

**Questions And Answers About
Updated And New UST Compliance Performance Measures
U.S. EPA, Office Of Underground Storage Tanks
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In this document, EPA’s Office of Underground Storage Tanks (OUST) discusses our efforts to update existing and develop new underground storage tank (UST) compliance performance measures, establish reporting requirements, determine facilities’ compliance, and report on more stringent requirements. Two attachments provide additional information about our UST compliance performance measures:

- Definitions for the updated and new UST and LUST performance measures
- Guide for inspectors about the updated and new UST compliance performance measures

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Why and how did EPA update the UST compliance performance measures?

In July 2015, EPA revised the federal UST regulation. This was the first major revision to the UST regulation since 1988. The revision strengthened the 1988 UST regulation by increasing emphasis on properly operating and maintaining UST equipment. To ensure our compliance performance measures reflect the 2015 UST regulation, EPA and the Association of State and Territorial Solid Waste Management Officials coordinated to update our existing compliance performance measures and add new measures. We will use these updated and new compliance performance measures to evaluate the UST program’s success in promoting environmentally safe operation of underground storage tank systems. We did not change the corrective action performance measures; they remain the same.

Beginning in October 2016, a workgroup made up of nine states and EPA reviewed the compliance performance measures, identified ways to ensure they capture requirements in the 2015 UST regulation, and recommended revisions for how EPA measures compliance with key aspects of the UST program. To help explain the changes to the compliance performance measures, the workgroup developed this question and answer document, updated the definitions for the performance measures, and created a guide for UST inspectors. The workgroup focused on producing performance measures that are easy for UST inspectors and others to understand

and implement. EPA will use a subset of the updated and new compliance performance measures to determine the national technical compliance rate.

When must states begin reporting on the updated and new compliance performance measures?

Implementing the updated and new compliance measures will be somewhat complex because not all states will begin reporting on the updated and new measures at the same time. A state will begin reporting on updated and new measures when its regulatory deadlines pass. For instance, a state that adopted the same regulatory deadlines as the 2015 federal regulation will first require spill and sump testing in October 2018. That state will begin collecting information in October 2018 and will report on the updated and new measures at mid-year 2019. A state that does not require spill and sump testing until October 2020 will begin collecting information in October 2020 and report on the updated and new measures at mid-year 2021. After a state switches to reporting on the updated and new UST compliance measures, that state will continue to report on these measures and no longer report on the phased out SOC measures. However, states not yet implementing the 2015 UST regulation will continue to report on SOC.

What data is EPA going to collect with the updated and new compliance performance measures?

Currently, states report the percentage of facilities in significant operational compliance with release prevention requirements, release detection requirements, and a combination of those requirements. The updated and new compliance performance measures include the existing measures plus additional testing requirements in the 2015 UST regulation; the updated and new measures capture a more complete picture of compliance nationwide.

Updated Existing Measures

States and EPA updated the existing compliance performance measures to reflect revisions in the 2015 UST regulation. The **release prevention measure** will be separated into three requirements: spill prevention, overfill prevention, and corrosion protection. This measure will record compliance with each of the three requirements, rather than the aggregate measure of release prevention. This will help states and EPA identify specific issues with release prevention compliance and identify future outreach and compliance assistance efforts. The **release detection measure** is similar to the prior measure but now includes provisions from the 2015 regulations such as reporting periodic testing of containment sumps used for interstitial monitoring.

Updated Combined Measure

EPA updated the combined compliance performance measure, which reports on the nationwide progress of the UST program. Currently, the combined measure tracks compliance with the release prevention and release detection measures. The updated combined measure will include compliance with spill prevention, overfill prevention, corrosion protection, and release detection requirements. EPA will refer to this measure as the technical compliance rate or TCR.

Added New Compliance Measures

Currently, significant operational compliance focuses on operation of the facility. The 2015 UST regulation added a number of important requirements beyond just operational compliance. EPA is adding new compliance performance measures for walkthrough inspections, operator training, and financial responsibility. These new measures will give EPA and states a national snapshot of compliance with requirements in the 2015 UST regulation.

Added New Financial Responsibility Measure

EPA is adding a new measure for financial responsibility (FR), and it is slightly different than the other compliance performance measures. States use varying methods and timing to determine compliance with FR, such as:

- Inspectors may review FR documents on site and determine FR compliance at the time of inspection. In these cases, inspectors base compliance on the status of FR at the time of the inspection.
- Alternatively, states may require owners submit FR documents to states, either as a result of compliance inspections if documents are not required to be kept on site, or states may require annual scheduled submissions to states.

Regardless of whether FR is submitted in response to compliance inspections or on a scheduled basis, EPA is requesting that states report compliance based on the first submission received. If states work with owners who come into compliance with FR later, those facilities will be considered out of compliance for purposes of reporting the FR measure. Similar to other measures, states should report if facilities are in compliance at the time of initial FR submissions.

When and how do inspectors determine if facilities are meeting the updated and new compliance performance measures?

Based on facilities' conditions at the time of inspections, UST inspectors determine whether facilities meet the performance measures. While inspectors may determine compliance at the end of actual inspections or based on evidence received after inspections, inspectors must base the compliance determination on conditions of facilities at the time of initial inspections. EPA assumes that inspector compliance assessment of measures is by traditional and routine practices and protocols of implementing agencies.

In order for a facility to be in compliance with a performance measure, a facility must be in compliance with each component of the measure. For the combined measure, or technical compliance rate, if a facility does not meet every compliance element under the associated performance measure, the inspector will determine that the facility is non-compliant with the combined measure.

Additionally:

- States may conduct in house file reviews to supplement data obtained during facility inspections. It is acceptable to receive files at different times than the actual inspections, but files must show that facilities were in compliance at the time of the inspections.
- States must base compliance determinations on the initial inspection and condition of facilities at the time inspectors begin the inspections.

- States must report compliance on a facility basis, rather than on an UST system basis. If any element of a measure is non-compliant at a facility, then the facility is out of compliance for only that element. The measures reflect compliance with select requirements of the 2015 UST regulation, not full compliance.

Determination examples:

- If a facility is unable to provide records and verify that overfill prevention was tested at the time of an initial inspection, but records which confirm the time of testing are submitted after the inspection, then the facility is in compliance and reported as such for performance measures reporting.
- If records indicate the overfill prevention was tested subsequent to the date of an inspection, the facility is non-compliant at the time of the inspection and reported as such.
- If a violation is repaired while the inspector is conducting an initial inspection, the facility is non-compliant with the performance measures because the facility was in violation when the inspector began the inspection.
- If at the time of the initial inspection, an inspector discovers some release detection equipment is nonoperational, yet the equipment is repaired or replaced during the inspection, the facility is non-compliant for performance measures reporting.

What is the difference between meeting the compliance performance measures and full compliance and enforcement?

States and EPA use compliance performance measures as an important way to track compliance nationwide. However, these measures do not track all of the requirements in the 2015 UST regulation. EPA encourages states to conduct full inspections, keep track of compliance with all individual regulatory violations, and take appropriate follow up enforcement action. While EPA requires states to only report on the performance measures, it is useful for states to compile full inspection, violation, and enforcement information so they can identify problems the regulated community might encounter and suggest solutions.

The attached *Meeting UST Compliance Performance Measures: Guide for Inspectors* contains information to help inspectors determine whether facilities are meeting compliance performance measures and calculate the technical compliance rate. States and EPA agreed to the compliance performance measures for UST spill prevention, overfill prevention, corrosion protection, release detection, walkthrough inspections, operator training, and financial responsibility. Other UST regulatory requirements, such as closure, that are absent from the performance measures are important also; please do not interpret their absence otherwise. The other UST requirements are still critical and enforceable regulatory requirements. UST owners and operators must comply with all requirements in the 2015 UST regulation.

Can states report on more stringent requirements than the 2015 federal UST regulation?

Some states have indicated it is difficult to report on the federal UST requirements and would prefer to report on their more stringent state requirements. This may be even more relevant now that EPA updated and added new requirements in response to the 2015 federal UST regulation. States may continue to report on analogous state requirements. In order to recognize that some

states are reporting based on more stringent requirements, EPA in our semiannual report will continue to indicate those states which notify EPA they are reporting based on more stringent requirements. EPA will also update the portion of the semiannual report that provides details about states' requirements, which are more stringent than the corresponding federal requirements.

Do you have questions or need more information?

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