

**State of Kansas
Department of Health and Environment**

Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Environmental Remediation, Storage Tank Section, will conduct a public hearing at 10:00 a.m. Thursday, May 14, 2020, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended regulations K.A.R. 28-44-12, 28-44-13, 28-44-14, 28-44-15, 28-44-16, 28-44-17, 28-44-18, 28-44-19, 28-44-20, 28-44-21, 28-44-22, 28-44-23, 28-44-24, 28-44-25, 28-44-26, 28-44-27, and 28-44-29, proposed new regulations 28-44-30 and 28-44-31 and the revocation of 28-44-28, all regarding petroleum products storage tanks.

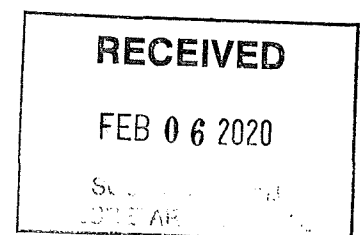
A summary of the proposed regulations and the estimated economic impact follows:

Summary of Regulations:

K.A.R. 28-44-12. General provisions. Updates the acceptable forms of payment. Adds a statement of penalty fees for owner or operator non-compliance, specifies required compliance dates, and provides for contractor license suspension or revocation if specified requirements are not met.

K.A.R. 28-44-13. Program scope. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST). Adds requirements for previously deferred storage tank systems.

K.A.R. 28-44-14. Definitions. Removes defined terms found in the Kansas Storage



Tank Act and federal regulations. Adds adopted defined terms of 40 C.F.R. 280.12, 280.92, and 280.250. Adds the following terms: “drop ticket,” “EPA,” “installation,” “license,” “out-of-service,” “site assessment,” “storage tank operation,” “these regulations,” and “UST remover.”

K.A.R. 28-44-15. Application for installation or modification of an underground storage tank. Adds the requirement of installing an anchoring system at all times. Increases the tank installation application fee from \$20/tank to \$100/tank and includes the UST registration fee and the first-year operating permit fee. Adopts by reference the Kansas Storage Tank Program Document.

K.A.R. 28-44-16. Underground storage tank systems: design, construction, installation, modification, and notification. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs. Adds requirements for secondary containment and under-dispenser containment (UDC), implemented in 2013. Adds a reference to the Kansas Storage Tank Program Document that describes additional methods of corrosion protection.

K.A.R. 28-44-17. Underground storage tank registration and operating permit. Separates registration notification fees and operating permit fees. Increases the one-time UST registration notification fee from \$10/tank to \$20/tank and the late penalty from \$10/facility to \$50/tank. Increases the annual UST operating permit fee from \$10/tank to \$25/tank and increases the late penalty from \$10/facility to \$50/tank. Requires an additional late penalty of \$100/tank if documents or payment, or both, have not been received by August 1 each year. Adds a reference to the Kansas Storage Tank Program Document.

K.A.R. 28-44-18. Registration of nonregulated underground storage tanks. Updates and clarifies language for current regulatory style.

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K.A.R. 28-44-19. General operating requirements. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs. Adds 40 C.F.R. 280.35 and 280.36 that add requirements and compliance dates for various equipment testing and the enhanced walkthrough inspections. Adds a reference to the Kansas Storage Tank Program Document.

K.A.R. 28-44-20. Underground storage tank contractor licensing. Updates and clarifies language for current regulatory style.

K.A.R. 28-44-21. Underground storage tank installer and remover licensing. Provides for a combination of installer and remover licenses. Adds a reference to the Kansas Storage Tank Program Document.

K.A.R. 28-44-22. Underground storage tank tester licensing. Provides for a combination of tester licenses. Adds a reference to the Kansas Storage Tank Program Document.

K.A.R. 28-44-23. Release detection. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs. Adds new release detection compliance dates and requirements for waste oil storage tanks and standby generator tanks. Removes vapor monitoring and groundwater monitoring as acceptable methods of release detection at storage tank facilities except that vapor monitoring can be used for two types of previously deferred tanks.

K.A.R. 28-44-24. Release reporting, investigation, and confirmation. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs.

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K.A.R. 28-44-25. Release response and corrective action for UST systems. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs.

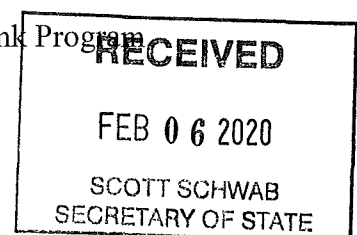
K.A.R. 28-44-26. Out-of-service UST systems and closure. Updates adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs. Removes vapor monitoring and groundwater monitoring as acceptable methods of release detection at storage tank facilities. Provides for enhanced timing criteria for permanent closure of USTs.

K.A.R. 28-44-27. Financial responsibility. Updates and revises adoption by reference to the July 1, 2015 40 C.F.R. 280 to meet Technical Standards and Corrective Action Requirements for Owners and Operators of USTs. Adds an exception to a full adoption of the federal regulation subpart to clarify wording in related insurance documents pertaining to the Petroleum Storage Tank Release Trust Fund.

K.A.R. 28-44-28. Aboveground storage tank fees. Revoked. The provisions contained in this regulation are included in K.A.R. 28-44-12.

K.A.R. 28-44-29. Aboveground storage tank operating permit. Increases the late penalty from \$10/facility to \$50/tank.

K.A.R. 28-44-30. Operator training and requirements. New regulation establishing requirements for owners and operators to designate different classes of operators for each UST system. Requires designated operators to be trained every 4 years. Removes the option for operators to complete a comparable exam. Adopts by reference 40 C.F.R. 280.240 through 280.245. Adds the requirement that the designated Class A operator reside or be stationed within 4 hours of their managed facilities. Adds a reference to the Kansas Storage Tank Program



Document that describes additional testing requirements for Class A and Class B operators and adds that Class C operators shall be trained by a Class A or Class B operator.

K.A.R. 28-44-31. UST systems with field-constructed tanks and airport hydrant fuel distribution systems. New regulation establishing requirements for owners and operators of UST systems that were previously deferred from federal and state storage tank regulations with adoption by reference of the July 1, 2015 40 C.F.R. 280.251 and 280.252. Adds a reference to the Kansas Storage Tank Program Document that includes the scheduled requirements for compliance.

Economic Impact:

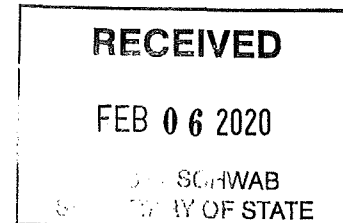
Cost to the agency: The proposed regulations will not increase costs to the agency.

Cost to the public and regulated community: The annual cost to the regulated communities is \$1,027,403.00. The regulated entities include businesses and local governments who own or operate underground storage tanks containing regulated substances. The estimated cost of pass-through to non-regulated businesses and the public is not anticipated to be included in the cost of fuel at the pump.

Cost to other governmental agencies or units: There are no known costs to other governmental agencies, unless they own or operate an underground storage tank as described above.

A detailed economic impact is provided in the economic impact statement that is available from the agency contact person or at the KDHE Storage Tank Section website, as listed below.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments



prior to 5:00 p.m. on the day of the hearing to Sharon Morgan, Kansas Department of Health and Environment, Bureau of Environmental Remediation, Storage Tank Section, 1000 SW Jackson, Suite 410, Topeka, KS 66612-1367, by email to Sharon.Morgan@ks.gov , or by fax to (785) 559-4260.

During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding economic impact statement and environmental benefit statement may be obtained from the KDHE Storage Tank Section website at www.kdheks.gov/tanks or by contacting Sharon Morgan at the address above, by phone (785) 296-1684 or by fax (785) 559-4260. Questions pertaining to the proposed regulations should be directed to Sharon Morgan at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations, economic impact statement, and environmental benefit statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sharon Morgan.

Lee A. Norman, M.D.

Secretary

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28-44-12. General provisions. (a) Any reference in these rules and regulations to standards, procedures, or requirements of 40 CFR part 280 shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these rules and regulations.

(b) When used in any provision adopted from 40 CFR part 280 inclusive, references to The following changes shall be made to any provision in 40 C.F.R. part 280 that is adopted by reference in these regulations:

(1) "The United States" shall be replaced with "the state of Kansas"; Kansas."

(2) "Environmental protection agency," or "implementing agency," and "EPA" shall be replaced with the "department"; "department" except as follows:

(A) "Environmental protection agency" shall not be replaced with "department" when used in 40 C.F.R. 280.103(b)(1) in the second sentence of the trust agreement.

(B) "Implementing agency" shall not be replaced with "department" when used in the following sections:

(i) 280.12 as stated in the definition of "implementing agency"; and

(ii) 280.92 as stated in the definition of "director of the implementing agency."

(C) "EPA" shall not be replaced with "department" when used in the following sections:

(i) 280.92 as stated in the definition of "director of implementing agency";

(ii) 280.92 as stated in the definition of "legal defense cost";

(iii) 280.95(b)(1)(i) through (iii);

(iv) 280.95(d) as stated in the "Letter from Chief Financial Officer";

(v) 280.103(b)(1); and

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(vi) appendix III.

(3) “Administrator,” or “regional administrator,” and “director” shall be replaced with the “secretary”; and “secretary” except as follows:

(A) In 40 C.F.R. 280.92 in the definition of “director of the implementing agency,” “regional administrator” shall not be replaced with “secretary.”

(B) In 40 C.F.R. 280.92 in the definition of “director of the implementing agency,” the first occurrence of the word “director” shall not be replaced.

(4) “Federal register” shall be replaced with the “Kansas register.”

(5) “Must” shall be replaced with “shall.”

(6) “Will” shall be replaced with “shall.”

(7) “October 13, 2015” shall be replaced with “the effective date of these regulations.”

(8) “October 13, 2018” shall be replaced with “October 13, 2021,” except in 40 C.F.R. 280.36(a) as adopted in K.A.R. 28-44-19.

(b) Each owner or operator, or both, shall be assessed penalty fees by the department for noncompliance. The penalty fees shall be in addition to the required registration and permit fees specified in these regulations.

(c) Any UST license may be suspended or revoked if the requirements specified in K.A.R. 28-44-21 and K.A.R. 28-44-22 are not met. If any license is suspended or revoked, the licensee shall meet the requirements established by the secretary as provided in the order issuing the suspension or revocation to be considered for reinstatement or renewal.

(e) (d) The fees required by K.A.R. 28-44-12 through K.A.R. 28-44-27 these regulations

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K.A.R. 28-44-12, page 3

shall be submitted in the form of a check or, money order, or electronic payment made payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 1989 ~~Supp.~~ 65-34,105; effective Nov. 26, 1990; amended P-_____.)

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28-44-13. Program scope and ~~interim prohibition~~. The provisions of 40 CFR C.F.R.
280.10 and 280.11 as in effect on September 23, 1988, dated July 1, 2015, as amended by 80 fed.
reg. 41624-41625 (2015) and effective on October 13, 2015, are hereby adopted by reference.
(Authorized by and implementing K.S.A. ~~1989 Supp.~~ 65-34,105; effective Nov. 26, 1990;
amended P-_____.)

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28-44-14. Definitions. (a) "Department" means the Kansas department of health and environment.

(b) "EPA" means the federal environmental protection agency.

(c) "License" means a document issued by the Kansas department of health and environment to qualified individuals or contractors authorizing such persons to engage in the business of installing, removing, modifying, upgrading, repairing, or testing of underground storage tanks. The license will specify the types of services the individual or contractor is qualified to perform.

(d) The definition of words, terms, and phrases set out in 40 CFR 280.12 as in effect on September 23, 1988 and 40 CFR 280.92 as in effect on November 9, 1989 are adopted by reference except, for the definition of the terms and phrases "operator," "owner," "person," "regulated substance," "release," "repair," "tank," and "underground storage tank" whose definitions from the Kansas storage tank act shall be followed. Each of the terms defined in this regulation, as used in these regulations, shall have the meaning specified in this regulation.

(b)(1) The terms and definitions in the following federal regulations are hereby adopted by reference:

(A) 40 C.F.R. 280.12 and 280.92, dated July 1, 2015, as amended by 80 fed. reg. 41625-41627 and 41640-41641 (2015) and effective on October 13, 2015; and

(B) 40 C.F.R. 280.250, published at 80 fed. reg. 41667 (2015) and effective on October 13, 2015.

(2) If the same term is defined differently both in K.S.A. 65-34,100 et seq. and amendments thereto or these regulations and in any federal regulation adopted by reference in

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these regulations, the definition prescribed in the Kansas statutes or these regulations shall control.

(c)(1) "Drop ticket" shall mean a bill of lading, invoice, or similar document that reflects fuel delivery by a petroleum transport company to a specific facility and includes the deliverer's name, the delivery date, and the quantity delivered.

(2) "EPA" shall mean United States environmental protection agency.

(3) "Installation" shall mean the work involved in placing a UST system or any part of a UST system in the ground, including excavation, tank placement, line placement, backfilling, and preparing a UST to be placed into service.

(4) "License" shall mean a document issued by the department to a qualified individual or contractor authorizing the person to engage in the business of installing, removing, modifying, upgrading, repairing, or testing underground storage tanks. A license specifies the types of services that the individual or contractor is qualified to perform.

(5) "Out-of-service," when used to describe a UST or UST system, shall mean that the UST or UST system is removed from use as a permitted UST or UST system storing a regulated substance.

(6) "Overfill" shall mean to supply a UST with more fuel than the UST can contain.

(7) "Site assessment" shall mean a determination of the presence or absence of petroleum contamination in areas where a release from a UST or UST system could have occurred or is suspected. This term shall include UST and UST system inspection in addition to the collection and analysis of samples from the areas surrounding and beneath the UST and UST system.

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(8) "Storage tank operation" shall mean the use, storage, filling, or dispensing of petroleum contained in a UST or UST system.

(9) "These regulations" shall mean article 44 of the department's regulations.

(10) "UST remover" shall mean a type of underground storage tank contractor.

(Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990;
amended P-_____.)

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28-44-15. Application for installation or modification of an underground storage tank.

~~Any person may not install, modify, or repair an underground storage tank or tank system without first obtaining a permit to do so from the department.~~

~~(a) To obtain a permit to construct and operate an underground storage tank or tank system, the following shall be submitted to the department:~~

~~(1) A completed application on a form provided by the department;~~

~~(2) Static water level information to indicate if an anchoring system will be required to prevent flotation;~~

~~(3) A description of the type of anchoring system to be utilized to prevent flotation if the tank is to be installed in a location where the water table is shallower than the base of the tank;~~

~~(4) A non-refundable \$20.00 per tank application fee~~ Each owner shall obtain an installation or modification permit from the department before installing or modifying a UST or UST system. The application requirements and procedures for installation or modification of a UST or UST system shall be those specified in the department's "Kansas storage tank program document," dated July 22, 2019, which is hereby adopted by reference.

~~(b) To obtain a permit to modify, upgrade or repair an underground storage tank, the following shall be submitted to the department:~~

~~(1) A completed application on a form supplied by the department describing the work to be performed, provided that repair applications may initially be made to the department by telephone if the repair is essential to protect the public health and environment, in which case a completed written application shall be submitted to the department within 30 days of the completion;~~

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~~(2) Where repairs are performed as a result of a release, evidence of compliance with K.A.R. 28-48-1 and 28-48-2. Each owner shall submit a nonrefundable installation application fee of \$100.00 for each tank. The installation application fee for a new UST shall include the registration fee and the first year's operating permit fee as required by K.A.R. 28-44-17.~~

~~(c) Any changes to the original approved plans shall be reported to the department:~~

~~(1) When the need for changes becomes apparent after the on-site work activities have commenced, a telephone approval to modify the original plan may be obtained. The name and title of the individual approving the changes shall be documented on the as built drawings which shall reflect the actual details of the job performed;~~

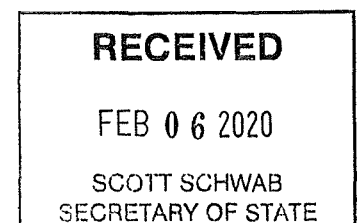
~~(2) When changes become apparent before the on-site activities have commenced, an amended plan shall be submitted to the department to document changes and receive approval of such changes prior to installation.~~

~~(d) Within 30 days of completion of the work, as built drawings shall be submitted to the department with accurate details of each new installation, modification, repair, and upgrade.~~
 (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105 65-34,106(a); implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 26, 1990; amended P-_____.)

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28-44-16. Underground storage tank systems: design, construction, installation, modification, and notification. (a) C.F.R. adoptions. The provisions of 40 CFR C.F.R. 280.20, 280.21, and 280.22 as in effect on September 23, 1988 and appendix III to part 280, dated July 1, 2015, as amended by 80 fed. reg. 41627-41630 and 41677 (2015) and effective on October 13, 2015, are hereby adopted by reference. , with the following changes to the sections specified:

(1) In 280.20(a)(2)(iv), "in writing" shall be added after "or according to guidelines established by the implementing agency."

(2) In 280.20(a)(5), (b)(4), and (c)(2)(i), "in writing" shall be added after "determined by the implementing agency."

(3) In 280.20(b)(2)(iv), "in writing" shall be added after "or guidelines established by the implementing agency."

(4) In 280.20(c)(3), "may not" shall be replaced with "shall not."

(5)(A) 280.20(e)(1) shall be replaced with the following:

"(e)(1) Each owner or operator of a new UST system shall ensure that an installer licensed by the department certifies that the UST system has been properly installed."

(B) 280.20(e)(2) shall be replaced with the following:

"(e)(2) Each owner or operator shall provide the completed manufacturer's installation checklist and installation certification to the department with the UST registration notification form as required by K.A.R. 28-44-17."

(C) 280.20(e)(3) through (6) shall be deleted.

(6) In 280.22(a), the last sentence shall be replaced with the following sentences:

"Owners shall use the form provided by the department in accordance with paragraph (c) of this

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section. The form is available from the department upon request.”

(7) 280.22(b) shall be replaced with the following:

“(b) Within 30 days of acquisition, any person who assumes ownership of a regulated underground storage tank system, except as described in paragraph (a) of this section, shall submit notice of the ownership change to the department using forms provided by the department upon request.”

(8) 280.22(c) shall be replaced with the following:

“(c) Owners shall use forms provided by the department upon request in lieu of forms set forth in appendix I and appendix II of this part. The information prescribed in appendix I and appendix II shall be collected on forms provided by the department.”

~~(b) All new underground storage tank installations shall be equipped with observation tubes to comply with the following requirements:~~

~~(1) Observation tubes shall be constructed in accordance with the following:~~

~~(A) Tubes shall measure four inches in diameter on the inside;~~

~~(B) Tubes shall extend from the base of the excavation to ground surface;~~

~~(C) Screened opening shall extend from the base of the excavation to a point no more than three feet below ground surface. The screened openings shall be sized to allow liquid or vapor to be intercepted by the tube without allowing the backfill materials to enter the tube;~~

~~(D) Tubes shall be equipped with water tight caps on the top and bottom;~~

~~(E) The annular space between the tube and pavement shall be sealed. The pavement or ground surface shall be graded in such a manner to prevent surface water from pooling around~~

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the tubes;

(F) Each observation tube shall be marked and secured to prevent accidental tampering.

(2) There shall be at least one observation tube for each 400 square feet of excavated area or fraction thereof. Where numerous tank excavations are located on the same property, the number of observation tubes shall be determined for each separate excavation. UST system requirements. The UST system requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(c) Verification. Each owner or operator shall submit verification of each installation or modification not later than 30 days after completion of the installation or modification. The verification shall be submitted to the department on forms provided by the department.

(Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended P- _____.)

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28-44-17. Underground storage tank registration and operating permit. (a) ~~Before an existing underground storage tank permit can be obtained or renewed, the owner shall comply with the following requirements:~~

~~(1) The underground storage tanks shall be registered with the department as required by K.A.R. 28-44-16;~~

~~(2) An annual registration fee of \$10.00 per tank shall be paid to the department by each owner or operator of an underground storage tank prior to April 30 of each year;~~

~~(3) A late notice fee of \$10.00 shall be charged for each facility which fails to submit the required fees prior to April 30 of each year.~~

~~(b) After June 1, 1991 no person shall place a regulated substance in a regulated underground storage tank unless a valid permit is openly displayed at the facility. Registration of each UST shall include notice of UST existence. Each owner or operator shall submit notice to the department and include the registration documentation specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.~~

~~(b) Each owner of a UST shall remit a nonrefundable registration fee of \$20.00 for each tank, which shall be submitted to the department with the registration notification form provided by the department.~~

~~(c) Each owner shall be assessed a penalty fee of \$50.00 for each tank if the owner fails to submit the completed registration notification form within seven days of either of the following:~~

~~(1) Bringing a UST or UST system into use; or~~

~~(2) assuming ownership of a regulated UST or UST system.~~

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(d) Each owner or operator shall submit an annual operating permit fee of \$25.00 for each tank before April 30 of each year. The operating permit requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(e) Each owner who fails to secure all necessary annual operating permits for each facility before April 30 of each year shall be assessed a penalty fee of \$50.00 for each tank. Each owner shall be assessed an additional penalty fee of \$100.00 for each tank if the owner fails to secure all necessary operating permits before August 1 of each year.

(f) An annual operating permit shall not be issued by the department until all permit fees and applicable penalty fees have been paid.

(g) No owner or operator shall operate a regulated UST system unless a valid operating permit issued by the department is displayed at the facility and is visible to the public.

(Authorized by and implementing K.S.A. 1989-Supp. 65-34,105, and 65-34,106(a); effective Nov. 26, 1990; amended P-_____.)

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28-44-18. Registration of ~~non-regulated~~ nonregulated underground storage tanks. (a) Any owner or operator of a ~~non-regulated~~ nonregulated tank ~~who wishes to~~ may register a that tank with the department for the purpose of qualifying the owner or operator to participate in the petroleum storage tank release trust funds. Each registration, shall ~~provide~~ be submitted to the department with the following information on ~~the forms~~ a form provided by the department:

- (1) Owner's name, address, and telephone number;
- (2) facility address or location;
- (3) tank operating status;
- (4) tank age;
- (5) tank capacity;
- (6) Tank UST system construction details; and
- (7) ~~product~~ type of each regulated substance stored.

(b) ~~The registration provided in this section is for the purpose of qualifying an owner or operator to participate in the petroleum storage tank release trust fund.~~ Voluntary registration of ~~non-regulated underground storage tanks will~~ each nonregulated UST shall not bring any the owner or operator of such a ~~non-regulated tank~~ under the mandatory provisions of the Kansas storage tank act, K.S.A. 1989 Supp. 65-34,101 et seq. and amendments thereto. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended

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28-44-19. General operating requirements. 40 CFR 280.30, 280.31, 280.32, 280.33, and 280.34 as in effect on September 23, 1988 are adopted by reference. (a) The provisions of 40 C.F.R. 280.30, 280.31, 280.32, 280.33, and 280.34, dated July 1, 2015, as amended by 80 fed. reg. 41630-41632 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.31(b)(1), "or according to another reasonable time frame established by the implementing agency" shall be deleted.

(2) In 280.31(c), the cathodic protection inspection date of "every 60 days" shall be replaced with an inspection date of "every 30 days."

(3) In 280.32(b)(2), "in writing" shall be added after "Use another option determined by the implementing agency."

(4) In 280.33(b), "may" shall be replaced with "shall."

(5) In 280.33(c), the second sentence shall be replaced with the following: "Non-corrodible pipes and fittings shall be replaced or repaired in accordance with the manufacturer's specifications."

(6) In 280.33(d), "in writing" shall be added after "or according to requirements established by the implementing agency."

(7) In 280.33(d)(3), "in writing" shall be added after "determined by the implementing agency."

(8)(A) In 280.34, "Section 9005 of Subtitle I of the Solid Waste Disposal Act, as amended" shall be replaced with "K.S.A. 65-34,108, as amended."

(B) In 280.34(b), the following changes shall be made:

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(i) The word "and" shall be deleted from the end of paragraph (b)(8).

(ii) The period at the end of paragraph (b)(9) shall be replaced with "; and".

(iii) The following paragraph shall be added after paragraph (b)(9):

"(10) The drop tickets for the preceding 12 months."

(b) The provisions of 40 C.F.R. 280.35 and 280.36, published at 80 fed. reg. 41632-41633 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.35(a)(1)(ii)(C), "in writing" shall be added after "requirements determined by the implementing agency."

(2) In 280.36(a)(3), "in writing" shall be added after "developed by the implementing agency."

(c) The general operating requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended

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28-44-20. Underground storage tank contractor licensing. (a) Applicants for an underground storage tank contractor license shall submit the following to the department: Each person installing, removing, or testing a UST or UST system shall be licensed in Kansas.

(b) Each person applying for a new UST contractor license shall submit the following to the department:

- (1) A completed application on a form provided by the department; and
- (2) a nonrefundable licensing fee of \$200.00 ~~to secure a license to remain in force until~~ for a license effective for two years from the initial licensing date.

~~(b)~~ (c) Upon completion of the initial two years of licensure, Applicants each applicant for renewal of an underground storage tank a UST contractor license shall submit the following to the department:

- (1) A ~~complete~~ completed application on a form provided by the department; and
- (2) ~~An~~ a nonrefundable annual renewal fee of \$100.00. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended P-_____.)

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28-44-21. Underground storage tank installer's installer and remover licensing.

(a) Applicants for an underground storage tank installer license shall:

(1) Submit the following to the department:

(A) ~~A completed application on a form provided by the department;~~

(B) ~~A licensing fee of \$100.00 to secure a license to remain in force until two years from the initial licensing date. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;~~

(C) ~~For each type of installation, evidence of successful completion of all training required by the manufacturers of the equipment to be installed or repaired under the applicant's supervision. Evidence shall include dates, locations, and names of courses completed.~~

(2) ~~Pass the licensing examination administered by the department with a score of 70% or greater on the general examination and the specific examination or examinations for each area to be supervised by the installer.~~

(b) ~~At least 45 days prior to expiration, applicants for renewal of an underground storage tank installer license shall:~~

(1) Submit the following items to the department:

(A) ~~A completed application on a form provided by the department;~~

(B) ~~An annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;~~

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~~(C) Evidence of successful completion of all training, required by the manufacturers of the equipment to be installed or repaired under the applicant's supervision. Evidence shall include dates, locations, and names of the courses.~~

~~(2) Pass the licensing examination administered by the department with a score of 70% or greater on the general examination and the specific examination or examinations for each area to be supervised by the installer. Any individual may apply for one or a combination of licenses. The requirements for an installer license and a remover license shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.~~

(b)(1) For each initial license, each applicant shall submit a nonrefundable license fee of \$100.00. Each initial license shall be effective for two years from the initial licensing date.

(2) For license renewal, each individual shall submit a nonrefundable annual renewal fee of \$50.00 for the 12-month period beginning on the effective date of each renewal license.

(Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended P-_____.)

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28-44-22. Underground storage tank tightness tester's tester licensing. (a) It shall be unlawful for any person to inspect or hold oneself out as authorized to inspect underground storage tanks and associated lines unless the person is licensed in accordance with this section.

Applicants for an underground storage tank tightness testing license shall:

(1) Submit the following to the department:

(A) A completed application on a form provided by the department;

(B) A licensing fee of \$100.00 to secure a license to remain in force until two years from the initial licensing date. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;

(C) Evidence of successful completion of all training, required by the manufacturers of the equipment to perform tightness testing under the applicant's supervision. Evidence shall include dates, locations, and names of courses completed.

(2) Pass the licensing examination administered by the department with a score of 70% or greater.

(b) Any license applied for may be denied or any license issued may be suspended or revoked for any underground tank storage tightness tester's license issued, pursuant to these regulations if found, after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee, whichever is applicable, has:

(1) Fraudulently or deceptively obtained or attempted to obtain a license;

(2) Failed at any time to meet the qualifications for a license or to comply with any

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provision or requirement of these regulations; or

(3) Failed to submit, to the department, a copy of each tank tightness test performed on a regulated tank in the state of Kansas;

(c) At least 45 days prior to expiration, applicants for renewal of an underground storage tank tightness tester's license shall:

(1) Submit the following to the department:

(A) A completed application on a form provided by the department;

(B) An annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;

(C) Evidence of successful completion of all training, required by the manufacturers of the equipment used by the tester. Evidence shall include dates, locations, and names of courses completed.

(2) Pass the licensing examination administered by the department with a score of 70% or greater. No individual shall test a UST system unless that individual is licensed as required by this regulation. The requirements for a tester license shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(b) Each individual who applies for any kind of tester license shall submit the following to the department:

(1) For each initial license, a nonrefundable licensing fee of \$100.00 for each license

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effective for two years from the initial licensing date; and

(2) for each license renewal, a nonrefundable annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the renewal of each license.

(c) Any license application may be denied or any license issued may be suspended or revoked for any UST or UST system tester license pursuant to these regulations if the applicant or licensee meets any of the following conditions:

(1) Has fraudulently or deceptively obtained or attempted to obtain a license;

(2) has failed at any time to meet the qualifications for a license or comply with any provision or requirement of these regulations; or

(3) has failed to submit to the department a copy of each UST or UST system test performed on a regulated tank in the state of Kansas. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended P-_____.)

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28-44-23. Release detection. (a) 40 CFR 280.40, 280.41, and 280.42 as in effect on September 23, 1988 are adopted by reference.

(b) 40 CFR 280.43 as in effect on September 23, 1988 is adopted by reference except for the following changes:

(1) The following language shall be added to 40 CFR 280.43(a) following 40 CFR 280.43(a)(6):

“(7) All underground storage tank systems shall utilize inventory control methods with the following exception. Waste oil storage tanks with capacities of 2000 gallons or less may utilize manual tank gauging in place of inventory control. Waste oil storage tanks using manual tank gauging shall report a suspected release if the following standards are exceeded.”

Nominal tank capacity gallons	Weekly standard (one test)	Monthly standard (average of four tests)
550 or less	10 gallons	5 gallons
551 thru 1,000	13 gallons	7 gallons
1001 thru 2000	26 gallons	13 gallons

(2) 40 CFR 280.43(b)(4) shall read as follows:

“(4) A leak is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds 10 gallons for a weekly test or 5 gallons for a monthly average of four tests.”

(3) 40 CFR 280.43(b)(5) shall read as follows:

“(5) Only tanks of 550 gallons or less nominal capacity may use this as the method of release detection.”

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~~(4) 40 CFR 280.43(f) shall read as follows:~~

~~“(f) Groundwater Monitoring. The following conditions shall exist before this release detection method can be employed at a take site:~~

~~(1) The stored substance is immiscible in water and has a specific gravity less than one;~~

~~(2) Groundwater has been encountered within the tank excavation and the tank has been buried at least partially below the groundwater surface. The hydraulic conductivity of the fill material used to backfill around the tanks is not less than 0.01 cm/sec. The monitoring wells shall intercept the excavation zone around the storage tank;~~

~~(3) The monitoring wells shall be constructed and located such that any contamination which is floating on the groundwater surface will be detected. The wells shall be constructed with the appropriate screen size to prevent sediments from entering the well bore. The screen shall extend from a point at least two feet above the highest water level to the base of the tank excavation;~~

~~(4) The monitoring wells shall be constructed to prevent surface water from entering the tank excavation through conduits created by these wells;~~

~~(5) Continuous or manual monitoring devices or methods shall be capable of detecting a hydrocarbon layer of 1/8 inch or greater thickness on the groundwater;~~

~~(6) Monitoring wells shall be clearly marked and secured to prevent unauthorized access and tampering;~~

~~(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f)(1) through (5) of this section and~~

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to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product.”

(5) The following language shall be added to 40 CFR 280.43 following 40 CFR 280.43(h):

“(i) Tanks which store heating oil for consumptive use on the premises where stored may utilize inventory control measures as a release detection method if the following conditions exist:

(1) The owner or operator of the underground storage tank system is using inventory control as required by K.A.R. 28-44-23;

(2) Fuel is dispensed less than 24 hours during any given month from the underground storage tank system;

(3) No more than 500 gallons of fuel is dispensed from the system during any given month;

(4) An inventory measurement is made immediately before and immediately after fuel is dispensed from the underground storage tank system.”

(e) 40 CFR 280.44 and 280.45 as in effect on September 23, 1988 are adopted by reference. The provisions of 40 C.F.R. 280.40, 280.41, 280.42, 280.43, 280.44, and 280.45, dated July 1, 2015, as amended by 80 fed. reg. 41633-41636 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes:

(a) In 40 C.F.R. 280.40(a)(3), “in writing” shall be added after “or requirements determined by the implementing agency.”

(b) In 40 C.F.R. 280.41, paragraph (a)(1)(i) shall be deleted.

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(c) The following paragraph shall be added after 40 C.F.R. 280.43(a)(6):

“(7) Each standby generator tank of any size and each waste oil UST with a capacity of 2,000 gallons or less shall be exempt from the inventory control requirements of this section.”

(d) In 40 C.F.R. 280.43(b)(5), “may not” shall be replaced with “shall not.”

(e) The following paragraph shall be added after 40 C.F.R. 280.43(e)(7):

“(8) The provisions of 40 C.F.R. 280.43(e) shall apply only to field-constructed tanks and airport hydrant fuel distribution systems. Each owner or operator previously approved for vapor monitoring for other USTs governed by these regulations shall use an approved release detection method beginning not later than October 13, 2021.”

(f) In 40 C.F.R. 280.43, paragraph (f) shall be deleted.

(g) In 40 C.F.R. 280.43, paragraph (i)(2) shall be replaced with the following:

“(i)(2) If another method is proposed, the owner and operator shall demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. The owner and operator shall provide information to be reviewed by the department concerning the size of release that the method can detect and the frequency and reliability with which it can be detected. The owner and operator shall comply with any approval conditions to ensure the protection of human health and the environment.”

(h) Each occurrence of the following phrases shall be deleted:

(1) “, or for another reasonable period of time determined by the implementing agency”;
and

(2) “, or for another reasonable time period determined by the implementing agency.”

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28-44-24. Release reporting, investigation, and confirmation. The provisions of 40 CFR C.F.R. 280.50, 280.51, 280.52, and 280.53 as in effect on September 23, 1988, dated July 1, 2015, as amended by 80 fed. reg. 41636-41637 (2015) and effective on October 13, 2015, are hereby adopted by reference except that 280.53(a)(1) shall read as follows with the following changes:

~~“(1) Spill or overfill of petroleum that results in a release above the surface of the ground which exceeds 25 gallons, or that causes a sheen on nearby surface water; or any below ground release from an underground storage tank system regardless of the quantity.”~~

(a) Each occurrence of the following phrases shall be deleted:

(1) “, or another reasonable period specified by the implementing agency”;

(2) “, or another reasonable time period specified by the implementing agency”;

(3) “, or another reasonable time period established by the implementing agency”; and

(4) “, or another reasonable amount specified by the implementing agency.”

(b) In 40 C.F.R. 280.51, “in writing” shall be added after “When required by the implementing agency.”

(c) In 40 C.F.R. 280.52, “in writing” shall be added after “or another procedure approved by the implementing agency.” (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended P-_____.)

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28-44-25. Release response and corrective action for ~~underground storage tank systems~~
~~containing petroleum or hazardous substances~~ UST systems. The provisions of 40 CFR C.F.R.
280.60, 280.61, 280.62, 280.63, 280.64, 280.65, 280.66, and 280.67 as in effect on September
23, 1988, dated July 1, 2015, as amended by 80 fed. reg. 41637-41639 (2015) and effective on
October 13, 2015, are hereby adopted by reference. with the following changes:

(a) The phrase "in writing" shall be added after each occurrence of the phrase "unless
directed to do otherwise by the implementing agency."

(b) Each occurrence of the following phrases shall be deleted:

(1) "or within another reasonable period of time determined by the implementing
agency";

(2) ", or within another reasonable period of time determined by the implementing
agency,"; and

(3) "or another reasonable period of time determined by the implementing agency."

(c) In 40 C.F.R. 280.63(b), "in writing" shall be added after "or in a format and according
to the schedule required by the implementing agency."

(d) In 40 C.F.R. 280.64, "in writing" shall be added after "to the maximum extent
practicable as determined by the implementing agency."

(e)(1) In 40 C.F.R. 280.65(a)(4), "in writing" shall be added after "The implementing
agency requests an investigation."

(2) In 40 C.F.R. 280.65(b), "in writing" shall be added after "or in accordance with a
schedule established by the implementing agency."

(f)(1) In 40 C.F.R. 280.66(a), "in writing" shall be added after "according to a

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schedule and format established by the implementing agency” and after “as determined by the implementing agency.”

(2) In 40 C.F.R. 280.66, paragraph (b) shall be replaced with the following paragraph:

“(b) Owners and operators shall not begin implementation of the corrective action plan until the department has determined that implementation of the plan would adequately protect human health, safety, and the environment. The following factors shall be considered in making this determination:”.

(3) In 40 C.F.R. 280.66(c), “in writing” shall be added after “or as directed by the implementing agency” and after “in accordance with a schedule and in a format established by the implementing agency.”

(4) In 40 C.F.R. 280.66(d)(2), “in writing” shall be added after “conditions imposed by the implementing agency.”

(g)(1) In 40 C.F.R. 280.67(a), the first sentence shall be replaced with the following sentence: “For each confirmed release that requires a corrective action plan, public notice provided by the department shall be designed to reach those members directly affected by the release and the planned corrective action.”

(2) In 40 C.F.R. 280.67, paragraph (b) shall be replaced with the following paragraph:

“(b) Site release information and decisions concerning the corrective action plan shall be made available to the public for inspection upon request to the department.”

(3) In 40 C.F.R. 280.67, paragraph (d) shall be replaced with the following paragraph:

“(d) If an approved corrective action plan implemented by the party or parties performing

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corrective action does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department, the public shall receive notice in compliance with paragraph (a) of this section. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended P-_____.)

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28-44-26. Out-of-service ~~underground storage tank~~ UST systems and closure. (a) The provisions of 40 C.F.R. 280.70, 280.71, 280.72, 280.73, and 280.74 as in effect on September 23, 1988, dated July 1, 2015, as amended by 80 fed. reg. 41639-41640 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes:

(1) The phrase “in writing” shall be added after each occurrence of “in a manner approved by the implementing agency” and “when directed by the implementing agency.”

(2) In 40 C.F.R. 280.70(c), “in writing” shall be added after “unless the implementing agency provides.”

(3)(A) In 40 C.F.R. 280.71(a), “or within another reasonable time period determined by the implementing agency” shall be deleted.

(B) In 40 C.F.R. 280.71(b), “in writing” shall be added after “or closed in place in a manner approved by the implementing agency.”

(C) The following sentence shall be added at the end of 40 C.F.R. 280.71(b): “Within 15 days of permanent closure, each owner or operator shall ensure that each contractor submits the completed permanent tank abandonment form to the department.”

(4) In 40 C.F.R. 280.72(a), the third sentence shall be deleted.

(5) In 40 C.F.R. 280.73, “based on the totality of the circumstances” shall be added after “in the judgment of the implementing agency.”

(b) The results of each site assessment shall be prepared and signed by an individual qualified to perform a site assessment in accordance with standard industry practices and the applicable requirements of the state board of technical professions. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990; amended

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28-44-27. Financial responsibility. The provisions of 40 CFR C.F.R. 280.90, 280.91, and 280.93 thru 280.112 through 280.99, and 280.102 through 280.115 as in effect on October 26, 1988 and as amended on November 7, 1988, December 21, 1988, February 3, 1989, November 9, 1989, dated July 1, 2015, as amended by 80 fed. reg. 41640, 41641-41648, and 41649-41662 (2015) and effective on October 13, 2015, are hereby adopted by reference, except for with the following changes to the sections specified:

(a) 40 CFR 280.91(c) shall read as follows:

“(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991.”

(b) 40 CFR 280.91(d) shall read as follows:

“(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, including all local government entities; October 26, 1991.”

(a) In 280.94(b), “Attorney(s) General of the state(s) in which the tanks are located” shall be replaced with “State Attorney General or attorneys within the department reviewing guarantees or surety bonds as Special Assistant Attorney(s) General.”

(b)(1) In 280.95, the first sentence in paragraph (f) shall be replaced with the following sentence: “When directed by the secretary in writing, the owner or operator, and/or guarantor shall submit reports of financial condition.”

(2) In 280.95(g), “written” shall be added before “notification by the Director of the implementing agency.”

(c)(1) In 280.96(b), “in writing” shall be added after “If the Director of the implementing agency notifies the guarantor.”

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(2) In 280.96(d), “written” shall be added before “instructions from the Director of the implementing agency.”

(d)(1) In 280.97(b)(1), “in writing” shall be added after each occurrence of “Whenever requested by [a Director of an implementing agency].”

(2) In 280.97, paragraph (c) shall be replaced with the following paragraph:

“(c) Each insurance endorsement or certificate language shall be worded with the language specified in paragraph (b) of this subsection or shall be amended to evidence the coverage of corrective action by the underground petroleum storage tank release trust fund by submitting a statement of eligibility in accordance with K.S.A. 65-34,115, and amendments thereto. Amendments shall reflect the standards specified in K.S.A. 65-34,114, and amendments thereto.”

(e)(1) In 280.98(b), in the fourth paragraph of the “Performance Bond,” “written” shall be added after “the Director of the state implementing agency’s.”

(2) In 280.98(b), in the third and fourth paragraphs under subsection (e) of the “Performance Bond,” “written” shall be added before “notification” and “instructions.”

(3) In 280.98(d), “written” shall be added before “instructions.”

(f)(1) In 280.99(b) in the “Irrevocable Standby Letter of Credit,” “may not” shall be replaced with “shall not.”

(2) In 280.99(c), “written” shall be added before “instructions.”

(g) In 280.102, paragraph (f) shall be replaced with the following paragraph:

“(f) Within 60 days after receiving a request from the owner or operator for release of

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funds as specified in paragraph (d) or (e) of this section, the trustee shall release funds to the owner or operator as instructed by the secretary in writing.”

(h)(1) In 280.103(b)(1) in the paragraph immediately following the title “Section 3. Establishment of Fund,” “written” shall be added before “instruction.”

(2) In 280.103(b)(1), “Section 4. Payment for [‘Corrective Action’ and/or ‘Third-Party Liability Claims’],” the first indented sentence shall be replaced with the following sentence: “The Trustee shall make payments from the fund as directed by [the Director of the implementing agency].”

(3) In 280.103(b)(1) in the second sentence following the title “Section 4. Payment for [‘Corrective Action’ and/or ‘Third-Party Liability Claims’],” “may not” shall be replaced with “shall not.”

(4) In 280.103, paragraph (c) shall be replaced with the following paragraph:

“(c) When instructed by the secretary in writing, the trustee shall refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.”

(i)(1) In 280.104(a) in the third sentence, “may not” shall be replaced with “shall not.”

(2) In 280.104(f), the first sentence shall be replaced with the following sentence: “When directed by the secretary in writing, the local government owner or operator, or local government guarantor shall submit reports of financial condition.”

(3) In 280.104(h), “written” shall be added after “within 30 days of.”

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(j)(1) In 280.105(e), the first sentence shall be replaced with the following sentence:

“When directed by the secretary in writing, the local government owner or operator shall submit reports of financial condition.”

(2) In 280.105(f), “written” shall be added after “within 30 days of.”

(k)(1) In 280.106(c)(1) and (c)(2), “in writing” shall be added after “as directed by the Director of the implementing agency.”

(2) In 280.106(d), each occurrence of “upon instructions” shall be replaced with “upon written instructions.”

(l)(1) In 280.107 in the first paragraph, the text “may not” shall be replaced with “shall not.”

(2) In 280.107(b) in the last sentence, “may not” shall be replaced with “shall not.”

(m)(1) In 280.109(a)(1), “may not” shall be replaced with “shall not.”

(2) In 280.109(a)(2), each occurrence of “may not” shall be replaced with “shall not.”

(n) In 280.110, paragraph (c) shall be replaced with the following paragraph:

“(c) When directed by the secretary, the owner or operator shall submit evidence of financial assurance as described in 40 C.F.R. 280.111(b) or other compliance information relevant to this subpart.”

(o)(1) In 280.112, paragraph (a) shall be replaced with the following paragraph:

“(a) Except as specified in paragraph (d) of this section, the guarantor, surety, or institution issuing a letter of credit shall place the amount of funds stipulated by the secretary in writing, up to the limit of funds provided by the financial assurance mechanism, into the standby

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trust if:”.

(2) In 280.112(b), the first sentence shall be replaced with the following: “A standby trust may be drawn on by the secretary when:”.

(3) In 280.112(c), the second sentence shall be replaced with the following sentence: “Third party liability claims shall be paid in the order in which the secretary receives certifications under paragraph (b)(2)(i) of this section and valid court orders under paragraph (b)(2)(ii) of this section.”

(4) In 280.112(d), “in writing” shall be added after “as directed by the Director.”

(p) In 280.113, “is no longer required” shall be replaced with “shall no longer be required.”

(q) In 280.115(a) in the first sentence, “written” shall be added before “instruction.”

(Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990;
amended P-_____.)

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28-44-28. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 22, 1993;
revoked P-_____.)

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28-44-29. Aboveground storage tank operating permit. (a) Before a an operating permit for an aboveground storage tank ~~can~~ may be obtained or renewed, the each owner shall comply with the following requirements: :

(1) Each aboveground storage tank shall be registered with the department ~~as required by~~ pursuant to K.S.A. 65-34,104, and amendments thereto. The registration application shall be ~~made~~ submitted on forms provided by the department; and shall include the following information:

- (A) Owner's name, address, and telephone number;
- (B) facility address or location;
- (C) tank status;
- (D) tank age;
- (E) tank capacity;
- (F) ~~tank system~~ storage tank construction details; and
- (G) ~~product~~ type of regulated substance stored.

(2) ~~An annual registration fee of \$10.00 per tank shall be paid to the department by each owner or operator of an aboveground storage tank prior to December 31 of each year; and~~ Each owner or operator shall pay to the department a nonrefundable annual registration fee of \$10.00 for each aboveground storage tank before December 31 of each year.

(3) A late notice penalty fee of \$10.00 \$50.00 shall be charged for each facility which ~~fails to~~ tank if the owner or operator does not submit the required fees ~~prior to~~ before December 31 of each year.

(b) ~~After March 1, 1994,~~ A regulated substance shall not be placed in an aboveground

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storage tank unless a valid operating permit is ~~openly~~ displayed at the facility and is visible to the public. (Authorized by and implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 22, 1993; amended P-_____.)

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28-44-30. Operator training and requirements. (a) The provisions of 40 C.F.R. 280.240, 280.241, 280.242, 280.243, 280.244, and 280.245, published at 80 fed. reg. 41666-41667 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes to the sections specified:

(1) In 280.242, the following changes shall be made:

(A) In the second sentence, "or comparable examination" shall be deleted.

(B) In paragraph (a), the following text shall be deleted: "either" and "or pass a comparable examination in accordance with paragraph (e) of this section."

(C) After paragraph (a)(2), the following text shall be added:

"Each class A operator of a facility or group of facilities shall reside or be stationed within four hours of each managed facility to respond to emergencies as needed."

(D) In paragraph (b), the following text shall be deleted: "either" and "or pass a comparable examination, in accordance with paragraph (e) of this section."

(E) In paragraph (c), the first sentence shall be replaced with the following sentence: "Each designated Class C operator shall be trained by a Class A or Class B operator in accordance with paragraphs (c)(1) and (2) of this section and complete a training program in accordance with paragraphs (c)(1) and (2) of this section."

(F) Paragraph (e) shall be deleted.

(2) In the first sentence of 280.244, "in writing" shall be added after "determined by the implementing agency."

(b) Each class A operator, each class B operator, and each class C operator shall complete the training and testing required in the department's "Kansas storage tank program document,"

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as adopted in K.A.R. 28-44-15. (Authorized by and implementing K.S.A. 65-34,105; effective

P- _____.)

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28-44-31. UST systems with field-constructed tanks and airport hydrant fuel distribution systems. The provisions of 40 C.F.R. 280.251 and 280.252, published at 80 fed. reg. 41667-41669 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(a) In 280.251, paragraph (b) shall be replaced with the following paragraphs:

“(b)(1) Each owner of an existing, out-of-service UST system with field-constructed tanks (FCTs) and airport hydrant fuel distribution systems (AHFDSs) shall submit to the department a one-time registration of UST system existence on a form provided by the department. This form shall be submitted to the department not later than 60 days after the effective date of these regulations, or upon discovery.

“(2) Each owner or operator of an active, in use UST system with FCTs and AHFDSs shall comply with the registration notification and operating permit requirements specified in K.A.R. 28-44-17. Each owner or operator of these UST systems shall demonstrate financial responsibility as required by K.A.R. 28-44-27 at the time of submission of the registration notification form.”

(b)(1) In 280.252(b)(1)(ii)(B), “in writing” shall be added after “another method determined by the implementing agency.”

(2) In 280.252(d)(1) and (d)(2), “in writing” shall be added after “approved by the implementing agency.”

(3) In 280.252(d)(1)(vi), the last sentence shall be replaced with the following sentence:
“The owner and operator shall submit data showing the size of release that the method can detect, and the frequency and reliability of detection for the department’s consideration.”

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(4) In 280.252(d)(2)(i)(B), the table titled "Phase In For Piping Segments \geq 100,000 Gallons In Volume" shall be replaced with the list titled "Phase-in testing for piping segments greater than or equal to 100,000 gallons in volume" on page 8 of the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(5) In 280.252(d)(2)(iv), the last sentence shall be replaced with the following sentence:
"The owner and operator shall provide information to be reviewed by the department concerning the size of release that the method can detect and the frequency and reliability with which it can be detected."

(6) In 280.252(e), the following changes shall be made:

(A) The phrase "in writing" shall be added after "When directed by the implementing agency."

(B) The phrase "based on the totality of the circumstances" shall be added after "in the judgment of the implementing agency." (Authorized by and implementing K.S.A. 65-34,105; effective P-_____.)

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Proposed

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

Article 44 – Petroleum Products Storage Tanks (KDHE)

K.A.R. Number(s)

K.A.R. 28-44-12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 29 -- amended
K.A.R. 28-44-30, 31 -- new
K.A.R. 28-44-28 -- revoked

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

1. K.S.A. 65-34,105 authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to adopt rules and regulations necessary to administer and enforce the provisions of the Kansas Storage Tank Act (K.S.A. 65-34, 100). Storage tank requirements regulated under Article 44 have been in effect since 1990 and consisted of an adoption of most of the federal regulations cited in 40 C.F.R. 280. Due to the Environmental Protection Agency's (EPA) amended regulations 40 C.F.R. 280 and 281 effective October 13, 2015, KDHE was charged with amending regulations governing storage tanks to comply with the federally mandated requirements. The agency document, which provides technical descriptions, requirements and instructions, is identified and adopted by reference in the applicable regulations.

A summary of each of the amended regulations K.A.R. 28-44-12 through 28-44-29, and new regulations K.A.R. 28-44-30 and 28-44-31 follows.

2. K.A.R. 28-44-12. General provisions.

This regulation describes the general overview of the federal regulations being adopted by reference unless otherwise specifically stated in these regulations. This amended regulation also includes a change in the acceptable forms of payment, a statement of a penalty for owner or operator non-compliance, a review of compliance dates, and contractor license suspension or revocation.

3. K.A.R. 28-44-13. Program scope.

This regulation contains general information about the requirements of each owner or operator of underground storage tanks (UST's) and UST systems which are included in, or excluded from, this article, and adopts by reference the federal regulations described in 40 C.F.R. 280.10 and 280.11. The amended regulations also include UST system installation requirements for UST's that are partially excluded from the storage tank regulations. Each owner or operator of some previously deferred tanks and tank systems are now expected to be in compliance with this article.

4. K.A.R. 28-44-14. Definitions.

This regulation includes the definitions of terms used throughout the regulations which contains an adoption by reference of specific terms in 40 C.F.R. 280.12, 280.92 and 280.250 and the definitions in K.S.A. 65-34, 102. The definitions have been expanded to include specific terms related to the storage tank industry.

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5. K.A.R. 28-44-15. Application for installation or modification of an underground storage tank.
This regulation establishes the application requirements for any person who wants to install a new UST or modify an existing UST. Several changes were made to this regulation. The first change is in the description of the anchoring system used to hold the UST in place. Anchoring systems will be used at all times, regardless of the depth to groundwater whereas the previous requirement was specific to shallow groundwater conditions. An implementation cost increase is not anticipated related to this anchoring change, as the tanks are already routinely anchored. The second change is to increase the installation application fee from \$20/tank to \$100/tank, and the total includes the UST registration and the first year operating permit fee. The third change is the relocation of the directions to submit the completed technical drawings from this regulation to K.A.R. 28-44-16. Grammatical changes were made to improve text.

6. K.A.R. 28-44-16. Underground storage tank systems; design, construction, installation, modification and notification.

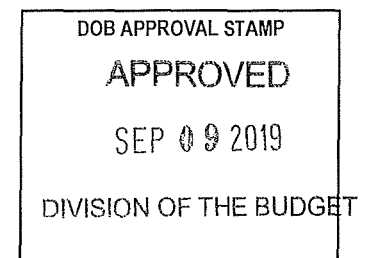
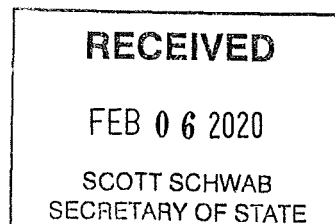
This regulation describes the specific criteria that each owner or operator will meet when designing, constructing, installing and modifying a UST system including the notification requirements and adopts by reference the federal regulations described in 40 C.F.R. 280.20, 280.21 and 280.22. Several changes were made to this regulation. To begin, the title of the regulation was changed; to reflect the location of modification requirements. Secondly, the requirement for secondary containment of UST systems was added due to the federal regulation requirement effective in 2013. KDHE implemented the regulation requirements in 2013. Another change is the addition of the federal requirement of under-dispenser containment (UDC), which KDHE implemented in 2013 according to K.S.A. 65-34-138, prior to the federally mandated date in 2016.

7. K.A.R. 28-44-17. Underground storage tank registration and operating permit.

This regulation establishes the requirement to register and obtain an operating permit for a UST or UST system in the directed timeline and manner. The title of this regulation was changed to include 'registration'. The fee for registration notification and the operating permit were previously combined; the amended regulation separates these two actions and fees. The fee associated with the one-time UST registration notification will increase from \$10/tank to \$20/tank, with the late penalty increasing from \$10/facility to \$50/tank. The fee associated with the annual UST operating permit will increase from \$10/tank to \$25/tank. The late penalty will increase from \$10/facility to \$50/tank if documents or payment, or both, are not received by the initial deadline of April 30th each year. If documents or payment, or both, have not been received by August 1st each year, an additional penalty of \$100/tank will be assessed. The increase in fee and penalty amounts will encourage each tank owner or operator to submit the required documents and remit their payments by the initial deadline.

8. K.A.R. 28-44-18. Registration of non-regulated underground storage tanks.

This regulation describes the condition that any owner or operator of a non-regulated tank may register that tank for the purpose of qualifying an owner or operator to participate in the petroleum storage tank release trust funds. Grammatical changes were made to clarify text.



9. K.A.R. 28-44-19. General operating requirements.

This regulation establishes the spill prevention, corrosion protection, and fuel compatibility requirements for each tank owner or operator to follow and adopts by reference the federal regulations described in 40 C.F.R. 280.30 through 280.36. Requirements include interstitial monitoring of secondarily contained areas, testing, reporting, record-keeping, equipment specifications, walkthrough inspections, and record retention. The amended regulation states specific processes to follow during testing and the enhanced walkthrough inspections as directed by the federal regulations and will help to identify any issues with equipment in a timely manner.

10. K.A.R. 28-44-20. Underground storage tank contractor licensing.

This regulation states that KDHE requires the contractor to be licensed in Kansas and describes the process applicants need to follow to obtain a license for their company. Grammatical changes were made to improve text.

11. K.A.R. 28-44-21. Underground storage tank installer and remover licensing.

KDHE requires individual contractors (installers and removers) to be licensed in Kansas to conduct work in Kansas. This regulation describes the process the applicants need to follow to obtain a license in their specialized area, including passing the licensing exam administered by the department. This regulation also describes the license renewal requirements. This amended regulation adds the licensing of the cathodic protection installer and is specific to Kansas regulations. Grammatical changes were made to improve text.

12. K.A.R. 28-44-22. Underground storage tank tester licensing.

This regulation requires tank testers to be licensed by KDHE to conduct work in Kansas. The application process is described for obtaining a license in their specialized area, including passing the licensing exam administered by the department. This regulation also describes the license renewal requirements. This amended regulation title was changed. The amended regulation also adds licensing of the cathodic protection and secondary containment testers and is specific to Kansas regulations.

13. K.A.R. 28-44-23. Release detection.

This regulation describes the variety of methods and combinations of methods used to detect a release of gasoline, diesel or other petroleum product from the UST or UST system and adopts by reference the federal regulations described in 40 C.F.R. 280.40 through 280.45. KDHE implemented release detection requirements on July 1, 2013 as directed by previous federal regulation amendments which was prior to the federal regulation effective date of 2016. The amended regulations list compliance dates, and the requirements for waste oil storage tanks and standby generator tanks. In the amended regulation, Kansas does not allow the option of vapor and groundwater monitoring as acceptable methods of release detection, except vapor monitoring can be used for the previously deferred field-constructed tanks and airport hydrant fuel distribution systems.

14. K.A.R. 28-44-24. Release reporting, investigation, and confirmation.

This regulation describes the procedures for each tank owner or operator to follow if a release of regulated substance is suspected or confirmed and adopts by reference the federal regulations described in 40 C.F.R. 280.50 through 280.53. KDHE remains consistent with the federal regulations and adds that, regardless of the quantity, any belowground release shall be reported to the department.

15. K.A.R. 28-44-25. Release response and corrective action for UST systems.

This regulation describes the steps each tank owner or operator shall take in response to a confirmed release from a UST system, within 24 hours of the release. It adopts by reference the federal regulations described in 40 C.F.R. 280.60 through 280.67. The title of this amended regulation was minimized.

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16. K.A.R. 28-44-26. Out-of-service UST systems and closure.

This regulation addresses the requirements each tank owner or operator shall meet when they experience a change-in-service, and when the tanks should be considered as temporarily out-of-service, abandoned or permanently closed. The requirements for this regulation are that of 40 C.F.R. 280.70 through 280.74 and are adopted by reference. This amended regulation title was changed. This amended regulation enhances the timing criteria for permanent closure of UST's upon completion of a site assessment of the excavation zone.

17. K.A.R. 28-44-27. Financial responsibility.

KDHE requires each tank owner or operator to possess 3rd party liability insurance or other acceptable form of financial responsibility in the event of a release. The requirements for this regulation are that of 40 C.F.R. 280.90, 280.91, 280.93 through 280.115 and are adopted by reference. The definitions in 280.92 are included in K.A.R. 28-44-14 Definitions and are also adopted by reference. This amended regulation adds an exception to a full adoption of the federal regulation subpart to clarify the wording in related insurance documents.

18. K.A.R. 28-44-28. Aboveground storage tank fees. Revoked.

This regulation described the acceptable forms of payment applicable to aboveground storage tank (AST) registration. Information from this regulation is included in K.A.R. 28-44-12 and did not need to be reiterated here.

19. K.A.R. 28-44-29. Aboveground storage tank operating permit.

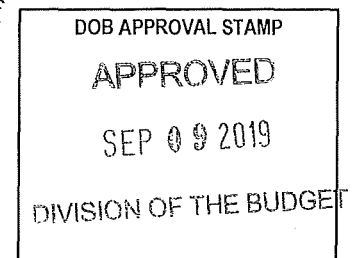
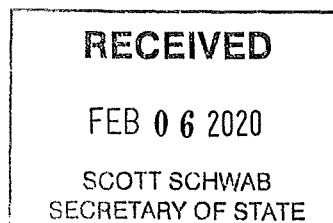
This regulation describes the process and fee required to register AST's. The permit shall be openly displayed at each permitted facility. The fee for the permit is unchanged, but the proposed late penalty will increase from \$10/facility to \$50/tank.

20. K.A.R. 28-44-30. Operator Training and Requirements.

This regulation addresses the requirements for each owner or operator to designate different classes of operators for each UST system and adopts by reference the federal regulations described in 40 C.F.R. 280.40 through 280.45. A description of each type of class category (Class A, Class B and Class C operator) and the requirements for each class are provided in the regulation. KDHE implemented operator training in 2007 as directed by federal grant guidelines prior to the federal regulation effective date of 2018. Kansas requires Class A and Class B operators to meet training and testing requirements, and a 'comparable examination' is not an acceptable form of training. The Class C operator is trained by either the Class A operator or the Class B operator. Kansas offers free operator training classes to encourage participation and certification. This regulation adds the Kansas requirement that the Class A operator reside or be stationed within 4 hours of their managed facilities to improve response time in the event of an emergency.

21. K.A.R. 28-44-31. UST systems with field-constructed tanks and airport hydrant fuel distribution systems.

This regulation describes the systems that were previously deferred from the federal and state storage tank regulations and adopts by reference the federal regulations described in 40 C.F.R. 280.251 and 280.252. The definitions in 40 C.F.R. 280.250 are included in K.A.R. 28-44-14 Definitions and are also adopted by reference. Compliance with the applicable portions of this article are detailed in this regulation. The federal regulation amendment became effective in 2015 for these previously deferred systems; KDHE will begin implementing these changes on the effective date of the amended regulations with phased-in compliance requirements.



II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

KDHE is amending the regulations to comply with requirements mandated by the federal government. In addition, KDHE must secure the Environmental Protection Agency's (EPA) reauthorization of State Program Approval (re-SPA) upon approval of the amended regulations to continue state management of the Storage Tank Program, which includes federal funding to manage the program, inspect regulated facilities, and investigate/remediate contaminated sites. The re-SPA is required due to changes in 2015 to the federal regulations (40 C.F.R. 280 and 281). For program approval, the Kansas storage tank program must maintain regulations which are no less stringent than the federal regulations. Other states must comply with the same federal regulations cited in 40 C.F.R. 280, and they have the opportunity to apply for SPA through the EPA. As reported by the EPA Region 7 Office, the 4 states to contiguous and Kansas have the following:

STATE	Past SPA?	Plan to Re-SPA?	Draft Regs		
			approved by EPA?	Regs in Effect?	Re-SPA yet?
KS	Yes	Yes	Yes (2018)	No	No
MO	Yes	Yes	Yes (2016)	Yes (2017)	No
NE	Yes	Yes	Yes (2018)	No	No
CO	Yes	Yes	Yes (2016)	Yes (2017)	No
OK	Yes	Yes	Yes (2015)	Yes (2017)	Yes

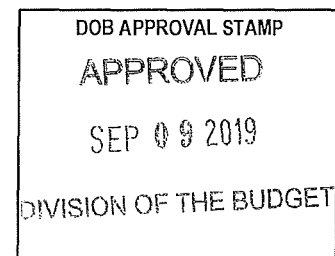
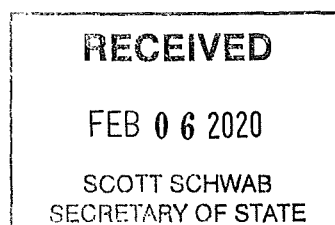
III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The amended regulations will have additional costs associated with implementing the federal inspection and testing requirements, but the industry trade associates consider the cost minimal compared to the typical overall cost of facility operations and should have limited net effect either to enhance or restrict business activities or growth.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

Failure to move forward with the amended regulations may result in the loss of federal funding to support our state programs. If not approved, then the federal regulations would be enacted in the state resulting in tank owners and operators being subjected to direct EPA oversight and the federal regulation requirements would immediately be implemented. The tank owners and operators would not have the opportunity to phase-in the inspection and testing requirements over a scheduled period of time. KDHE needs to have these amended regulations approved to submit the re-SPA package to the EPA as soon as possible. The storage tank program needs to have re-SPA in order to defer EPA's direct oversight and to avoid the potential of having the state programs taken away.



C. Businesses that would be directly affected by the proposed rule and regulation;

The businesses that would be directly affected are the petroleum marketers, fueling facilities, convenience stores, bus barns, some hospitals and some city public works facilities (i.e. power plants). Failure to approve the amended regulations would affect the states re-SPA status, resulting in immediate implementation of federal requirements which would cause a hardship to the affected businesses. An immediate requirement of specific system component testing would greatly increase the costs of the tests, also resulting in a hardship to the affected businesses.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefits of these amended regulations include continuing the prevention and corrective action programs, maintaining state and federal fund management, continuing to provide public outreach programs to the regulated community, enforcing preventative measures at facilities to reduce the number of petroleum releases and to investigate/remediate contaminated sites utilizing federal grants. In addition, the re-SPA status will enable the state to continue state-level management of the storage tank programs.

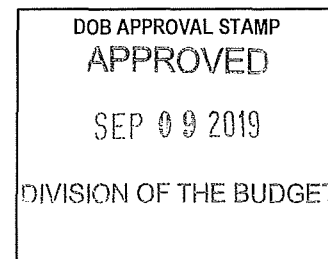
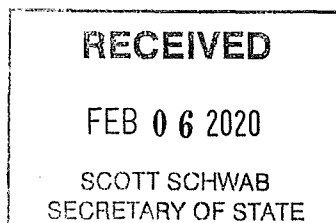
E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

No less costly or less intrusive methods were available for consideration by KDHE to achieve the purposes of the amended regulation, yet meet the federal regulation requirements.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

The annual cost to the regulated entities is \$1,027,403.00.

The regulated entities include businesses and local governments who own or operate storage tanks containing regulated substances. The estimated cost of pass-through to non-regulated businesses and the public is not anticipated to be included in the cost of fuel at the pump. The volume of taxable fuel sold in Kansas per year exceeds 1.6 billion gallons; the volume of non-taxable fuel sold in Kansas is an additional 1 billion gallons per year (data provided by the Petroleum Marketers and Convenience Store Associate (PMCA) of Kansas. The estimated cost to non-regulated businesses and the public is less than a penny (\$0.000642) per gallon purchased.



An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

The cost to the regulated entities is \$5,302,935.00 over 5 years.

Year 1 Cost: \$1,027,403.00

Year 2 Cost: \$1,027,403.00

Year 3 Cost: \$1,027,403.00

Year 4 Cost: \$1,110,363.00

Year 5 Cost: \$1,110,363.00

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Total implementation and compliance costs do not exceed \$3.0 million over any two-year period.

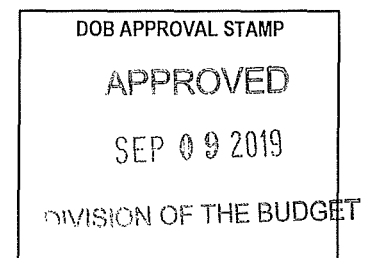
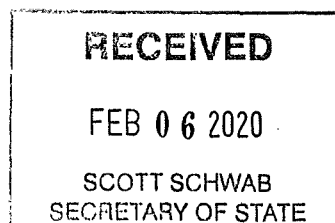
Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Costs associated with regulation requirements are included in the following pages including tables. *Table 1 KDHE Database Review – Testing* covers the costs associated with the new testing requirements. Randomly selected facilities (100) were chosen from the facility registration database to aid in obtaining an average cost per facility per year. *Table 2 Fees, Penalties, Increases, Comments and Justification* is a detailed list of the various fees and penalties (historical and proposed). *Table 3 Increased Costs per Active UST Facility* summarizes the calculated total per year costs listed in paragraph F.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

The total implementation costs will not exceed \$3M, therefore a public hearing was not held at the time of this submittal.



Costs to the regulated entities who are affected by or are subject to the regulations:

Each tank owner or operator is affected by or subject to the regulations related to the specific subjects **noted below**. The amended regulations allow flexibility to tank owners and operators, providing options to address their specific existing tank systems, plus provide guidance when upgrading the existing systems or installing new tanks. All quoted costs were obtained in March 2018 from licensed Kansas contractors in order to prepare estimates of anticipated expenses.

Inspections

Each tank owner or operator is currently required to conduct regular inspections of their fueling facilities. The amended regulations require more thorough and more frequent walkthrough inspections. The inspection shall now include the completion of a specific form. No additional cost is expected; this is based on the Class A and Class B Operator being currently employed by the facility.

Every 30 days, the following will be inspected, which will take approximately 20 minutes: spill buckets, piping transition sumps, and release detection equipment.

Once a year, the following will be inspected, which will take approximately 10 additional minutes: submersible turbine pump (STP) containment sumps, sumps without containment, dispensers, dispenser sumps, gauge sticks and other hand-held equipment.

Recommendation: KDHE recommends the following be inspected *every 30 days instead of annually*: dispensers, dispenser sumps, gauge sticks and other hand-held equipment.

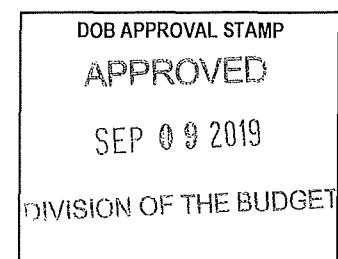
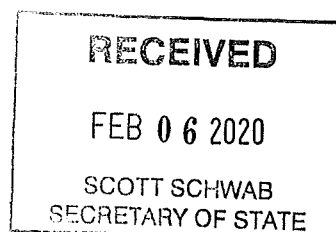
Previously deferred tanks

Several types of tank systems were previously deferred, or excluded, from storage tank regulations. The amended regulations require these tank systems to be in regulatory compliance. If use of existing equipment meets regulatory requirements, the additional cost per facility will be negligible. If these tank systems need appropriate release detection equipment, the costs could range from \$4,500 to \$10,000 per facility. The previously deferred systems are as follows:

- Emergency power generator UST's – Each owner or operator of these UST's need to designate, within one year, the type of release detection they will use for their tank system, which may result in the addition of new equipment.
- UST systems with field-constructed tanks and airport hydrant fuel distribution systems – Each owner or operator of these UST's will be required to register their UST's with KDHE. Full compliance with the regulations within three years is expected, relating to corrosion protection, release detection, release prevention, and operation and maintenance inspections.

Flow restrictors

Flow restrictors, or more specifically stated as ball float valves, are no longer allowed in vent lines as a method of overfill prevention. Each owner or operator utilizing ball float valves in vent lines will begin using overfill shutoff devices, such as a flapper valve or overfill alarm. The cost to convert to overfill shutoff devices ranges from \$250 to \$700 per facility.



Vapor and Groundwater Monitoring

Vapor and groundwater monitoring used as a form of release detection for UST systems are not allowed in the amended regulations with the exception that vapor monitoring can be used in association with field-constructed tanks and airport hydrant fuel distribution systems. Most of the facilities affected by this requirement will begin using Statistical Inventory Reconciliation (SIR) to meet the release detection requirement. The cost to begin using SIR ranges from \$150 to \$300 per tank. Note: The costs of SIR may be similar to the costs of Vapor or Groundwater monitoring and as a result, there may not be a significant increase in overall costs.

Testing

The amended regulations require each tank owner or operator to meet additional testing requirements every 3 years, with estimated costs, as follows:

- Spill buckets - \$75 to \$100 per bucket
- Overfill prevention equipment - \$75 to \$100 per tank
- Secondary containment equipment - \$150 to \$500 per sump, depending on the type of equipment.

Each tank owner or operator will also be required to meet additional testing requirements every year for the following:

- Automatic tank gauging - If the owner or operator chooses to use automatic tank gauging as their method of release detection, the associated costs range from \$200 to \$350 per facility.

KDHE Database Review – Testing - The department conducted an informal review of 100 random facilities from the registration database as seen in Table 1 beginning on the following page. The information gathered from these facilities included:

- Number of tanks;
- Release detection methods used, described as Automatic Tank Gauge (ATG), Statistical Inventory Reconciliation (SIR) and Interstitial Monitoring (IM);
- Tank structure, which included single-walled tanks and double-walled tanks; and
- Number of dispensers.

The following specific tests are required once every three years for facilities *with single-walled and double-walled UST's*:

Spill bucket test - estimated at \$100 per tank,

Overfill prevention equipment test - estimated at \$100 per tank, and

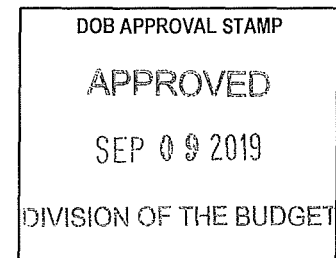
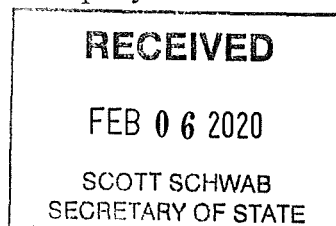
ATG/sensor test (to be conducted annually) - estimated at \$100 per tank (x 3 years),

Facilities with double-walled tanks will also conduct the following tests:

STP sump test - estimated at \$375 per sump, and

Dispenser test – estimated at \$450 per dispenser.

Testing Summary - In conclusion, the testing costs per facility vary greatly depending on the number of tanks and related system equipment. As seen in Table 1, page 4, an average estimated testing cost of the 100 facilities reviewed was \$1,090.50 every three years, or \$363.50 per year.



Proposed

Table 1: KDHE Database Review - Testing

The purpose of reviewing Kansas facilities is to determine the costs associated with the new testing requirements.

One hundred randomly selected facilities were chosen from the facility registration database.

The facility information will aid in obtaining an average cost per facility (testing) per year.

Page 1 of 4

							Required Testing costs over first 3 years per facility					Total Per Facility every 3 yrs	Equates to an annual cost per yr
Facility ID	City	No. of Tanks	Release Detection Method	Single-wall or Double-wall	No. of Dispnsrs	ATG	Spill	Overfill	STP				
						Test	Bucket Test	Equipment Test	Sump Test	Dispnsr Test			
1	07024	Pittsburg	3	SIR	Single	4	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
2	07032	Meade	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
3	08645	St. Francis	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
4	17611	Satanta	4	ATG	Single	3	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
5	22296	Scott City	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
6	25052	Osage City	3	SIR	Single	2	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
7	25518	Washington	4	SIR w/ATG	Single	7	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
8	27553	Dodge City	4	ATG	Single	6	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
9	28620	Kingman	2	ATG	Single	1	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
10	29945	Wellington	2	ATG	Single	4	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
11	29955	Lyons	1	ATG	Single	3	\$100.00	\$100.00	\$100.00	N/A	N/A	\$300.00	\$100.00
12	30146	Topeka	2	ATG	Single	4	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
13	30310	Wichita	4	SIR w/ATG	Double	8	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
14	30430	Wichita	4	SIR w/ATG	Double	6	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
15	30616	Pittsburg	3	IM w/ATG	Double	6	\$300.00	\$300.00	\$300.00	\$1,500.00	\$1,350.00	\$3,750.00	\$1,250.00
16	41101	Stafford	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
17	00190	Manhattan	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
18	00284	Kingman	3	SIR	Single	2	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
19	00774	Hutchinson	2	SIR	Single	4	N/A	\$200.00	\$200.00	N/A	N/A	\$400.00	\$133.33
20	00845	Arkansas City	4	ATG	Single	4	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
21	01428	Fredonia	3	SIR	Single	2	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
22	01689	Concordia	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
23	01812	Hoyt	1	SIR	Single	1	N/A	\$100.00	\$100.00	N/A	N/A	\$200.00	\$66.67
24	02061	Russell	4	ATG	Single	4	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
25	02185	Stockton	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
26	02332	Wakeeney	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
27	02647	Liberal	6	ATG	Single	6	\$600.00	\$600.00	\$600.00	N/A	N/A	\$1,800.00	\$600.00

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	Facility ID	City	No. of Tanks	Release Detection Method	Single-wall or Double-wall	No. of Dispnsrs	Required Testing costs over first 3 years per facility					Total Per Facility every 3 yrs	Equates to an annual cost per yr
							ATG Test	Spill Bucket Test	Overfill Equipment Test	STP Sump Test	Dispnsr Test		
28	03119	Plainville	4	ATG	Single	4	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
29	03190	Russell	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
30	03626	Dighton	7	SIR	Single	10	N/A	\$700.00	\$700.00	N/A	N/A	\$1,400.00	\$466.67
31	03711	Meade	4	ATG	Single	7	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
32	04115	St. Francis	5	ATG	Single	5	\$500.00	\$500.00	\$500.00	N/A	N/A	\$1,500.00	\$500.00
33	05383	Ellis	4	ATG	Single	4	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
34	06478	Kansas City	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
35	06734	Wellington	3	SIR w/ATG	Single	4	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
36	06784	Hill City	3	SIR	Single	5	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
37	07003	Scott City	3	SIR	Single	3	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
38	07039	Ulysses	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
39	07235	McPherson	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
40	07870	Junction City	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
41	08672	Smith Center	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
42	11196	Council Grove	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
43	11217	Sabetha	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
44	12208	Ulysses	4	ATG	Single	6	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
45	13369	Topeka	4	ATG	Single	3	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
46	13447	Hiawatha	4	ATG	Single	2	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
47	14276	Cheney	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
48	16346	Lyons	3	VM	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
49	17913	Independence	5	ATG	Single	7	\$500.00	\$500.00	\$500.00	N/A	N/A	\$1,500.00	\$500.00
50	20682	Ellsworth	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
51	23094	Belleville	3	SIR	Single	5	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
52	23157	Great Bend	3	ATG	Single	4	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
53	23191	Burlington	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
54	23702	Chanute	1	ATG	Single	0	\$100.00	\$100.00	\$100.00	N/A	N/A	\$300.00	\$100.00
55	25671	Oberlin	4	SIR	Single	2	N/A	\$400.00	\$400.00	N/A	N/A	\$800.00	\$266.67
56	25894	Kansas City	3	ATG	Single	4	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
57	25960	Pratt	3	SIR	Single	2	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00

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							Required Testing costs over first 3 years per facility					Total Per Facility every 3 yrs	Equates to an annual cost per yr
	Facility ID	City	No. of Tanks	Release Detection Method	Single-wall or Double-wall	No. of Dispnsrs	Spill		Overfill	STP			
							ATG Test	Bucket Test	Equipment Test	Sump Test	Dispnsr Test		
58	26279	Goodland	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
59	26311	Great Bend	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
60	27362	Pittsburg	2	SIR w/ATG	Single	4	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
61	27414	Elkhart	3	SIR	Single	2	N/A	\$300.00	\$300.00	N/A	N/A	\$600.00	\$200.00
62	27530	Norton	3	SIR w/ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
63	27698	Fort Scott	5	SIR	Single	6	N/A	\$500.00	\$500.00	N/A	N/A	\$1,000.00	\$333.33
64	27768	Liberal	5	ATG	Single	6	\$500.00	\$500.00	\$500.00	N/A	N/A	\$1,500.00	\$500.00
65	27819	Scott City	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
66	28009	Independence	4	SIR	Single	4	N/A	\$400.00	\$400.00	N/A	N/A	\$800.00	\$266.67
67	28112	Newton	2	ATG	Single	4	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
68	28133	Wamego	2	SIR	Single	2	N/A	\$200.00	\$200.00	N/A	N/A	\$400.00	\$133.33
69	28169	Gardner	3	ATG	Single	5	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
70	28194	Leavenworth	2	SIR w/ATG	Single	4	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
71	28199	Dodge City	3	ATG	Single	4	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
72	28814	Paola	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
73	28968	Sharon Springs	4	SIR w/ATG	Single	2	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
74	29135	Lenexa	3	ATG	Single	4	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
75	29184	Burlington	4	ATG	Single	4	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
76	29236	Ellsworth	3	ATG	Single	3	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
77	29301	Overland Park	2	SIR	Single	2	N/A	\$200.00	\$200.00	N/A	N/A	\$400.00	\$133.33
78	29360	Elkhart	2	SIR	Single	2	N/A	\$200.00	\$200.00	N/A	N/A	\$400.00	\$133.33
79	29680	Salina	2	ATG	Double	4	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
80	29829	Goodland	2	ATG	Single	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
81	29842	Junction City	5	ATG	Single	17	\$500.00	\$500.00	\$500.00	N/A	N/A	\$1,500.00	\$500.00
82	29924	Hutchinson	3	ATG	Single	4	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
83	29933	Hays	5	ATG	Single	6	\$500.00	\$500.00	\$500.00	N/A	N/A	\$1,500.00	\$500.00
84	30099	Ottawa	4	IM w/ATG	Double	6	\$400.00	\$400.00	\$400.00	\$2,000.00	\$1,800.00	\$5,000.00	\$1,666.67
85	30152	Iola	4	ATG	Single	10	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
86	30168	Oberlin	3	ATG	Single	7	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
87	30176	Lenexa	5	IM w/ATG	Double	7	\$500.00	\$500.00	\$500.00	\$2,500.00	\$2,250.00	\$6,250.00	\$2,083.33

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						Required Testing costs over first 3 years per facility					Total Per Facility every 3 yrs	Equates to an annual cost per yr	
Facility ID	City	No. of Tanks	Release Detection Method	Single-wall or Double-wall	No. of Dispnsrs	ATG	Spill	Overfill	STP	Dispnsr			
						Test	Bucket Test	Equipment Test	Sump Test	Test			
88	30246	Leawood	3	ATG	Single	6	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
89	30281	Colby	7	ATG	Single	12	\$700.00	\$700.00	\$700.00	N/A	N/A	\$2,100.00	\$700.00
90	30287	Lawrence	4	ATG	Double	5	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
91	30351	Bunker Hill	3	SIR w/ATG	Single	11	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
92	30409	Colby	7	CITLDS w/ATG	Single	16	\$700.00	\$700.00	\$700.00	N/A	N/A	\$2,100.00	\$700.00
93	30420	Tribune	4	ATG	Single	4	\$400.00	\$400.00	\$400.00	N/A	N/A	\$1,200.00	\$400.00
94	30497	Derby	2	ATG	Double	2	\$200.00	\$200.00	\$200.00	N/A	N/A	\$600.00	\$200.00
95	30638	Chanute	4	IM w/ATG	Double	7	\$400.00	\$400.00	\$400.00	\$2,000.00	\$1,800.00	\$5,000.00	\$1,666.67
96	30641	McPherson	3	IM w/ATG	Double	7	\$300.00	\$300.00	\$300.00	\$1,500.00	\$1,350.00	\$3,750.00	\$1,250.00
97	08784	Wichita	3	ATG	Single	6	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
98	12186	Lenexa	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
99	07235	McPherson	3	ATG	Single	2	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00
100	29133	Lawrence	3	SIR w/ATG	Single	7	\$300.00	\$300.00	\$300.00	N/A	N/A	\$900.00	\$300.00

\$26,700.00

/100

\$267.00 per facility per year

ATG Costs

Sum	\$109,050.00	\$36,350.00
# of facilities	/100	/100
Total/Facility	\$1,090.50	\$363.50

Dispnsr = Dispenser

ATG = Automatic Tank Gauge, electronically measures fuel level in the tank; the test will be conducted

once within the first 3 years and annually thereafter (4th year, etc.) @ \$100 / test / tank / year.

SIR = Statistical Inventory Reconciliation, a method used to manually measure fuel level in the tank,

record these levels and review the data statistically.

IM = Interstitial Monitoring, a method used to detect a release within the secondary containment.

CITLDS = Continuous In-Tank Leak Detection System

VM = Vapor Monitoring

Note: If ATG is used to collect data for SIR or inventory control, the ATG test will be required.

STP = Submersible Turbine Pump (located in the sump housing).

For the first 3 years:

Testing Cost / Facility / Year:	\$363.50
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Without the ATG Costs	\$82,350.00	\$27,450.00
# of facilities	/100	/100
Total/Facility	\$823.50	\$274.50
Testing Cost / Facility / Year:		\$274.50
This value used in 4th + Years		

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Fees and Penalties

Several fees and penalties will increase with the approval of the amended regulations as outlined in **Table 2**. The following subjects and related fees are shown below:

- The UST installation application fee increases from \$20/tank to \$100/tank, and includes the UST registration fee and the first year operating permit fee.
- The UST registration notification fee increases from \$10/tank to \$20/tank, with a late penalty increase from \$10/facility to \$50/tank.
- The UST operating permit, previously included with the tank registration fee, was \$10/tank and will increase to \$25/tank. If documents or payment, or both, needed by the department to secure the permit are not received by April 30th per year, a late penalty of \$50/tank will also be assessed; if documents or payment, or both, are not received by August 1st per year, an additional penalty of \$100/tank will be assessed.
- The AST operating permit fee of \$10/tank will not increase, but the late penalty will increase from \$10/facility to \$50/tank.
- The Contractor license, installer, remover and tester licensing fees will not increase.

The fee increases noted above and the justification for each are detailed on the following table (**Table 2**).

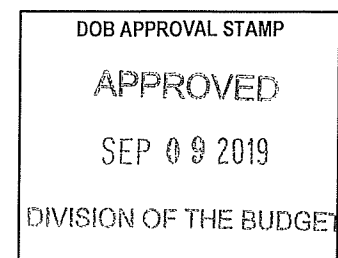
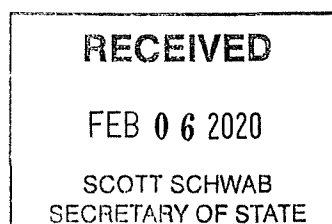


TABLE 2: Fees, Penalties, Increases, Comments and Justification

	Current Fee	Increased Fee	Comments / Justification
1			
Tank Registration	\$10/Tank	\$20/Tank	<p>Comment: Tanks are often discovered on former facility property. The number of tanks discovered in this manner result in up to 25 tanks annually. These tank owners register their tanks and typically apply for the Trust Fund in order to expedite eligibility if contamination is discovered during the site assessment. The tank registration fee and operating permit fee were previously combined. Tank registration is due within 30 days of acquiring or assuming ownership.</p> <p>Justification: The increase from \$10/tank to \$20/tank is estimated to add \$250 in revenue for tank registration based on 25 tank registrations per year. The additional funds will contribute specifically to the costs of enhancing outreach efforts to the regulated community.</p>
Late Penalty	\$10/Facility	\$50/Tank	<p>Comment: Tank owners and operators are occasionally late in submitting their tank registration fees. We anticipate the late penalty increase will prompt tank owners and operators to fulfill their payment responsibilities in a timely manner, and not have to pay the penalty.</p> <p>Justification: The state does not anticipate receiving many late penalties in this category. The increase from \$10/facility to \$50/tank is estimated to add a total of \$100 in revenue per year, based on approximately 10% of registrations (2 UST's) being late. The additional funds will contribute specifically to the costs of enhancing outreach efforts to the regulated community.</p>
2			
Installation Permit	\$20/Tank	\$100/Tank	<p>Comment: The installation permit includes an application permit fee and the first year operating permit fee. The application permit fee is for the review and approval of plans by the department, the UST registration, the installation permit, and the temporary operating permit. Based on a 10-year average, there are 35 tank installations per year.</p> <p>Justification: The increase from \$20/tank to \$100/tank is estimated to add a total of \$3,500 in revenue based on 35 anticipated tank installations per year. The increase in revenue will contribute specifically to the costs of enhanced outreach to the regulated community.</p>
3			
UST Operating Permits	\$10/Tank	\$25/Tank	<p>Comment: Tank permitting includes submittal of the permit fee and UST compliance documentation by each owner or operator annually. In 2017, there were 5,670 tanks permitted by the department which resulted in \$56,700 in permit fees. Funds received contribute towards the state's UST prevention grant from the EPA which requires a state match of \$130,000 annually.</p> <p>Justification: The increase from \$10/tank to \$25/tank is estimated to add a total of \$141,750 in revenue per year, based on 5,670 UST's. This total amount covers the required state match for the federal grant, and will contribute to the costs of implementing, operating and maintaining a new database, provide for online permitting, and enhance outreach to the regulated community.</p>
Late Penalty	\$10/Facility	\$50/Tank and \$100/Tank	<p>Comment: In 2017, 45% of owners and operators were out of compliance with meeting the deadline to submit their required compliance documentation or permit fees, or both. This is partially due to the low late penalty amount (in comparison with other states permit fees). We anticipate the late penalty increase will prompt tank owners and operators to fulfill their submittal responsibilities in a timely manner, and not have to pay the penalty. Our goal is to reduce the percentage of facilities who are late to request their permits. This will prompt owners and operators to meet annual compliance requirements.</p> <p>Justification: KDHE's goal is to greatly reduce non-compliance with a goal of only 10% of the owners and operators being late. The late penalty will increase from \$10/facility to \$50/tank after the April 30th deadline per year. An additional \$100 per tank will be assessed after August 1st (the start date of the new permit cycle) if documents or payment, or both, are not received. An estimated 10% (567 UST's) will result in \$28,350 to \$85,050 in the first year of implementing the increased penalty. The additional funds will be used to support UST compliance, inspections and enforcement, in addition to contributing to the costs of implementing, operating and maintaining a new database, provide for online permitting and enhance outreach to the regulated community.</p>
4			
AST Operating Permits	\$10/Tank	<No Change>	<p>Comment: In 2017, there were 9,502 AST's permitted located at 4,872 facilities. Current revenue of \$95,020 per year (at \$10/tank) will remain consistent.</p>
Late Penalty	\$10/Facility	\$50/Tank	<p>Comment: There are a number of AST owners and operators that do not comply with the operating permit fee submittal deadline. Our goal is to reduce the percentage of AST facilities who are late to request their permits and this will subsequently help AST owners and operators meet annual compliance requirements.</p> <p>Justification: The increase from \$10/facility to \$50/tank is estimated to add a total of \$47,500 in revenue per year. This amount is based on an estimate of 10% (950 AST's) of owners and operators who are late in submitting their fees. The additional funds will contribute to the costs of implementing, operating and maintaining a new database, provide for online permitting, and enhance outreach to the regulated community.</p>

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Table 3 on the following page demonstrates the anticipated costs for a UST facility to meet compliance requirements of the amended regulations. KDHE contacted several industry contractors and a representative of the Petroleum Marketers and Convenience Store Association (PMCA) to get cost estimates of various equipment and services. The costs will vary depending on when the facility owner or operator needs the work completed and when the specialized contractors are available. The potential for contractor costs to decrease may result due to the bidding process and competition for work.

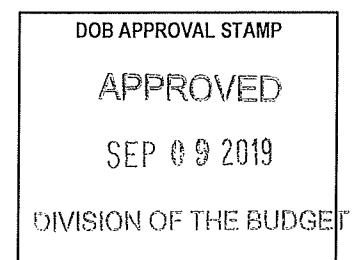
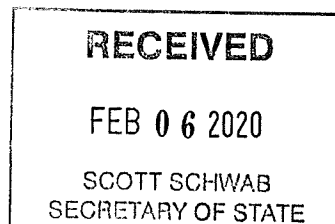


Table 3 - Increased Costs per Active UST Facility

TOPIC	Frequency	Increased Cost/Year	UST's or UST Facilities	First Year	Second Year	Third Year	Fourth Year	Fifth Year	Comments
1 FEES									
			UST'S						
UST Permitting	Annually	\$15.00	5670	\$85,050.00	\$85,050.00	\$85,050.00	\$85,050.00	\$85,050.00	This is an annual fee; costs increased from \$10/tank to \$25/tank
UST Installation Application	Prior to install	\$80.00	75	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	This includes the application, registration and permitting fees; costs increased from \$20/tank to \$100/tank
UST Registration	At discovery	\$10.00	20	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	This is a one-time fee; costs increased from \$10/tank to \$20/tank
2 INSPECTIONS									
			UST Facilities						
Enhanced Walkthrough Inspections	Monthly	\$0.00	2000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Based on knowledge that all facilities have a Class A/B operator on staff.
	Annually	\$0.00	2000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Based on knowledge that all facilities have a Class A/B operator on staff.
3 TESTING									
Spill Buckets, Overfill Prevention and Secondary Containment Tests	W/in first 3 years	\$363.50	2000	\$727,000.00	\$727,000.00	\$727,000.00			One hundred facilities chosen at random from the registration database; - most have single-wall systems which represents the majority in Kansas.
	Subsequent yrs	\$274.50	2000				\$549,000.00	\$549,000.00	
ATG Probe and Sensor Test	W/in first 3 years	cost included above							ATG, Spill buckets, overfill prevention, secondary containment testing; using an average of \$1,080.50/facility/3 years = \$363.50/year. (Table 1)
ATG Probe and Sensor Test	Annually	\$267.00	1600				\$427,200.00	\$427,200.00	The ATG testing cost is overestimated in the first 3 yr estimate as only 80% of the facilities in the test group used ATG as their RD method.
4 RELEASE DETECTION FOR PREVIOUSLY DEFERRED UST SYSTEMS									
Emergency Power Generators	W/in first 3 years	\$1,917.00	67	\$128,439.00	\$128,439.00	\$128,439.00	\$0.00	\$0.00	Costs vary from \$4,500 to \$7,000 with an avg of \$5,750/3 yrs = \$1,917/yr.
Testing after RD installation	Subsequent yrs	\$363.50	67				\$24,354.50	\$24,354.50	This equipment is used at hospitals, jails, and other high security buildings.
Field-Constructed Tanks	W/in first 3 years	\$1,500.00	25	\$37,500.00	\$37,500.00	\$37,500.00	\$0.00	\$0.00	The est. cost is \$4,500/3 years = \$1,500/year; there's the potential
Testing after RD installation	Subsequent yrs	\$274.50	25				\$6,862.50	\$6,862.50	for these tanks to be phased-out due to not being able to install Release Detection equipment to a square-base tank.
Airport Hydrant Fuel Distr. System	W/in first 3 years	\$3,333.00	8	\$26,664.00	\$26,664.00	\$26,664.00	\$0.00	\$0.00	The est. cost is \$10,000/3 years = \$3,333/year; less than 10 in the state.
Testing after RD installation	Subsequent yrs	\$274.50	8				\$2,196.00	\$2,196.00	
5 FLOW RESTRICTORS									
Facilities using ball float valves in the vent lines must change to flapper valves, overfill shut-off devices or alarms	Upon failure	\$475.00	20	\$9,500.00	\$9,500.00	\$9,500.00	\$9,500.00	\$9,500.00	Costs vary from \$250 to \$700; using an average of \$475/year.
6 TYPE OF RELEASE DETECTION									
Vapor and groundwater monitoring no longer allowed as a form of release detection; must begin using a new method of release detection	W/in first 3 years	\$150.00	47	\$7,050.00	\$7,050.00	\$7,050.00	\$0.00	\$0.00	Facilities using Vapor or GW monitoring will need to switch to a new method of release detection within 3 years. Most facilities will switch to SIR and the costs of SIR range from \$150 to \$300/tank; using an average of \$225/tank/3 years = \$150/year (for 2 active tanks). The costs of annual testing are included in the item #3 Testing.

UST = Underground Storage Tank

RD = Release Detection

1st Year Total	2nd Year Total	3rd Year Total	4th Year Total	5th Year Total
\$1,027,403.00	\$1,027,403.00	\$1,027,403.00	\$1,110,363.00	\$1,110,363.00

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- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

The regulation changes will have no effect on cities, counties or school districts within the state unless they own or operate UST's or AST's. When the notice of hearing for these regulations is published in the Kansas Register, standard agency procedure will be followed and the three organizations will be contacted electronically with attached copies of the regulations, economic impact statement and published notice of hearing.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

In addition to contacting several industry contractors and the PMCA, the KDHE storage tank program held a stakeholder meeting to present the upcoming mandated changes to the storage tank regulations. Those in attendance were from the PMCA, facility retailers, service providers and an environmental consultant. Throughout the presentation, participants provided questions and input concerning their specific interests in the changes.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

The option to not adopt these regulations is not a viable choice as these state regulations are sourced from federally mandated regulations (40 C.F.R. 280).

