review
17 results with a member of the board or an employee of the cabinet upon request.

18 (5) Contents of the water well driller examination.

19 (a) For a certificate to drill water supply wells, an examination shall consist of~~[the~~
20 following]:

21 1. The Kentucky Water Well Certification Examination;

22 2. The National Ground Water Association General Exam; and

23 3. One (1) or more of the~~[following]~~ National Ground Water Association specialty

1 examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be
2 certified, including:

- 3 a. Cable Tool Drilling Exam;
- 4 b. Air Rotary Drilling Exam;
- 5 c. Mud Rotary Drilling Exam;
- 6 d. Reverse Rotary Drilling Exam;
- 7 e. Jetting and Driving Wells in Unconsolidated Material Exam;
- 8 f. Boring and Augering in Unconsolidated Materials Exam; or
- 9 g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in
10 consultation with~~[and]~~ the board to test~~[testing-for]~~ knowledge of local laws or regulations as
11 established in~~[accordance-with]~~ KRS 223.410.

12 (b) For a certificate to drill monitoring wells using hollow stem auger, solid stem auger,
13 or direct push method, an examination shall consist of~~[the following]~~:

- 14 1. The Kentucky Monitoring Well Certification Examination;
- 15 2. The National Ground Water Association General Exam; and
- 16 3. The National Ground Water Association Augering and Monitoring Exam; or
- 17 4. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in
18 consultation with~~[and]~~ the board to test~~[testing-for]~~ knowledge of local laws or regulations as
19 established in~~[accordance-with]~~ KRS 223.410.

20 (c) For a certificate to drill monitoring wells using another method, an examination shall
21 consist of~~[the following]~~:

- 22 1. The Kentucky Monitoring Well Certification Examination;
- 23 2. The National Ground Water Association General Examination;

1 3. The National Ground Water Association Augering and Monitoring Exam; and

2 4. One (1) or more of the~~following~~ National Ground Water Association specialty
3 examinations applicable~~applying~~ to each drilling method for which the applicant wishes to be
4 certified, including:

5 a. Cable Tool Drilling Exam;

6 b. Air Rotary Drilling Exam;

7 c. Mud Rotary Drilling Exam;

8 d. Reverse Rotary Drilling Exam;

9 e. Jetting and Driving Wells in Unconsolidated Material Exam;

10 f. Boring and Augering in Unconsolidated Materials Exam; or

11 g. A substitute examination as identified or developed~~jointly~~ by the cabinet in
12 consultation with~~and~~ the board to test~~testing for~~ knowledge of local laws or regulations as
13 established in~~accordance with~~ KRS 223.410.

14 (6) Contents of the water well driller assistant examination. An applicant shall earn a
15 minimum passing score of seventy (70) percent on:

16 (a) The Kentucky Water Well Driller Assistant Certification Examination; or

17 (b) A substitute examination as identified or developed by the cabinet in consultation with
18 the board to test knowledge of local laws or regulations as established in KRS 223.410.

19 (7) Contents of the monitoring well driller assistant examination. An applicant shall earn a
20 minimum passing score of seventy (70) percent on the:

21 (a) Kentucky Monitoring Well Driller Assistant Certification Examination; or

22 (b) A substitute examination as identified or developed by the cabinet in consultation with
23 the board to test knowledge of local laws or regulations as established in KRS 223.410.

1 Section 4. Issuance of Certificate. (1)~~[Upon satisfactory fulfillment of the requirements of~~
2 ~~this administrative regulation,]~~ The cabinet shall issue a certificate~~[to the applicant]~~ designating
3 the classification ~~[of drilling]~~ for which the water well driller or water well driller assistant has
4 demonstrated competence:~~[-]~~

5 (a) Upon satisfactory fulfillment of the requirements established in~~[of]~~ this administrative
6 regulation; and

7 (b) Payment of the initial certification fee as established in KRS 223.447.

8 (2) A~~[If the driller's employment or mailing address changes from that listed on the~~
9 ~~application, the]~~ water well driller or water well driller assistant shall provide written notification
10 to the cabinet within thirty (30) days of a change of employment or mailing address.

11 (3) Display of certificate number.

12 (a) A certified water well driller shall have the certificate number affixed and
13 prominently displayed on the drill rig used at the well site.

14 (b) The certificate number shall be:

15 1. Inscribed with the format~~[in the following manner]:~~ KY. CERT. XXXX-XXXX-
16 XX~~[XXXX XXXX]~~ (insert certificate number in place of the Xs);~~[-]~~

17 2.~~[(e)]~~ Inscribed with numbers that are~~[Numbers shall be]~~ at least three (3) inches in
18 height and of a color that shall be easily distinguishable from that of the drill rig; and~~[-]~~

19 3.~~[(d) This number shall be]~~ Removed if the:

20 a. Drill rig is scrapped, sold, or otherwise changes ownership;~~[-]~~or

21 b.~~[if the]~~ Certified water well driller's certificate becomes invalid.

22 Section 5. Service of Process. Each applicant, certified water well driller, and certified water
23 well driller assistant~~[and driller]~~ shall provide the cabinet with an address for receipt of applicable

1 legal documents for service of process. The last address provided to the cabinet~~[pursuant to this~~
2 ~~provision]~~ shall be the address at which the cabinet shall tender applicable legal notices in connection
3 with an enforcement or disciplinary action.

4 Section 6. Disciplinary Action. (1) A certified water well driller or certified water well
5 driller assistant shall be subject to disciplinary action if the water well driller or water well driller
6 assistant:

7 (a) Practiced fraud or deception in obtaining a certificate or filing cabinet mandated
8 reports;

9 (b) Did not use reasonable care or judgment in the performance of duties;

10 (c) Failed to apply knowledge in the performance of duties;

11 (d) Is~~[incompetent,]~~ unable~~;~~ or unwilling to properly perform duties; or

12 (e) Does not have bond and insurance required by KRS 223.430.

13 (2) The disciplinary action shall take the form of~~[the following]~~ sanctions established in
14 this subsection depending on the severity, duration, and number of the violations, including:

15 (a) Probation, not to exceed one (1) year;

16 (b) Suspension of the water well driller's or water well driller assistant certificate, not to
17 exceed one (1) year, during which the certificate shall be considered void;

18 (c)~~[+]~~ Temporary revocation of the~~[driller's]~~ certificate which~~[-~~

19 ~~2. Temporary revocation]~~ shall be greater than one (1) year and not more than four (4)
20 years;

21 (d) Permanent revocation of the~~[driller's]~~ certificate~~[certification]~~; or

22 (e) Civil or criminal penalties against the driller.

23 (3) Initial review procedures. Valid~~[Written]~~ complaints or a significant enforcement

1 action against a water well driller or water well driller assistant may~~], unless duplicitous or~~
2 ~~frivolous, shall]~~ be reviewed at the next regularly scheduled board meeting.

3 (a) If the board decides that a complaint or enforcement action warrants~~[complaints~~
4 ~~warrant]~~ further investigation, the water well driller or water well driller assistant shall be
5 requested to appear before the board.

6 (b) Upon completion of its review of the complaint and available facts, the board shall
7 send its recommendation and supporting facts to the cabinet.

8 (c) The cabinet shall:

9 1. Decide whether to take disciplinary action against the water well driller or water well
10 driller assistant based on the board's recommendation and supporting facts;~~[-]~~

11 2.~~[(d) The cabinet shall]~~ Notify the water well driller or water well driller assistant and
12 the board of its decision and the facts supporting its decision in writing.

13 ~~[(e) The cabinet shall notify the board of its decision and the facts supporting its~~
14 ~~decision.]~~

15 (4) Action taken by the cabinet pursuant to this section shall not preclude the cabinet from
16 pursuing additional civil or criminal action.

17 (5)(a) A water well driller or water well driller assistant whose certificate has been
18 suspended or revoked shall not drill wells.

19 (b) If a certificate is permanently revoked, the water well driller or water well driller assistant
20 shall be ineligible to receive a certificate as a water supply well driller,~~[or]~~ monitoring well driller,
21 or well driller assistant in the future.

22 (c) Experience gained during a suspension or temporary revocation shall not be included
23 toward meeting the requirements established in~~[of]~~ Section 2~~[(5)]~~ of this administrative

1 regulation.

2 (6)(a) Sanction review and removal. During the water well driller's or water well driller
3 assistant's probation or suspension the board and cabinet shall monitor the water well driller's or
4 water well driller assistant's work activities.

5 (b) At the end of the sanction period, the board shall recommend that the cabinet lift the
6 sanction or take additional action against the water well driller or water well driller assistant.

7 (7) Pursuant to KRS 224.10-420(2), a water well driller or water well driller assistant
8 may contest~~[who considers himself aggrieved by]~~ a disciplinary action of the cabinet by
9 filing~~[may file]~~ a petition for a hearing with the cabinet.

10 Section 7. Expiration and Renewal of Certificates. (1) All certified water well drillers and
11 water well driller assistants shall renew their certificates annually.

12 (2)(a) Certificates shall be valid from the date of issuance until the following June 30. If an
13 initial certificate is issued after May 1, it shall be effective until June 30 of the next calendar year.

14 (b) Certificates shall be renewed by July 1 of each year.

15 (3) Certificate renewal shall require submitting to the cabinet:~~[(3)(a) A certified water well~~
16 ~~driller desiring to renew a certificate shall file]~~

17 (a) A complete Application for Certification Renewal~~[Application with the cabinet];~~ and

18 (b) Payment of the renewal fee as established~~[Pay the fees specified]~~ in KRS 223.447.

19 ~~[(b) The renewal application shall be made on the Well Driller's Certification Renewal~~
20 ~~Application.]~~

21 (4)(a) If the certificate renewal fee is not received within sixty (60) days of the renewal date
22 of July 1, the certificate shall expire.

23 (b) Expired certificates may be renewed without examination within two (2) years of the

1 expiration date, if the applicant:

2 1. Pays the renewal fee as established in KRS 223.447;⁵

3 2. Meets the continuing education requirements established~~[outlined]~~ in Subsection 5~~[five~~
4 ~~(5)]~~ of this section within the twelve (12) months immediately preceding~~[prior to]~~
5 recertification;⁵ and

6 3. Meets all other statutory and regulatory requirements for certification.

7 (5) Continuing education requirement.

8 (a) Certified water well drillers shall complete five (5) hours of cabinet-approved
9 continuing education for certificate renewal. A minimum of three (3) hours of continuing
10 education shall pertain directly to well drilling.

11 (b) Certified well driller assistants shall complete a minimum of eight (8) hours of
12 cabinet-approved continuing education as established in KRS 223.425. A minimum of four (4)
13 hours of continuing education shall pertain directly to well drilling.

14 (c)~~(a)~~ Continuing education shall include correspondence courses, short courses, trade
15 association meetings, and other job training courses relevant to water well construction.

16 (d)~~(b)~~ A~~The~~ certified water well driller or water well driller assistant shall obtain
17 written approval from the cabinet prior to completing the continuing education training.

18 (e)~~(e)~~ The cabinet shall approve continuing education training events that meet~~for all~~
19 ~~drillers if the training meets~~ the requirements established in paragraphs~~[of paragraph]~~ (a) and (b)
20 of this subsection.

21 (d) An applicant for certificate renewal shall submit documentation of continuing
22 education~~[training]~~ with the renewal application.

23 Section 8. Certificates and Wallet Cards. (1) The cabinet shall provide certified water well

1 drillers and water well driller assistants with certificates and wallet cards.

2 (2) A certified water well driller or water well driller assistant~~[The driller]~~ shall carry
3 wallet cards at the job site.

4 Section 9.~~[Rig Operators. Rig operator cards shall not be issued after the most recent~~
5 ~~effective date of this administrative regulation.~~

6 ~~Section 10.]~~ Incorporation by Reference. (1) The following material is incorporated by
7 reference:

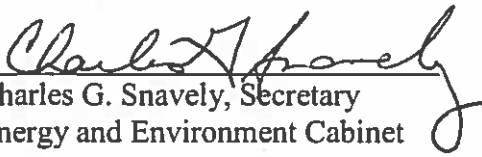
8 (a) "Application for Certification", DEP No. DOW6060, July 2019~~["Water Well and~~
9 ~~Monitoring Well Driller's Certification Application", July 2008; and];~~

10 (b) "Application for Certification Renewal", DEP No. DOW6070, Month/2019~~["Well~~
11 ~~Driller's Certification Renewal Application", July 2008]; and~~

12 (c) "Affidavit of Supervision", DEP No. DOW6080, July 2019.

13 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
14 law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday
15 through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Water Web
16 site at <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx>;
17 www.water.ky.gov].

401 KAR 6:320E Certification of water well drillers and water well driller assistants is approved for filing.



Charles G. Snavely, Secretary
Energy and Environment Cabinet

7/9/2019

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 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 August 31, 2019. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation, to the contact person.

Contact person: Carole J. Catalfo
Internal Policy Analyst, RPPS,
Division of Water, 3rd Floor
300 Sower Boulevard
Frankfort, Kentucky 40601
Phone (502) 564-3410
Fax (502) 564-9003
Email: water @ky.gov (Subject line: "Chapter 6 regulations")

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 6:320E

Contact Person: Carole J. Catalfo
Phone: (502) 782-6914
Email: water@ky.gov (Subject Line: "Chapter 6 regulations")

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for certification and certification renewal for water well and monitoring well drillers and well drillers assistants, including examinations, applications, disciplinary action, and certification renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirement to promulgate administrative regulations for well driller and well driller assistants pursuant to KRS 223.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(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 revises language to comply with the requirements of KRS 13A, renames the regulation to include water well driller assistants, adds certification standards and requirements for water well driller assistants, establishes a minimum passing score of seventy percent (70%) on applicable examinations, provides that cabinet examinations shall be scheduled at a mutually agreeable date and time with the applicant, requires payment of the initial certification fee before a certificate will issue, establishes a continuing education requirement of eight (8) hours per year for well driller assistants, requires that at least fifty

percent (50%) of continuing education units be pertinent to well drilling, updates existing Materials Incorporated by Reference, and adds an Affidavit of Supervision required for certified well driller assistants.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative is necessary to establish a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation establishes a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 entities identified in question (3) will need to comply with the requirements for becoming certified, and to renew certification, as a water well driller's assistant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation, an applicant for initial certification as a water well driller or water well driller's assistant will pay a total of \$330 (\$50 application fee, eighty dollar \$80 examination fee, and \$200 certification fee) as established in KRS 223.447. Certified well drillers must also pay for the cost of the surety bond and \$1000,000 of general liability insurance. Certification renewal for water well drillers and water well driller assistants will cost \$200 as established in KRS 223.447.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements of KRS 223.400 through 223.600. Additionally, the entities will benefit from having a new water well driller's assistant program.

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

(a) Initially: The current cost of the program is about \$300,000 for 2.5 FTEs for certified water well drillers, which is well above the current annual revenue between approximately \$15,000 to \$20,000. The certified population could potentially triple, from about 150 to 450, with implementation of the new water well driller's assistant program.

(b) On a continuing basis: Should the new program triple the number of applicants, the program would require at least one additional FTE which would cost approximately \$69,000, to bring total annual cost to about \$369,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Water well driller and water well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds allocated by the legislature.

(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: Senate Bill 32 of the 2019 legislative session amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees contained in this administrative regulation were established by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is applied. The fees and information required for certification are based on whether the certification is for a water well driller or water well driller's assistant, and whether certification is initial or a renewal.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

401 KAR 6:320E

Contact Person: Carole J. Catalfo
Phone: (502) 782-6914
Email: water@ky.gov (Subject Line: "Chapter 6 regulations")

(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 Division of Water and those divisions of state or local government that would employ or contract with a certified water well driller to construct, modify, or abandon a water supply well or monitoring well at a state or local government-owned property.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(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? The revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller assistant program triples the current certified population.

(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? The revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller's assistant program triples the current certified population.

(c) How much will it cost to administer this program for the first year? The current cost of the program is about \$300,000 for 2.5 FTEs.

(d) How much will it cost to administer this program for subsequent years? The Division of Water may require an additional FTE if the new water well driller's assistant program triples the certified population, which will cost approximately \$369,000 per year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the

fiscal impact of the administrative regulation.

Revenues (+/-): Approximately \$136,800

Expenditures (+/-): Approximately \$369,000

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 6:320E

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

Email: water@ky.gov (Subject Line: "Chapter 6 regulations")

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.
2. State compliance standards. KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the certification of water well drillers or water well drillers assistants.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the “Application for Certification””, DEP No. DOW6060, July 2019. This document is used to apply for water well driller and water well driller assistant certification.

This document consists of four (4) pages.

Detailed summary of changes:

Detailed summary of changes:

Form was reformatted, cabinet address changed, added form number and date.

Under Title Box: ROW 1 was two columns now three columns

Column 1- Added: “Or Remit Application and application fee of \$50.00 to:”

Under former Row 1- Column 1: Inserted revised title into New Row 2- Column 2: and added website address

Under New Row 1 Column 3: Inserted Box for Official Use Only

Changed “General Information” heading to “Applicant Information”

Move revised statement of “Payment Methods”

Removed “Exam Fee” statement

Removed question about becoming Certified water well and monitoring well driller

Inserted cells for:

“Certification Type”: “Water Well Driller”, “Monitoring Well Driller”, “Monitoring Well Driller Assistant” and Water Well Driller Assistant”

Inserted field for “Drilling Methods: “(Which Methods do you wish to be certified to perform):”

Insert cells for eight (8) drilling methods

Added: “Kentucky and NGWA exam requirements for each certification type”

Under “Equipment List” removed “by you” to refer to driller or drillers assistant “List each drilling rig owned or operated by driller and/or driller assistant:” and “List and briefly describe equipment to be used by driller and/or driller assistant for cementing and grouting:”

Added “Current Certifications” field

Expanded fields for “certification type, certificate number, certificate level, and expiration date.”

Revised “Experience/Education” to “Education and Training”.

Revised reporting methods field

Added field for “Work Experience”

Added the following statement: “List current position first. List all duties associated with each position regarding water well and/or monitoring well drilling duties. If duties are split between several areas of responsibility, indicate the percentage of time spent working in each area. (Attach additional sheets for listing additional experience).”

Removed “List the last ten wells you have constructed” and “Comment section”

Added new section entitled “Liability Insurance and Surety Bond Coverage (Kentucky Revised Statutes (KRS) 223.430)”

Added: “Proof of liability insurance coverage shall be submitted to the division before the application can be approved”

Inserted a row with spaces for: “Carrier:, Policy ID:, Coverage Begins:, Coverage Ends”

Added row with comment: “The Water Well Performance Bond shall be completed by the Surety and submitted to the division on the appropriate division form.”

Inserted row with spaces for: Surety Company, Bond ID number, Bond Type, Policy effective date”

Added New Section entitled “Information Verification” with comment: “All applications are subject to audit for verification of job duties and employment history.”

Added Row for “ Print Applicants Name”, Applicant’s Signature”, “Date”

Added new section entitled “Application, Certification and Examination Fees”

Added: “Driller and Driller Assistant applications must be submitted with a \$50.00 check or money order, per application, made payable to the *Kentucky State Treasurer*. Applications submitted without payment will not be processed. Exam fees can be prepaid or upon the day of examination. Certification fees shall be paid upon completion and approval of the certification process. Application and examination fees are non-refundable.”

Add table of application, exam, and certification fees.

II. This administrative regulation incorporates by reference the “Application for Certification Renewal” DEP No. DOW6070, July 2019. This form is used to apply for water well driller and water well driller assistant certification renewal.

This document consists of two (2) pages.

Detailed summary of changes:

Reformatted, added DEP Form No., and revised Month/Year.

Renamed document “Application for Certification Renewal” with well driller and well driller assistant designations

Updated Division of Water address, added telephone number and web address, and updated application fees.

Added an additional column with ePay web address and added: “Or remit application with fees to:” with updated address.

Added a box for “Official Use Only”

Changed “Certified Driller” to “Applicant Information”, expanded check boxes for Certification Type, and added fields for Agency Interest Number and eight Drilling Methods.

Removed fields for “Drilling Company”, “Rig Operators”, “Well Construction”, and “Training”.

Inserted new section entitled “Liability Insurance and Surety Bond Coverage (Kentucky Revised Statutes (KRS) 223.430)”

Added: “Proof of liability insurance coverage shall be submitted to the division before the application can be approved”

Inserted fields for: "Carrier:, Policy ID:, Coverage Begins:, Coverage Ends:.

Changed "Training" to "Continuing Education"

Inserted: "List all "Division Approved" training hours that are being used for this renewal. All hours must be earned prior to applying for certification renewal. For trainings hours received from non division sponsored events, completion certificates or other proof of training must be attached to this form."

Inserted fields for expanded list of: "Course code (Available from the training vendor), Training Course Title, Sponsor or Presenter, Date, and hours for drillers and driller assistants

Deleted "Signature of Driller" and "Date"

Added "All applications are subject to audit for verification of job duties and employment history."; a checkbox for "I am Eligible to work in the U.S.; and "I certify that, to the best of my knowledge, the data contained herein is complete and correct. I understand that submission of false information can result in certificate revocation and penalties as defined in KRS 223.400 through 223.991 and/or KRS 224.99-010."

Added fields for "Print Applicants Name"; "Applicant's Signature"; "Date"

Under "Renewal Fees"

Added "The renewal certification period is from July 1 through July 31 of each year. Renewal fees may be paid to the *Kentucky State Treasurer*, electronically beginning on June 1st of each renewal year by using ePay on the division's website. Renewal applications submitted to the division by mail must be accompanied with a check or money order made payable to the *Kentucky State Treasurer*. *Applications submitted without payment will not be processed.*"

Expanded and updated table for "Renewal Fees".

III. This administrative regulation incorporates by reference the "Affidavit of Supervision", DEP No. DOW6080, July 2019. This form is used to provide proof of supervision of water well driller assistants by a certified water well driller.

This document consists of one (1) page.