

Dear Senators BURTENSHAW, Adams, Semmelroth, and
Representatives BARBIERI, Furniss, Chew:

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 (ZBR Chapter Rewrite,
Fee Rule) - Proposed Rule (Docket No. 58-0107-2301).

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 08/28/2023. 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 09/25/2023.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
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 09, 2023

SUBJECT: Department of Environmental Quality

IDAPA 58.01.07 - Rules Regulating Underground Storage Tank Systems (ZBR Chapter Rewrite, Fee Rule)
- Proposed Rule (Docket No. 58-0107-2301)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.07 - Rules Regulating Underground Storage Tank Systems. According to the department, this is a chapter rewrite based on Executive Order 2020-01: Zero-Based Regulation. The department notes that this is a chapter rewrite and a fee rule. The department adds that the rule removes sections that are no longer applicable and includes updates consistent with the adopted Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks found in 40 CFR Part 280, as required for state program approval. The department states that the goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, increase clarity and ease of use, and maintain state program approval. The department also states that the rulemaking does not impose or increase a fee beyond what was previously submitted to and reviewed by the Legislature but does impose the current fee on newly regulated tanks pursuant to 40 CFR Part 280.

Negotiated Rulemaking / Fiscal Impact

The department notes that negotiated rulemaking was conducted and that there is no fiscal impact as a result of the rulemaking.

Statutory Authority

The rulemaking is authorized pursuant to Chapters 1 and 88, Title 39, Idaho Code.

cc: Department of Environmental Quality
Caroline Moores

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.07 – RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS
DOCKET NO. 58-0107-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

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 18, 2023. If no such written request is received, a public hearing will not be held. Two public meetings were held during the negotiated rulemaking process.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(EO 2020-01\)](#), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This is one of the DEQ rule chapters up for review in 2023.

This rulemaking removes sections that are no longer applicable and includes updates consistent with the adopted Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (40 CFR Part 280) required for state program approval. The “revised as of date” of 40 CFR Part 280 has been updated to 2023 even though 40 CFR Part 280 has not been revised since its incorporation by reference into IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems, in 2017. The purpose of this update is to simplify compliance for the regulated community by making the CFR more accessible.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, increase clarity and ease of use, and maintain state program approval.

Citizens of the state of Idaho, environmental groups, owners and operators of underground storage tanks, cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, and representatives of the Idaho Petroleum Storage Tank Fund Board of Trustees may be interested in commenting on this proposed rule. The rule is expected to be final and effective upon the conclusion of the 2024 legislative session if adopted by the Board and approved by the Idaho Legislature.

FEE SUMMARY: This rulemaking does not impose or increase a fee beyond what was previously submitted to and reviewed by the Idaho Legislature in prior rules but does impose the current fee on newly regulated tanks, per the adopted Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (40 CFR Part 280) required for state program approval. The annual fee statutory authority is established by Idaho Code §§ 39-118 and 39-8802(d).

FISCAL IMPACT: 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 resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: On March 1, 2023, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin and on March 2, 2023 a preliminary draft rule was posted on DEQ’s website. Meetings were held on March 30 and May 11, 2023. Stakeholders and members of the public participated by receiving email notifications, attending the meetings, and reviewing DEQ’s presentations. Key information was posted on DEQ’s website and distributed to persons who participated in the negotiated rulemaking.

No comments were received during the negotiated rulemaking process. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management for review. DEQ formatted the draft for publication as a proposed rule and is now seeking public comment. The negotiated rulemaking

record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/underground-storage-tanks-docket-no-58-0107-2301/>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before September 1, 2023. Submit written comments to:

Kristi Lowder
Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706
kristi.lowder@deq.idaho.gov

Dated this 2nd day of August, 2023.

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N. Hilton Street Boise, Idaho 83706
Phone: (208)373-0149
caroline.moores@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 58-0107-2301
(ZBR Chapter Rewrite.)

58.01.07 – RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

000. LEGAL AUTHORITY.

Chapters 1 and 88, Title 39, Idaho Code, ~~grant authority to the Board of Environmental Quality to promulgate rules for the regulation of underground storage tank systems within the state of Idaho.~~ (3-24-22)()

001. ~~TITLE AND~~ SCOPE.

01. Title. These rules are titled IDAPA 58.01.07, “~~Rules Regulating Underground Storage Tank Systems.~~” (3-24-22)

02. Scope. These rules ~~establish standards and procedures necessary for the regulation of underground storage tank systems. Compliance with these rules shall not relieve persons from the obligation to comply with other applicable state or federal laws~~ have the scope and applicability provided in Section 39-8804, Idaho Code.

(3-24-22)()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. (3-24-22)

003. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records." ()

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. (3-24-22)

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 2023 with the following exceptions exclusions: (3-24-22)()

- a. 40 CFR 280.12, the definition of "Replaced" is excluded; (3-24-22)()
- b. 40 CFR 280.12, the definition of "Under-dispenser containment or UDC" is excluded; (3-24-22)()
- c. 40 CFR 280.20, the introductory paragraph sentence, "In addition, except for suction piping that meets the requirements of Section 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 Section 280.43(g)," is excluded; (3-24-22)()
- d. 40 CFR 280.20(f), is excluded; (3-24-22)()
- e. 40 CFR 280.34(b)(9), the citation to Section 280.245 is excluded; (3-24-22)()
- f. 40 CFR 280.41(a)(1), "installed on or before April 11, 2016..." is excluded; (3-24-22)()
- g. 40 CFR 280.41(a)(2), is excluded; (3-24-22)()
- h. 40 CFR 280.41(b)(1), "installed on or before April 11, 2016..." is excluded; (3-24-22)()
- i. 40 CFR 280.41(b)(2), is excluded; (3-24-22)()
- j. 40 CFR 280.42, Note to paragraph (a), "for tank installed on or before October 13, 2015." is excluded; (3-24-22)()
- k. 40 CFR 280.42(e), "installed on or before October 13, 2015..." is excluded; and (3-24-22)()
- l. 40 CFR Part 280, Subpart J is excluded. (3-24-22)()

02. Hazardous Substance Underground Storage Tank Systems. (3-24-22)

a. The following items only apply to hazardous substance underground storage tank systems and do not apply to petroleum underground storage tank systems: (3-24-22)

- 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 (3-24-22)
- ii. 40 CFR 280.42 and any reference to 40 CFR 280.42 in 40 CFR Part 280. (3-24-22)

~~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. (3-24-22)

~~032.~~ **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 will prevail. (3-24-22)()

~~043.~~ **Stringency.** IDAPA 58.01.07 shall will be no more stringent than federal law or regulations governing ~~underground storage tank~~ UST systems. (3-24-22)()

~~05.~~ **Availability of Referenced Material.** The federal regulations adopted by reference can be obtained at the following locations: (3-24-22)

~~a.~~ U.S. Government Printing Office, www.ecfr.gov; and (3-24-22)

~~b.~~ Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (3-24-22)

~~005.~~ **OFFICE HOURS — MAILING ADDRESS AND STREET ADDRESS.**

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. (3-24-22)

~~006.~~ **CONFIDENTIALITY OF RECORDS.**

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” (3-24-22)

~~007.~~ -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems,” the following definitions apply: The term “department” has the meaning provided for that term in Section 39-103, Idaho Code. (3-24-22)()

~~01.~~ **Board.** The Idaho Board of Environmental Quality. (3-24-22)

~~021.~~ **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 As defined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” Section 003. (3-24-22)()

~~03.~~ **Department.** The Idaho Department of Environmental Quality. (3-24-22)

~~04.~~ **Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (3-24-22)

~~052.~~ **Existing.** Solely for purposes of determining when secondary containment is required, existing is when a ~~petroleum underground storage tank~~ UST, piping, motor fuel dispensing system, facility, public drinking 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. (3-24-22)()

~~06.~~ **EPA.** The United States Environmental Protection Agency. (3-24-22)

~~073.~~ **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~~ UST 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 UST~~ system. (3-24-22)(____)

084. Installer. Any person who installs a new or replacement ~~petroleum underground storage tank UST~~ system. (3-24-22)(____)

095. New Underground Storage Tank (UST). 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 provisions~~ of 40 CFR 280.20(a). (3-24-22)(____)

106. 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. As defined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.” Section 003.~~ (3-24-22)(____)

11. 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.~~ (3-24-22)

1207. 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 drinking 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. (3-24-22)(____)

1308. Product Deliverer. Any person who delivers or deposits product into a ~~petroleum underground storage tank UST~~. This term may include major oil companies, jobbers, ~~petroleum~~ transportation companies, or other product delivery entities. (3-24-22)(____)

1409. Public Drinking 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.” As defined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.” Section 003.~~ (3-24-22)(____)

150. Red Tag. A tamper-resistant tag, device, or mechanism attached to the tank’s fill pipes that clearly identifies a ~~petroleum underground storage tank UST~~ as ineligible for product delivery. The tag or device shall must be visible to the product deliverer and clearly state that it is unlawful to deliver to, deposit into, or accept product into the ineligible ~~petroleum underground storage tank UST~~. (3-24-22)(____)

161. Replace. As it applies to ~~petroleum underground storage tanks USTs~~ and piping, replace is defined as follows: (3-24-22)(____)

a. ~~Petroleum Underground Storage Tank. Replace means t~~To remove an existing tank and install a new tank. (3-24-22)(____)

b. ~~Piping. Replace means t~~To remove and put back in one hundred (100) percent of the piping, excluding connectors, connected to a single ~~petroleum underground storage tank UST~~ 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 will be considered a replacement under this definition only if one hundred (100) percent of the metal piping,

excluding connectors, is replaced. (3-24-22)()

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

a. At installation or modification, be liquid-tight on its sides, bottom, and at any penetrations; and ()

b. Be compatible with the substance conveyed by the piping; and either ()

c. Allow for visual inspection and access to the components in the containment system; or ()

d. Be monitored for releases using a release detection method that meets the requirements provisions of 40 CFR 280.43(g). (3-24-22)()

011. – 099. (RESERVED)

100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.

01. Notification. An owner, operator, or designee must provide to the Department: (3-24-22)()

a. ~~Provide written notice to the Department using forms provided by the Department~~ thirty (30) days prior to the installation of a new piping system or a new or replacement ~~petroleum underground storage tank UST~~. (3-24-22)()

b. ~~Provide notice to the Department~~ twenty-four (24) hours prior to the installation of a replacement piping system. (3-24-22)()

~~**02. Notification Forms.** The written notice required in Subsection 100.01.a. shall be made upon forms provided by the Department. (3-24-22)~~

032. Requirements for Petroleum UST Systems. Owners, operators, and installers of a new or replacement ~~petroleum underground storage tank UST~~ or piping system shall ~~shall~~ **must** comply with the following requirements provisions. (3-24-22)()

a. Each new ~~petroleum underground storage tank, or existing UST~~ or piping ~~connected to any such new tank, installed or replaced 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 will~~ have secondary containment and be monitored for leaks ~~in accordance with 40 CFR 280.43(g)~~ if the new or replaced ~~petroleum underground storage tank UST~~ or piping is within one thousand (1,000) feet of any existing public ~~drinking~~ 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 UST~~ system, and be checked for evidence of a release at least every thirty (30) days. The following conditions are excluded: (3-24-22)()

i. Suction piping that meets the requirements provisions of 40 CFR 280.41(b)(1)(ii)(A) through (E); (3-24-22)()

ii. Piping that manifolds two (2) or more ~~petroleum underground storage tanks USTs~~ together; (3-24-22)()

iii. Existing piping to which new piping is connected to install a dispenser; and ()

iv. Tanks identified in 40 CFR 280.10(b). ()

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 USTs~~, piping, or motor fuel dispenser system as part of the new ~~underground storage tank UST~~ facility installation, secondary containment and under-dispenser containment are required, regardless of whether the well is installed before or after the ~~petroleum underground tanks USTs~~, piping, and motor fuel dispenser system are installed. (3-24-22)()

c. The notice ~~required described~~ in Subsection 100.01 ~~shall will~~ indicate whether the new or replacement installation is within one thousand (1,000) feet of an existing public ~~drinking~~ 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 ~~drinking~~ water system or any existing potable drinking water well, the owner, operator or designee ~~shall will~~ 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: (3-24-22)()

- i. The public or private water service provider in the area which the new or replacement installation is located (if any); ()
- ii. The city or county in which the new or replacement installation is located; ()
- iii. The Idaho Department of Water Resources; and ()
- iv. The ~~Idaho Department of Environmental Quality~~. (3-24-22)()

d. In the case of a replacement of an existing ~~petroleum underground storage tank UST~~ or existing piping ~~connected to the petroleum underground storage tank~~, Section 100 ~~shall apply~~ies only to the specific ~~petroleum underground storage tank UST~~ or piping being replaced, not to other ~~petroleum underground storage tanks USTs~~ and ~~connected pipes comprising such system piping~~. (3-24-22)()

e. Each installation of a new motor fuel dispenser system ~~shall will~~ include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing public ~~drinking~~ water system or any existing potable drinking water well. (3-24-22)()

~~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. (3-24-22)~~

~~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. (3-24-22)~~

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 may~~ 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 that~~ has an electronic sump sensor installed and connected to an electronic monitoring device, such as an automatic tank gauge. (3-24-22)()

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.~~ (3-24-22)

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. ()

102. -- 199. (RESERVED)

200. RELEASE REPORTING REQUIREMENTS.

01. Information to be Reported. (3-24-22)

~~a.~~ In addition to the requirements provisions in 40 CFR Part 280, Subpart E, and IDAPA 58.01.02, "Water Quality Standards," Subsections 851-01 and 852, owners or operators shall must report to the Department, on forms provided by the Department, the following information regarding confirmed petroleum underground storage tank UST releases to the Department on forms provided by the Department within ninety (90) days of a confirmed release: (3-24-22)()

~~ia.~~ The release source; and ()

~~ib.~~ The release cause. ()

~~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. (3-24-22)

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

a. Petroleum Underground Storage Tanks USTs; (3-24-22)()

b. Piping; ()

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; ()

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 UST~~; and (3-24-22)()

e. Delivery problem, which identifies releases that occurred during product delivery to the ~~petroleum underground storage tank UST~~. Typical causes associated with this source are spills and overfills. (3-24-22)()

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

a. Spills which may occur when the delivery hose is disconnected from the fill pipe of the ~~petroleum underground storage tank UST~~ or when the nozzle is removed from the vehicle at the dispenser; (3-24-22)()

b. Overfills which may occur from the fill pipe at the ~~petroleum underground storage tank UST~~ or when the nozzle fails to shut off at the dispenser; (3-24-22)()

c. Physical or mechanical damage of all types except corrosion. Examples include a puncture of the ~~petroleum underground storage tank UST~~ or piping, loose fittings, broken components, and components that have changed dimension like elongation or swelling; (3-24-22)()

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

e. Installation problem that occurs specifically because the ~~underground storage tank UST~~ system was not installed properly. (3-24-22)()

~~**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."~~ (3-24-22)

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:~~ (3-24-22)

~~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);~~ (3-24-22)

~~b. Be developed in cooperation with petroleum underground storage tank owners and tank operators;~~ (3-24-22)

~~c. Take into consideration training programs implemented by petroleum underground storage tank owners and operators as of August 8, 2005;~~ (3-24-22)

~~d. Provide for training to be conducted on-site or at another mutually convenient location; and~~ (3-24-22)

~~e. Be appropriately communicated to petroleum underground storage tank owners and operators.~~ (3-24-22)

021. Operator Designation. For each ~~petroleum underground storage tank~~ UST system regulated under these rules, the owner or operator ~~shall~~ **must**: ~~(3-24-22)()~~

a. Designate: ()

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~~ UST system. ~~This does not require~~ **It is not necessary** that the class A operator be on site; ~~(3-24-22)()~~

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~~ UST system. ~~This does not require~~ **It is not necessary** that the class B operator be on site at all times; and ~~(3-24-22)()~~

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~~ UST system. The class C operator ~~can~~ **may** be designated by the class A or B operator. ~~(3-24-22)()~~

b. Maintain a record at the facility where the ~~petroleum underground storage tank~~ UST is located listing each person designated in Subsections 300.021.a.i., ~~300.02.a.ii., and 300.02.a.~~ **through** iii. ~~(3-24-22)()~~

c. Notify the Department in writing of the individual(s) designated in Subsections 300.021.a.i. and ~~300.02.a.ii.~~ within thirty (30) days of the designation. ~~(3-24-22)()~~

032. Individual Training. The owner or operator of each ~~petroleum underground storage tank~~ UST system regulated under these rules ~~shall~~ **must** ensure that the individual(s) identified in: ~~()~~

a. Subsections 300.021.a.i. and ~~300.02.a.ii.~~ participate in the training conducted by the Department or a state of Idaho approved third party: ~~(3-24-22)()~~

~~ab.~~ ~~The individual(s) identified in~~ Subsections 300.021.a.i. or ~~300.02.a.ii.~~ ~~shall~~ provide training to the persons identified in Subsection 300.021.a.iii: ~~(3-24-22)()~~

~~bc.~~ ~~The individual(s) identified in~~ Subsection 300.021.a.iii. ~~must~~ be trained before assuming responsibility for responding to emergencies: ~~(3-24-22)()~~

~~cd.~~ ~~The individual(s) identified in~~ Subsections 300.021.a.i. and ~~300.02.a.ii.~~ ~~shall~~ repeat the training within thirty (30) days if the ~~petroleum underground storage tank~~ UST system for which they have responsibility is determined to be out of compliance with these rules: ~~and~~ ~~(3-24-22)()~~

~~de.~~ ~~The individual(s) identified in~~ Subsections 300.021.a.i. and 300.021.a.ii. ~~shall~~ be trained within thirty (30) days of assuming operation and maintenance duties. ~~(3-24-22)()~~

043. 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. ()

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.~~ ~~(3-24-22)~~

02. Third-Party Inspections. ~~(3-24-22)~~

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.:~~ (3-24-22)

~~i. Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures;~~ (3-24-22)

~~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;~~ (3-24-22)

~~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;~~ (3-24-22)

~~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~~ (3-24-22)

~~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.~~ (3-24-22)

~~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.~~ (3-24-22)

~~e. 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.~~ (3-24-22)

~~**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.~~ (3-24-22)

~~401.—499. (RESERVED)~~

500. DELIVERY PROHIBITION.

~~**01. Prohibition.** Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into a petroleum underground storage tank at a facility which has been identified by the Department to be ineligible for such delivery, deposit, or acceptance.~~ (3-24-22)

~~**021. Classification as Ineligible.** The Department shall will classify a petroleum underground storage tank UST as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance as soon as practicable after the Department determines one (1) or more of the following conditions exists is not installed:~~ (3-24-22)(____)

~~a. Required sSpill prevention equipment is not installed;~~ (3-24-22)(____)

~~b. Required oOverfill protection equipment is not installed;~~ (3-24-22)(____)

~~c. Required lLeak detection equipment is not installed; or~~ (3-24-22)(____)

~~d. Required eCorrosion protection equipment is not installed.~~ (3-24-22)(____)

~~**032. Warning of Violations.** The Department may classify a petroleum underground storage tank UST~~

as ineligible for delivery, deposit, or acceptance of a regulated ~~petroleum~~ substance if the owner or operator of the tank has been issued a written warning for ~~failure to comply with~~ any of the following ~~violations items~~, and the owner or operator fails to initiate corrective action within thirty (30) days of the issuance of the written warning, unless the deadline is extended by the Department: ~~(3-24-22)()~~

- a. ~~Failure to p~~Properly operate or maintain leak detection equipment; ~~(3-24-22)()~~
- b. ~~Failure to p~~Properly operate or maintain spill, overfill, or corrosion protection equipment; or ~~(3-24-22)()~~
- c. ~~Failure to m~~Maintain financial responsibility. ~~(3-24-22)()~~

043. Service of Notice. If the Department classifies a ~~petroleum underground storage tank UST~~ as ineligible for delivery, deposit, or acceptance of a regulated ~~petroleum~~ substance pursuant to Subsections 500.021 or 500.032, the Department ~~shall~~ will provide a written notice of the determination to the owner or operator prior to prohibiting the delivery, deposit, or acceptance of a regulated ~~petroleum~~ substance. Notice is considered properly served by the Department in any of the following ways: ~~(3-24-22)()~~

- a. ~~The notice is p~~Personally delivered to the owner or operator; or ~~(3-24-22)()~~
- b. ~~The notice is e~~Clearly posted at a public entrance to the facility where the ~~petroleum underground storage tank UST~~ is located and a copy ~~of the notice is also~~ sent by certified mail to the last known address of the owner or operator. ~~(3-24-22)()~~

054. Red-Tagging. Once service of the written notice of the ineligible determination is complete, the Department ~~shall then~~ will: ~~()~~

- a. ~~a~~Attach a red tag to each fill pipe of the ineligible ~~petroleum underground storage tank UST~~ clearly identifying the tank as ineligible; ~~()~~
- b. ~~The Department shall also m~~Maintain a list of all ~~petroleum underground storage tanks USTs~~ that are classified as ineligible ~~for delivery, deposit, or acceptance of a regulated petroleum substance;~~ ~~()~~
- c. ~~The Department shall m~~Make the list available to the public by posting the list ~~on the Department's website~~ at www.deq.idaho.gov. ~~(3-24-22)()~~

065. Written Notice. The written notice required by Subsection 500.043 must include: ~~(3-24-22)()~~

- a. The specific reasons or violations that led to the ineligible classification; ()
- b. A statement notifying the owner and operator that the ~~petroleum underground storage tank UST~~ is ineligible for delivery and it is unlawful for any person to deliver to, deposit into, or accept a regulated ~~petroleum~~ substance into the ~~petroleum underground storage tank UST~~; ~~(3-24-22)()~~
- c. The effective date the ~~petroleum underground storage tank UST~~ is deemed ineligible for delivery; ~~(3-24-22)()~~
- d. The name and address of the department representative to whom a written request for re-inspection can be made, if a re-inspection is necessary; ()
- e. A statement regarding the right to appeal the Department's action regarding ineligible classification pursuant to IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records"; and ()
- f. The option to request a compliance conference pursuant to Subsection 500.076. ~~(3-24-22)()~~

076. Compliance Conference. The owner or operator may request a compliance conference with the

Department within fifteen (15) days of receipt of the notice. A compliance conference ~~shall~~ will be scheduled within twenty (20) days and conducted in an informal manner by the Department. At the compliance conference, the owner or operator may explain why he believes the ~~petroleum underground storage tank UST~~ should not be classified as ineligible. During the compliance conference, the owner or operator and the Department will identify and establish appropriate acts and a time schedule for compliance as necessary. (3-24-22)()

087. Duration of Ineligible Classification. The classification of a ~~petroleum underground storage tank UST~~ as ineligible ~~shall~~ remains in effect until the conditions cited in the notice no longer exist. If the Department determines that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated ~~petroleum~~ substance, the Department or an authorized designee ~~shall~~ will: ()

a. ~~As~~ As soon as practicable, remove the red tag from the ~~petroleum underground storage tank and also UST~~: ()

b. ~~Remove the petroleum underground storage tank UST~~ from the ineligible list posted on its website: ~~and~~ ()

c. ~~The Department will also s~~Send a written notice to the owner and operator that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated ~~petroleum~~ substance. (3-24-22)()

098. Declining Classification. The Director may decline to classify a ~~petroleum underground storage tank UST~~ as ineligible if the Director decides that ~~classifying the petroleum underground storage tank as ineligible for delivery, deposit, or acceptance~~ it is not in the best interest of the public. (3-24-22)()

a. The Director may only defer application of delivery prohibition for up to one hundred eighty (180) days after determining a ~~petroleum underground storage tank UST~~ is ineligible ~~for delivery, deposit, or acceptance of a regulated petroleum substance~~. (3-24-22)()

b. The Director may authorize the delivery, deposit, or acceptance of product into an ineligible ~~petroleum underground storage tank UST~~ if such activity is necessary to test or calibrate the ~~underground storage tank UST~~ or dispenser system. (3-24-22)()

109. Department Authority. Nothing in Section 500 ~~shall will~~ affect or preempt the authority of the Department to prohibit the delivery, deposit, or acceptance of a regulated ~~petroleum~~ substance to a ~~petroleum underground storage tank UST~~ under other existing authorities. (3-24-22)()

110. Proper Notice. A person ~~shall will~~ not be in violation of ~~Subsection 500.01 39-8809(1), Idaho Code~~, if the Department fails to provide the notice ~~required by described in~~ Subsections 500.043 and 500.054. (3-24-22)()

121. Unlawful to Tamper with Red Tag. It ~~shall be is~~ unlawful for any person to tamper with ~~and/or~~ remove the red tag without the Department's approval. (3-24-22)()

501. -- ~~599~~600. (RESERVED)

600. PETROLEUM UNDERGROUND STORAGE TANK DATABASE.

01. Maintenance. ~~The Department shall maintain a database which provides details on the status of all petroleum underground storage tanks in the state of Idaho which are subject to regulation. The database shall be updated no less than the end of each calendar quarter.~~ (3-24-22)

02. Identification. ~~The database shall identify any tanks subject to delivery prohibition.~~ (3-24-22)

03. Petition. ~~Petroleum underground storage tank owners or operators may petition the Department to correct any inaccurate information for their tanks and the Department shall correct any such inaccurate information within thirty (30) days after verification.~~ (3-24-22)

~~04. Availability. The database shall be available to the public on the Department's website at www.deq.idaho.gov. (3-24-22)~~

601. FEE SCHEDULE FOR UNDERGROUND STORAGE TANKS USTs.

~~Owners or operators of All regulated underground storage tanks shall USTs must pay an annual, underground storage tank nonrefundable fee provided in Section 39-119, Idaho Code. The fee shall be assessed to regulated underground storage tanks as provided in Section 601. (3-24-22)()~~

01. Fee Criteria. ()

~~a. Compartment, emergency generator day and belly tanks, and siphon-manifolded underground storage tanks shall USTs will be treated as separate underground storage tanks. (3-24-22)()~~

~~b. Temporarily out of use tanks are included in Section 601. (3-24-22)()~~

02. Fee Amount and Schedule. ()

~~a. Annual fees shall must be paid for each fee year beginning January 2, 2018, and continuing for each succeeding year. (3-24-22)()~~

~~b. The annual fee per underground storage tank UST is one hundred dollars (\$100). The annual fee shall will 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. (3-24-22)()~~

~~c. New underground storage tanks USTs installed after January 2 will not pay a fee until the following January. (3-24-22)()~~

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 USTs is incorrect. (3-24-22)()~~

~~04. Payment. Payment of the annual fee shall be is due on January 2, unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment shall will be due on the successive business day. Fees paid by Make checks or money orders shall be made payable to the Idaho Department of Environmental Quality and sent send to 1410 North Hilton Street, Boise, ID 83706-1255. (3-24-22)()~~

~~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). (3-24-22)~~

~~07. Nonrefundable. The annual fee required by these rules shall be nonrefundable. (3-24-22)~~

~~08. Fee Report. Prior to February 1 of each year, the Director shall will report to the Governor and the Idaho Legislature on the use of fees collected the previous year. At a minimum, the report shall must include: (3-24-22)()~~

~~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. ()
- 602. -- 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: Kristi Lowder **Phone:** 373-0347

Date: June 12, 2023

IDAPA, Chapter and Title Number, and Chapter Name:

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems

Fee Rule Status: **Proposed** **Temporary**

Rulemaking Docket Number: 58-0107-2301

STATEMENT OF ECONOMIC IMPACT

The fees are unchanged from the previous year.

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems

Idaho Code §§ 39-119, 39-8802(d), annual UST fee is up to \$100 per tank.

Estimated Costs to the Agency to Implement the Rules in FY24:

Rule Chapter	General Funds	Dedicated Funds	Federal Funds	Total
58.01.07	\$95,000	\$300,000	\$365,000	\$760,000