

**Updated
September 2019**

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

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Washington, D.C. 20460
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EPA 510-R-19-002
September 2019

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Overview Of The Public Record Grant Guidelines

Why Is EPA Updating These Guidelines?

The U.S. Environmental Protection Agency (EPA) is updating the public record grant guidelines so they are consistent with requirements in the 2015 federal underground storage tank (UST) regulation. The update primarily affects information about compliance, tank universes, and facility universes.

EPA's Office of Underground Storage Tanks (OUST) initially issued grant guidelines in January 2007 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). That section of the Solid Waste Disposal Act (SWDA) was enacted by the Underground Storage Tank Compliance Act, which is part of the Energy Policy Act of 2005. Subsection (c) of Section 1526 of the Energy Policy Act amended Section 9002 in Subtitle I of the Solid Waste Disposal Act to require states to maintain, update, and make available to the public a record of underground storage tanks 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.

What Is In These Updated 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. This update clarifies changes to public records because of the 2015 federal UST regulation. These guidelines include: 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 The Changes To The Guidelines Take Effect?

Every state receiving a grant under Subtitle I publishes an annual public record. States are on variable schedules for updating their regulations to incorporate the 2015 federal UST regulation and reaching regulatory compliance dates. All states must begin reporting revised tank and facility universes in the public record—including the previously deferred underground storage tanks—as of the effective date of their updated regulations.

EPA updated compliance measure tracking to the technical compliance rate measures to incorporate the 2015 federal UST regulation requirements. Once a state switches to reporting the technical compliance rate to EPA for semi-annual reporting, then states must begin reporting technical compliance rate (TCR) information or equivalent state compliance data in the public record. Before then, states must continue to report significant operational compliance (SOC) information or equivalent state compliance requirements in the public record.

Public Record Requirements

What Underground Storage Tanks Do These Updated Guidelines Apply To?

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 partially excluded underground storage tanks. Underground storage tanks used for hazardous substances, emergency power generation, airport hydrant systems, and field-constructed tanks must be included as part of the public record.

How Does A State Continue To Implement The Public Record Guidelines?

A state implements these guidelines by continuing to make a record containing information consistent with these guidelines available to the public. As in the past, a state may choose to make a record that contains more comprehensive information than described in these guidelines available to the public. For example, some states choose to make a public record available that also includes underground storage tanks regulated by the state but not regulated under Subtitle I.

When Must States Post The Public Record?

States are required to update the public record annually. This means that on or before the same date of the prior year the previous public record was posted, states must post the next public record on their websites. For states that publish tank and compliance information separately from source and cause information, both sections must be posted on or before the prior year's posting to meet these guidelines. We highly encourage states to report their public record data consistent with the federal fiscal year and data reported to EPA, from October 1 of one year to September 30 of the next year.

How Must States Make The Public Record Available?

States post their public records on their websites either directly or through a link to a document or interactive report. The public must be able to easily find a state's public record on its website. Public records that states directly post on their websites must contain the required elements listed in the next section including: posted date; statements of universe description and compliance determination; and source and cause information. See next section.

Because some people do not have access to the Internet, 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 Updated Public Record Contain?

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

Minimum Public Record Content – At a minimum, the information listed below must be included in a state’s public record. Note that these updated grant guidelines refer to the technical compliance rate measures associated with requirements in the 2015 federal UST regulation. States should continue to report significant operational compliance, or equivalent state requirements until their regulation’s compliance dates are effective. Then they begin reporting technical compliance rate or equivalent state measures.

- **Public Record Posted Date** – This is the date the public record document was made available to the public.
- **Active 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. Note that states may separate facilities with only temporarily-closed underground storage tanks from active facilities, as long as they provide both numbers.
- **Active USTs** – This is the total number of regulated underground storage tanks in the state that are not permanently closed. Note that states may separate temporarily-closed underground storage tanks from active 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 technical compliance rate performance measure, which covers spill prevention, overfill, corrosion protection if applicable, and release detection compliance, described in EPA’s October 2018 performance measures definitions; see www.epa.gov/ust/ust-performance-measures. For more information on the technical compliance rate including a guide for inspectors, see www.epa.gov/ust/technical-compliance-rate-tcr-performance-measures. 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 technical compliance rate performance measure, which covers spill prevention, overfill, corrosion protection if applicable, and release detection compliance, for state or federal underground storage tank requirements. If a state is reporting compliance based on criteria that are more stringent than the technical compliance rate performance measure, the state also should 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 3 for applicability. If a state includes information on underground storage tanks that are regulated only by the state, then the universe 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 EPA’s performance measures definitions 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 EPA’s performance measures is available at www.epa.gov/ust/ust-performance-measures. 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. States must provide this information where the source of release is known. States also have the option of reporting data on unknown sources. 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 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, but we have added an optional unknown category. 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, or release source, and the reason for the failure, or release cause. The following contains the minimum list of sources and causes:

- **Sources** – Note that you may choose to address unknown sources by either reporting the source as *unknown* or by not reporting unknown sources. Do not place unknown sources in any of the known source categories. For example, do not place unknown sources in the *other* category.
 - **Tank** – This term means the tank that stores the product and is part of the underground storage tank system. Use this source if regulated substances were released directly from the tank, except if a spill or overfill occurred at the tank, then report this as a delivery problem.
 - **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. Use this source if regulated substances were released directly from the piping. Spills and overfills typically do not occur at piping.
 - **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 is considered a release from the dispenser. This source includes reportable spills and overfills associated with vehicle refueling.
 - **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 category when the release source is known but does not fit into one of the above categories. For example, releases from vent lines, vapor recovery lines, and fill lines are included in this category.
 - **Unknown (Optional Category)** – If desired, use this option to report releases where the source of the release is unknown.

- **Causes** – Note that if you are unable to determine the cause of a release, choose *unknown*.
 - **Spill** – Use this cause when a spill occurs. For example, spills may occur when the delivery hose is disconnected from the tank fill pipe and the spill bucket is not liquid tight 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 category 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 is included in this category.
 - **Unknown** – Use this category when you cannot determine the cause of the release.

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?

As part of the grants award process, states must annually certify that they meet the requirements in the guidelines. 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. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these grant conditions by using 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' website at www.epa.gov/ust/public-record-about-underground-storage-tanks-2005-energy-policy-act or call 202-564-0663.

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 require implementation in subsequent years. To implement the 2005 law, EPA and states are working 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 the 2005 legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see www.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts

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

General Information

Public Record Posted Date: _____

Total Number Of Active UST Facilities: _____
 Total Number Of Active USTs: _____

Summary Information For On-Site Inspections

Number Of UST Facilities Inspected: _____
 Inspection Period Dates: _____ To: _____
 Percent Compliance (Technical Compliance Rate Measure): _____

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

Summary Information For Release

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																	
Unknown (Optional)																	
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?

<input type="checkbox"/> Tank
<input type="checkbox"/> Piping
<input type="checkbox"/> Dispenser
<input type="checkbox"/> Submersible Turbine Pump
<input type="checkbox"/> Delivery Problem
<input type="checkbox"/> Other (specify) _____
<input type="checkbox"/> Unknown

Cause Information – Why did the release occur?

<input type="checkbox"/> Spill
<input type="checkbox"/> Overfill
<input type="checkbox"/> Corrosion
<input type="checkbox"/> Physical Or Mechanical Damage
<input type="checkbox"/> Install Problem
<input type="checkbox"/> Other (specify) _____
<input type="checkbox"/> Unknown