

Dated: May 2, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8310-4]

Grant Guidelines for States Regarding State Compliance Reports on Government Underground Storage Tanks; Solid Waste Disposal Act, Subtitle I, as Amended by Title XV, Subtitle B of the Energy Policy Act of 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: By this notice, the Environmental Protection Agency (EPA), Office of Underground Storage Tanks (OUST) is advising the public that on April 24, 2007 EPA issued the grant guidelines for state compliance reports on government underground storage tanks (USTs) and subsequently made the guidelines available on EPA's Web site. In this notice, EPA is publishing the grant guidelines for state compliance reports on government USTs in their entirety. EPA developed the grant guidelines for state compliance reports on government USTs as required by Section 9003(j) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1526 of the Energy Policy Act of 2005.

DATES: On April 24, 2007, EPA issued and subsequently posted on EPA's Web site the grant guidelines for state compliance reports on government USTs. EPA is notifying the public via this notice that the grant guidelines for state compliance reports on government USTs are available as of May 9, 2007.

ADDRESSES: EPA posted the grant guidelines for state compliance reports on a government USTs on our Web site at: http://www.epa.gov/oust/fedlaws/epact_05.htm#Final. You may also obtain paper copies from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse. You may request copies from NSCEP by calling 1-800-490-9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242-0419; or faxing your request to NSCEP at 301-604-3408. Ask for: *Grant Guidelines To States For Implementing The Provision Of The Energy Policy Act Of 2005*

Requiring States To Report On The Compliance Of Government Underground Storage Tanks (EPA 510-R-07-003, April 2007).

FOR FURTHER INFORMATION CONTACT:

Steven McNeely, EPA's Office of Underground Storage Tanks, at mcneely.steven@epa.gov or 703-603-7164.

SUPPLEMENTARY INFORMATION: 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 of 2005, contains amendments to Subtitle I of the Solid Waste Disposal Act. This is the first federal legislative change for the underground storage tank (UST) program since its inception over 20 years ago. The UST provisions of the law significantly affect federal and state UST programs, require major changes to the programs, and are aimed at further reducing UST releases to our environment. Among other things, the UST provisions of the Energy Policy Act require that states receiving funding under Subtitle I comply with certain requirements contained in the law. OUST worked, and is continuing to work, with its partners to develop grant guidelines that EPA regional tank programs will incorporate into states' grant agreements. The guidelines will provide states that receive UST funds with specific requirements, based on the UST provisions of the Energy Policy Act, for their state UST programs.

Section 9003(j) of Subtitle I of the Solid Waste Disposal Act, as amended by Section 1526 of the Energy Policy Act, requires states that receive Subtitle I funding must report to EPA no later than August 8, 2007 on the compliance status of government-owned and government-operated USTs. As a result of that requirement, EPA worked with states and other stakeholders to develop grant guidelines for state compliance reports on government USTs. States receiving funds from EPA for their UST programs must comply with the UST provisions of the Energy Policy Act and will be subject to action by EPA under 40 CFR 31.43 if they fail to comply with the guidelines.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. Section 601 et.) or Sections 202 and 205 of the Unfunded

Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. Although this action does create new binding legal requirements, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. Section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each house of the Congress and to the Comptroller General of the United States. Since this final action will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit a report to Congress containing this final action prior to the publication of this action in the **Federal Register**.

Grant Guidelines to States for Implementing the Provision of the Energy Policy Act of 2005 Requiring States to Report on the Compliance of Government Underground Storage Tanks

U.S. Environmental Protection Agency; Office of Underground Storage Tanks; April 2007.

Contents

Overview of the Government Underground Storage Tanks Compliance Report Grant Guidelines

Why Is EPA Issuing These Guidelines?
When Do These Guidelines Take Effect?
To Whom Do These Guidelines Apply?

Requirements for the Government Underground Storage Tanks Compliance Report

What Must A State Compliance Report On Government Underground Storage Tanks Include?

What Definitions Are Used In These Guidelines?

When And Where Must A State Submit Its Compliance Report On Government Underground Storage Tanks?

How Will States Demonstrate Compliance With These Guidelines?

How Must A State Ensure The Quality Of Its Government Underground Storage Tanks Report Data?

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

For More Information on the Government Underground Storage Tanks Compliance Report Grant Guidelines

Background About The Energy Policy Act Of 2005

Appendix—Inspection Requirements Of The Energy Policy Act: Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998 (June 8, 2006 EPA Memorandum)

Overview of the Government Underground Storage Tanks Compliance Report 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 provision in Section 9003(j)¹ of the Solid Waste Disposal Act, 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 (b) of Section 1526 of the Energy Policy Act amends Subtitle I of the Solid Waste Disposal Act by requiring states that receive Subtitle I funding to report on the compliance status of their government-owned and/or -operated underground storage tanks (UST). EPA must require each state that receives funding under Subtitle I to submit a state compliance report on government underground storage tanks no later than two years after the date of enactment of the Act. States must submit their compliance reports to the EPA Administrator. The Administrator will make the reports available to the public. The law specifies that each state report:

1. List the location and owner of each underground storage tank regulated under Subtitle I and owned or operated by the federal, state, or local governments in the state that, as of the date of submission of the report, is not in compliance with Section 9003;
2. Specify the date of the last inspection; and
3. Describe the actions that have been and will be taken to ensure compliance

¹ This provision, originally identified as 9003(i) in the Energy Policy Act, was changed to 9003(j) in Public Law 109-168, January 10, 2006.

of the government underground storage tank listed.

When Do These Guidelines Take Effect?

States must submit reports to EPA on or before August 8, 2007. This is a one-time report required under Subsection (b) of Section 1526 of the Energy Policy Act.

To Whom Do These Guidelines Apply?

Any state receiving Subtitle I funding must submit to EPA a state compliance report on government underground storage tanks.

Requirements for the Government Underground Storage Tanks Compliance Report

What Must a State Compliance Report on Government Underground Storage Tanks Include?

A state compliance report on government underground storage tanks must provide the following information for each *noncompliant* federal-, state-, and local-government underground storage tank in its jurisdiction:

1. The location and owner of each government underground storage tank² that, as of the date of submission of the report,³ is not in compliance with 40 CFR Part 280 or with state requirements that are part of a state underground storage tank program EPA has approved under the state program approval (SPA) procedures. At a minimum, states must include the owner's name; UST identification number(s); facility address(es); and city, county, state, and zip code. The compliance determination should be based on the following areas:

- Notification (failure to notify).
- Corrosion protection.
- Tanks and piping have appropriate corrosion protection.
- Documentation available including testing, inspections, and other records.
- Overfill prevention in place and operational.
- Spill prevention in place and operational.
- Tank and piping release detection.
- Appropriate method and appropriate equipment or procedures in place.
- Documentation of proper monitoring and testing.
- Reporting suspected releases.
- Records of tank and piping repairs.

² If a state is unable to separate violations on a tank-by-tank basis, the state may list all tanks at the facility.

³ In order to provide each state agency adequate time to meet the August 8, 2007, reporting submittal deadline, each state should base its noncompliance determination cutoff on the date that its report was submitted for final review.

• Secondary containment where required.

- Financial responsibility.
- Temporary closure.

If a state is reporting compliance based on a determination pursuant to requirements that are more stringent than subtitle I, the state should identify and may list its more stringent requirements.

2. The date of the last on-site inspection that was used to identify each noncompliance underground storage tank. Alternatively, for compliance monitoring activities that occurred prior to August 8, 2005, states may report the date for the last compliance monitoring activity as described in the June 8, 2006, EPA memorandum (see Appendix).

3. The actions that have been and will be taken to ensure the compliance of each noncompliant underground storage tank identified. Note: States are not expected to divulge enforcement confidential information in the report.

States may submit their reports in whatever format they deem appropriate.

What Definitions Are Used in These Guidelines?

On-site inspection is defined in these guidelines as an inspection that is:

- On-site;
- Conducted by a state, local (when contracted or delegated by a state), EPA, or certified third-party inspector; and
- Sufficient to determine compliance with federal underground storage tank requirements in Subtitle I or state requirements that are part of a state underground storage tank program EPA has approved under the SPA procedures in 40 CFR Part 281.

Local government shall have the meaning given this term by applicable state law. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services. *Operator* is defined in 40 CFR 280.12 (http://www.epa.gov/oust/fedlaws/280_a.pdf). *Owner* is defined in 40 CFR 280.12 (http://www.epa.gov/oust/fedlaws/280_a.pdf). *Underground Storage Tank (UST)* has the same meaning as defined in 40 CFR 280.12, except it does not include those tanks identified in 40 CFR 280.10(b) and

280.10(c) as excluded or deferred (http://www.epa.gov/oust/fedlaws/280_a.pdf).

When and Where Must a State Submit Its Compliance Report on Government Underground Storage Tanks?

Each state that receives Subtitle I funding must submit its government underground storage tanks compliance report to the EPA Administrator on or before August 8, 2007.

The state report should be sent to the U.S. EPA Administrator. The mailing address is: Administrator, Attn: State Government UST Compliance Report Submittal, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., MC 0001, Washington, DC 20460-0001. An electronic submittal can be e-mailed to Johnson.Stephen@epa.gov with the title "Submittal of State Government UST Compliance Report" in the subject field.

How Will States Demonstrate Compliance With These Guidelines?

After August 8, 2007, and before receiving future grant funding, each state must provide one of the following to its EPA Regional Office.

1. If a state has submitted its compliance report to the EPA administrator, nothing more needs to be submitted, or
2. For a state that has not yet submitted its compliance report, a document that describes the progress that the state has made so far, the plans for future efforts to complete the compliance report, and the date by which the state expects to meet the requirements.

How Must a State Ensure the Quality of Its Government Underground Storage Tanks Report Data?

To the maximum extent practicable, states must provide accurate and complete data to EPA. States must use quality assurance practices that will produce data of quality adequate to meet project objectives and minimize reporting of inaccurate data.

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 underground storage tank 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 on the Government Underground Storage Tanks Compliance Report Grant Guidelines

Visit the EPA Office of Underground Storage Tanks Web site at 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 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 require 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.

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Appendix



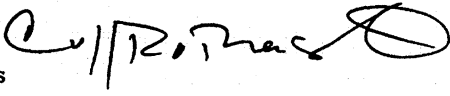
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 8 2006

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Inspection Requirements Of The Energy Policy Act: Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998

FROM: Cliff Rothenstein, Director
Office of Underground Storage Tanks 

TO: EPA Regional UST Division Directors
State UST Program Managers

I am writing to share with you the Agency's determination on how to interpret a key provision of the Energy Policy Act, that is, the requirement to inspect all underground storage tanks (USTs) that have not undergone an inspection since December 22, 1998. To implement this provision, states that receive Solid Waste Disposal Act (SWDA) Subtitle I funding must determine which USTs have undergone an inspection in the relevant time frame. As described more fully below, USTs that have undergone a compliance monitoring activity since December 22, 1998, do not need to have an on-site inspection by August 8, 2007.

This document applies to USTs regulated under Subtitle I in operation on or before December 22, 1998. As used in this document, USTs means those tanks that satisfy the definition of "UST" in 40 C.F.R. § 280.12, except for those tanks identified in 40 C.F.R. §§ 280.10(b) and 280.10(c) as excluded or deferred USTs. This document does not apply to USTs installed after December 22, 1998, because such USTs are not subject to the two-year inspection requirement.

Energy Policy Act Inspection Requirements

The UST provisions in the Energy Policy Act of 2005 contain amendments to Subtitle I of SWDA. Section 1523 of the Energy Policy Act amends section 9005 of SWDA by requiring periodic on-site inspections for USTs. In particular, under section 9005(c)(1), USTs that have not been inspected since December 22, 1998 must have an on-site inspection by August 8, 2007.

Determining Which Underground Storage Tanks Have Undergone An Inspection Since December 22, 1998

In section 9005(c)(1), Congress uses the term “inspection” in connection with determining whether an UST had already undergone an inspection between December 22, 1998 and August 8, 2005. In contrast, however, further in section 9005(c)(1) and then in section 9005(c)(2), Congress uses the term “*on-site* inspection” (emphasis added) in connection with subsequent inspections that EPA or states must conduct within, respectively, a 2-year or 3-year timetable. When enacting section 9005(c)(1), Congress was aware that the states and EPA were using a variety of compliance monitoring activities to determine an owner/operator’s compliance with Subtitle I and its implementing regulations or a requirement or standard of a state program developed under Subtitle I.¹ The use of the term “inspection” without the modifier “on-site” in section 9005(c)(1) reflects Congress’ understanding of the variety of state and federal activities that had been used prior to the enactment of the Energy Policy Act to determine an owner/operator’s compliance with the applicable UST regulations and is limited to the context of this provision in this legislation. By enacting section 9005(c)(2), Congress made a deliberate choice to alter both the frequency of inspections, as well as the variety of existing activities used to determine an owner/operator’s compliance, by legislating that EPA or a state conduct on-site inspections of all USTs every three years.

Therefore, solely for purposes of implementing the requirements of section 9005(c)(1), USTs that have not undergone a compliance monitoring activity since December 22, 1998, have not undergone an inspection under section 9005(c)(1) and thus must have an on-site inspection by August 8, 2007. For the limited purpose of determining which USTs have undergone a compliance monitoring activity since December 22, 1998, the state agency responsible for implementing the UST regulatory program may count any of the activities that the state, or an entity on behalf of the state, was using from December 22, 1998, through August 8, 2005, to reasonably monitor, evaluate, or determine an owner/operator’s compliance with the federal UST regulations or the regulations of a state approved under section 9004.² Any UST that had undergone such a state or federal activity from December 22, 1998, through August 8, 2005, is not required to have an on-site inspection by August 8, 2007, under section 9005(c)(1).

Next Steps

This summer OUST expects to publish draft inspection grant guidelines to implement section 9005(c) of SWDA Subtitle I as amended by the Energy Policy Act of 2005. These guidelines will incorporate the determination made in this memorandum, and detail what states must do to meet the on-site inspection requirements in 9005(c). If you have questions or comments about this memorandum or the inspection requirements contained in the Energy Policy Act, please contact Tim Smith of my office at smith.timr@epa.gov or 703-603-7158.

cc: EPA Regional UST Branch Chiefs
EPA Regional UST Program Managers
OUST Managers
OUST Regional Liaisons

¹ For instance, the Government Accountability Office (GAO) issued a Report to Congress in May 2001 describing the breadth of UST inspection programs which included the use of tank owners’ self-certification that their tanks were in compliance as one activity used to determine UST compliance. The Report also included inspections. EPA considers an inspection to be a visit to a facility or site for the purpose of gathering information, including direct observations, to determine compliance with a statutory requirement, regulation, or other legal obligation.

² While not all such state activities meet EPA’s definition of an inspection, based upon information before Congress prior to enacting section 9005(c)(1), *see* n.1, above, such activities were described to Congress as ways in which some states determine an owner/operator’s compliance with the applicable UST regulations.

Dated: May 2, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 07-2267 Filed 5-8-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0936; FRL-8121-5]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 8, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0936 and the pesticide petition number (PP) of interest, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.