

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Rule Caption	Align Tank Rules with federal regulations and improve existing rules.
Title of Proposed Rulemaking:	Underground Storage Tank Rule Revisions
Stat. Authority or other Legal Authority:	ORS 465.200 through 465.455, and 466.706 through 466.995
Stat. Implemented:	ORS 465.200 through 465.455, and 466.706 through 466.835
Need for the Rule(s)	<p>A) Subtitle B of the federal Energy Policy Act of 2005 contains underground storage tank (UST) provisions (entitled the Underground Storage Tank Compliance Act of 2005) that requires the Department to adopt rules to:</p> <ul style="list-style-type: none"> • Revise the current UST operator training requirements to include three classes of operators that require training, and the training required for each class of operator; • Implement fuel delivery prohibition requirements for noncompliant tanks by defining when an UST is ineligible for delivery, deposit or acceptance of fuel and describe the mechanism(s) DEQ will use to identify ineligible USTs; • Require secondary containment and monitoring for new and replaced tanks and piping. <p>B) Amendments by the 2007 legislature (SB 104) to laws governing underground storage tanks require the Department to adopt rules to:</p> <ul style="list-style-type: none"> • Increase the annual tank fee (from \$85/year to \$135/year); and • Make the existing expedited enforcement program (i.e., field citations) permanent and increase the penalty amounts (from a maximum of \$100 to \$500 per violation and an increased aggregate of \$1,500 from \$300). <p>C) This rulemaking proposal also improves existing UST regulations by:</p> <ul style="list-style-type: none"> • Changing the operating registration certificate to a certificate that is renewed annually and define the conditions under which a certificate will not be renewed; • Increasing clarity and resolving existing technical issues; • Aligning the definition of an UST in Division 122 to that in Division 150; • Revising the UST service provider license renewal period in Division 160 from 12 to 24 months; and • Revising the UST service provider license renewal period in Division 162 from 12 to 24 months.
Documents Relied Upon for Rulemaking	<ul style="list-style-type: none"> • Oregon Administrative Rules, Chapter 340, Division 122 (Cleanup rules), Division 150 (UST regulations), Division 160 (Requirements for UST Service Providers) & Division 162 (Requirements for Soil Matrix Service Providers and Supervisors) • Oregon UST statutes, ORS 465.200 through 465.455, and 466.706 through 466.995 • Federal regulations for USTs, 40 CFR Part 280, Subparts A through H • Grant Guidelines To States for Implementing the Operator Training Provision, the Secondary Containment Provision and the Delivery Prohibition Provision of the Energy Policy Act of 2005 • Energy Policy Act of 2005

	<ul style="list-style-type: none"> 2007 Laws chapter 479 (SB 104) 	
Requests for Other Options	<p><i>ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.</i></p>	
Fiscal and Economic Impact, Statement of Cost Compliance		
Overview	<p>Federal UST legislation (UST Compliance Act of 2005) is anticipated to have the following economic impact on all tank owners:</p> <ul style="list-style-type: none"> Economic impact from adding the Class A operator category. The training costs will range from \$75 to take a national exam to \$350 to obtain one-time training from private vendors. We do not expect an economic impact from adding Class B operators, because DEQ already require this level of training and previously trained individuals will be grandfathered into the new training category. Economic impact will occur from retraining requirements for one or both classes of operator should a facility be found noncompliant during inspection. There is no economic impact anticipated for the third Class of operator (i.e., Class C operator) as they will be trained to perform emergency response activities by either the Class A or B operator at the facility to perform emergency response activities; and There is no economic impact anticipated for the secondary containment requirement as most, if not all, new tank and piping systems installed in Oregon now are secondarily contained. However, the requirement to install under-dispenser containment for new and replaced fuel dispensers will have a relatively small overall economic impact in the total installation or replacement cost as this is not the standard practice. <p>State UST legislation (SB 104) is anticipated to have the following economic impact on all tank owners:</p> <ul style="list-style-type: none"> Economic impact from the increase in the annual tank fee from \$85 to \$135; and Even with the increase in the field citation penalties, economic benefit is still anticipated through the potential for reduced cost of enforcement penalties with expedited process vs. traditional enforcement penalties and process. 	
General public	<p>There is no direct economic impact on the general public as a result of the proposed rule revisions. The cost to have UST operators trained is not anticipated to result in increased costs of motor fuel or services provided by non-retail tank owners.</p>	
<p>Small Business (50 or fewer employees – ORS183.310(10))</p>	a) Estimated number and types of businesses impacted	Approximately 1,000 small businesses owning one or more regulated UST facilities with fewer than 50 employees will be impacted by the proposed rule changes.
	b) Additional reporting requirements	There are no additional reporting requirements anticipated with this rulemaking proposal. Additional recordkeeping requirements include tracking. Current rule requires tracking for only one class of operator.
	c) Additional equipment and administration requirements	There is anticipated economic impact for the requirement to install under-dispenser containment for new and replaced fuel dispensers. This will have a relatively small overall economic impact relative to the total installation or replacement costs.
	d) Describe how businesses were involved in development of this rulemaking	The program convened its stakeholder group which consisted of industry, stakeholder organizations and service provider representation. Although a strong effort was made to have individual small business owners participate in this rulemaking, the two individuals who agreed to participate did not attend the rule revision meeting.

	The mandatory operator training requirements and the increased expedited enforcement penalties will have some financial impact on all tank owners regardless of the size of the business. Very small business owners (e.g., individuals who own only one UST facility) will likely be affected the most. Although expedited enforcement penalties are increased (maximum penalty increased from \$100 to \$500 and total aggregate increased from \$300 to \$1,500), there is still an anticipated economic benefit to small business owners as penalties associated with violations under the expedited enforcement process are smaller than a tank owner would otherwise experience with traditional enforcement.
Large Business	Large business owners would experience the same potential financial effect as small business owners. Although the cost of training is multiplied by the number of UST system operators that a business owner employs, some large business owners may choose to conduct their own training sessions as some do now under current rules. This would likely result in savings in both dollars and the time spent by employees to attend trainings.
Local Government	Local governments owning regulated USTs will be affected by the operator training and enforcement requirements in the same way as either large or small business owners.
State Agencies	State agencies owning regulated USTs will be affected in the same way as either large or small business owners.
DEQ	The proposed amendments will increase costs for the Department to implement the operator training program and process the annual operating certificate. The Department will use temporary staff resources to develop the expanded operator training program and expedited enforcement programs (approx. 0.5 FTE for three months) and use existing and new staff (approx. 0.5 FTE) to implement the programs. The expanded expedited enforcement process is anticipated to reduce the time required by inspectors for UST enforcement activities as more UST violations may now be cited using field citations.
Other agencies	Federal and local government agencies owning regulated USTs will be affected in the same way as either large or small business owners.
Assumptions	The cost to tank owners to obtain the required operator training is estimated to range from \$75 to \$300 depending upon the type of training option selected: \$ 70 - \$80 Standardized national proficiency test (does not include training). \$200 - \$225 On-line, web-based training and testing program from private vendor \$200 - \$350 Training course presented in several different states by a private vendor
Housing Costs	The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Administrative Rule Advisory Committee	The UST Workgroup assisted the Department in the development of the proposed rule revisions. Workgroup members provided input on policy issues and recommended changes to rule language after discussion with Department staff.

Prepared by _____ Mitch Scheel _____ Date _____
Printed name

Approved by DEQ Budget Office _____ Andree Pollock _____ Date _____
Printed name