

Dear Senators BAIR, VICK, Stennett, and
Representatives THOMPSON, Anderst, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Environmental Quality:

IDAPA 58.01.07 - Rules Regulating Underground Storage Tank Systems - (Fee Rule) Proposed
Rule (Docket No. 58-0107-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/08/2016. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/06/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: August 19, 2016

SUBJECT: Department of Environmental Quality

IDAPA 58.01.07 - Rules Regulating Underground Storage Tank Systems - (Fee Rule) Proposed Rule
(Docket No. 58-0107-1601)

The Department of Environmental Quality submits notice of proposed rulemaking at IDAPA 58.01.07 - Rules Regulating Underground Storage Tank Systems. According to the department, the rulemaking was initiated to adopt the newly revised federal Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs), 40 CFR Part 280, and to establish a fee structure. The department states that the Environmental Protection Agency (EPA) updated 40 CFR Part 280 on October 13, 2015 amending the 1988 federal regulations by increasing emphasis on properly operating and maintaining underground storage tank equipment. In order to retain state program approval/primary enforcement authority that was approved by EPA on February 28, 2012, the department notes that Idaho is required to adopt the newly revised 40 CFR Part 280 and re-submit a state program approval application package by October 13, 2018. The department adds that the new regulations and successive federal grant reductions have made it impossible to maintain the minimum program effort necessary to retain state program approval and that DEQ must negotiate a fee structure to ensure there is sufficient funding to maintain an underground storage tank program and retain state program approval. The department indicates that fees would not exceed one hundred dollars (\$100) per tank per year.

The department also states that the revised 40 CFR Part 280 includes the secondary containment and operator training provisions found in the Energy Policy Act of 2005. EPA is giving the states the option to adopt the new provisions or retain their existing secondary containment and operator training rules. According to the department, it is proposing to retain its existing, less stringent, secondary containment and operator training rules (IDAPA 58.01.07.100 and 300) and incorporate the remainder of 40 CFR Part 280 by reference. In addition, DEQ proposes revisions that would simplify inspections, include a fee structure, remove duplicate definitions now found in 40 CFR Part 280, include a training requirement overlooked during the 2007 rulemaking, and provide for alternative periodic testing of containment sumps used for interstitial monitoring of piping.

The department confirms that the proposed rule does not regulate an activity not regulated by the federal government, nor is it more stringent than federal regulations. The department states that the rule is broader in scope than federal regulations with respect to the collection of fees. The department notes that during the 2016

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

legislative session, Senate Bill 1244 revised section 39-8802, Idaho Code, to allow for the collection of UST fees under section 39-119, Idaho Code.

Negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Chapters 1 and 88, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.07 - RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

DOCKET NO. 58-0107-1601 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Chapters 1 and 88, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 17, 2016. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to adopt into state rules the newly revised federal Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs), 40 CFR Part 280, and to establish a fee structure. The Environmental Protection Agency (EPA) updated 40 CFR Part 280 on October 13, 2015 amending the 1988 federal regulations by increasing emphasis on properly operating and maintaining underground storage tank equipment. In order to retain state program approval/primary enforcement authority that was approved by EPA on February 28, 2012, Idaho is required to adopt the newly revised 40 CFR Part 280 and re-submit a state program approval application package by October 13, 2018. Additionally, these new regulations and successive federal grant reductions have made it impossible to maintain the minimum program effort necessary to retain state program approval. DEQ must negotiate a fee structure to ensure there is sufficient funding to maintain an underground storage tank program and retain state program approval. Fees would not exceed one hundred dollars (\$100) per tank per year. Collection of UST fees is authorized by Section 39-119, Idaho Code. Senate Bill 1244 (2016) revised Section 39-8802(2)(d), Idaho Code, to allow for collection of UST fees under Section 39-119, Idaho Code.

The revised 40 CFR Part 280 includes the secondary containment and operator training provisions found in the Energy Policy Act of 2005. EPA is giving the states the option to adopt the new provisions or retain their existing secondary containment and operator training rules. DEQ proposes to retain its existing, less stringent, secondary containment and operator training rules (IDAPA 58.01.07.100 and 300) and incorporate the remainder of 40 CFR Part 280 by reference.

In addition, DEQ proposes revisions that would simplify inspections, include a fee structure, remove duplicate definitions now found in 40 CFR Part 280, include a training requirement overlooked during the 2007 rulemaking, and provide for alternative periodic testing of containment sumps used for interstitial monitoring of piping.

Owners and operators of underground storage tanks, cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, representatives of the Idaho Petroleum Storage Tank Fund Board of Trustees, and citizens of the state of Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2016 for adoption of a pending rule. The rule is expected to become final and effective upon the conclusion of the 2017 legislative session if adopted by the Board and approved by the Legislature.

FEE SUMMARY: DEQ must negotiate a fee structure to ensure there is sufficient funding to maintain an underground storage tank program and retain state program approval. Fees would not exceed one hundred dollars (\$100) per tank per year. Collection of UST fees is authorized by Section 39-119, Idaho Code. In 2016, the Idaho Legislature revised Section 39-8802(2)(d), Idaho Code, to allow for collection of UST fees under Section 39-119, Idaho Code, (Senate Bill 1244).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Section 67-5223(4), Idaho Code, DEQ prepared a brief synopsis detailing the substantive difference between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at www.deq.idaho.gov/58-0107-1601 or by contacting the undersigned.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 2016 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on April 28 and May 26, 2016. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0107-1601.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft (Draft No. 4) for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it more stringent than federal regulations. This proposed rule is broader in scope than federal regulations with respect to the collection of fees. In 2016, the Idaho Legislature revised Section 39-8802(2)(d), Idaho Code, to allow for collection of UST fees under Section 39-119, Idaho Code, (Senate Bill 1244).

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Kristi Lowder at kristi.lowder@deq.idaho.gov or (208) 373-0347.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before August 31, 2016.

DATED this 3rd Day of August, 2016.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0107-1601 (FEE RULE)
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

Any reference to any document identified in Subsection 004.01 shall constitute the full adoption by reference into IDAPA 58.01.07. (4-2-08)

01. Documents Incorporated by Reference. Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280, revised as of July 1, 2017, with the following exceptions: (4-2-08)()

- a. 40 CFR 280.12, the definition of "Replaced" is excluded; ()
- b. 40 CFR 280.12, the definition of "Under-dispenser containment or UDC" is excluded; ()
- c. 40 CFR 280.20, the introductory paragraph sentence, "In addition, except for suction piping that meets the requirements of §280.41(b)(1)(ii)(A) through (E), tanks and piping installed or replaced after April 11, 2016 must be secondarily contained and use interstitial monitoring in accordance with §280.43(g).", is excluded; ()
- d. 40 CFR 280.20(f), is excluded; ()
- e. 40 CFR 280.34(b)(9), the citation to §280.245 is excluded; ()
- f. 40 CFR 280.41(a)(1), "installed on or before April 11, 2016..." is excluded; ()
- g. 40 CFR 280.41(a)(2), is excluded; ()
- h. 40 CFR 280.41(b)(1), "installed on or before April 11, 2016..." is excluded; ()
- i. 40 CFR 280.41(b)(2), is excluded; ()
- j. 40 CFR 280.42, Note to paragraph (a), "for tank installed on or before October 13, 2015." is excluded; ()
- k. 40 CFR 280.42(e), "installed on or before October 13, 2015..." is excluded; and ()
- l. 40 CFR Part 280 Subpart J is excluded. ()

02. Hazardous Substance Underground Storage Tank Systems. (4-2-08)

a. The following items only apply to hazardous substance underground storage tank systems and do not apply to petroleum underground storage tank systems: (4-2-08)

- i. The definition of "Hazardous substance UST system" in 40 CFR 280.12 and use of this term or regulations regarding hazardous substance in 40 CFR Part 280; and (4-2-08)
- ii. 40 CFR 280.42 and any reference to 40 CFR 280.42 in 40 CFR Part 280. (4-2-08)

b. All other provisions of 40 CFR Part 280 and all provisions of IDAPA 58.01.07 shall apply to hazardous substance underground storage tank systems. (4-2-08)

03. Consistency. In the event of conflict or inconsistency between the language in IDAPA 58.01.07 and that found in [40 CFR Part 280](#), IDAPA 58.01.07 shall prevail. (4-2-08)

04. Stringency. IDAPA 58.01.07 shall be no more stringent than federal law or regulations governing underground storage tank systems. (4-2-08)

05. Availability of Referenced Material. The federal regulations adopted by reference can be obtained at the following locations: (4-2-08)

a. U.S. Government Printing Office, www.ecfr.gov; and (4-2-08)

b. Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems,” the following definitions apply: (4-2-08)

01. Board. The Idaho Board of Environmental Quality. (4-2-08)

02. Community Water System. A public water system that serves at least fifteen (15) service connections used by year-round residents of the area served by the system or regularly serves at least twenty-five (25) year-round residents. (4-2-08)

03. Department. The Idaho Department of Environmental Quality. (4-2-08)

04. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. (4-2-08)

05. Existing. Solely for purposes of determining when secondary containment is required, existing is when a petroleum underground storage tank, piping, motor fuel dispensing system, facility, public water system or potable drinking water well is in place when a new installation or replacement of a tank, piping, or motor fuel dispensing system begins. (4-2-08)

06. EPA. The United States Environmental Protection Agency. (4-2-08)

07. Installation of a New Motor Fuel Dispenser System. The installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the petroleum underground storage tank system. This equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser, below the shear valve, and connect the dispenser to the piping. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the petroleum underground storage tank system. (4-2-08)

08. Installer. Any person who installs a new or replacement petroleum underground storage tank system. (4-2-08)

~~**09. Motor Fuel.** Petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of petroleum-blended gasohol, and is typically used in the operation of a motor engine. This includes blended petroleum motor fuels such as biodiesel and ethanol petroleum blends. (4-2-08)~~

~~**10. New Underground Storage Tank.** Has the same meaning as “underground storage tank or UST” in 40 CFR 280.12, except that such term includes tanks that have been previously used and meet the requirements of 40 CFR 280.20(a). (4-2-08)~~

~~140.~~ **Non-Community Water System.** A public water system that is not a community water system. A non-community water system is either a transient non-community water system or a non-transient non-community water system. (4-2-08)

~~12. Person. An individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government. (4-2-08)~~

~~131.~~ **Piping.** A hollow cylinder or a tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated petroleum substances from the petroleum underground storage tank(s) to the dispenser(s) or other end-use equipment. It does not mean vent, vapor recovery, or fill lines that do not routinely contain regulated petroleum substances. (4-2-08)

~~102.~~ **Potable Drinking Water Well.** Any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which supplies water for a non-community public water system or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. (4-2-08)

~~153.~~ **Product Deliverer.** Any person who delivers or deposits product into a petroleum underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities. (4-2-08)

~~164.~~ **Public Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "non-community water system." (4-2-08)

~~175.~~ **Red Tag.** A tamper-resistant tag, device, or mechanism attached to the tank's fill pipes that clearly identifies a petroleum underground storage tank as ineligible for product delivery. The tag or device shall be visible to the product deliverer and shall clearly state that it is unlawful to deliver to, deposit into, or accept product into the ineligible petroleum underground storage tank. (4-2-08)

~~18. Repair. Solely for purposes of determining when secondary containment is required, as it applies to petroleum underground storage tanks, piping, and motor fuel dispensers systems, repair means any activity that does not meet the definition of replace. (4-2-08)~~

~~196.~~ **Replace.** As it applies to petroleum underground storage tanks and piping, replace is defined as follows: (4-2-08)

a. Petroleum Underground Storage Tank. Replace means to remove an existing tank and install a new tank. (4-2-08)

b. Piping. Replace means to remove and put back in one hundred (100) percent of the piping, excluding connectors, connected to a single petroleum underground storage tank system. This definition does not alter the requirement in 40 CFR 280.33(c) to replace metal pipe sections and fittings that have released product as a result of corrosion or other damage. A replacement of metal pipe section and fittings pursuant to 40 CFR 280.33(c) shall be considered a replacement under this definition only if one hundred (100) percent of the metal piping, excluding connectors, is replaced. (4-2-08)

~~20. Secondary Containment. A release detection and prevention system that meets the requirements of 40 CFR 280.43(g). The piping shall have an inner and outer barrier and a method of monitoring the space between~~

~~the inner and outer barriers for a leak or release.~~

~~(4-2-08)~~

217. Under-Dispenser Spill Containment. Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water. Such containment must: (4-2-08)

- a. At installation or modification, be liquid-tight on its sides, bottom, and at any penetrations; and (4-2-08)
- b. Be compatible with the substance conveyed by the piping; and either (4-2-08)
- c. Allow for visual inspection and access to the components in the containment system; or (4-2-08)
- d. Be monitored for releases using a release detection method that meets the requirements of 40 CFR 280.43(g). (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.

01. Notification. An owner, operator or designee must: (4-2-08)

a. Provide written notice to the Department thirty (30) days prior to the installation of a new piping system or a new or replacement petroleum underground storage tank. (4-2-08)

b. Provide notice to the Department twenty-four (24) hours prior to the installation of a replacement piping system. (4-2-08)

02. Notification Forms. The written notice required in Subsection 100.01.a. shall be made upon forms provided by the Department. (4-2-08)

03. Requirements for Petroleum UST Systems. Owners, operators, and installers of a new or replacement petroleum underground storage tank or piping system shall comply with the following requirements. (4-2-08)

a. Each new petroleum underground storage tank, or piping connected to any such new tank, installed after February 23, 2007, or any existing petroleum underground storage tank, or existing piping connected to such existing tank, that is replaced after February 23, 2007, shall have secondary containment and be monitored for leaks if the new or replaced petroleum underground storage tank or piping is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. At a minimum, secondary containment systems must be designed, constructed, and installed to contain regulated substances released from the tank system until they are detected and removed, prevent the release of regulated substances to the environment at any time during the operational life of the petroleum underground storage tank system, and be checked for evidence of a release at least every thirty (30) days. The following conditions are excluded: (4-2-08)

- i. Suction piping that meets the requirements of 40 CFR 280.41(b)(~~2~~1)(i)(A) through (~~E~~); (4-2-08) ()
- ii. Piping that manifolds two (2) or more petroleum underground storage tanks together; (4-2-08)
- iii. Existing piping to which new piping is connected to install a dispenser; and (4-2-08)
- iv. Tanks identified in 40 CFR 280.10(b). (4-2-08)

b. If the owner installs, within one (1) year, a potable drinking water well at the new facility that is within one thousand (1,000) feet of the petroleum underground tanks, piping, or motor fuel dispenser system as part

of the new underground storage tank facility installation, secondary containment and under-dispenser containment are required, regardless of whether the well is installed before or after the petroleum underground tanks, piping, and motor fuel dispenser system are installed. (4-2-08)

c. The notice required in Subsection 100.01 shall indicate whether the new or replacement installation is within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well. If the owner and installer certify that the installation is not within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well, the owner, operator or designee shall provide and maintain documentation showing that a reasonable investigation of water systems and drinking water wells was undertaken. A reasonable investigation includes, but is not limited to, a search of the records of: (4-2-08)

i. The public or private water service provider in the area which the new or replacement installation is located (if any); (4-2-08)

ii. The city or county in which the new or replacement installation is located; (4-2-08)

iii. The Idaho Department of Water Resources; and (4-2-08)

iv. The Idaho Department of Environmental Quality. (4-2-08)

d. In the case of a replacement of an existing petroleum underground storage tank or existing piping connected to the petroleum underground storage tank, Section 100 shall apply only to the specific petroleum underground storage tank or piping being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. (4-2-08)

e. Each installation of a new motor fuel dispenser system shall include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. (4-2-08)

04. Requirements for Hazardous Substance UST Systems. Owners, operators, and installers of a new or replacement hazardous substance underground storage tank or piping system shall have secondary containment as required in 40 CFR 280.42. (4-2-08)

05. Certification. Owners and operators shall also comply with the certification requirements of 40 CFR 280.22(f) as incorporated by reference into these rules. (4-2-08)

101. ALTERNATIVE PERIODIC TESTING OF CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING.

01. Applicability. ()

a. The alternative test method in Subsection 101.02 shall only be used for containment sumps that are performing continuous interstitial monitoring as a piping release detection method where an electronic sump sensor is installed and connected to an electronic monitoring device, such as an automatic tank gauge, or where the piping within a containment sump is continuous to a containment sump which has an electronic sump sensor installed and connected to an electronic monitoring device, such as an automatic tank gauge. ()

i. The sump sensor in Subsection 101.01.a. must be positioned in the containment sump according to manufacturer instructions and at the lowest possible point in the containment sump. ()

ii. The sump sensor in Subsection 101.01.a. must be wired and programmed appropriately to shut down power to the submersible turbine pump (positive shutdown) when the sensor is in contact with liquid in any containment sump. ()

iii. If new dispensers are added and Subsection 101.01.a.ii. cannot be achieved (no electrical conduit, not enough sensor ports, etc.), an electronic stand-alone dispenser containment sump sensor may be used if it is wired appropriately to shut down power to the dispenser when the sensor is in contact with liquid in the dispenser

containment sump. ()

b. The Department may not allow the alternative test method in Subsection 101.02 if it determines the containment sump, penetration fittings, or containment sump sensors are not constructed or positioned in a manner that will accommodate the alternative testing or prevent releases to the environment (i.e., penetration fittings are too close to the containment sump bottom). ()

02. Alternative Test Method Allowed. ()

a. As an alternative to the allowable test method in 40 CFR 280.35(a)(1)(ii)(A)-(C), containment sumps used for interstitial monitoring of piping may be tested as follows: ()

i. Temporarily remove any interstitial monitoring containment sump sensors before conducting the test; ()

ii. Add water to the containment sump up to a point directly beneath the first containment sump penetration fitting from the bottom of the containment sump. The water must be allowed to settle for at least fifteen (15) minutes; ()

iii. Place a measuring stick that has one sixteenth (1/16th) inch increments into the lowest point in the containment sump and extending above the water level in the sump; and ()

iv. Document the initial water level measurement as measured from the bottom of the containment sump. After one (1) hour, document the ending water level measurement. If the water level changes less than one eighth (1/8th) inch, the containment sump passes the integrity test. If the water level changes one eighth (1/8th) inch or greater, the containment sump fails the integrity test. ()

b. Upon completion of the test, remove all water and properly dispose of it. Reinstall any interstitial monitoring sensors. Reinstall all containment sump lids, gaskets, and covers. ()

10~~1~~2. -- 199. (RESERVED)

200. RELEASE REPORTING REQUIREMENTS.

01. Information to be Reported. (4-2-08)

a. In addition to the requirements in IDAPA 58.01.02, "Water Quality Standards," Subsection 851.01, owners or operators shall report the following information regarding confirmed petroleum underground storage tank releases to the Department on forms provided by the Department: (4-2-08)

i. The release source; and (4-2-08)

ii. The release cause. (4-2-08)

b. Releases less than twenty-five (25) gallons that are cleaned up within twenty-four (24) hours, and which do not cause a sheen on nearby surface water, do not need to be reported. (4-2-08)

02. Release Sources. Release sources may include, but are not limited to the following: (4-2-08)

a. Petroleum Underground Storage Tanks; (4-2-08)

b. Piping; (4-2-08)

c. Dispensers, which include the dispenser and equipment used to connect the dispenser to the piping. A release from a suction pump or components located above the shear valve would be an example of a release from the dispenser; (4-2-08)

d. Submersible turbine pump area, which includes the submersible turbine pump head (typically located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the petroleum underground storage tank; and (4-2-08)

e. Delivery problem, which identifies releases that occurred during product delivery to the petroleum underground storage tank. Typical causes associated with this source are spills and overfills. (4-2-08)

03. Release Causes. Release causes may include, but are not limited to the following: (4-2-08)

a. Spills which may occur when the delivery hose is disconnected from the fill pipe of the petroleum underground storage tank or when the nozzle is removed from the vehicle at the dispenser; (4-2-08)

b. Overfills which may occur from the fill pipe at the petroleum underground storage tank or when the nozzle fails to shut off at the dispenser; (4-2-08)

c. Physical or mechanical damage of all types except corrosion. Examples include a puncture of the petroleum underground storage tank or piping, loose fittings, broken components, and components that have changed dimension like elongation or swelling; (4-2-08)

d. Corrosion of a metal tank, piping, flex connector, or other component; and (4-2-08)

e. Installation problem that occurs specifically because the underground storage tank system was not installed properly. (4-2-08)

04. Requirements. The reporting required in Section 200 shall be reported to the Department within ninety (90) days of a confirmed release. The reporting requirement in Section 200 shall not relieve owners or operators from the obligation to comply with [40 CFR Part 280 Subpart E "Release Reporting, Investigation, and Confirmation."](#) IDAPA 58.01.02, "Water Quality Standards," Section 851, "Petroleum Release Reporting, Investigation, and Confirmation," and IDAPA 58.01.02, "Water Quality Standards," Section 852, "Petroleum Release Response and Corrective Action." (4-2-08)()

201. -- 299. (RESERVED)

300. TRAINING REQUIREMENTS.

01. Requirements. The Department shall adopt a training program to help owners and operators comply with the requirements of these rules. The training program requirements shall: (4-2-08)

a. Be consistent with 42 U.S.C. 6991i(a), as amended by the Underground Storage Tank Compliance Act, (Pub.L. 109-58, title XV, sec. 1524(a), Aug. 8, 2005); (4-2-08)

b. Be developed in cooperation with petroleum underground storage tank owners and tank operators; (4-2-08)

c. Take into consideration training programs implemented by petroleum underground storage tank owners and operators as of August 8, 2005; (4-2-08)

d. Provide for training to be conducted on site or at another mutually convenient location; and (4-2-08)

e. Be appropriately communicated to petroleum underground storage tank owners and operators. (4-2-08)

02. Operator Designation. For each petroleum underground storage tank system regulated under these rules, the owner or operator shall: (4-2-08)

a. Designate: (4-2-08)

i. The class A operator, who is the individual(s) having primary responsibility for on-site operation and maintenance of the petroleum underground storage tank system. This does not require that the class A operator be on site; (4-2-08)

ii. The class B operator, who is the individual(s) having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank system. This does not require that the class B operator be on site at all times; and (4-2-08)

iii. The class C operator, who is the daily, on-site individual(s) having primary responsibility for addressing emergencies presented by a spill or release from the petroleum underground storage tank system. The class C operator can be designated by the class A or B operator. (4-2-08)

b. Maintain a record at the facility where the petroleum underground storage tank is located listing each person designated in Subsections 300.02.a.i., 300.02.a.ii., and 300.02.a.iii. (4-2-08)

c. Notify the Department in writing of the individual(s) designated in Subsections 300.02.a.i. and 300.02.a.ii. within thirty (30) days of the designation. (4-2-08)

03. Training. The owner or operator of each petroleum underground storage tank system regulated under these rules shall ensure that the individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. participate in the training conducted by the Department or a state of Idaho approved third party. (4-2-08)

a. The individual(s) identified in Subsections 300.02.a.i. or 300.02.a.ii. shall provide training to the persons identified in Subsection 300.02.a.iii. (4-2-08)

b. The individual(s) identified in Subsection 300.02.a.iii. must be trained before assuming responsibility for responding to emergencies. (4-2-08)

c. The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall repeat the training within thirty (30) days if the petroleum underground storage tank system for which they have responsibility is determined to be out of compliance with these rules. (4-2-08)

d. The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall be trained within thirty (30) days of assuming operation and maintenance duties. ()

04. Unattended Sites. In the case of unattended sites, a sign must be posted in a location visible from the dispensers indicating emergency shut-off procedures and emergency contact phone numbers. (4-2-08)

301. -- 399. (RESERVED)

400. INSPECTIONS.

01. Department Authority. In order to fulfill the statutory requirements of Chapter 88, Title 39, Idaho Code, officers, employees or representatives of the Department, or third-party inspectors as described in Subsection 400.02, are authorized to inspect petroleum underground storage tanks, contents of the tanks, and associated equipment and records relating to such tanks, contents, and associated equipment. (4-2-08)

02. Third-Party Inspections. (4-2-08)

a. Third-party inspectors must be certified, licensed, or registered by an approved state program to perform on-site inspections. At a minimum, third-party inspectors must meet the requirements listed in Subsections 400.02.a.i. through 400.02.a.v.: (4-2-08)

i. Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures; (4-2-08)

- ii. Successfully complete the state's required training program. The training program for third-party inspectors must be comparable to the training program for Department inspectors; (4-2-08)
 - iii. Not be the owner or operator of the petroleum underground storage tank, an employee of the owner or operator of the petroleum underground storage tank, or a person having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank; (4-2-08)
 - iv. Use an inspection report form developed by the Department. Review of applicable records and other activities that can be accomplished off-site may be combined with activities conducted at the site to fulfill the on-site inspection requirement; and (4-2-08)
 - v. Complete and submit the inspection report to the Department in the manner and time frame established by the Department. All third-party inspection reports must be submitted electronically to the Department for review and for the Department to make a compliance determination for each site. If requested by the Department, third-party inspectors shall provide all supporting documentation for its inspection reports. (4-2-08)
- b.** Third-party inspection procedures must contain an audit program, developed by the Department, to monitor third-party inspectors on a routine basis. The audit program must include a sufficient number of on-site inspections to effectively assess inspector performance. (4-2-08)
- c.** If a third-party inspector fails to demonstrate to the approved state program adequate competence and proficiency to perform petroleum underground storage tank inspections, or the approved state program otherwise determines it is not appropriate for the third-party inspector to conduct on-site inspections as part of a third-party inspection program, the approved state program must take appropriate action against the third-party inspector as provided by law. (4-2-08)

03. Inspections. All inspections shall be done in accordance with the provisions of Section 39-108, Idaho Code. At a minimum, an on-site inspection must assess compliance with the provisions of these rules and 40 CFR Part 280, following: (4-2-08)()

- ~~a. Notification;~~ (4-2-08)
- ~~b. Corrosion protection;~~ (4-2-08)
- ~~c. Overfill prevention in place and operational;~~ (4-2-08)
- ~~d. Spill prevention in place and operational;~~ (4-2-08)
- ~~e. Tank and piping release detection;~~ (4-2-08)
- ~~f. Reporting suspected releases;~~ (4-2-08)
- ~~g. Records of tank and piping repairs;~~ (4-2-08)
- ~~h. Secondary containment where required;~~ (4-2-08)
- ~~i. Financial responsibility; and~~ (4-2-08)
- ~~j. Temporary closure.~~ (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

601. FEE SCHEDULE FOR UNDERGROUND STORAGE TANKS.

All regulated underground storage tanks shall pay an annual underground storage tank fee provided in Section 39-119, Idaho Code. The fee shall be assessed to regulated underground storage tanks as provided in Section 601.

- ()
- 01. Fee Criteria.** ()
- a.** Compartment and siphon-manifolded underground storage tanks shall be treated as separate underground storage tanks. ()
- b.** Temporarily out of use tanks are included in Section 601. ()
- 02. Fee Amount and Schedule.** ()
- a.** Annual fees shall be paid for each fee year beginning January 2, 2018, and continuing for each succeeding year. ()
- b.** The annual fee per underground storage tank is one hundred dollars (\$100). The annual fee shall not exceed one hundred dollars (\$100) and will be re-calculated each year if the fee balance exceeds thirty-five thousand dollars (\$35,000). Any fee balance above thirty-five thousand dollars (\$35,000) will be used to reduce the following year's fee. ()
- c.** New underground storage tanks installed after January 2 will not pay a fee until the following January. ()
- 03. Billing.** ()
- a.** An annual fee invoice will be generated and mailed in November for each owner listed in the Department's Underground Storage Tank Database. ()
- b.** Owners will have one (1) month to notify the Department in writing if the number of underground storage tanks is incorrect. ()
- 04. Payment.** Payment of the annual fee shall be due on January 2, unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. ()
- 05. Delinquent Unpaid Fees.** An owner will be delinquent in payment if the annual fee has not been received by the Department by March 1. ()
- 06. Enforcement.** Failure to comply with Section 601 shall be subject to enforcement and penalties pursuant to the enforcement provisions of Section 39-108, Idaho Code, (Idaho Environmental Protection and Health Act), and Section 39-8811(2), Idaho Code, (Idaho Underground Storage Tank Act). ()
- 07. Nonrefundable.** The annual fee required by these rules shall be nonrefundable. ()
- 08. Fee Report.** Prior to February 1 of each year, the Director shall report to the Governor and the Idaho Legislature on the use of fees collected the previous year. At a minimum, the report shall include: ()
- a.** A list of all tanks subject to inspection; ()
- b.** The type of inspection and regulatory authority or guidance used; and ()
- c.** A detailed accounting of how fee funds were spent. ()
- 6042. -- 999. (RESERVED)**

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Department of Environmental Quality

Agency Contact:

Orville Green 373-0278

Kristi Lowder 373-0347

Date: 7/14/18

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems

Fee Rule Status: X Proposed __ Temporary

Rulemaking Docket Number: 58-0107-1601

STATEMENT OF ECONOMIC IMPACT:

DEQ must negotiate a fee structure to ensure there is sufficient funding to maintain an underground storage tank (UST) program and retain state program approval. Fees would not exceed one hundred dollars (\$100.00) per tank per year. Collection of UST fees is authorized by Idaho Code § 39-119. In 2016, the Idaho Legislature revised Idaho Code § 39-8802(2)(d) to allow for collection of UST fees under Idaho Code § 39-119 (Senate Bill 1244).

Costs to the Agency: There will be additional, unknown, personnel costs relating to administering the newly revised federal Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280. Costs include outreach, increased inspection times, additional follow-up, database development, and fee collection. Costs will come from federal funding, general fund, and fees.

Costs to the Regulated Community: The UST fee will not exceed one-hundred dollars (\$100.00) per tank per year, which amounts to a projected total of \$335,000.

Overview of Incorporations by Reference for the DEQ Underground Storage Tank Program

Docket No. 58-0107-1601

Required by Idaho Code § 67-5223(4)

An efficient way to implement new or updated federal regulations is to incorporate them by reference. Reproducing the Code of Federal Regulations in state rules is impractical and costly. Therefore when possible and as supported by Idaho industry, DEQ incorporates federal regulations by reference. Sections with no changes are also incorporated to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules regardless of whether DEQ incorporates them by reference.

In addition, for DEQ to continue to be the implementing authority for the Underground Storage Tank Program in the state of Idaho, the agency is required to implement the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280, revised July 15th, 2015. DEQ is required to continually demonstrate that our underground storage tank program meets minimum federal requirements.

If DEQ's underground storage tank program does not meet EPA's minimum requirements, EPA could withdraw state program approval, or primacy, and underground and leaking underground storage tank federal funding.

The following table summarizes the Code of Federal Regulations section the DEQ Underground Storage Tank Program incorporates by reference.

40 CFR Part	Title	Changes During Past Year?	Impact on Idaho
280	Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST)	Yes	Yes

These changes are discussed in more detail below. The associated Federal Register notice was published on July 15th, 2015 (FR Volume 80, No. 135).

The following subparts were revised and will have an impact on Idaho facilities:

Subpart A: Program Scope and Installation Requirements for Partially Excluded UST Systems

- The section describes the applicability of the regulations, installation requirements, and definitions.
- The current update regulates previously deferred systems. This includes airport hydrant, field-constructed, and emergency power generator USTs.
- Any owners of these newly regulated systems will be required to comply with the regulations.

- The definition of “repair” was expanded to include repairs to piping, spill, overflow, corrosion protection, and release detection equipment.
- Definitions pertaining to operator training and secondary containment were also added but will not have an impact on Idaho facilities because they are not being adopted. These definitions are already contained in IDAPA 58.01.07 and are not necessary to maintain primacy.

Subpart C: General Operating Requirements

- The section describes spill and overflow, operation and maintenance, repairs, reporting and recordkeeping, periodic testing, and walkthrough inspections.
- The current update requires equipment compatibility with USTs storing over 10 percent ethanol or 20 percent biodiesel. Owners must notify DEQ 30 day prior to storing these substances.
- The current update requires testing after repairs to secondary containment areas, spill, and overflow equipment within 30 days following the date of the repair.
- The current update requires spill prevention and containment sumps used for interstitial monitoring of piping to be tested at least once every three years.
- The current update requires an overflow prevention inspection at least once every three years.
- The current update requires a walkthrough inspection every 30 days except containment sumps and hand-held release detection equipment can be inspected annually.
- The current update adds statistical inventory reconciliation as another option for release detection.

Subpart D: Release Detection

- The section describes all methods of tank and piping release detection.
- The current update requires release detection equipment be annually tested for proper operation.
- The current update adds statistical inventory reconciliation as another option for release detection.
- The current update requires a site assessment if ground water or soil vapor monitoring will be used as a release detection method.

The following parts were revised and will have minimal impact on Idaho facilities:

Subpart B: UST Systems: Design, Construction, Installation and Notification

- The section describes performance standards for new UST systems and notification requirements.
- The current update requires newly installed or replaced UST systems to have secondary containment but this will not have an impact on Idaho facilities because they are not being adopted. These definitions are already contained in IDAPA 58.01.07 and are not necessary to maintain primacy.
- The current update prohibits the installation of flow restrictors and requires spill and overflow prevention equipment be periodically tested. Flow restrictors will have a minimal impact due to a lack of prevalence but the testing of spill and overflow prevention equipment will be required every three years and have a cost associated with it.

- The current update includes permanently closing tanks that have a failed lining inspection when the lining can't be repaired. This will have a minimal impact because the lining can be repaired.
- The current update includes notifying DEQ within 30 days of assuming ownership of an UST. This will have minimal impact because DEQ will provide the form and there is no cost associated with notification.

Subpart E: Release Reporting, Investigation, and Confirmation

- The section describes when to report suspected releases and release investigation steps.
- The current update includes liquid in the interstice as a suspected release condition.
- The update requires the test to determine whether a breach of either wall of the secondary containment has occurred.

Subpart G: Out-of-Service UST Systems and Closure

- The section describes how to place a tank into temporarily out of use service and how to close an UST.
- The current update specifies that release detection operation and maintenance and spill and overfill testing are not required for temporarily out of use tanks.

The following parts were revised but are administrative in nature:

Subpart F: Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

- The section describes how to respond, investigate, and clean up a leak.
- The current update only includes changing the spelling of groundwater.

Subpart H: Financial Responsibility

- The section describes approved financial responsibility mechanisms.
- The current update removes obsolete dates and references.

Subpart I: Lender Liability

- The section describes entities that will not be subject to certain sections of Subparts E and H.
- The current update removes obsolete dates and references.

The following part was revised but Idaho does not have any affected facilities:

Subpart J: Operator Training

- The section describes the operator training provisions.
- This subpart is excluded from adoption because the provisions are already contained in IDAPA 58.01.07 and are not necessary to maintain primacy.

Subpart K: UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

- The section describes the requirements for field-constructed and airport fuel hydrant systems.

- DEQ is not aware of any of these types of systems that would be subject to these provisions.