Yellow shaded text indicates revisions made based on April 28, 2016 meeting discussion.

Written comment deadline for this draft – May 9, 2016

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, 20~~07~~17 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;

~~**g.** DEQ shall only require the minimum requirements set forth in 40 CFR 280.36 and provide a form;~~

h. 40 CFR 280.41(a)(1), "installed on or before April 11, 2016…" is excluded;

i. 40 CFR 280.41(a)(2), is excluded;

j. 40 CFR 280.41(b)(1), "installed on or before April 11, 2016…" is excluded;

k. 40 CFR 280.41(b)(2), is excluded;

l. 40 CFR 280.42, Note to paragraph (a), "for tank installed on or before October 13, 2015." is excluded;

m. 40 CFR 280.42(e), "installed on or before October 13, 2015…" is excluded; and

n. 40 CFR Part 280 Subpart J is excluded.

Comment [KL1]: I did not make any changes to Subpart K simply because we don't have any of these systems so the risk of somebody having to comply with the original dates EPA requires do not have an effect in our state.

Comment [KL2]: Our rules have the Energy Act definition which is approved by EPA for SPA. Therefore, no changes are needed to the current definition.

Comment [KL3]: Our rules have the Energy Act definition which is approved by EPA for SPA. Therefore, no changes are needed to the current definition.

Comment [KL4]: Our rules have the Energy Act language which is approved by EPA for SPA. Therefore, we do not want to include EPA's new language.

Comment [KL5]: This is dispenser systems. Our rules have the Energy Act language which is approved by EPA for SPA. Therefore, we do not want to include EPA's new language.

Comment [KL6]: We are not adopting Subpart J. Our rules have the Energy Act language which is approved by EPA for SPA. Therefore, we do not want to include EPA's new language.

Comment [KL7]: Walkthrough inspections. Attorney says this is a policy statement that does not belong in the rule. DEQ will uphold policy and provide form.

Comment [KL8]: This is addressing RD of older tanks. Our rules allow these methods prior to 2/23/07.

Comment [KL9]: This is addressing RD of new tanks. Our rules require new tanks monitoring on 2/23/07.

Comment [KL10]: This is addressing RD of older piping. Our rules allow these methods prior to 2/23/07. We cannot change the date to 2/22/07 because this section describes the 3 gph method that new piping must still follow, even after 2/23/07.

Comment [KL11]: This is addressing RD of new piping. Our rules require new piping monitoring on 2/23/07. We cannot change the date to 2/22/07 because this section describes the 3gph method that new piping must still follow, even after 2/23/07.

Comment [KL12]: Hazardous substance tanks. Our rules require monitoring on 2/23/07

Comment [KL13]: Hazardous substance tanks. Our rules require monitoring on 2/23/07

Comment [KL14]: This is operator training. Our rules have the Energy Act language which is approved by EPA for SPA. Therefore, we do not want to include EPA's new language.

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)

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)

Comment [KL15]: This definition is already in the adopted federal regulations

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)

Comment [KL16]: This is the same definition in the adopted federal regulation

18. ~~**Repair**. Solely for purposes of determining when secondary containment is requiredas 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)

Comment [KL17]: Nowhere in the rules is the word "repair" used (ie the definition is never referenced). The federal regulations already have a definition of repair and it is not associated with secondary containment. Secondary containment provisions only deal with new and replacements. Any other tank system work will not trigger secondary containment provisions.

~~**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)

Comment [KL18]: There is already a definition in the federal regulations that now includes containment sumps

(Break in Continuity of Sections)

100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.

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)(ii)(A) through (~~v~~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)

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

01. Applicability.

a. The alternative testing 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 beneath a dispenser containment sump is continuous to the submersible turbine pump containment sump.

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 appropriately to shut down power to the submersible turbine pump if the sensor is in contact with liquid in the submersible turbine pump containment sump or to the dispenser if the sensor is in contact with liquid in the dispenser 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 Testing Allowed.

a. In addition to the allowable testing methods 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 ($1/16^{th}$) 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 ($1/8^{th}$) inch, the containment sump passes the integrity test. If the water level changes one eighth ($1/8^{th}$) inch or greater, the containment sump fails the integrity test.

03. Completion of Test. 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.

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)~~

Comment [KL19]: New federal regulations have additional reporting requirements.

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.

Comment [KL20]: This is an Energy Act grant requirement that was overlooked during the 2007 rulemaking.

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)~~

Comment [KL21]: There are too many inspection components to list out. Owners must follow the requirements in the rules and 40 CFR Part 280.

~~**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.

Comment [KL22]: As of Nov. 2015 we have 385 compartments

b. Temporarily out of use tanks are included in ~~not excluded from~~ 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.

Comment [KL23]: Aug-Oct are not possible, fiscal does billing for Drinking Water and IPDES. May-July they do billing for Title V. January 1 is a holiday.

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.

06. Delinquent Unpaid Fees. An owner will be delinquent in payment if the annual fee has not been received by the Department by ~~February~~ March 1.

07. 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 Sections 39-8809 and 39-8811(2), Idaho Code (Idaho Underground Storage Tank Act).

08. Nonrefundable. The annual fee required by these rules shall be nonrefundable.

09. 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.