Overview
The purpose of this rulemaking is to adopt recent amendments to federal underground storage tank (UST) requirements that were promulgated by the United States Environmental Protection Agency (U.S. EPA) in a final rule published on July 15, 2015, at 80 FR 41565. The changes established federal UST requirements that are similar to key portions of the Energy Policy Act of 2005. In addition, U.S. EPA added new operation and maintenance requirements and addressed UST system requirements deferred in the 1988 UST regulation. The main changes include the following:

- Secondary containment requirements for new and replaced tanks and piping.
- Operator training requirements.
- Periodic operation and maintenance requirements for UST systems.
- Requirements to ensure UST system compatibility before storing certain biofuel blends.
- Removal of past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems.
- Updates to codes of practice.
- Editorial and technical corrections.

IDEM has an approved state UST program in which the U.S. EPA has authorized IDEM to administer and enforce UST requirements that must be no less stringent than the federal UST requirements. When the federal government changes the federal UST program or modifies statutory or regulatory authority, an approved state program must submit a revised application for state program approval, in accordance with the state program approval requirements at 40 CFR 281. The changes included in the recent U.S. EPA final rule modified the federal UST program and incorporated statutory requirements from the Energy Policy Act of 2005, so U.S. EPA is requiring that approved states submit a revised application for state program approval. By proposing to adopt the recent changes to the federal program, IDEM is updating the approved state UST program to make the program consistent with and no less stringent than the federal UST requirements. When this rulemaking is completed, IDEM will include the rule changes in a revised application for state program approval that IDEM will submit to U.S. EPA.

In addition, IDEM is proposing other amendments to 329 IAC 9 that will improve the rule language. IDEM proposes to delete portions of 329 IAC 9 that are repetitive of or conflicting with federal UST requirements and replace them with incorporation by reference of federal UST requirements at 40 CFR 280. This change significantly shortens and simplifies the rule language in 329 IAC 9 and reduces repetitiveness and potential conflicts between state and federal requirements, while maintaining state UST requirements that are no less stringent than the federal requirements. IDEM also will make additional revisions that include correction and
clarification of obsolete cross-references, typographical errors, inconsistencies, and simplification and clarification of existing rule language. These revisions should aid compliance with the UST requirements by making the rule language easier to follow and understand.

Suggested Changes since Preliminary Adoption
The rule proposed for final adoption has undergone some changes since the draft rule was preliminarily adopted at the October 11, 2017, board meeting. At 329 IAC 9-3-1, the standards and practices for the lining of tanks are updated to be consistent with the latest standards in the federal rules at 40 CFR 280 that are incorporated by reference. Without this change, the state rules would be inconsistent with the federal rules and regulated entities technically would be required to comply with two different standards for the same activity. At 329 IAC 9-4-4, the information for the incorporation by reference of the Code of Federal Regulations (CFR) is updated to include the same edition of the CFR as the entirety of 329 IAC 9 and the latest information to access CFR documents. Finally, IDEM is proposing the repeal of 329 IAC 9-4-2 because the section is nearly identical to and repetitive of the analogous federal requirements at 40 CFR 280.51. In this rulemaking, IDEM has incorporated by reference the federal UST requirements, where possible, to reduce potential confusion and repetitiveness between state and federal UST requirements.

Affected Persons
Owners and operators of underground storage tanks in Indiana are affected by this rulemaking, except for those owners and operators that meet the exclusions at 40 CFR 280.10.

Reasons for the Rule
IDEM initiated this rulemaking to adopt recent revisions to the federal UST requirements that were promulgated by U.S. EPA on July 15, 2015. IDEM has a federally approved state UST program, which means that IDEM is approved to administer and enforce a state UST program in lieu of the federal UST program. The state UST program must be no less stringent than the corresponding federal UST requirements and comply with the state program approval requirements at 40 CFR 281. In order to maintain this approval, IDEM must amend the state program to adopt requirements that are no less stringent than the recently promulgated federal requirements and re-submit an application for state program approval. For the particular situation associated with this rulemaking, IDEM must submit the revised application to U.S. EPA by October 13, 2018.

Economic Impact of the Rule
This rulemaking will not impose any requirements on regulated entities beyond what is imposed by federal laws and regulations. Therefore, any economic impact from this rulemaking will be related to the federal requirements that IDEM is proposing to incorporate by reference.

However, there may be an economic impact if IDEM does not adopt the revisions to the federal UST requirements and re-submit an application for state program approval. Failing to adopt the revisions and re-submit the application may result in a loss of federal approval and funding for IDEM’s UST program, which would leave the state responsible for covering the loss of funding. Regulated entities also may be subject to potentially conflicting and repetitive state and federal
requirements, which may create regulatory inefficiencies, uncertainties, and additional costs. The described scenario could result in a significant and uncertain cost to the state, UST owners and operators, and the general public that could be prevented by adopting the revisions to the federal UST requirements and submitting a complete, revised application for state program approval.

Scheduled Board Action and Hearings
First Public Hearing: October 11, 2017, at the Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, Indiana.
Second Public Hearing: January 10, 2018, at the Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, Indiana.

IDEM Contact
Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345, (800) 451-6027 (in Indiana), or dwatts1@idem.in.gov.