

Grant Guidelines To States  
For Implementing The  
Public Record Provision  
Of The Energy Policy Act Of 2005

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## **Overview Of The Public Record Grant Guidelines**

### ***Why Is EPA Issuing These Guidelines?***

The U.S. Environmental Protection Agency (EPA), in consultation with states, developed these grant guidelines to implement the public record provision in Section 9002(d) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Subsection (c) of Section 1526 of the Energy Policy Act amends Section 9002 in Subtitle I of the Solid Waste Disposal Act to add requirements for states to maintain, update, and make available to the public a record of underground storage tanks (USTs) regulated under Subtitle I. EPA must require each state that receives funding under Subtitle I to meet the public record requirements. Subsection (d) of Section 9002 in Subtitle I requires EPA to prescribe the manner and form of the public record, and says that, to the maximum extent practicable, the public record of a state must include:

- The number, sources, and causes of underground storage tank releases in the state.
- The record of compliance by underground storage tanks in the state with Subtitle I or a state program approved under Section 9004 of Subtitle I.
- Data on the number of underground storage tank equipment failures in the state.

EPA's Office of Underground Storage Tanks (OUST) is issuing these grant guidelines to establish the minimum requirements a state receiving Subtitle I funding (hereafter referred to as "state") must meet in order to comply with the public record requirements in Section 9002(d).

### ***What Is In These Guidelines?***

These guidelines describe the minimum requirements for public record that a state's underground storage tank program must meet in order for a state to comply with statutory requirements for Subtitle I funding. These guidelines include: developing and updating the public record; making the record available to the public; describing the minimum public record content; ensuring data quality; and demonstrating and ensuring compliance with these guidelines.

### ***When Do These Guidelines Take Effect?***

A state must develop a program for gathering information and begin gathering data to meet the public record requirement by October 1, 2007.

## Public Record Requirements

### ***What Underground Storage Tanks Do These Guidelines Apply To?***

***For purposes of providing the public information on percent compliance and numbers of underground storage tanks, facilities, and inspections,*** states must, at a minimum, include underground storage tanks regulated under Subtitle I that satisfy the definition of underground storage tank in 40 CFR 280.12, except for those tanks identified in 40 CFR 280.10(b) and 280.10(c) as excluded or deferred underground storage tanks. Underground storage tanks used for emergency power generation [deferred from release detection by 280.10(d)] must be included as part of the public record.

***For purposes of providing the public information on confirmed releases and sources and causes of releases,*** states must, at a minimum, include underground storage tanks regulated under Subtitle I that satisfy the definition of underground storage tank in 40 CFR 280.12, except for those tanks identified in 40 CFR 280.10(b) as excluded underground storage tanks. Underground storage tanks deferred in 40 CFR 280.10(c) and those used for emergency power generation [deferred from release detection by 280.10(d)] must be included as part of the public record.

### ***How Does A State Implement These Guidelines?***

A state implements these guidelines by making a record containing information consistent with these guidelines available to the public.

A state may choose to make a record that contains more comprehensive information than described in these guidelines available to the public. For example, a state may choose to make a record available to the public that includes underground storage tanks regulated by the state but not regulated under Subtitle I.

### ***When Must States Develop, Make Available, And Update The Public Record?***

In 2007, state underground storage tank programs must:

#### **Deadlines And Requirements In 2007**

<b>Not Later Than</b>	<b>States Must</b>
September 30, 2007	Develop a program for gathering information required for the public record
October 1, 2007	Begin gathering data to meet the public record requirement

In 2008 and beyond, state underground storage tank programs must:

#### **Deadlines And Requirements In 2008 And Beyond**

<b>Not Later Than</b>	<b>States Must</b>
September 30, 2008	Complete first year's data gathering
October 1, 2008 (and beyond)	Begin next year's data gathering
December 31, 2008	Make the public record available to the general public  For consistency with data states submit to EPA, states should make available a public record that includes data from October 1 through September 30 of each year.
September 30, 2009 (and beyond)	Complete next year's data gathering
On or before the same day of the next year (for example, on or before December 31, 2009)	Update the public record at least annually

### ***How Must States Make The Public Record Available?***

EPA believes state underground storage tank programs should use a multi-pronged approach to making the public record available. At a minimum, states must make the public record available in electronic format and make the public record available to those who request the information but do not have electronic access. Each state must develop a web site that does one of the following:

- The public record is posted on or downloadable from the internet. This option may be an interactive web site that retrieves the information, a web site that lists the information, or a file that is downloadable in electronic format.

- The web site describes how to receive an electronic copy of the public record (for example via e-mail).

In addition, some people may not have access to electronic information. Therefore, states must also make the public record available to those who request the information, but do not have electronic access. Examples of ways to make the public record available in this instance include paper copies or a public reading room.

### ***What Must The Public Record Contain?***

States must provide a public record that, at a minimum, contains the summary information described below. Appendix A contains a sample public record with summary information. In addition to summary information, the public record must also provide the public with instructions on how to obtain site-specific underground storage tank information on compliance and releases.

**Minimum Public Record Content** – At a minimum, the following information must be included in a state’s public record.

- **Public Record Posted Date** – This is the date the public record document was made available to the public.
- **Total UST Facilities** – This is the total number of underground storage tank facilities in the state containing one or more regulated underground storage tanks that are not permanently closed. Please note that states may separate facilities with temporarily-closed underground storage tanks from total facilities as long as they provide both numbers.
- **Total USTs** – This is the total number of regulated underground storage tanks in the state that are not permanently closed. Please note that states may separate temporarily-closed underground storage tanks from total underground storage tanks, as long as they provide both numbers.
- **Number Of UST Facilities Inspected** – This is the total number of underground storage tank facilities in the state that had an on-site compliance inspection conducted in accordance with EPA inspection guidelines applicable at the time of the inspection, and conducted between the inspection period dates described below.
- **Inspection Period Dates** – These are the two dates between which the inspections listed above were conducted. At a minimum, these dates must cover the 12 month period for which the public record data is gathered.
- **Percent Compliance** – This is the percent of underground storage tank facilities inspected between the inspection period dates described above that were in compliance with EPA or state regulations during the most recent facility

inspection. At a minimum, compliance means the facility met the combined performance measure (release detection and release prevention compliance) of the significant operational compliance (SOC) requirements described in EPA's September 30, 2003 memorandum (and attachments) to EPA regions and states. This document is available on the internet at:

<http://www.epa.gov/oust/cmplastc/soc.htm>. At a minimum, the percent compliance must cover the 12 month period for which the public record data is gathered.

- **Compliance Measurement And Reported UST Universe Statements** – These statements describe:
  - The basis for the compliance determination. For example, the compliance rate may be based on the combined performance measure (release detection and release prevention compliance) for significant operational compliance with state or federal underground storage tank requirements. If a state is reporting compliance based on criteria that are more stringent than the combined performance measure for significant operational compliance, the state also must identify that their compliance reporting is more stringent and may list those more stringent requirements.
  - The universe of underground storage tanks and facilities that the public record is based on. At a minimum, the public record must contain information on underground storage tanks to which the guidelines apply (see page 2 for applicability). If a state provides information to the public based on deferred underground storage tanks or underground storage tanks that are regulated only by the state, then the statement must also provide the public with that information.
- **Release Reporting Period Dates** – These are the two dates between which the confirmed releases reported in the public record document occurred. At a minimum, these dates must cover the 12 month period for which the public record data is gathered.
- **Number Of Confirmed Releases** – This is the number of confirmed releases that occurred between the release reporting period dates described above. The term confirmed release has the same definition used in the semiannual activity reports with one exception – confirmed releases from hazardous substance underground storage tank systems must also be included in the public record. The confirmed release definition for the semiannual activity reports is available on the internet at: <http://www.epa.gov/oust/cat/perfmeas.pdf>. Please note that states may provide petroleum and hazardous substance confirmed releases separately as long as they provide both numbers.
- **Number And Percent Of Releases By Source** – This is the number and percent of releases attributed to each source where the source of release is

known. See the information in the **Number, Sources, And Causes Of UST Releases And Data On Equipment Failures** section below for descriptions of sources.

- **Number And Percent Of Causes By Source** – This is the number and percent of causes attributed to each known source. See the information in the **Number, Sources, And Causes Of UST Releases And Data On Equipment Failures** section below for descriptions of causes.

### **Number, Sources, And Causes Of UST Releases And Data On Equipment Failures**

– The release source and cause data that must be included in the public record are those associated with a **reportable** release in 40 CFR Part 280.50 or applicable state regulation. States are not required to provide information on releases where the source is not known. The data on sources and causes of releases also includes data on equipment failures, as required by Section 9002(d)(2)(C) of Subtitle I, by providing the piece of equipment that failed (release source) and the reason for the failure (release cause). The following contains the minimum list of sources and causes, including those associated with equipment failures, and provides a short description for each:

- **Sources**
  - **Tank** – This term means the tank that stores the product and is part of the underground storage tank system.
  - **Piping** – This term means the piping and connectors running from the tank or submersible turbine pump to the dispenser or other end-use equipment. It does not include vent, vapor recovery, or fill lines.
  - **Dispenser** – This term includes the dispenser and equipment used to connect the dispenser to the piping. For example, a release from a suction pump or components located above the shear valve would be considered a release from the dispenser.
  - **Submersible Turbine Pump (STP) Area** – This term includes the submersible turbine pump head (typically located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the tank.
  - **Delivery Problem** – This term identifies releases that occurred during product delivery to the tank. Typical causes associated with this source are spills and overfills.
  - **Other** – Use this option when the release source does not fit into one of the above categories. For example, releases from vent lines, vapor recovery lines, and fill lines would be included in this category.



- **Causes**

- **Spill** – Use this cause when a spill occurs. For example, spills may occur when the delivery hose is disconnected from the fill pipe of the tank or when the nozzle is removed from the vehicle at the dispenser.
- **Overfill** – Use this cause when an overfill occurs. For example, overfills may occur from the fill pipe at the tank or when the nozzle fails to shut off at the dispenser.
- **Physical Or Mechanical Damage (Phys/Mech Damage)** – Use this cause for all types of physical or mechanical damage except corrosion as described below. Some examples of physical or mechanical damage include: a puncture of the tank or piping, loose fittings, broken components, and components that have changed dimension (for example, elongation or swelling).
- **Corrosion** – Use this cause when a metal tank, piping, or other component has a release due to corrosion (for steel, corrosion takes the form of rust). This is a specific type of physical or mechanical damage.
- **Installation Problem** – Use this cause when the problem is determined to have occurred specifically because the underground storage tank system was not installed properly. Note that these problems may be difficult to determine.
- **Other** – Use this option when the cause is known but does not fit into one of the above categories. For example, accidentally or intentionally putting regulated substances into a monitoring well would be included in this category.
- **Unknown** – Use this option only when the cause is not known.

Appendix B contains a sample release data-gathering form.

### ***How Must States Ensure The Quality Of The Public Record Data?***

To the maximum extent practicable, states must provide accurate and complete data to the public. States must use quality assurance practices that will: produce data of quality adequate to meet project objectives; minimize reporting of inaccurate data; and allow for timely updates to the data as changes or corrections occur.

***How Will States Demonstrate Compliance With These Guidelines?***

After September 30, 2007, the date by which states must develop a program for gathering the public record information, and before receiving future grant funding, states must provide one of the following to the appropriate EPA regional office:

- For a state that has met the requirements for public record, the state must submit a certification indicating that the state meets the requirements in the guidelines.
- For a state that has not yet met the requirements for public record, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:
  - A description of the state's activities to date to meet the requirements in the guidelines,
  - A description of the state's planned activities to meet the requirements, and
  - The date by which the state expects to meet the requirements.

EPA may verify state certifications of compliance through site visits, record reviews, or audits as authorized by 40 CFR Part 31.

***How Will EPA Enforce States' Compliance With The Requirements In These Guidelines?***

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available for inspection and other UST compliance activities. EPA will also condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

## **For More Information About The Public Record Grant Guidelines**

Visit the EPA Office of Underground Storage Tanks' web site at [www.epa.gov/oust](http://www.epa.gov/oust) or call 703-603-9900.

### **Background About The Energy Policy Act Of 2005**

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (titled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act – the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at further reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions required implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: [http://www.epa.gov/oust/fedlaws/nrg05\\_01.htm](http://www.epa.gov/oust/fedlaws/nrg05_01.htm)

## Appendix A - Sample Public Record – Summary Information On Underground Storage Tanks (USTs)

### General Information

Public Record Posted Date: \_\_\_\_\_

Total Number Of UST Facilities: \_\_\_\_\_

Total Number Of USTs: \_\_\_\_\_

### Summary Information For On-Site Inspections

Number Of UST Facilities Inspected: \_\_\_\_\_

Inspection Period Dates: \_\_\_\_\_ To: \_\_\_\_\_

Percent Compliance (Combined Measure): \_\_\_\_\_

Note: Tank, facility, and on-site inspection information is based on [state: describe universe of tanks]. On-site inspections measure compliance with \_\_\_\_\_ (SOC, state regulations, Subtitle I, etc.). [States may list more stringent requirements here.]

### Summary Information For Releases

Number Of Confirmed UST Releases: \_\_\_\_\_

Release Reporting Period Dates: \_\_\_\_\_ To: \_\_\_\_\_

### Summary Information For Release Sources And Causes

Source			Cause													
			Spill		Overfill		Phys/Mech Damage		Corrosion		Install Problem		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Tank																
Piping																
Dispenser																
STP																
Delivery Problem																
Other																
Totals																

# = number, % = percent of total number

Note: Release, source and cause information is based on [state: describe universe of tanks]. Source and cause data were collected using [state: describe data-gathering technique(s)].

**[State:** Provide information here on how the public can obtain site-specific UST information on compliance and releases.]

## Appendix B - Sample Release Data-Gathering Form On Underground Storage Tanks (USTs) (for known sources of release)

### General Information

UST Facility Name Or ID: \_\_\_\_\_

Date Release Was Confirmed: \_\_\_\_\_

### Source Information – Where did the release come from?

- ☐ **Tank**
- ☐ **Piping**
- ☐ **Dispenser**
- ☐ **Submersible Turbine Pump**
- ☐ **Delivery Problem**
- ☐ **Other (specify) \_\_\_\_\_**

### Cause Information – Why did the release occur?

- ☐ **Spill**
- ☐ **Overfill**
- ☐ **Corrosion**
- ☐ **Physical Or Mechanical Damage**
- ☐ **Install Problem**
- ☐ **Other (specify) \_\_\_\_\_**
- ☐ **Unknown**