

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:045. Delivery prohibition.

6 RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart C, 42 U.S.C. 6991c

7 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-150, 42 U.S.C.

8 6991e, 6991k

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the cabinet  
10 to establish a program for regulating underground storage tanks that implements the federal  
11 regulatory requirements for underground storage tanks. 42 U.S.C. 6991k authorizes [~~establishes~~]  
12 the parameters for delivery prohibition for underground storage tank systems. This  
13 administrative regulation establishes the procedures for invoking delivery prohibition for an  
14 underground storage tank system.

15 Section 1. Applicability. This administrative regulation shall not apply to a regulated  
16 underground storage tank used to fuel an emergency backup generator.

17 Section 2. Delivery Prohibition for UST Systems. (1) The cabinet shall determine that a  
18 UST system is ineligible for delivery, deposit, or acceptance of regulated substances upon  
19 confirmation of one (1) or more of the following conditions:

20

1 (a) In accordance with 401 KAR 42:020, 42:030, and 42:040, required spill prevention  
2 equipment is not installed, operational, or maintained;

3 (b) In accordance with 401 KAR 42:020, 42:030, and 42:040, required overfill prevention  
4 equipment is not installed, operational, or maintained;

5 (c) In accordance with 401 KAR 42:020 and 42:030, required corrosion protection  
6 equipment is not installed, operational, or maintained;

7 (d) In accordance with 401 KAR 42:040, required release detection is not performed;

8 (e) In accordance with 401 KAR 42:020 and 42:040, required release detection  
9 equipment is not installed, operational, or maintained;[ø]

10 (f) In accordance with 401 KAR 42:020, required registration is not submitted or is not  
11 amended as necessary;

12 (g) In accordance with 401 KAR 42:200, the annual fee for underground storage tanks is  
13 past due by more than one (1) year; or

14 (h) A defective UST system component, confirmed by UST system testing or visual  
15 observation by the cabinet, and for which the owner or operator has not documented a repair or  
16 replacement, has:

17 1. Caused a release of a regulated substance into the environment; or

18 2. Allowed a regulated substance to infiltrate into the interstitial space of the UST system.

19 (2) If a condition established [~~described~~] in subsection (1)(a) through (h) [~~(1)~~] of this  
20 section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or  
21 operator.

1 (3) The Notice of Violation shall serve as notice to the owner or operator of the cabinet's  
2 intent to invoke delivery prohibition for the UST system if the violation is not corrected within  
3 the time frame established in writing by the cabinet.

4 (4) Upon failure by the owner or operator to correct the violation of a condition  
5 established in subsection (1)(a) through (h) [~~(1)~~] of this section, cited in the initial Notice of  
6 Violation, or to request an extension, in accordance with Section 3 of this administrative  
7 regulation, a second Notice of Violation shall be issued.

8 (5) Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition  
9 shall be invoked and an authorized representative of the cabinet shall attach a delivery  
10 prohibition tag to the non-compliant UST system.

11 (6) An owner or operator shall ensure that a delivery prohibition tag shall not be [~~is not~~]  
12 removed, defaced, altered, or destroyed.

13 (7) An owner or operator shall not allow the delivery, deposit, or acceptance of regulated  
14 substances into a UST system for which the cabinet has invoked delivery prohibition, unless  
15 otherwise directed in writing by the cabinet for the purpose of UST system testing.

16 (8) An owner or operator shall notify the appropriate product deliverer if delivery  
17 prohibition has been invoked.

18 (9) Delivery prohibition shall remain in effect until the non-compliant UST system is  
19 returned to compliance for the violation that caused delivery prohibition to be invoked [~~in~~  
20 ~~accordance with subsection (1) of this section~~].

21 (10) The cabinet shall determine if a UST system is authorized to accept deliveries within  
22 two (2) business days (Monday through Friday) of receipt of written notice from the owner or

1 operator that the remedial measures established in the Notice of Violation [~~related to subsection~~  
2 ~~(1) of this section~~] have been met.

3 (11) If the violation has been corrected, the cabinet shall terminate delivery prohibition  
4 and remove an affixed delivery prohibition tag within two (2) business days (Monday through  
5 Friday).

6 (12) If the division director[;] or designee [;] determines, in writing, that delivery  
7 prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a  
8 rural and remote area, the cabinet shall defer the application of delivery prohibition for a UST  
9 system, with reference to subsection (1)(a) through (h) [~~(a), (b), (c), (d), or (e) of subsection (1)~~]  
10 of this section, for a period not to exceed forty-five (45) days.

11 Section 3. Extensions. (1) The owner or operator of a UST system may request an  
12 extension to a deadline established by this administrative regulation or established by the cabinet.  
13 The extension request shall be in writing pursuant to this administrative regulation.


14 (2) [~~The extension request shall be submitted in writing and received by the Division of~~  
15 ~~Waste Management prior to the deadline.~~

16 (3) The cabinet shall grant an extension, if an extension would not have a detrimental  
17 impact on human health or the environment.

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401 KAR 42:045 approved for filing.

9/25/15  
Date

  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 24, 2015, at 6:00 p.m. (Eastern Time), at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 2015, five 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 cancelled. 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 until November 30, 2015. 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:** Louanna Aldridge  
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200 Fair Oaks, Second Floor  
Frankfort, KY 40601  
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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 401 KAR 42:045

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for invoking delivery prohibition for an UST system.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the procedures for delivery prohibition for UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing delivery prohibition procedures for USTs in accordance with the Energy Policy Act of 2005.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statute by establishing the procedures for delivery prohibition.

(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 will prohibit delivery, deposit, or acceptance of regulated substances to the UST systems of an owner or operator who has failed to register, amend the registration, or

pay the annual tank fees as required by KRS 224.60-150, 224.60-105, and the administrative regulations promulgated in 401 KAR 42:020 and 42:200.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to institute UST owner or operator compliance with registration and annual tank fee payments.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to the authorizing statutes by enforcing tank registration and annual tank fees as required in KRS 60-105 and KRS 60-150 respectively.

(d) How the amendment will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statutes by prohibiting delivery, deposit, or acceptance of regulated substances to UST system of an owner or operator who has failed to comply with the authorizing statutes or administrative regulation promulgated requiring the registration and annual tank fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are approximately 3,317 registered UST facilities in Kentucky.

(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:

None. This administrative regulation identifies procedures for the cabinet to follow for invoking delivery prohibition.



(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will be no cost to the regulated entity other than the costs associated with compliance and annual tank fees pursuant to current regulation within 401 KAR Chapter 42.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

As a result of compliance the owners or operators of UST facilities identified in question (3) may be eligible for participating in the Petroleum Storage Tank and Environmental Assurance Fund and will avoid the cabinet prohibiting delivery, deposit, or acceptance of regulated substances to the UST system.

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

(a) Initially: The initial cost to the administrative body will be negated by the additional annual tank fees received from non-compliant UST system owners or operators.

(b) On a continuing basis: The continuing cost to the administrative body will be negated by the additional annual tank fees received from non-compliant UST system owners or operators.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Funding for the administration, implementation, and enforcement of this administrative regulation is provided for in KRS 224.60-150 with the annual tank fees required for UST systems, and U.S. E.P.A. grants.

(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 administrative regulation will not require a fee increase.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied?

Tiering is not applied in this administrative regulation. Delivery prohibition procedures are the same for all UST systems.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 6991k, 42 U.S.C. 6991e

2. State compliance standards.

KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate.

42 U.S.C. 6991k, 42 U.S.C. 6991e

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 401 KAR 42:045

Contact Person: Louanna Aldridge

Phone number: 502-564-6716

(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 Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

42 U.S.C. 6991k, 42 U.S.C. 6991e, KRS 224.60-105, and KRS 224.60-150.

(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 between \$30,000 and \$65,000 for the first year as a result of compliance by UST owners or operators. If red tagging induced 70% of active facilities (TAC) and 20% of temporarily closed (TTC) facilities to register and pay tank fees, an additional \$30,363.00 in paid fees would be collected. If 100% of the tank fee due were collected the net amount would be \$65,290.00.

(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 and additional \$30,000 annually as a result of compliance by UST owners or operators.

If we red tagged the remaining active facilities a second time and achieved 100% payment of fees, that would obtain an additional \$10,386 in paid fees for year two (above and beyond our annual tank fees that we bill approximately \$30,000 per fiscal year).

(c) How much will it cost to administer this program for the first year?

Initially, the costs for additional delivery prohibition measures implemented pursuant to this administrative regulation by the UST program and field personnel will be \$36,242.00.

(d) How much will it cost to administer this program for subsequent years?

For subsequent years, the costs for additional delivery prohibition measures implemented pursuant to this administrative regulation by the UST program and field personnel will be from zero to \$4,000. The argument for zero costs is that in time red tag for failure to register will be integrated into the normal inspection cycle. Therefore, the notices of violations and enforcement procedures will blend with present activities. It would be a very rare event for an inspector to red-tag a site for failure to register as the only compliance issue. Additionally, proper registration will help identify and provide notice to tank owners and operators who are presently difficult to identify. This will reduce the amount of time spent trying to identify owners.

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

Revenues (+/-): In the first two years it is expected that between \$30,000 and \$60,000 will be raised in additional tank fees collected by additional compliance from non-registered UST system owner and operators and the timely submittal of annual tank fees. After the initial start-up period revenues from tanks fees will settle to about an additional \$30,000 annually. As compliance with tank registration improves, an additional \$75,000 per year will be saved in subsequent years due to the reduction of staff time used to collect tank fees and locate tank owners and operators.

Expenditures (+/-): First and second year expenditures will be approximately \$40,242.00

Other Explanation: The additional costs for implementation of the additional delivery prohibition measures implemented pursuant to this administrative regulation will be negated by the annual tank fees received from non-registered UST system owner and operator. Costs will, additionally, be off-set by a reduction in the staff time used to locate tank owners and operators.