



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

**MEMORANDUM**

**SUBJECT:** Updates to the UST Prevention Assistance Guidance

**FROM:** Mark Barolo, Acting Director  
Office of Underground Storage Tanks (OUST)

**TO:** UST/LUST Regional Program Managers, Regions I - X

Attached is new program guidance that we have developed to assist the Regions in reviewing underground storage tank (UST) assistance agreement proposals from states and tribes. This guidance replaces grant guidance on this topic that was developed in 2008 and 2009 and addresses many issues and questions we have received since that time. Notably this guidance updates the list of allowable and unallowable activities in the UST prevention program, broken out by the funding source. I encourage your Project Officers to review this guidance as needed.

This guidance can also be found on the UST website at <https://www.epa.gov/ust/state-grant-policy-and-guidance>.

Please see the attached program guidance for more details. If you have any questions, please contact me at (202) 564-1611 or Rich Canino at (202) 564-0394.

Attachment

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**Program Guidance for Prevention Assistance  
Agreements Awarded Under the Leaking  
Underground Storage Tank (LUST) Trust Fund Program**

**U.S. Environmental Protection Agency  
Office of Underground Storage Tanks  
Washington, D.C.**  
[www.epa.gov/ust](http://www.epa.gov/ust)  
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## List of Acronyms used in this document

AA	Assistant Administrator
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
EPAct	Energy Policy Act of 2005
FR	Funding Recommendation
LUST	Leaking Underground Storage Tank
MA	Multiple Appropriations
NPTCD	National Policy, Training and Compliance Division
NGGS	Next Generation Grant System
OGC	Office of General Counsel
OGD	Office of Grants and Debarment
OLEM	Office of Land and Emergency Management
OUST	Office of Underground Storage Tanks
PO	Project Officer
PPG	Performance Partnership Grants
RA	Regional Administrator
RCRA	Resource Conservation and Recovery Act
STAG	State and Tribal Assistance Grants
SWDA	Solid Waste Disposal Act
TCR	Technical Compliance Rate
UST	Underground Storage Tank

# Introduction

## Purpose

EPA's Office of Underground Storage Tanks (OUST) developed this guidance to meet the following objectives:

- Establish a comprehensive resource for regional project officers (POs) to consult when reviewing underground storage tank (UST) prevention assistance agreement proposals from states and territories (hereafter referred to as states), tribes, and intertribal consortia (hereafter referred to as tribes),
- Update and consolidate the *2008 Office of Underground Storage Tanks Program Guidance for Prevention Assistance Agreements Awarded Under the Leaking Underground Storage Tank (LUST) Trust Fund Program* and the *2009 Supplemental Guidance*,
- Address questions and issues OUST staff have received from regional POs that were not addressed in the above documents,
- Provide a comprehensive list of allowable and unallowable activities under LUST Prevention and state and tribal assistance grants (STAG) funding, and
- Incorporate grant merit review requirements and accompanying checklist, as required by updates to *OMB's 2 CFR 200 Uniform Grant Guidance*, effective Nov 12, 2020.

This program guidance will assist Regional UST programs as they negotiate and approve state and Tribal UST prevention assistance agreements and work with their Regional Grants Management Offices to ensure timely award funding to states and tribes. Regions must negotiate and award assistance agreements for these funds separate from the general LUST corrective action cooperative agreements and must ensure that funds are tracked and accounted appropriately.

As part of an agreement with EPA's Office of Grants and Debarment (OGD) in establishing the 2 CFR §200.205 merit review process, OUST will review this guidance and the merit review process at least once every five years for possible updates.

This guidance replaces and supersedes the *2008 Office of Underground Storage Tanks Program Guidance for Prevention Assistance Agreements Awarded Under the Leaking Underground Storage Tank (LUST) Trust Fund Program* and the *2009 Supplemental Guidance*.

## Background And Legislative Information

[The Superfund Amendments and Reauthorization Act of 1986](#) established the federal LUST Trust Fund (LTF) to address actual or suspected releases from federally regulated USTs by amending Subtitle I of the Solid Waste Disposal Act (SWDA), also known as the Resource Conservation and Recovery Act (RCRA).<sup>1</sup> The LTF is financed by a one tenth of one cent per gallon tax on gasoline, diesel, and aviation fuels. All taxes are collected directly by the US Treasury Department and place in an account that Congress can draw appropriations from. The tax is not permanent and

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<sup>1</sup> For consistency purposes, SWDA will henceforth be referred to as RCRA in this guidance.

must be reauthorized periodically. This most recently happened in the [Infrastructure Investment and Jobs Act of 2021](#) (also known as the Bipartisan Infrastructure Law), extending the tax through Oct 1, 2026.

[The Energy Policy Act of 2005](#) (EPAct) expanded the authorized uses of the LTF<sup>2</sup> to allow for specific UST prevention activities outlined in RCRA § 9011.<sup>3</sup> EPA interprets SWDA § 9011 in combination with other leak prevention authorities provided by EPAct to authorize the use of LTF for the following major activities:

- Inspections and other enforcement activities,
- Operator training,
- Secondary containment support activities,
- Delivery prohibitions, and
- Public reporting requirements.

EPA's annual appropriation acts authorize financial assistance to tribes for developing and implementing programs to manage USTs in Indian country as part of the RCRA § 9013 strategy for addressing UST concerns on tribal lands.

Prior to passage of EPAct, Congress authorized and appropriated STAG funds for UST prevention activities, as authorized by RCRA § 2007(f)(2). EPA continues to receive a small STAG appropriation to fund UST prevention cooperative agreements to states for activities similar to those authorized by RCRA § 9011, as well as any UST prevention activities not authorized by § 9011.

The language included annually in the STAG appropriation (reproduced below) for the RCRA § 2007(f)(2) program authorizes EPA to supplement grants awarded under LUST-funded RCRA § 9011 grants with STAG money appropriated for RCRA § 2007(f)(2) without regard to general legal restrictions on using two appropriations for the same activities:

*XXX shall be for grants to States under section 2007(f)(2) of the Solid Waste Disposal Act, which shall be in addition to funds appropriated under the heading "Leaking Underground Storage Tank Trust Fund Program" to carry out the provisions of the Solid Waste Disposal Act specified in section 9508(c) of the Internal Revenue Code other than section 9003(h) of the Solid Waste Disposal Act.*

Additional information on the UST Prevention program's statutory authority may be found in the Catalogue of Federal Domestic Assistance (CFDA) Listing [# 66.804 for the UST Prevention, Detection, and Compliance Program](#).

## **Cooperative Agreements or Grants**

EPA has discretion to award either grants or cooperative agreements to states and tribes for UST prevention activities. The difference between a grant and a cooperative agreement is the degree

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<sup>2</sup> For clarity, funds allocated in the prevention are program are called LUST Prevention since they come from the LUST Trust Fund, although the program itself is referred to as UST prevention.

<sup>3</sup> OUST issued program guidance in Fiscal Year 2008, and supplemental guidance in 2009, to reflect the UST prevention funding made available to underground storage tank prevention needs related to EPAct. This guidance document supersedes and replaces those documents.

of EPA's involvement in the activities that a state or tribe will need to carry out with EPA financial assistance. If EPA's involvement is substantial, a cooperative agreement is the appropriate funding vehicle; if that involvement is not substantial, a grant is the appropriate vehicle. Section 7 of EPA Order 5700.1, [Policy for Distinguishing Between Assistance and Acquisition](#) provides additional guidance on determining whether to award a grant or a cooperative agreement.

EPA has determined that UST prevention assistance agreements funded with LUST Trust Fund and/or STAG funding are to be issued as cooperative agreements.

## **Section 1: Allowable uses For STAG And LUST Prevention Money**

### **General Information on Allowable Uses**

The extent of allowable activities in the UST Prevention program depends largely on whether the recipient is a tribe or state. More specifically,

- Tribes may use LUST Prevention money broadly to support any actions necessary to implement the UST prevention program, as highlighted in EPA's [Strategy For An EPA/Tribal Partnership To Implement Section 1529 Of The Energy Policy Act Of 2005](#).
- States may use LUST Prevention money for activities that are reasonably necessary to carry out the major prevention activities outlined in EPAct, described above.
- States may use STAG money for all similar activities as LUST prevention money, as allowed by language in EPA's annual appropriation acts.
- In addition, states may use STAG money for additional state UST program and capacity-building activities associated with their UST programs but not specifically identified in EPAct.<sup>4</sup>

A more comprehensive description of the EPAct requirements states must meet can be found in the UST Prevention guidelines listed below. All state requirement activities listed in these guidelines are eligible for LUST prevention money, including:

- [Inspecting USTs](#) (Section 1523 of EPAct),
- [Operator Training](#) (Section 1524),
- [Public Record](#) (Section 1526),
- [Delivery Prohibition](#) (Section 1527),
- [Financial Responsibility and Installer Certification](#) (Section 1530), and
- [Secondary Containment](#) (Section 1530).

Table 1 below provides more specific examples of state activities that are and are not eligible for LUST prevention and STAG money, based on both the EPAct and subsequent EPA policy decisions. This list is not exhaustive; it represents the most common questions received on eligibility of using LUST and/or STAG funding money.

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<sup>4</sup> The list of eligible STAG activities does not apply to GAP funding, which has its own set of allowable and eligible activities found in [Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortium](#).

**Table 1. Allowable Uses for STAG and LUST Prevention Money**

<b>Allowable activities using STAG and/or LUST Prevention Funding</b>
<ul style="list-style-type: none"> <li>• UST compliance inspections, including training or oversight of inspectors.</li> </ul>
<ul style="list-style-type: none"> <li>• Enforcement activities, including issuing administrative orders and bringing actions for UST violations, including delivery prohibition.</li> </ul>
<ul style="list-style-type: none"> <li>• Database management activities, including inputting data and developing a public facing website, associated tracking, and enforcement related activities, and updating notification/registration forms.</li> </ul>
<ul style="list-style-type: none"> <li>• Training and outreach to UST owners and operators about their EPCRA regulatory requirements.</li> </ul>
<ul style="list-style-type: none"> <li>• State program approval activities that are specifically related to EPCRA regulatory requirements, such as developing enforcement policy for inspections.</li> </ul>
<ul style="list-style-type: none"> <li>• Performing state financial responsibility assurance and enforcement activities that fall under SWDA § 9004(f)(1)(A)(ii) or (iii).</li> </ul>
<b>Allowable activities using STAG Funding Only (Unallowable with LUST P money)</b>
<ul style="list-style-type: none"> <li>• Activities not specifically related to EPCRA requirements, such as developing regulations or interpretations on the 2015 UST regulation, records maintenance of leak detection monitoring, tank closure activities, financial responsibility activities, field constructed airport and hydrant systems activities, or outreach or compliance assistance not related to EPCRA.</li> </ul>
<ul style="list-style-type: none"> <li>• Participation in equipment certification or materials approval activities.</li> </ul>
<ul style="list-style-type: none"> <li>• Participation in a leak detection workgroup.</li> </ul>
<ul style="list-style-type: none"> <li>• Participation in standards development activities.</li> </ul>
<ul style="list-style-type: none"> <li>• Conducting UST compatibility activities.</li> </ul>
<ul style="list-style-type: none"> <li>• Performing contractor certifications, such as installer, remover, tester, or repairers.</li> </ul>
<ul style="list-style-type: none"> <li>• Performing activities related to the interim prohibition in SWDA § 9003(g).</li> </ul>
<b>Activities NOT Allowable with either LUST P or STAG funding</b>
<ul style="list-style-type: none"> <li>• Working on permitting programs not directly linked to delivery prohibition.</li> </ul>
<ul style="list-style-type: none"> <li>• Conducting LUST corrective actions that EPA can fund under SWDA § 9003(h)(7), such as site investigation, assessment, or cleanup of a suspected or actual release.</li> </ul>
<ul style="list-style-type: none"> <li>• Testing petroleum UST operation and maintenance equipment, (such as purchasing spill kits, the replacement/repair of leaking tanks, UST installation, or UST removal and demolition activities).</li> </ul>
<ul style="list-style-type: none"> <li>• Responding to petroleum releases from vehicle accidents.</li> </ul>
<ul style="list-style-type: none"> <li>• Using funds to support state fund administrative costs or to help meet the state cost-share requirement.</li> </ul>
<ul style="list-style-type: none"> <li>• Performing any UST testing activities.</li> </ul>
<ul style="list-style-type: none"> <li>• Paying fines or penalties.</li> </ul>
<ul style="list-style-type: none"> <li>• Performing general training activities for UST staff not related to their credentials.</li> </ul>

## **Section 2: Grant Management and Accounting Information**

### **Getting Started for New POs**

This section provides information for new POs and those new to the UST Prevention cooperative agreement process. Another useful resource for new POs to consult is the [Grants Assistance Agreement Almanac](#).



The [Next Generation Grants System](#) (NGGS) is EPA’s grants management system. All UST Prevention cooperative agreements are both discretionary and non-competitive. There are currently three CFDA’s associated with the UST and LUST programs, but the only correct one to use for Prevention cooperative agreements is #66.804 - [Underground Storage Tank \(UST\) Prevention, Detection, and Compliance Program](#).<sup>5</sup>

See Table 2 below for details on what information should be included on a Commitment Notice.

Table 2 – Information to include on your Commitment Notice												
Line	Site Name	Req No	Fiscal year	Approp. Code	BO code	PRC	Object class	Amount	Site project	Cost Org Code	I/D	Description
001	Name	Set by your FCO	The current FY	F/LUST and/or E/STAG	Your Region, then F	602DJ6	4187	The requested amount	See below	Not needed	Not needed	Not needed

### Project or Site Codes

There is a general rubric for funding commitment notices for LUST Prevention cooperative agreements in NGGS. According to the Agency’s [Funds Control Manual](#), LUST Prevention cooperative agreements require a seven-digit project or site code. The correct code may be entered using the following rubric:

- Characters 1 and 2 indicate the EPA Region, such as 01,
- Characters 3, 4, and 5 should be entered as “00G,” with the G signifying a state or tribal cooperative agreement, and
- Characters 6 and 7 should be entered as “AA,” which indicates EPA Act or LUST prevention money.

There is no requirement for a project or site code for grants funded with STAG appropriations and the program code is L.

### Delegation of Authority

NGGS allows selection of three separate delegations in the same funding recommendation (FR) via a dropdown menu, including:

1. [EPA Delegation 1-114 Approving Assistance Agreements with Federally Recognized Tribes for Programs to Manage Hazardous Waste and Underground Storage Tanks and for Leaking Underground Storage Tank Activities](#)
2. [EPA Delegation 8-14 State Underground Storage Tank Financial Assistance Program and](#)

<sup>5</sup> The other two CFDA’s include #66.805 - [Leaking Underground Storage Tank Trust Fund Corrective Action Program](#), which is used for cooperative agreements in the LUST state fund cleanup program. Separate grant guidance is available for [LUST Corrective Action Cooperative Agreements](#); and #66.816 - [Headquarters and Regional Underground Storage Tanks Program](#), which is used for grants that either promote the prevention, compliance, and identification of USTs or to support activities that promote corrective action, enforcement, and management of releases from UST systems in Indian Country (depending on appropriation).

[State Program Submittals, which](#) authorizes RAs to approve STAG funded financial assistance agreements under SWDA 2007(f)(2). The RAs may, in turn, redelegate authority to the Division Director level; and

3. [EPA Delegation 8-38 Grants and Cooperative Agreements for Subtitle I](#), authorizes the OLEM Assistant Administrator and RAs to take all necessary actions to approve LUST funded prevention grants or cooperative agreements with states and tribes. The OLEM AA may in turn, redelegate the authority to the OUST Office Director and the Regions may redelegate to the Division Director level.

### Statutory Authority

Table 3 below illustrates the correct, statutory authority, delegation of authority, and statutory language to enter on the Funding Recommendation in the NGGS, depending on both the recipient and the appropriation(s) used.

Table 3 – Correct Statutory and Delegation of Authorities for LUST Prevention Cooperative Agreements to enter in NGGS				
Grantee	Funding Source	Statutory authority (line A.15)	Delegation of authority (line A.16)	Statutory Language
State	STAG	SWDA § 2007	<a href="#">8-14 State Underground Storage Tank Financial Assistance Program and State Program Submittals</a>	[Appropriations are available] “to be used to make grants to the states for purposes of assisting the states in the development and implementation of approved State underground storage tank and release detection, prevention, and correction programs under subchapter IX.”
State	LUST Prevention	SWDA § 9011	<a href="#">8-38 Grants and Cooperative Agreements (Subtitle I)</a> .	<p>“Funds made available under section 6991m(2)(D) of this title from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subchapter—</p> <ol style="list-style-type: none"> <li>(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subchapter; and</li> <li>(2) By the Administrator, for tanks regulated under this subchapter (including under a State program approved under section 6991(c) of this title.”</li> </ol>
State	STAG & LUST Prevention	SWDA § 2007 and § 9011	8-14 and 8-38.	See two responses above.

Grantee	Funding Source	Statutory authority (line A.15)	Delegation of authority (line A.16)	Statutory Language
Tribe	LUST Prevention	SWDA § 9013 and the most recent EPA annual appropriations act	<a href="#">1-114 Approving Assistance Agreements with Federally Recognized Tribes for Programs to Manage Hazardous Waste and Underground Storage Tanks and for Leaking Underground Storage Tank Activities.</a>	Annual Appropriations (must be reauthorized and updated every year)  “Provided, That the Administrator is authorized to use appropriations made available under this heading to implement section 9013 of the Solid Waste Disposal Act to provide financial assistance to federally recognized Indian tribes for the development and implementation of programs to manage underground storage tanks.

### Multiple Appropriations or Split Funding

POs may combine LUST Prevention and STAG funding allocated to a state into a single assistance agreement. In so doing, regions must follow EPA’s policy on “split funding” or multiple appropriation grants, as specified in the EPA Order 5730.2, [Multiple Appropriations Awards Policy](#), and provide adequate justification, for example, combining two allocations minimizes the administrative burden on the state.

POs must also develop a proportional charging allocation methodology for single assistance agreements, and per the request of the Research Triangle Park Finance Center, include these charging allocations in the FR to facilitate grant expenditures. States do not need to account for LUST prevention and STAG money separately, but they must follow their existing procedures for complying with [the financial management and audit standards in 2 CFR Part 200](#).

As part of justifying a multiple appropriations grant, POs must include in the FR a description of the methodology for charging payments that reflect the proportional benefit to each appropriation. The allocation methodology should include the following:

- Define what will be allocated. For example, grant funding for (insert scope of work narrative),
- Describe the allocation methodology, including the allocation statistic proposed to distribute costs among subobjectives; the method used to derive the statistic; and the total cost including the portion of the cost to be disbursed by the subobjective, and
- Define the time-period for the methodology.

### Sample Multiple Appropriation Award Grant Allocation Formula:

Table 4 below provides an example of a multiple award funding allocation:

Project or Description	Appropriation	Funding Request	Funding %
Conducting UST compliance inspections, including training and oversight of inspector.	E (STAG)	\$150,000	10%

Conducting UST compliance inspections, including training and oversight of inspector.	F (LUST prevention)	\$1,500,000	90%
	Total	\$1,650,000	100%

**Sample Purpose Statement for Multiple Appropriations Award:**

*The purpose of this project is to assist state UST program managers who implement leak detection, prevention, and related enforcement to manage state USTs that measure results in support of the mission-based goals of the national UST program.*

**Prohibition of LUST Prevention Grants in Performance Partnership Grants (PPGs)**

Although grants may be combined with both LUST prevention and STAG appropriations, states cannot combine these grants with a STAG-funded PPG. This is because the statute authorizing PPGs requires that PPG funding come from the “categorical” STAG appropriation or that Congress otherwise authorize including grant funds in a PPG. This restriction does not apply to grants funded exclusively with STAG money.

**Combining LUST Prevention Funding and SWDA § 2007 STAG Funding in the Same Cooperative Agreement.**

Although LUST Prevention cooperative agreements are prohibited for inclusion in PPGs, LUST Prevention funds and STAG funds available for SWDA § 2007 grants may be combined in a single grant under the Multiple Appropriations (MA) Award Policy. The Office of General Counsel (OGC) has advised that appropriations for LUST prevention grants and SWDA § 2007 grants are legally available for the same types of activities based on the language in EPA’s annual appropriation act. Other requirements of the MA Policy such as developing an allocation formula for distributing charges between LUST prevention and SDWA § 2007 STAG apply.

In practice, many of the administrative efficiencies achieved under PPGs may be accomplished by combining grants with LUST prevention and STAG appropriations. Decisions on PPG use are typically made by the grantee, in consultation with the regional PO, as the grantee will realize the administrative efficiencies.

**Eligible Applicants and Requirements**

These cooperative agreements or grants are only available to states or tribes meeting the requirements as described in the [Federal Register Vol. 67, No. 213, pp. 67181-67183, Update to EPA Policy on Certain Grants to Intertribal Consortia](#). LUST Prevention cooperative agreements authorized by Section 2007(f) of the SWDA are only available to states. While tribes are technically authorized to access STAG funds, EPA has made the policy determination that STAG funds be limited to use for the states.

**Credentials Or Documentation**

States must either submit certification indicating they meet the applicable Energy Policy Act provisions, or submit documentation describing their efforts to meet the requirements, according to [EPA's Energy Policy Act grant guidelines](#). Regional offices maintain the credentials or documentation for states' programs; tribes are not required to provide certification.

A state must complete this or a similar certification form and submit it to the region. The region reviews this form and drafts a memo to OUST, indicating the state either meets the program provisions or has an acceptable plan in place to help achieve compliance, for example, the 3-year inspection cycle mandate. OUST reviews regional memos and state certifications, and when agreeing with regional findings, releases grant money for the award.

### **Project Duration**

The terms of the assistance agreement, including budget and project period duration are determined at the time of the award by the specific EPA regional Grants Office in consultation with the regional UST program.

### **Section 3: Regulatory Requirements and Guidance**

The following regulations apply to all Prevention related cooperative agreements:

- [2 CFR Part 200](#), the Uniform Grant Guidance, government-wide policies and procedures for the award and administration of grants,
- [2 CFR Part 1500](#), a subset of the Uniform Grant Guidance that includes EPA-specific grant requirements, and
- [40 CFR Part 35](#), that includes policies and procedures for providing assistance agreements through state and tribal grants appropriated under STAG.

### **Project Requirements**

States must agree to comply with guidelines EPA issued to implement Title XV, Subtitle B of EPAct as a term and condition of receiving UST prevention grants. See the grant guidelines on EPA's [Energy Policy Act of 2005 and Underground Storage Tanks](#) web page for specific guidelines about each relevant section, such as requirements on delivery prohibition, inspecting USTs, operator training, of EPAct. These guidelines do not apply to tribal LUST Prevention cooperative assistance agreements.

### **Cost Sharing**

When receiving an assistance agreement awarded under SWDA § 9011 and other applicable provisions of Subtitle I of SWDA, states will, per EPA policy, provide a 25 percent cost share. The cost share is based on total project costs. The cost share is consistent with the cost share requirement in 40 CFR § 35.335 for release prevention and detection grants funded with STAG appropriations under Section 2007(f)(2) of the SWDA. States may meet the cost share requirement by any means authorized by the cost share provision of [2 CFR § 200.306](#).

If states ask for documentation of the cost share requirement, regions may provide states a copy of

the revised version of Assistance Listing 66.804. In addition, OLEM provided notice of the cost sharing requirement in [Federal Register Vol.73, No. 61, pp.16674 – 16675, State Cost Share Requirement for Leaking Underground Storage Tank \(LUST\) Prevention Assistance Agreement and Authority to Provide LUST Prevention Assistance Agreements to Tribes](#). When a state receives a combined LUST prevention and STAG grant, the 25 percent cost share is based on total project costs under the combined grant. States need not track their expenditures for cost sharing separately for LUST activities and STAG activities.

Consistent with 40 CFR §35.735, there is no cost share requirement for UST Prevention cooperative agreements for tribes awarded pursuant to annual appropriation acts. OUST decided not to require a tribal cost share, as there is no such requirement described in the SWDA or the annual appropriation acts.

For states, EPA may make exceptions to the [40 CFR § 35.335, State And Local Assistance, Maximum Federal Share](#) for STAG agreements to waive or reduce the 25 percent match or cost sharing requirement. The state cost share provision in 40 CFR § 35.335 is not based on a statutory requirement contained in the applicable grant making authority, § 2007(f)(2) of the Solid Waste Disposal Act. If states request a waiver or reduction of the 25 percent cost share requirement for STAG funded SWDA § 2007(f)(2) assistance agreements, regional offices will need to formally request a waiver to 40 CFR § 35.335 from the Director of OGD's National Policy, Training and Compliance Division (NPTCD) from the provision of EPA's grant regulations as provided in [2 CFR 1500.4](#). See [NPTCD's deviation or waiver procedures](#).

Similarly, although the 25 percent cost share for UST Prevention cooperative assistance agreements is not covered by 40 CFR §35.335, any Region requesting a waiver from the policy-based cost share requirement for LUST prevention assistance agreements must follow the same procedures used for waivers under 2 CFR § 1500.4. Regions can request waivers from OGD's Director, National Policy, Training and Compliance Division.

### **Terms And Conditions — Example**

In the terms and conditions section of a grant award, regions must include a term and condition that the state grantee complies with provisions of the Energy Policy Act for all their UST grants. The following is a sample term and condition:

“The recipient understands it is subject to requirements described in current EPA guidelines implementing Subtitle B, Underground Storage Tank Compliance Act, of Title XV of the Energy Policy Act, that are effective as of the date of this award or funded amendment.”

### **Reporting Requirements**

Reporting requirements are identified at [2 CFR § 200.329](#). POs may include additional information regarding the content and frequency of reporting requirements in the terms and conditions of the assistance agreements, provided the frequency of reporting is consistent with regulatory limits.

## **State Reporting Requirements and Schedule**

State reporting requirements and schedule for UST prevention assistance agreements are identified in the National Program Guidance and in the [semiannual report of UST performance measures](#).

## **Environmental Results**

Regions must negotiate grant-specific performance measures with each state or tribe. These measures are tailored for each state or tribe, and eligibility requirements are based on funding type. Negotiations occur once a grantee submits a draft workplan for regional review and prior to formal submission in [www.grants.gov](http://www.grants.gov). Refer to the [National Program Guidance for OLEM](#) (updated annually) for national performance measures for LUST prevention activities. Specific national LUST prevention environmental results include the UST technical compliance rate (TCR).

## **Section 4: Policy Direction**

### **Allocation And Distribution of Money**

LUST Prevention and STAG appropriations are distributed to the Regions using an allocation formula OUST developed, as required by Congress. This formula calculates the amount of financial need by establishing a base amount for each state and then considering the number of federally regulated USTs in each state. States may make requests to Regions for a certain amount of money to come from STAG, as this money may be more widely used to support prevention related activities not specifically outlined in the Energy Policy Act. Regional offices are empowered to make the final determination on the actual amounts each state and tribe should receive. Funding for tribes is not included in the formula. However, funds are distributed to the tribes based on needs identified by the Regions and informed by the national tribal funding panel.

### **Funding Priorities**

LUST Prevention program funding is used to provide resources to states and tribes for their UST programs. Specific examples of funded projects include: inspections, enforcement, developing leak prevention regulations, and other program infrastructure. Regions should give priority to funding inspections in states that are out of compliance with EPCRA requirements and to assisting states with adopting measures, for example, delivery prohibition, secondary containment, operator training, as required by EPCRA and EPA's grant guidelines.

### **Workplan Guidance**

As part of the Office of Management and Budget's updates to 2 CFR Part 200 Uniform Grant Guidance, we added this section to provide guidance on what should be included in a prevention assistance grant workplan. However, oversight of grant workplans is a regional responsibility and there is no expectation OUST will review workplans.

States and tribes must submit applications for LUST prevention or STAG grants, and they must include budgets and workplans. The budget should include a breakdown of associated costs of each planned activity and output. The workplan should include a proposed schedule for each

activity, specifying target dates and milestones for timely project completion. EPA's regional grants office determines the scope of work of each prevention grant at the time of the award.

## **Environmental Justice (EJ) Considerations**

In implementing [Executive Order 13985 - On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), OUST is encouraging a stronger EJ component in all state and tribal grants. Per the *UST Program's EJ Implementation Guidance*, shared by OUST Acting Office Director Mark Barolo on March 25, 2022, there are several activities that the Regions should pursue with state and tribal partners in their cooperative assistance agreements, such as:

- Working with states to identify EJ activities that the states can implement,
- Memorializing agreed-upon activities in work plans for state grants. This may include a listing of specific activities or a more general “develop a set of actions” depending on the timing of the grant negotiations and how much prior work the state has done to incorporate EJ concerns,
- Analyzing the UST universe using environmental justice criteria and supplementing with other data elements of interest to the state to inform future actions,
- Providing additional compliance assistance to facilities in areas with EJ concerns, and
- Targeting inspection and enforcement efforts at facilities in areas with EJ concerns.

## **Section 5: Merit Review for Non-Competitive Grants**

### **Merit Review**

In August 2020, the Office of Management and Budget announced changes to the Uniform Grant Guidance at 2 CFR Part 200. The most substantive change to the grant rules was the requirement for all Agency non-competitive grants to establish a formal merit review process.

This requirement necessitates the regional project officer to certify that the grant meets program objectives, and that the grantee can meet requirements of the workplan, given their past performance. It requires that the merit review process and checklist be reviewed periodically, which OUST will conduct at least every five years.

The checklist in Appendix 1 is effective as of November 13, 2020, and applies to all new grants awarded after that date. It does not apply to supplemental grants where work has not changed and there are no performance issues with the grantee, nor to any incremental funding amendments. This checklist should be added to Section M of the FR in NGGS.

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## Attachment 1: Grant Merit Review Checklist

### Merit Review Checklist For Applications For New Awards And Supplemental Amendments --STAG UST Categorical And LUST Prevention Grants (Federal Assistance Listing # 66.804)

Note: OGD approved this version on March 19, 2021.

Review of Grant # \_\_\_\_\_

Review conducted by \_\_\_\_\_ (Name and title e.g project officer)

Review conducted on \_\_\_\_\_ (Date)

This checklist was developed to comply with the merit review requirements for non-competitive grant applications under [2 CFR 200/Uniform Grant Guidance](#). It was developed for use by Regional project officers to complete before submitting their funding request to the Regional grant office. Effective as of November 12, 2020, this checklist will be necessary for all new awards, as well as for supplemental amendments where the work is significantly different from the underlying grant and depending on how the grantee has been performing under the grant. It is not required for incremental or unfunded amendments to the grant.

This checklist and the STAG UST categorical and LUST Prevention grant merit review process will be reviewed by the UST program manager on at least a five year cycle, in compliance with the periodic review requirements under [2 CFR 200.205](#).

For grants funded with both STAG and LUST Prevention Funding, Project Officers are to use the criteria for both funding sources when analyzing the merits of the application.

Section 1 describes the determination on whether a merit review is needed for an application for a supplemental amendment. If the answer to both questions is no, you do not need to do a merit review for the application. If the answer to either question is yes, then a merit review based on this checklist is required for the application.

Sections 2-4 establishes the process for conducting merit review and is needed for all new awards, and supplemental amendments based on the section 1 analysis.

#### *Section #1 - Supplemental Funding Applications Merit Review Determination*

1. Are the activities to be performed under the supplemental funding application significantly different from the activities in the underlying grant?	YES	NO
2. Have there been any significant issues with the grantee's performance and reporting so far under the grant that there are concerns whether the grantee can successfully achieve the program objectives. This includes not meeting the 3-year EPAAct inspection cycle and not having a plan for coming back into compliance.	YES	NO

If you have answered no to both questions, sign and date the form and your review is complete. If you answered yes to either of these questions, please continue to section #2.

*Section #2 - New Merit Review Process*

<p>3. Does the grantee’s application meet the following criteria:</p> <p>a. <b>STAG grants only</b> – For STAG grants funded under RCRA § 2007, the proposed workplan complies with the workplan requirements outlined in <a href="#">40 CFR 35.107</a>, and the feasibility requirements listed in <a href="#">40 CFR 35.111</a>, namely that the grant is feasible “given the applicant’s existing circumstances, past performance, program authority, organization, resources, and procedures.”</p> <p>b. <b>LUST prevention grants only</b> – For LUST grants funded under RCRA § 9011, the proposed workplan is feasible given the applicant’s existing circumstances, past performance, program authority, organization, resources, and procedures.</p> <p>c. The grantee’s workplan complies with the allowable activities authorized by SWDA § 9003(i), 9003(j), 9005(c), 9010, 9011, and 9012, and as outlined on page 6 of the <a href="#">Office of Underground Storage Tanks (OUST) Program Guidance for FY 2008 Prevention Funding for Assistance Agreements Awarded under the Leaking Underground Storage Tank (LUST) Trust Fund Program</a> (May ‘08).</p>	<p>a) YES NO N/A</p> <p>b) YES NO N/A</p> <p>c) YES NO</p>
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*Section #3 – Factors in Considering the Grant Amount*

<p>4. Notwithstanding that the applicant’s annual allocation allotment is determined by OUST’s LUST prevention allocation formula, does the workplan justify this year’s funding amount as originally requested?</p>	<p>YES NO</p>
<p>5. If the originally requested amount is not justified, have you worked with the grant applicant to resolve these issues and requested modifications to their workplan that ensures a successful grant?</p>	<p>YES NO N/A</p>

*Section #4 - Grant compliance with LUST program objectives*

<p>6. The objective of the LUST Prevention program, as listed in Assistance Listing 66.804, is to assist states, Territories, Tribes, and Intertribal consortia in developing and implementing UST programs for leak prevention, compliance, and other activities authorized by the Energy Policy Act of 2005. Does the proposed workplan help achieve these program objectives?</p>	<p>YES NO</p>
<p>7. If yes, please provide a brief description of how the grantee is likely to be successful in achieving program objectives. _____</p> <p>_____</p> <p>_____</p>	