

<p><b>Docket Number:</b> <u>58-0107-1601</u>  <b>Effective Date:</b> <u>2017 Sine die</u>  <b>Rules Title:</b> <u>Rules Regulating Underground Storage Tank Systems</u>  <b>Agency Contact and Phone:</b> <u>Kristi Lowder, 373-0347</u></p>	<p style="text-align: right;"><b>Public Notice</b></p> <p><b>Hearings:</b> [ ] Yes [X] No  <b>Locations and Dates:</b> N/A  <b>Written Comment Deadline:</b> 8/31/16</p>
<p><b>Descriptive Summary of Rule as Initially Proposed:</b>  This rulemaking has been initiated to adopt into state rules the newly revised 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs), 80 Fed. Reg. 41565-41683 (published 7/15/15; effective 10/13/15), 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 (\$100.00) per tank per year. Collection of UST fees is authorized by Idaho Code § 39-119. Senate Bill 1244 (2016) revised Idaho Code § 39-8802(2)(d) to allow for collection of UST fees under Idaho Code § 39-119.</p> <p>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.</p> <p>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.</p> <p>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. A copy of the Overview of Incorporations by Reference is attached.</p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment <i>sine die</i> of the First Regular Session of the Sixty-fourth Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p><b>Negotiated Rule Making:</b> [X] Yes [ ] No</p> <p><b>Costs To the Agency:</b> 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.</p> <p><b>Costs To the Regulated Community:</b> The UST fee will not exceed \$100.00 per tank per year, which amounts to a projected total of \$335,000.</p> <p><b>Relevant Statutes:</b> Chapters 1 and 88, Title 39, Idaho Code</p> <p><b>Idaho Code § 39-107D Statement:</b> This rule does not regulate an activity not regulated by the federal government, nor is it more stringent than federal regulations. This rule is broader in scope than federal regulations with respect to the collection of fees. In 2016, the Idaho Legislature revised Idaho Code § 39-8802(2)(d) to allow for collection of UST fees under Idaho Code § 39-119.</p> <p><b>Fee Summary:</b> 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 \$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.</p>

Temporary Rule       Necessary to protect public health, safety or welfare  
 Compliance with deadlines in amendments to governing law or federal programs  
 Conferring a benefit

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Section	Section Title	Summary of Rule Changes Based on Public Comment
004	<b>Incorporation by Reference.</b>	This section has not been changed. No comments received.
010	<b>Definitions.</b>	This section has not been changed. No comments received.
100	<b>Additional Measures to Protect Ground Water from Contamination.</b>	This section has not been changed. No comments received.
101	<b>Alternative Periodic Testing of Containment Sumps Used for Interstitial Monitoring of Piping.</b>	This section has not been changed. No comments received.
200	<b>Release Reporting Requirements.</b>	This section has not been changed. No comments received.
300	<b>Training Requirements.</b>	This section has not been changed. No comments received.
400	<b>Inspections.</b>	This section has not been changed. No comments received.
601	<b>Fee Schedule for Underground Storage Tanks.</b>	This section has not been changed. No comments received.

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

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Required by Idaho Code § 67-5223(4)

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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 newly revised Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs), 80 Fed. Reg. 41565-41683 (published 7/15/15; effective 10/13/15). 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

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, overfill, 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 overfill, 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 overfill 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 overfill 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.

**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 overfill prevention equipment be periodically tested. Flow restrictors will have a minimal impact due to a lack of prevalence but the testing of spill and overfill 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.