

**Proposed Amendments
to the
California Code of Regulations
Title 23. Waters
Division 3. State Water Resources Control Board
and Regional Water Quality Control Boards
Chapter 24. Grant and Loan Programs
Article 2. Replacing, Removing, or Upgrading
Petroleum Underground Storage Tanks Grant
and Loan Program**

**INITIAL
STATEMENT OF REASONS**

**June 2022
State Water Resources Control Board
Division of Financial Assistance**

**Article 2. REPLACING, REMOVING, OR UPGRADING PETROLEUM
UNDERGROUND STORAGE TANKS GRANT AND LOAN
PROGRAM**

The State Water Resources Control Board (State Water Board) proposes to amend the regulations for the Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) Grant and Loan Program located in article 2 of chapter 24 of division 3 of title 23 of the California Code of Regulations (RUST Regulations) to update the RUST Regulations and make them more specific and consistent with current operational practices. The State Water Board further proposes to amend the RUST Regulations to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 and those changes to the Health and Safety Code enacted by Chapter 69, Statutes of 2009, Chapter 649, Statutes of 2009, Chapter 640, Statutes of 2013, and Chapter 547, Statutes of 2014 that still are in effect.

Where appropriate the State Water Board proposes to amend the RUST grant and RUST loan requirements to make the requirements for grants and loans similar, which makes it easier for those applicants who are applying for both a RUST grant and a RUST loan for their project. Consistency between the requirements for RUST grants and RUST loans also serves to streamline the State Water Board's eligibility review.

The State Water Board also proposes certain amendments to the RUST Regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (e.g., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, cross-references, grammar, punctuation, or renumbering or relocating regulatory provisions. For consistency purposes, the citation format for statutory and regulatory references is made consistent throughout the RUST Regulations. To the extent that many of these amendments without regulatory effect are non-substantive and their purpose is self-evident or merely editorial, they are not discussed herein.

The State Water Board has determined that these proposed RUST Regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that concern RUST grant and loans.

The State Water Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing these amendments to the RUST Regulations. The State Water Board relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) in proposing these amendments to the RUST Regulations. The Form 399 is available on the State Water Board's website at:

https://www.waterboards.ca.gov/water_issues/programs/ustcf/rust_regulations.html.

The specific purpose and the basis for the State Water Board's determination of the necessity of each amendment are explained herein.

Consideration of Alternatives

The State Water Board believes that no reasonable alternative to these proposed regulations would be: 1) more effective in carrying out the purpose for which the proposed regulations are proposed; 2) as effective and less burdensome to affected private persons, industry, local governments, and state agencies; or 3) more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The State Water Board has considered the alternatives discussed below. Interested persons may present statements or arguments with respect to alternatives to the proposed amendments during the written comment period or at a hearing, if a hearing is requested, on this matter.

Alternative 1

The State Water Board considered only amending the RUST Regulations to make them consistent with amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 and those changes to the Health and Safety Code enacted by Chapter 69, Statutes of 2009, Chapter 649, Statutes of 2009, Chapter 640, Statutes of 2013, and Chapter 547, Statutes of 2014 that still are in effect, and not amending the RUST Regulations to make them more specific and consistent with current operational practices. This alternative, however, is not reasonable because it would not make the RUST Regulations more specific and consistent with current operational practices. If the State Water Board does not amend the RUST Regulations to make them more specific and consistent with current operational practices, RUST applicants and their contractors will continue to not have a clear understanding of all of the requirements for obtaining and receiving RUST funding. Additionally, the requirements for obtaining and receiving RUST funding may not be applied consistently if they are not specifically set forth in the RUST Regulations.

Alternative 2

The State Water Board considered only amending the RUST Regulations to make them more specific and consistent with current operational practices and not make them consistent with amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 and those changes to the Health and Safety Code enacted by Chapter 69, Statutes of 2009, Chapter 649, Statutes of 2009, Chapter 640, Statutes of 2013, and Chapter 547, Statutes of 2014 that still are in effect. This alternative, however, is not reasonable because the RUST Regulations will continue to not be consistent with the current language of the Health and Safety Code. If the State Water Board does not amend the RUST Regulations to make them consistent with the current

language of the Health and Safety Code, RUST applicants and their contractors will continue to not have a clear understanding of all of the requirements for obtaining and receiving RUST funding. Additionally, it is unclear how the State Water Board could amend the RUST Regulations to make them more specific and consistent with current operational practices without also making them consistent with the current language of the Health and Safety Code.

Alternative 3

The State Water Board considered making no changes to the RUST Regulations. This alternative, however, is not reasonable because it would not make the RUST Regulations: 1) consistent with amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 and those changes to the Health and Safety Code enacted by Chapter 69, Statutes of 2009, Chapter 649, Statutes of 2009, Chapter 640, Statutes of 2013, and Chapter 547, Statutes of 2014 that still are in effect; or 2) more specific and consistent with current operational practices. If the State Water Board does not amend the RUST Regulations to make them consistent with the current language of the Health and Safety Code and to make them more specific and consistent with current operational practices, RUST applicants and their contractors will continue to not have a clear understanding of all of the requirements for obtaining and receiving RUST funding. Additionally, the requirements for obtaining and receiving RUST funding may not be applied consistently if they are not specifically set forth in the RUST Regulations.

ECONOMIC IMPACT ANALYSIS/ ASSESSMENT

The State Water Board has prepared this Economic Impact Analysis/Assessment in accordance with Government Code section 11346.3, subdivision (b).

Article 2. REPLACING, REMOVING, OR UPGRADING PETROLEUM UNDERGROUND STORAGE TANKS GRANT AND LOAN PROGRAM

The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Creation or Elimination of Jobs within California

The State Water Board estimates that the proposed regulatory action will not have an effect on the creation or elimination of jobs within California as a result of the proposed amendments because the amendments to the RUST Regulations do not create or eliminate a significant enough workload to support the creation or elimination of jobs within California.

Creation of New Businesses or the Elimination of Existing Businesses within California

The State Water Board estimates that the proposed regulatory action will not have an effect on the creation or elimination of businesses within California as a result of the proposed amendments because the amendments to the RUST Regulations do not create or eliminate a significant enough workload to support the creation or elimination of businesses within California.

Expansion of Businesses Currently Doing Business with California

The State Water Board estimates that the proposed regulatory action will not have an effect on the expansion of businesses within California as a result of the proposed amendments because the amendments to the RUST Regulations do not create or enough workload to support the expansion of businesses currently doing business within California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulatory action will implement statutory changes and update the RUST Regulations to make them more specific and consistent with existing practice, which will assist the State Water Board in decreasing the processing time for RUST applications, execution of grant and loan agreements, and processing of invoicing. As a result, more RUST projects may be completed, decreasing the risk of soil and groundwater contamination resulting from underground storage tank (UST) releases, improving the health and welfare of California residents, worker safety, and the State's environment.

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business

The proposed regulatory actions will not directly affect businesses statewide because amendments to the RUST Regulations do not create a significant enough workload to support the creation of a new business, elimination of an existing business, or the expansion of an existing business doing business in California.

SPECIFIC PURPOSE AND NECESSITY OF EACH PROPOSED AMENDMENT

SECTION 3402. DEFINITIONS

Specific Purpose and Necessity of the Proposed Action

1. **“Act”** – Deletes the definition of “Act” because it no longer is necessary. As modified, the proposed RUST Regulations provide the applicable references to the Health and Safety Code for clarification purposes.

2. **“Air district”** – Adds a definition of the new term “Air district” to identify all those regulatory agencies that issue permits under Health and Safety Code section 41954 and implementing regulations.
3. **“Applicant’s principals”** – Adds a definition of the new term “applicant’s principals,” which replaces the existing terms “officer” and “officers of the business” in the RUST Regulations for clarification purposes. Existing statutory and regulatory requirements for RUST grant and loan eligibility include the requirement that all officers of the small business be domiciled in California. Additionally, applicants must provide certain tax and/or financial documentation for both the small business and its officers. Not all small businesses use “officer” titles. As defined, the term “applicant’s principals” encompasses all of the primary persons in the small business that must meet the existing requirements for “officers” consistent with existing practice.
4. **“Borrower”** – Modifies the definition of “borrower” to clarify that an applicant does not become a borrower until a fully executed loan is in a place. This clarification is necessary to clearly distinguish borrowers from applicants. The definition of “borrower” is consistent with the existing use of the term.
5. **“California Environmental Reporting System”** – Adds a definition of the new term “California Environmental Reporting System” to identify the statewide electronic database used for regulating USTs in California.
6. **“Capacity”** – Adds a definition of the new term “capacity.” Existing regulations require the State Water Board to determine if a RUST loan applicant is creditworthy. Existing regulations, however, do not give any guidance on how to determine if an applicant is creditworthy. Proposed section 3426(a)(2) amends the requirement to determine creditworthiness to provide that the State Water Board must evaluate the applicant’s character, capital, and capacity, in order to determine if the applicant is creditworthy. These are the factors typically used throughout the lending industry when determining whether a loan applicant is creditworthy. The definition of “capacity” is consistent with the use of this term by the lending industry.
7. **“Capital”** – Adds a definition of the new term “capital.” Existing regulations require the State Water Board to determine if a RUST loan applicant is creditworthy. Existing regulations, however, do not give any guidance on how to determine if an applicant is creditworthy. Proposed section 3426(a)(2) amends the requirement to determine creditworthiness to provide that the State Water Board must evaluate the applicant’s character, capital, and capacity, in order to determine if the applicant is creditworthy. These are the factors typically used throughout the lending industry when determining whether a loan applicant is creditworthy. The definition of “capital” is consistent with the use of this term by the lending industry.

8. **“Character”** – Adds a definition of the new term “character.” Existing regulations require the State Water Board to determine if a RUST loan applicant is creditworthy. Existing regulations, however, do not give any guidance on how to determine if an applicant is creditworthy. Proposed section 3426(a)(2) amends the requirement to determine creditworthiness to provide that the State Water Board must evaluate the applicant’s character, capital, and capacity, in order to determine if the applicant is creditworthy. These are the factors typically used throughout the lending industry when determining whether a loan applicant is creditworthy. The definition of “character” is consistent with the use of this term by the lending industry.
9. **“Collateral”** – Adds a definition of the existing term “collateral” for clarification purposes. The definition of “collateral” is consistent with the use of this term by the lending industry.
10. **“Corrective action”** – Deletes the definition of “corrective action” because it is no longer necessary. As modified, the proposed RUST Regulations provide the applicable statutory reference for the definition of “corrective action” in the only section where this term is used for clarification purposes.
11. **“Environmental audit”** – Deletes the definition of “environmental audit” because “environmental audit” no longer is used in the RUST Regulations. To implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020, the requirement for RUST loan applicants to submit an environmental audit in existing section 3424(d) has been replaced by a requirement in proposed section 3424(h) that RUST loan applicants submit an environmental compliance and risks assessment. As proposed, section 3424(h) allows the State Water Board to better assess environmental compliance and risks at the project facility and is consistent with Health and Safety Code section 25299.103, subdivision (c).
12. **“Financial responsibility”** – Deletes the definition of “financial responsibility” because it no longer is necessary. As modified, the proposed RUST Regulations provide the applicable statutory references for the financial responsibility requirements wherever this term is used for clarification purposes. The statutory references provided are consistent with the statutory references in Health and Safety Code section 25299.102, subdivision (f).
13. **“Grantee”** – Adds a definition of the new term “grantee,” which has been added to the RUST Regulations for clarification purposes to distinguish grantees from applicants. The definition of “grantee” is consistent with the existing use of the term.
14. **“Operator”** – Adds a definition of the existing term “operator” for clarification purposes. The definition of “operator” is consistent with Health and Safety Code section 25299.100, subdivision (f).

15. **“Owner”** – Adds a definition of the existing term “owner” for clarification purposes. The definition of “owner” is consistent with Health and Safety Code section 25299.102, subdivision (f).
16. **“Project”** – Modifies the definition of “project” to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020.
17. **“Project facility”** – Adds a definition for the new term “project facility,” which replaces the term “facility” throughout the RUST Regulations for clarification purposes. The term “project facility” is specific to the facility at which the project tanks are located as distinguished from other facilities that the applicant may own or operate.
18. **“Project tank”** – Deletes the definition of “project tank,” which is replaced with the term “project tanks” throughout the RUST Regulations to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020.
19. **“Project tanks”** – Adds a definition of the new term “project tanks,” which replaces the term “project tanks” throughout the RUST Regulations and is modified to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As modified, the definition of “project tanks” implements earlier amendments to the Health and Safety Code enacted by Chapter 649, Statutes of 2009 and is consistent with Health and Safety Code section 25299.100, subdivision (e).
20. **“Regional Board”** – Deletes the definition of “Regional Board” because “Regional Board” no longer is used in the proposed RUST Regulations. As a result of amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 that removed corrective action as an allowable purpose for RUST loan funding, Regional Water Quality Control Boards do not oversee any work that is eligible for RUST funding.
21. **“RUST Program”** – Modifies the existing definition of “RUST Program” for clarification purposes and to implement amendments to the Health and Safety Code enacted by Chapter 547, Statutes of 2014 and Chapter 296, Statutes of 2020. As modified, the definition of “RUST Program” is consistent with Health and Safety Code, division 20, chapter 6.76, section 25299.100 et seq (Health and Safety Code chapter 6.76).
22. **“Small businesses”** – Modifies subdivision (b) of the existing definition of “small business” consistent with the global change to the RUST Regulations to replace the terms “officers” and “officers of the business” with the new term “applicant’s principals.”
23. **“Tank”** – Modifies the definition of “tank” to replace the reference to the existing definition of “tank” in section 2804 of title 23 of the California Code of Regulations

with a reference to Health and Safety Code section 25281. This change is necessary because the State Water Board plans to amend existing section 2804 to implement amendments to the Health and Safety Code enacted by Chapter 616, Statutes of 2008. These amendments will not be consistent with the definition of “tank” in Health and Safety Code section 25299.100, subdivision (d). As modified, the definition of “tank” in the RUST Regulations is consistent with the definition of “tank” in Health and Safety Code section 25299.100, subdivision (d).

24. **“Underground storage tank”** – Modifies the definition of “underground storage tank” to replace the reference to the existing definition of “underground storage tank” in section 2804 of title 23 of the California Code of Regulations with a reference to Health and Safety Code section 25281. This change is necessary because the State Water Board plans to amend existing section 2804 to implement amendments to the Health and Safety Code enacted by Chapter 616, Statutes of 2008. These amendments will not be consistent with the definition of “tank” in Health and Safety Code section 25299.100, subdivision (d). As modified, the definition of “underground storage tank” in the RUST Regulations is consistent with the definition of “tank” in Health and Safety Code section 25299.100, subdivision (d).

SECTION 3421. GRANT AND LOAN PURPOSES

Specific Purpose and Necessity of the Proposed Action

1. **Section 3421(a) and (b)** – Combines existing subdivisions (a) and (b) into proposed subdivision (a) because there no longer is a difference in the purposes for which RUST grant and loan funds may be used, making it unnecessary to split the purposes into two subdivisions. Also, modifies the allowable funding purposes to implement amendments to the Health and Safety Code enacted by Chapter 547, Statutes of 2014 and Chapter 296, Statutes of 2020. In addition, modifies this provision to clarify that RUST only may finance costs, not reimburse past costs in accordance with Health and Safety Code section 25299.104, subdivision (c) and section 25299.107, subdivision (b). As modified, subdivision (a) is consistent with Health and Safety Code section 25299.101, section 25299.104, subdivision (c), section 25299.105, subdivision (c), and section 25299.107, subdivision (b).
2. **Section 3421(b)** – Adds this subdivision to clarify those categories of costs that are eligible for RUST grant or loan funding because these costs are necessary to meet the eligible purposes set forth in subdivision (a).
3. **Section 3421(b)(1)** – Adds this subdivision to specify that the cost of an “upgrade” or “repair” as defined in California Code of Regulations, title 23, section 2610 is eligible for RUST grant and loan funding, consistent with existing practice. Pursuant to proposed subdivision (a), RUST grant and loan funding may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code, division 20, chapter 6.7, section 25280 et seq (Health and Safety Code

chapter 6.7) and implementing regulations, located at California Code of Regulations, title 23, division 3, chapter 16, section 2610 et seq. The terms “upgrade,” “remove,” and “replace” are not defined in either Health and Safety Code chapter 6.76 or the RUST Regulations. “Repair” as defined in California Code of Regulations, title 23, section 2610 includes a wide range of actions to restore a tank or UST system to proper operating condition, including work that an ordinary person might consider to be an upgrade or the removal and replacement of a component of the UST system. “Upgrade,” on the other hand, is given a relatively narrow meaning in California Code of Regulations, title 23, section 2610 for reasons that are not relevant to the RUST Program. Both “upgrades” and “repairs” are necessary for UST owners and operators to comply with Health and Safety Code chapter 6.7 and implementing regulations. For these reasons, this subdivision specifies that the cost of an “upgrade” or “repair” is eligible for RUST grant and loan funding.

4. **Section 3421(b)(2)** – Adds this subdivision to specify that the cost of an upgrade or repair of the project tanks to comply with Health and Safety Code section 41954 and implementing regulations is eligible for RUST grant and loan funding, consistent with existing practice. Pursuant to proposed subdivision (a), RUST grant and loan funding may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code section 41954 and implementing regulations. The terms “upgrade,” “remove,” and “replace” are not defined in either Health and Safety Code chapter 6.76 or the RUST Regulations. Work that an ordinary person might consider to be an upgrade or the removal and replacement of the enhanced vapor recovery system or components required to comply with Health and Safety Code section 41954 and implementing regulations also can be considered to be a repair. For these reasons, this subdivision specifies that the cost of an upgrade or repair necessary to comply with Health and Safety Code section 41954 and implementing regulations is eligible for RUST funding is eligible for RUST grant and loan funding.
5. **Section 3421(b)(3)** – Adds this subdivision to specify that the cost of complying with the requirements of Health and Safety Code chapter 6.7 and implementing regulations for replacing or removing project tanks is eligible for RUST grant and loan funding, consistent with existing practice. Pursuant to proposed subdivision (a), RUST grant and loan funding may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7 and implementing regulations. The cost of replacing or removing the project tanks includes costs such as the removal and replacement of project tanks will involve the costs for soil samples taken as part of the removal of project tanks and the costs for testing the replacement tanks to ensure proper installation and operation. This subdivision is necessary to specify that all costs associated with complying with the requirements in Health and Safety Code chapter 6.7 and implementing regulations for replacing or removing the project tanks are eligible for RUST grant and loan funding.

6. **Section 3421(c)** – Adds this subdivision to specifically identify common types of costs that are not eligible for RUST grant or loan funding because these costs are not necessary to meet the eligible purposes set forth in subdivision (a).
7. **Section 3421(c)(1)** – Adds this subdivision to specify that any cost for work performed before the grantee or borrower has an executed RUST grant or loan is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Consistent with proposed subdivision (a), RUST grant and loan funds only may be used to finance the costs of an eligible project, not reimburse an applicant who already has performed work.
8. **Section 3421(c)(2)** – Adds this subdivision to specify that any cost associated with repairing, remodeling, or reconstructing buildings, canopies, or landscaping or other improvements, including building permits and architecture plans is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. UST owners and operators who are removing and replacing all or most of their UST system may complete additional improvements to their gas stations during construction, such as repairing, remodeling, or reconstructing of buildings, canopies, or landscaping or other improvements for a variety of reasons including business modernization and expansion. This work is not necessary to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, or implementing regulations and is not eligible for RUST grant and loan funding.
9. **Section 3421(c)(3)** – Adds this subdivision to specify that any cost associated with removing, replacing, upgrading, or installing a dispenser, computer software or equipment that is not part of the monitoring system, or any other equipment that is not necessary to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. UST owners and operators have many reasons to remove, replace, upgrade, or install new dispensers, computer software or equipment that is not part of the monitoring system, and other equipment that is not necessary to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations, including meeting accessibility requirements and payment card industry data security standards and business modernization and expansion. Pursuant to proposed subdivision (a), RUST grant and loan funds only can be used for work that is necessary to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, or implementing regulations. RUST grant and loan funds cannot be used for removing, replacing, upgrading, or installing these items except where the work is necessary to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, or implementing regulations.

10. **Section 3421(c)(4)** – Adds this subdivision to specify that any cost associated with installing an additional UST, dispenser, or associated equipment is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. RUST funds cannot be used for the purpose of expanding the applicant’s business by adding additional USTs, dispenser, or associated equipment.
11. **Section 3421(c)(5)** – Adds this subdivision to specify that any cost associated with changing the type of petroleum stored in a UST is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. Choosing to switch the substance stored in a UST (e.g., switching from storing gasoline to storing diesel) is an expansion or change to the applicant’s business. RUST funds cannot be used for the purpose of expanding or changing the applicant’s business.
12. **Section 3421(c)(6)** – Adds this subdivision to specify that any cost associated with the temporary or permanent closure-in-place of a UST is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. Temporary closure of a UST only is allowed if the UST owner or operator intends to return the UST to use. It is not a step towards removing or permanently closing the UST in place. While permissible if certain requirements are met, permanently closing a UST in place is not the same as proper removal of the UST. Temporary closure and permanent closure-in-place are not eligible purposes for RUST grant and loan funding because the activities are not part of upgrading, removing, or replacing the project tanks.
13. **Section 3421(c)(7)** – Adds this subdivision to specify that any cost associated with advertising or marketing, including signage, decals, or other markings or advertising is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. RUST funds cannot be used for the purpose of advertising or marketing.
14. **Section 3421(c)(8)** – Adds this subdivision to specify that any cost associated with testing tanks, except for testing required pursuant to chapter 6.7 of division 20 of the

Health and Safety Code, section 41954 of the Health and Safety Code, and implementing regulations to ensure proper installation and operation of the project tanks after they have been upgraded, repaired, or replaced, is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. UST owners or operators are required to conduct certain tests on a periodic basis as part of regular maintenance of their UST systems. RUST funds cannot be used for this periodic testing because this testing is not part of upgrading, removing, or replacing the project tanks. RUST funds only can be used for those tests required pursuant to chapter 6.7 of division 20 of the Health and Safety Code, section 41954 of the Health and Safety Code, and implementing regulations to ensure proper installation and operation of the project tanks after they have been upgraded, repaired, or replaced.

15. **Section 3421(c)(9)** – Adds this subdivision to specify that any cost associated with collecting and analyzing soil samples, except for soil samples required for the proper removal of the project tanks pursuant to chapter 6.7 of division 20 of the Health and Safety Code and implementing regulations to detect or confirm if an unauthorized release has occurred, is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 removed corrective action as an allowable purpose for RUST loan funding. Consistent with these amendments and pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. RUST grant and loan funding cannot be used for corrective action costs.

Soil samples required for the proper removal of the project tanks pursuant to chapter 6.7 of division 20 of the Health and Safety Code and implementing regulations to detect or confirm if an unauthorized release has occurred are not corrective action and these costs are not eligible for reimbursement under the UST Cleanup Fund. Soil samples taken for the purpose of investigating a confirmed unauthorized release is corrective action and the costs for collecting and analyzing these soil samples are not eligible for RUST grant and loan funding. Eligible UST Cleanup Fund claimants can be reimbursed by the UST Cleanup Fund for eligible reasonable and necessary costs of corrective action, including soil samples taken for the purpose of investigating a confirmed unauthorized release.

16. **Section 3421(c)(10)** – Adds this subdivision to specify that any cost associated with corrective action as defined by Health and Safety Code section 25299.14 is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 removed corrective action as an allowable purpose for RUST loan

funding. Consistent with these amendments and pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. RUST grant and loan funding cannot be used for corrective action costs.

17. **Section 3421(c)(11)** – Adds this subdivision to specify that any cost associated with any carrying cost, interest charge, or finance charge is not eligible for RUST funding, consistent with existing practice and RUST funding limitations. Pursuant to proposed subdivision (a), RUST grant and loan funding only may be used for the costs necessary to upgrade, remove, or replace project tanks to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations. Carrying costs, interest charges, and finance charges are not necessary to comply with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and implementing regulations, and are not eligible for RUST grant and loan funding.
18. **Section 3421(c)(12)** – Adds this subdivision to clarify that any other cost not directly related to the purposes set forth in subdivision (a) is not eligible for RUST grant or loan funding. Subdivision (c)(12) is necessary because it is not possible to list every possible ineligible cost.

SECTION 3421.1. MAXIMUM LIFETIME GRANT AMOUNT

Specific Purpose and Necessity of the Proposed Action

1. **Section 3421.1(a)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 547, Statutes of 2014. Consistent with Health and Safety Code section 25299.107, subdivision (d), the maximum lifetime grant amount that any person or entity may receive from the RUST Program is \$70,000.
2. **Section 3421.1(b)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 547, Statutes of 2014. As proposed, subdivision (b) is consistent with Health and Safety Code section 25299.107, subdivision (e), which provides that a person or entity may receive up to \$140,000 in RUST grant funds for the removal and replacement of a project tank that is required to be permanently closed pursuant to Health and Safety Code section 25292.05 if the project facility is available for public use and there is no other public fueling station within a fifteen mile radius. This \$140,000 RUST grant does not count against the person or entity's \$70,000 maximum lifetime RUST grant amount. Therefore, an eligible applicant may be eligible for up to \$210,000 in RUST grant funding to comply with Health and Safety Code section 25292.05.

SECTION 3422. LOAN ELIGIBILITY

Specific Purpose and Necessity of the Proposed Action

1. **Section 3422** – Deletes existing subdivision (a)(2) in order implement amendments to the Health and Safety Code enacted by Chapter 640, Statutes of 2013. Also modifies section 3422 for clarification purposes. As modified, section 3422 is consistent with Health and Safety Code section 25299.102. Section 3422 is renumbered accordingly.
2. **Section 3422(b)** – Deletes existing subdivision (b) and moves its provisions to proposed section 3422.1 to separate the RUST loan and grant eligibility requirements to better organize the RUST Regulations. Section 3422 is renumbered accordingly.
3. **Section 3422(b)** – Moves existing subdivision (a)(3) to proposed subdivision (b) and modifies it to implement amendments to the Health and Safety Code enacted by amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As modified, subdivision (b) is consistent with Health and Safety Code section 25299.102, subdivision (f).
4. **Section 3422(c)** – Moves existing subdivision (a)(4) to proposed subdivision (c) and modifies it to implement amendments to the Health and Safety Code enacted by amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As modified, subdivision (c) is consistent with Health and Safety Code section 25299.102, subdivision (d).
5. **Section 3422(d)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (d) is consistent with Health and Safety Code section 25299.102, subdivision (e).
6. **Section 3422(e)** – Moves existing subdivision (a)(5) to proposed subdivision (d).
7. **Section 3422(f)** – Adds this subdivision to further implement proposed section 3423(b), which limits RUST loan funding so that no person or entity owes a principal balance of more than \$750,000 at any time for all the person's or entity's RUST loans. Proposed section 3423(b) further provides that the State Water Board cannot issue a RUST loan for less than \$10,000. Consistent, with these provisions, proposed subdivision (f) provides that an applicant only is eligible for a RUST loan if the total principal balance owed at the time of application for all of the applicant's RUST loans is less than \$740,000.

SECTION 3422.1. GRANT ELIGIBILITY

Specific Purpose and Necessity of the Proposed Action

1. **Section 3422.1** – Deletes existing section 3422(b) and moves its provisions regarding grant eligibility requirements to proposed section 3422.1 to better organize the RUST Regulations. In addition, the RUST grant eligibility provisions are expanded to set forth and make specific each of the eligibility requirements for RUST grant eligibility in Health and Safety Code section 25299.105 for clarification purposes and ease of use.
2. **Section 3422.1(a)(1)** – Moves the requirement that the applicant own or operate the project tanks from existing section 3422(b) to proposed section 3422.1(a)(1) and modifies it to specify that the applicant must be a small business, consistent with Health and Safety Code section 25299.105, subdivision (a)(1) and existing regulations.
3. **Section 3422.1(a)(2)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by amendments to the Health and Safety Code enacted by Chapter 69, Statutes of 2009 and Chapter 296, Statutes of 2020. As proposed, subdivision (a)(2) is consistent with Health and Safety Code section 25299.105, subdivision (a)(3).
4. **Section 3422.1(a)(3)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 69, Statutes of 2009 and Chapter 296, Statutes of 2020. As proposed, subdivision (a)(3) is consistent with Health and Safety Code section 25299.105, subdivision (a)(5).
5. **Section 3422.1(a)(4)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (a)(4) is consistent with Health and Safety Code section 25299.105, subdivision (a)(6).
6. **Section 3422.1(a)(5)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (a)(5) is consistent with Health and Safety Code section 25299.105, subdivision (a)(4)(A).
7. **Section 3422.1(a)(6)** – Adds this subdivision to further implement proposed section 3421.1, which provides that the maximum lifetime grant amount that any person or entity may receive from the RUST Program is \$70,000 unless the applicant meets the requirements of proposed section 3421.1(b). A person or entity may receive one or more RUST grants up to the maximum amount; however, proposed section 3423.1(b) provides that the State Water Board cannot issue a RUST grant for less than \$3,000. Consistent with these provisions, proposed subdivision (a)(6) provides that an applicant only is eligible for a RUST grant if the

total of any previous grants that the applicant has received is less than \$67,000 or the applicant meets the requirements of proposed section 3421.1(b).

3. **Section 3422.1(b)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 547, Statutes of 2014 and Chapter 296, Statutes of 2020. This subdivision provides that the State Water Board may waive the requirements set forth in subdivisions (a)(3) and (a)(4) if: 1) the project tanks will be removed and will not be replaced with new tanks; and 2) the applicant is not eligible for a loan pursuant to section 3422. Health and Safety Code section 25299.105, subdivision (b)(1) sets forth an additional requirement that the applicant own or operate the project tanks. The State Water Board has determined that it is not necessary to include this additional requirement in proposed subdivision (b) because the applicant already must own or operate the project tanks to be eligible for a RUST grant pursuant to subdivision (a)(1). As proposed, subdivision (b) is consistent with Health and Safety Code section 25299.105, subdivision (b).

SECTION 3423. LOAN TERMS

Specific Purpose and Necessity of the Proposed Action

1. **Section 3423(a)** – Adds this subdivision to set forth the allowable terms of loans, the collateral requirements for those terms, and the applicable interest rate consistent with Health and Safety Code section 25299.104, subdivision (b) and existing practice. All RUST loans are secured by a Uniform Commercial Code Financing Statement. RUST loans with a term of twenty years are further secured by a Deed of Trust and Assignment of Rents on the real property on which the project facility is located. Health and Safety Code section 25299.104, subdivision (b) provides that the interest rate shall be set at the rate equal to one-half of the most recent general obligation bond rate obtained by the California State Treasurer's Office at the time of the loan commitment.
2. **Section 3423(b)** – Adds this subdivision to set forth the minimum and maximum RUST loan amounts consistent with Health and Safety Code section 25299.104, subdivision (a). There is no maximum lifetime limit on the amount of RUST loan funding that a person or entity may receive, and a person or entity may receive multiple loans from the RUST Program. This subdivision, however, provides that no person or entity can owe a principal balance of more than \$750,000 at any time for all the person's or entity's RUST loans. This limitation reduces the risk to the RUST Program from borrower defaults and ensures that the RUST Program's limited funds are available to assist a larger number of UST owners and operators in complying with regulatory requirements.
3. **Section 3423(c)** – Moves existing subdivision (a) to proposed subdivision (c) and modifies it to set forth and make specific each of the loan terms and conditions in

Health and Safety Code section 25299.104 for clarification purposes and ease of use.

4. **Section 3423(c)(2)** – Moves existing subdivision (a)(2) to proposed subdivision (c)(2) to replace “late charges” with “late fee” consistent with existing terminology. Also, modifies this subdivision for clarification purposes. Failure to comply with any of the terms and conditions of a RUST loan may constitute an event of default. A late fee only can be imposed for failure to make a timely payment of the full interest and/or principal due. The State Water Board has other remedies under its RUST loan agreements for other events of default.
5. **Section 3423(c)(3)** – Moves existing subdivision (a)(3) to proposed subdivision (c)(3) and modifies it to provide references to the specific applicable federal, state, or local requirements that apply to USTs for clarification purposes. As modified, this subdivision is consistent with amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 and existing practice.
6. **Section 3423(c)(4)** – Moves existing subdivision (a)(4) to proposed subdivision (c)(4) and modifies it for clarification purposes to specify the licensing requirements set forth in the previously referenced sections of the Business and Professions Code. Also, modifies this subdivision to include a requirement that RUST borrowers’ contractors not only hold current and active license(s) issued by the California Contractor State Licensing Board, but also comply with all applicable requirements set forth in California Code of Regulations, title 23, section 2715 of the California Code of Regulations. As modified, this subdivision is consistent with existing practice.
7. **Section 3423(c)(5)** – Adds this subdivision to provide that the borrower must pay a loan origination fee of up to two percent of the requested loan amount upon execution of the loan. The amount of the loan origination fee is consistent with Health and Safety Code section 25299.104, subdivision (d).
8. **Section 3423(c)(6)** – Adds this subdivision to clarify that the State Water Board may add any provision to a RUST loan that is necessary to protect its position as a creditor or to ensure that the project complies with applicable laws. Subdivision (c)(6) is necessary because it is not possible to list every provision that may be necessary to either protect the State Water Board’s position as a creditor or to ensure that the project complies with applicable laws. Funds from the RUST Program are limited and provisions that protect the State Water Board’s position as a creditor ensure the long-term viability of the RUST Program. In addition, projects that do not comply with all applicable laws, including Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations, do not serve the purpose of the RUST Program. Further, compliance with all applicable laws generally is necessary for the borrower to have the ability to repay the RUST loan.

9. **Section 3423(d)** – Moves existing subdivision (b) to proposed subdivision (d) and modifies it to clarify that RUST loan funding only may be made for costs invoiced to the borrower for completed work and that no disbursements will be made for deposits. This provision is consistent with existing practice and ensures that limited RUST grant funding is not used for work that has not been completed and may not ever be completed.

Also, modifies this subdivision to provide that the State Water Board may withhold the final ten percent of the RUST loan funding until completion of the project in accordance with existing practice. Funds from the RUST Program are limited and incomplete projects do not serve the purpose of the RUST Program. Further, completion of the project generally is necessary for the borrower to have the ability to repay the RUST loan. This provision ensures that RUST funds are not used on projects where the borrower is unable or unwilling to complete the project. The State Water Board will release the withheld RUST loan funds to the borrower upon completion of the project.

In addition, modifies this subdivision so that the conditions precedent for disbursement are the same for all disbursements for clarification purposes and conciseness.

10. **Section 3423(d)(1), (d)(2), and (d)(3)** – Deletes existing subdivisions (d)(1), (d)(2), and (d)(3), combines existing subdivisions (d)(1)(A), (d)(2)(A), and (d)(3)(A) into proposed subdivision (d)(1), combines existing subdivisions (d)(1)(A), (d)(2)(A), and (d)(3)(A) into proposed subdivision (d)(2), and modifies the provisions in proposed subdivisions (d)(1) and (d)(2) so that the conditions precedent for all projects eligible for RUST loan funding is the same for clarification purposes and conciseness. The paragraphs within subdivision (d) are renumbered accordingly.

As modified, subdivisions (d)(1) and (d)(2) apply to all projects and are consistent with existing practice. Proposed subdivision (d)(1) conditioning RUST loan disbursement on an executed contract by a licensed contractor including costs consistent with the project budget contained in the loan agreement is necessary to ensure that the project will be conducted by a licensed contractor and that budget in the RUST loan agreement is sufficient to complete the project. Proposed subdivision (d)(2) conditioning RUST loan disbursement on receipt of all permits or regulatory approvals required for the project is necessary in order to ensure that the project is being conducted in compliance with all applicable laws and that it will receive final regulatory approval upon completion.

12. **Section 3423(d)(3)** – Adds this subdivision to condition RUST loan disbursement on receipt of original invoices supporting all requested costs, including all subcontractor(s) invoices. This provision, which is consistent with existing practice, is necessary to determine whether the costs requested by the borrower are for costs for work that is eligible for RUST loan funding and that the costs actually have been incurred for work that was performed by the contractor and any subcontractor(s).

This ensures that RUST loan funding only is used for eligible purposes and serves to prevent fraud, waste, and abuse.

13. **Section 3423(d)(4)** – Deletes existing subdivision (d)(4) consistent with amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 removing corrective action as an allowable purpose for RUST loan funding.

Adds proposed subdivision (d)(4) to clarify that the State Water Board may request any other information or documentation reasonably required to determine whether a cost requested by a borrower are eligible for RUST loan funding. This provision, which is consistent with existing practice, is necessary because additional information or documentation sometimes is necessary to determine whether the costs requested by the borrower are for costs for work that is eligible for RUST grant funding and that the costs actually have been incurred for work that was performed by the contractor and any subcontractor(s). This ensures that RUST grant funding only is used for eligible purposes and serves to prevent fraud, waste, and abuse.

SECTION 3423.1. GRANT TERMS

Specific Purpose and Necessity of the Proposed Action

1. **Section 3423.1** – Adds this section to set forth the terms and conditions for RUST grant agreements, which are consistent with existing practice. These terms and conditions are necessary to carry out the purpose of the RUST Program and to ensure that the project complies with all applicable laws.
2. **Section 3423.1(a)(1)** – Adds this subdivision to require RUST grantees to comply with all permitting requirements and applicable laws, including Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. This subdivision, which is consistent with existing practice, is necessary to ensure that RUST grantees comply all applicable laws, including Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. Funds from the RUST Program are limited and projects that do not comply with all applicable laws, including Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations, do not serve the purpose of the RUST Program.
3. **Section 3423.1(a)(2)** – Adds this subdivision to require RUST grantees' contractors hold current and active license(s) issued by the California Contractor State Licensing Board and complies with all applicable requirements for service technicians set forth in California Code of Regulations, title 23, section 2715. This subdivision, which is consistent with existing practice, is necessary to ensure that RUST grantees' contractors comply with applicable contracting and UST requirements. Funds from the RUST Program are limited and projects that do not comply with all applicable laws do not serve the purpose of the RUST Program.

4. **Section 3423.1(a)(3)** – Adds this subdivision to clarify that the State Water Board may add any provision to a RUST grant that is necessary to ensure that the project complies with applicable laws. Subdivision (a)(3) is necessary because it is not possible to list every provision that may be necessary to ensure that the project complies with applicable laws. Funds from the RUST Program are limited and projects that do not comply with all applicable laws, including Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations, do not serve the purpose of the RUST Program.
5. **Section 3423.1(b)** – Moves the provision in existing section 3425(c) providing the maximum amount of grant funding that an applicant may receive to proposed section 3423.1(b) and modifies it to implement amendments to the Health and Safety Code enacted by Chapter 547, Statutes of 2014. As modified, this subdivision is consistent with Health and Safety Code section 25299.107.
6. **Section 3423.1(c)** – Adds this subdivision to provide that disbursement of RUST grant funding only may be made for costs invoiced to the grantee for completed work and that no disbursements will be made for deposits. This provision is consistent with existing practice and ensures that limited RUST grant funding is not used for work that has not been completed and may not ever be completed.

In addition, this subdivision provides that the State Water Board may withhold the final ten percent of the RUST grant funding until completion of the project in accordance with existing practice. Funds from the RUST Program are limited and incomplete projects do not serve the purpose of the RUST Program. This provision ensures that RUST funds are not used on projects where the grantee is unable or unwilling to complete the project. The State Water Board will release the withheld RUST grant funding to the grantee upon completion of the project.

7. **Section 3423.1(c)(1)** – Adds this subdivision to condition RUST grant disbursement on an executed contract by a licensed contractor including costs consistent with the project budget contained in the loan agreement. This provision, which is consistent with existing practice, is necessary to ensure that the project will be conducted by a licensed contractor and that budget in the RUST grant agreement is sufficient to complete the project.
8. **Section 3423.1(c)(2)** – Adds this subdivision to condition RUST grant disbursement on receipt of all permits or regulatory approvals required for the project. This provision, which is consistent with existing practice, is necessary in order to ensure that the project is being conducted in compliance with all applicable laws and that it will receive final regulatory approval upon completion.
9. **Section 3423.1(c)(3)** – Adds this subdivision to condition RUST grant disbursement on receipt of original invoices supporting all requested costs, including all subcontractor(s) invoices. This provision, which is consistent with existing practice, is necessary to determine whether the costs requested by the borrower are for costs

for work that is eligible for RUST grant funding and that the costs actually have been incurred for work that was performed by the contractor and any subcontractor(s). This ensures that RUST grant funding only is used for eligible purposes and serves to prevent fraud, waste, and abuse.

10. **Section 3423.1(c)(4)** – Adds this subdivision to clarify that the State Water Board may request any other information or documentation reasonably required to determine whether a cost requested by a grantee are eligible for RUST grant funding. This provision, which is consistent with existing practice, is necessary because additional information or documentation sometimes is necessary to determine whether the costs requested by the borrower are for costs for work that is eligible for RUST grant funding and that the costs actually have been incurred for work that was performed by the contractor and any subcontractor(s). This ensures that RUST grant funding only is used for eligible purposes and serves to prevent fraud, waste, and abuse.

SECTION 3424. LOAN APPLICATION CONTENT

Specific Purpose and Necessity of the Proposed Action

1. **Section 3424** – Deletes existing section 3424 and adds proposed section 3424. As proposed section 3424 contains many of the RUST loan application requirements that are in existing section 3424, however, those requirements are reorganized and amended for clarification purposes, consistency with existing practice, and consistency with Health and Safety Code section 25299.102.

As proposed, section 3424 not include the requirement in existing section 3424(k) regarding providing all of the permit applications for the project from the proposed RUST Regulations because the requirement in existing section 3426(a) that applicants obtain all permits necessary to complete a project before the applicant may apply for a loan is deleted. An applicant may wait until the applicant has an executed loan agreement to obtain permits and use loan funds to pay the permitting fees.

In addition, proposed section 3424 does not include the requirement regarding projects involving corrective action in existing section 3424(g) because corrective action no longer is an eligible purpose for RUST loan funding.

The State Water Board does not require applicants to use a specific RUST loan application form; however, for the convenience of the applicant, the State Water Board has established an optional electronic application through the State Water Board's Financial Assistance Application Submittal Tool and also supplies an optional form in an organized, consistent format.

2. **Section 3424(a)** – Moves the provisions in existing section 3424(a) regarding the identity and contact information for the applicant to proposed section 3424(a) and modifies them for clarification purposes. Also, adds a requirement for the applicant to provide any fictitious business name it uses and documentation to support that use. This requirement, which is consistent with existing practice, is necessary because the RUST Program needs all of the names that are used for the business to ensure that it can fully identify the applicant and can verify that documentation listing a fictitious business name is the applicant’s documentation. Additionally, deletes the requirement that the applicant provide the date the applicant’s business was established because this information is not necessary to determine if an applicant is eligible for RUST loan funding. Existing practice does not include requesting this information.

In addition, deletes the requirement for the applicant to provide its tax identification number because this information is provided by the applicant on the Payee Data Record (Std. 204) that all loan borrowers must submit and the applicant’s tax identification also is included on the applicant’s tax returns, which the applicant must provide as part of the loan application. Removing the tax identification number from the loan application requirements reduces the number of documents for the RUST loan application that include Personally Identifiable Information.

3. **Section 3424(b)** – Moves the provisions in existing section 3424(a) regarding the identity and contact information for the contact person for the applicant to proposed section 3424(b) and modifies them for clarification purposes. Additionally, adds a requirement, which is consistent with existing practice, to provide the contact person’s email address.
3. **Section 3424(c)** – Adds this subdivision to establish a requirement, which is consistent with existing practice, that applicants provide a list of the names, titles, and legal addresses or domiciles of each of the applicant’s principals. This requirement is necessary so that the State Water Board can determine whether the applicant meets the requirement in subdivision (b) of the definition of “small business” set forth in section 3420 that the applicant’s principals be domiciled in California. This requirement also assists the State Water Board to ensure that RUST loan documents are signed by the appropriate individual(s).
4. **Section 3424(d)** – Moves the provisions in existing section 3424(a) regarding the identity and contact information for each RUST loan guarantor to proposed section 3424(d) and modifies them for clarification purposes. Additionally, adds a requirement, which is consistent with existing practice, to provide each guarantor’s email address.
5. **Section 3424(e)** – Moves the requirements in subdivisions (b) and (c) of existing section 3424 applicable to the project tanks and any other tanks owned and/or operated by the applicant at the project facility to proposed section 3424(e) and

modifies them for clarification purposes and to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020.

Pursuant to Health and Safety Code section 25299.103, subdivision (f) the applicant must provide evidence that the project tanks are in compliance, or will be in compliance after the completion of the project, with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. In addition, Health and Safety Code section 25299.103, subdivision (e), requires applicants to provide evidence that all tanks owned and/or operated by the applicant, except for the project tanks, are in compliance with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. For most RUST projects, all of the tanks at the project facility will be included in the project as project tanks and permitting and compliance requirements have both tank-specific and facility-wide aspects. For these reasons, proposed subdivision (e) includes the documentation requirements for project tanks and any other tanks owned and/or operated by the applicant at the project facility.

Subdivision (e) implements subdivision (e) and (f) of Health and Safety Code section 25299.103 by requiring applicants provide a list of all of the project tanks and any other tanks owned and/or operated by the applicant at the project facility, the California Environmental Reporting System (CERS) identification number for each tank and either evidence that each tank meets the permitting requirements imposed under Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations, or an explanation of how the project will bring the project tanks into compliance with those permitting requirements in accordance with proposed subdivision (f). Consistent with existing practice, the State Water Board checks CERS for all tanks not at the project facility and consults with the applicable local agency to check compliance with Health and Safety Code chapter 6.7 and all implementing regulations.

6. **Section 3424(f)** – Moves existing paragraphs (1) and (3) of existing section 3424(f) to proposed section 3424(f) and modifies these requirements to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (f) is consistent Health and Safety Code section 25299.103, subdivision (g). If the project tanks do not have current operating permits issued by the applicable local agency and current permits to operate issued by the applicable air district due to compliance issues, then this explanation will be provided under subdivision (e)(1)(D) and/or (e)(2)(D) of section 3424. This subdivision is necessary because project tanks are not required to be in full compliance with all of the requirements of Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations in order to have current operating permits issued by the applicable local agency and current permits to operate issued by the applicable air district.
7. **Section 3424(g)** – Moves the requirements in subdivisions (b) and (c) of existing section 3424 applicable to all tanks owned and/or operated by the applicants, except

the project tanks and any other tanks owned and/or operated by the applicant at the project tank, to proposed section 3424(g) and modifies them for clarification purposes and to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020.

Pursuant to Health and Safety Code section 25299.103, subdivision (e), applicants must provide evidence that all tanks owned and/or operated by the applicant, except for the project tanks, are in compliance with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. As proposed, subdivision (g) implements this provision by requiring applicants provide a list of all tanks owned and/or operated by the applicant that are not located at the project facility, the street address of each tank, the CERS identification number for each tank, and evidence that each tank meets the permitting requirements imposed under Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. Consistent with existing practice, the State Water Board checks CERS for all tanks not at the project facility and consults with the applicable local agency to ensure compliance with Health and Safety Code chapter 6.7 and all implementing regulations.

8. **Section 3424(h)** – Deletes the requirement in existing section 3424(d) that RUST loan applicants submit an environmental audit, as specified in California Code of Regulations, title 10, section 5260, and replaces it with a requirement in proposed section 3424(h) that RUST loan applicants submit photographs of the project facility and an environmental compliance and risks assessment for the project facility. This modification is necessary to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020.

The requirement to provide photographs of the project facility is consistent with existing practice. Photographs of the project facility are necessary for the State Water Board to better assess the current condition of the project facility in order to better assess environmental compliance and risks at the project facility and is consistent with Health and Safety Code section 25299.103, subdivision (c). Photographs also assist the State Water Board in preventing fraud, waste, and abuse against the RUST Program.

The new environmental compliance and risks assessment requirement replaces an existing nine-page environmental audit form created by the State Water Board in accordance with and Health and Safety Code section 25299.103, subdivision (c) before it was amended effective January 1, 2021 and California Code of Regulations, title 10, section 5260 regarding the Hazardous Waste Reduction Loan Program. The existing environmental audit form does not serve the purposes of the RUST Program because it borrows from an unrelated program and is not well focused on the environmental compliance and risks at RUST project facilities that may impact an applicant's ability to repay the requested loan amount. As proposed, the environmental compliance and risks assessment will allow the State Water

Board to better assess environmental compliance and risks at the project facility and is consistent with Health and Safety Code section 25299.103, subdivision (c).

The State Water Board will not require applicants to use a specific RUST environmental compliance and risks assessment form; however, for the convenience of the applicant, the State Water Board will provide an optional Environmental Compliance and Risks Assessment Form in an organized, consistent format.

9. **Section 3424(h)(1)** – Adds this subdivision to require RUST loan applicants to provide applicant information as part of the environmental compliance and risks assessment. Applicants must provide the applicant's name and project facility for identification purposes. Applicants also must identify if they own the project facility property. In addition, applicants who own the project facility property must provide the date that the applicant acquired the project facility property, because applicants typically will be less knowledgeable of the project facility's environmental risks as it pertains to activities that occurred before they acquired the property. This property acquisition information is necessary for the State Water Board to assess the information provided on the form in order to assess environmental compliance and risks at the project facility.
10. **Section 3424(h)(2)** – Adds this subdivision to require RUST loan applicants to provide information and documentation regarding the project tanks as part of the environmental compliance and risks assessment. Applicants are required to provide the date that the project tanks were installed because the age of the tanks impacts the environmental risks posed by the tanks. In addition, the design, construction, and monitoring requirements for a UST depend on the installation date, therefore, this information will assist the State Water Board in assessing compliance with the Health and Safety Code chapter 6.7 and all implementing regulations.

Applicants also are required to provide the date that the applicant acquired and/or began operating the project tanks. This information is necessary because applicants typically will be less knowledgeable of project tank information as it pertains to activities that occurred before they acquired and/or began operating the tanks. In addition, this information will assist the State Water Board in assessing the applicant's compliance with the Health and Safety Code chapter 6.7 and all implementing regulations.

Additionally, applicants are required to identify the applicant must provide the pipe replacement date if the project tanks piping has ever been removed or replaced. This information is necessary because the age of the piping impacts the environmental risks posed by the piping. In addition, the design, construction, and monitoring requirements for piping depend on the installation date, therefore, this information will assist the State Water Board in assessing compliance with the Health and Safety Code chapter 6.7 and all implementing regulations.

Finally, applicants are required to provide a description of any compliance issues with the project tanks or any other tanks at the project facility during the previous year that have not yet been documented by local regulators or uploaded to the CERS, including the most recent Designated UST Operator Visual Inspection Report and any other relevant documentation. This information is necessary because the State Water Board will not be able to identify this information when it checks CERS for compliance with Health and Safety Code chapter 6.7 and all implementing regulations. In addition, the local regulator may not be aware of the compliance yet, and therefore, would not be able to notify the State Water Board of the issue when State Water Board consults the applicable local agency to check compliance with Health and Safety Code chapter 6.7 and all implementing regulations.

11. **Section 3424(h)(3)** – Adds this subdivision to require RUST loan applicants to provide information and documentation regarding the project facility’s environmental risks. Applicants are required to provide information regarding potential environmental risks posed by all of the following hazards which may occur at sites with USTs. Specifically, applicants must identify whether any of the following are not or have ever been located on, stored at, or used on the project facility property: aboveground storage tanks; sumps, septic tanks, pits, ponds, lagoons, oil/water separators, or clarifiers; chemicals, paints, petroleum products, or pesticides, maintenance or shop/service areas; and elevators or hydraulic lifts.

Applicants also are required to provide a copy of any environmental assessments, audits, or inspections of the project facility property that have not been uploaded to the applicable reporting database. These documents are necessary for the State Water Board to assess environmental compliance and risks at the project facility. As proposed, applicants are not required to provide copies of any environmental assessments, audits, or inspections of the project facility property that have not been uploaded to the applicable reporting database because this documentation is readily available to the State Water Board.

12. **Section 3424(h)(4)** – Adds this subdivision to require RUST loan applicants to provide information and documentation about any environmental cleanup that may have occurred at the project facility. Applicants are required to provide the case identification number(s), lead cleanup oversight agency, and responsible party(ies) for any open cleanup cases for the project facility property. This information is necessary for the State Water Board to assess the environmental risks and compliance issues related to any open cleanup cases and to assess the applicant’s level of financial risk associated with the cleanup case. Applicants are not required to provide information regarding any closed cleanup cases for the project facility property, because no further action related to the contamination is required pursuant to these cases.

Applicants also are required to provide the funding source and program identification number for any funding from the State Water Board for which the applicant has applied and/or received funding. This information is necessary for the State Water

Board to determine whether the applicant has funding to carry out any environmental cleanup for which the applicant is responsible. This information also allows the State Water Board to determine if the applicant is in good standing with State Water Board's environmental cleanup funding programs and to identify any potential related issues.

13. **Section 3424(h)(5)** – Adds this subdivision to require RUST loan applicants to certify under penalty of perjury that all required supporting documentation is included; that all information provided is true and correct to the best of the applicant's knowledge; and that the applicant will inform the State Water Board of any changes to the information provided. This certification is necessary to ensure that the information and documentation provided is truthful and complete to the best of the applicant's knowledge and to require the applicant(s) to inform the State Water Board of any changes to the information provided as any changes could impact the State Water Board's assessment of the environmental compliance and risks at the project facility.
14. **Section 3424(h)(6)** – Adds this subdivision to clarify that the State Water Board may request any other information or documentation reasonably required for the State Water Board to assess the environmental compliance and risks at the project facility. This provision is necessary because additional information or documentation sometimes is necessary to fully assess environmental compliance and risks at a project facility.
15. **Section 3424(i)** – Moves existing section 3424(e) to proposed section 3424(i) and modifies it to require applicants to provide information regarding claims made to the UST Cleanup Fund, any claim made to other sources of local, state, or federal funds, and any claim made to any insurers for any unauthorized releases from any tanks owned or operated by the applicant. This information is necessary for the State Water Board to assess the applicant's ability to provide adequate collateral and repay the requested RUST loan. As proposed, subdivision (i) does not require copies of correspondence with the local agency or Regional Water Quality Control Board because this documentation is required to be included in the State Water Board's GeoTracker database. Additionally, the requirement to provide reports to insurers is deleted as redundant. This documentation is included in the requirement to provide any claims made to insurers.
16. **Section 3424(j)** – Moves existing section 3424(j) to proposed section 3424(j) and modifies it to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (j) is consistent with Health and Safety Code section 25299.102, subdivision (f).
17. **Section 3424(k)** – Adds this subdivision to require that the applicant provide a legal description of the real property at which the project facility is located and either proof of ownership or proof of leasing the property and the authority and ability to perform the project. This information is necessary in order to ensure that applicant has

sufficient collateral to secure the requested loan amount and the authority to perform the work.

18. **Section 3424(l)** – Moves the provisions in existing section 3424(a) regarding providing tax returns for the previous two years to proposed section 3424(l) and modifies it to clarify that this requirement applies not just to the applicant and each guarantor, but also the applicant’s principals, which is consistent with existing practice. The applicant’s principals’ tax returns are necessary to ensure that the applicant meets the definition of a “small business” under section 3420. Also, modifies this requirement to require that the tax returns provided be Federal Tax Returns, not California Tax Returns. This modification is necessary to provide the State Water Board with additional statements and schedules not typically included with California Tax Returns. These additional statements and schedules will provide the State Water Board with information to better determine if the applicant’s cash flow and debt-coverage will be sufficient to enable the applicant to repay the requested loan amount. Requiring submittal of Federal Tax Returns instead of state tax returns is consistent with typical requirements in the lending industry.

Additionally, adds a requirement that the applicant provide the applicant’s most recent California or Federal Employee Tax Return in order to better implement the requirement the small business eligibility requirement for loans. Many applicants for RUST loan funding also apply for RUST grant funding, and therefore, already must provide their most recent Employee Tax Return under the existing RUST Regulations. In addition, this documentation will be necessary if the State Water Board has to determine priority for loan funding pursuant to proposed section 3426(e). Applicants may provide either their most recent California Employee Tax Return or their most recent Federal Employee Tax Return, because both the California Employee Tax Return and the Federal Tax Return provide the information necessary for the State Water Board to ensure that the applicant meets the RUST loan eligibility requirements.

19. **Section 3424(m)** – Moves existing section 3424(h) to proposed section 3424(m) and modifies it to clarify what financial information must be provided for the applicant and what financial information must be provided for the applicant’s principals. Also, moves the provisions in existing section 3424(a) to proposed section 3424(m) for organization and clarification purposes. All of the documents required under proposed section 3424(m) are necessary to determine if the applicant is able to provide adequate collateral and repay the loan.
20. **Section 3424(n)** – Moves existing section 3424(i) to proposed section 3424(n). Subdivision (n) is necessary so that the State Water Board knows how much RUST loan funding the applicant is requesting.
21. **Section 3424(o)(1)** – Moves the requirement to provide a description of the project from existing section 3424(f)(2) to proposed section 3424(o)(1) and modifies it for clarification purposes. As modified, paragraph (1) requiring a complete project

description is necessary to determine if the project is eligible for loan funds and to ensure that the proposals, estimates, or contracts provided by the applicant pursuant to proposed subdivision (o)(3) fully encompass the entire project.

22. **Section 3424(o)(2)** – Adds a requirement to provide communications from the applicable air district related to the project and any communications from the applicable local agency related to the project that have not previously been uploaded to the CERS. Currently, applicants may provide communications from the air district or the local agency related to the project in order to comply with paragraphs (1) and (3) of existing section 3424(f). Additionally, the State Water Board checks CERS for documents and records related to the applicant’s facility and consults with the local agency about the project. In some cases, however, important information in communications from the air district or the local agency related to the project either is not provided to the State Water Board or is not provided to the State Water Board as early as it should be resulting in inefficiencies. Paragraph (2) is necessary to ensure that the State Water Board is provided with all relevant communications from the air district or the local agency related to the project at the time of the loan application.
23. **Section 3424(o)(3)** – Moves existing paragraphs (4) and (5) of section 3424(f) to proposed section 3424(o)(3) and modifies these provisions to fully set forth the State Water Board’s expectations for proposals, estimates, or contracts consistent with existing practice. In some cases there are additional permitting costs or other project costs that are not included in a contractor’s or equipment supplier’s proposals, estimates, or contracts, therefore, it is necessary to further modify these provisions to require the applicant to provide estimates of any project costs that are not included in the provided contractor proposals, estimates, or contracts. This provision allows for the State Water Board to include eligible project costs that are not included in contractor proposals, estimates, or contracts in the RUST loan agreement budget. It also serves to identify all applicable permitting requirements in those instances where permits are not included in the contractor’s proposal, estimate, or contract.

As modified, paragraph (3) is necessary for the State Water Board to determine whether costs are eligible. It is necessary for the proposals, estimates, or contracts to include ineligible costs and for all permitting costs to be set forth because the State Water Board needs to ensure that the applicant has sufficient funds to complete the entire project. Incomplete projects do not serve the purpose of the RUST Program.

24. **Section 3424(o)(4)** – Moves the requirement to provide an estimate of the timetable to complete the project from existing section 3424(f)(2) to proposed section 3424(o)(4). Paragraph (4) is necessary for the State Water Board to project when the project will be completed and to ensure that the project will be timely completed.

25. **Section 3424(p)** – Moves existing section 3424(l) to proposed section 3424(p). Subdivision (p) is necessary because it is not possible to list all the information or documentation that may be necessary for the State Water Board to determine an applicant’s eligibility or the amount of RUST loan funding for which the applicant is eligible.

SECTION 3425. GRANT APPLICATION CONTENT

Specific Purpose and Necessity of the Proposed Action

1. **Section 3425** – Deletes existing section 3425 and adds proposed section 3425. As proposed section 3425 contains many of the RUST grant application requirements that are in existing section 3425, however, those requirements are amended for clarification purposes and consistency with existing practices and Health and Safety Code section 25299.105

As proposed, section 3425 does not include the provisions in existing section 3425(c) providing the minimum and maximum amount of grant funding that the State Water Board may grant an applicant because these provisions are moved to proposed section 3423.1(b).

Proposed section 3425 also does not include the requirement in existing section 3425(f) regarding owning or operating the USTs at the facility since January 1, 1997, because this eligibility requirement was deleted by amendments to the Health and Safety Code enacted by Chapter 69, Statutes of 2009.

In addition, proposed section 3425 does not include the provision in existing section 3425(g) requiring applicants to provide a statement regarding the amount of gasoline that the applicants have sold at retail for the two years preceding the application is deleted because it is unnecessary. Proposed section 3425(i) requires applicants to provide documentation showing the amount of gasoline that the applicants have sold at retail for the two years preceding the application.

The State Water Board does not require applicants to use a specific RUST grant application form; however, for the convenience of the applicant, the State Water Board has established an optional electronic application through the State Water Board’s Financial Assistance Application Submittal Tool and also supplies an optional form in an organized, consistent format.

2. **Section 3425(a)** – Moves existing section 3425(a) to proposed section 3425(a) and modifies it for clarification purposes to identify the required information more specifically. Proposed subdivision (a), which is consistent with existing practice, requires applicants provide the applicant’s legal address or domicile because this information is necessary to ensure that the applicant meets the California domicile requirement in Health and Safety Code section 25299.105, subdivision (a)(2). Also,

adds a requirement for the applicant to provide any fictitious business name it uses and documentation to support that use. This requirement, which is consistent with existing practice, is necessary because the State Water Board needs all of the names that are used for the business to ensure that it can fully identify the applicant and can verify that documentation listing a fictitious business name is the applicant's documentation

In addition, deletes the requirement for the applicant to provide its tax identification number because this information is provided by the applicant on the Payee Data Record (Std. 204) that all grantees must submit and the applicant's tax identification also is included on the applicant's tax returns, which the applicant must provide as part of the grant application. Removing the tax identification number from the grant application requirements reduces the number of documents for the RUST grant application that include Personally Identifiable Information. Also deletes the requirement that the State Water Board provide a specified statement to RUST grant applicants regarding the requirement to include the tax identification number, because applicant's no longer are required to provide the tax identification number as part of the application.

3. **Section 3425(b)** – Moves the provisions in existing section 3425(a) regarding the identity and contact information for the contact person for the applicant to proposed section 3425(b) and modifies them for clarification purposes. Additionally, adds a requirement, which is consistent with existing practice, to provide the contact person's email address.
4. **Section 3425(c)** – Moves existing section 3425(b) to proposed section 3425(c) and modifies it for clarification purposes to identify the required information more specifically. Proposed subdivision (a), which is consistent with existing practice, requires applicants provide the applicant's principals legal addresses or domiciles because this information is necessary to ensure that the applicant's principals meet the California domicile requirement in Health and Safety Code section 25299.105, subdivision (a)(2). Additionally, replaces the term "corporate officer of the applicant" with the term "applicant's principals."
5. **Section 3425(d)** – Moves the requirements in subdivisions, (d), (h), and (i) of existing section 3425 applicable to the project tanks and any other tanks owned and/or operated by the applicant at the project facility to proposed section 3425(d) and modifies them for clarification purposes and to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020.

Pursuant to Health and Safety Code section 25299.105, subdivision (a)(5) and except as provided in Health and Safety Code section 25299.105, subdivision (b), the applicant must provide evidence that either the project tanks are in compliance with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations or meets specified requirements set forth in subparagraph (B) of subdivision (a)(5). In addition, Health and Safety Code

section 25299.105, subdivision (a)(3), requires applicants to provide evidence that all tanks owned and/or operated by the applicant, except for the project tanks, are in compliance with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. Permitting and compliance requirements have both tank-specific and facility-wide aspects. For most RUST projects, all of the tanks at the project facility will be included in the project as project tanks and permitting and compliance requirements have both tank-specific and facility-wide aspects. For these reasons, proposed subdivision (d) includes the documentation requirements for project tanks and any other tanks owned and/or operated by the applicant at the project facility.

Subdivision (d) implements subdivision (a)(3) and (a)(5) of Health and Safety Code section 25299.103 by requiring applicants provide a list of all of the project tanks and any other tanks owned and/or operated by the applicant at the project facility, the CERS identification number for each tank and either evidence that each tank meets the permitting requirements imposed under Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations, or an explanation of how the project will bring the project tanks into compliance with those permitting requirements in accordance with proposed subdivision (e). Consistent with existing practice, the State Water Board checks CERS for all tanks not at the project facility and consults with the applicable local agency to check compliance with Health and Safety Code chapter 6.7 and all implementing regulations.

6. **Section 3425(e)** – Adds proposed section 3425(e) to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (e) is consistent with Health and Safety Code section 25299.105, subdivision (a)(5)(B)(A), which requires applicants whose project tanks are not currently in compliance with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations to show that the project will bring the project tanks into compliance with these provisions. If the project tanks do not have current operating permits issued by the applicable local agency and current permits to operate issued by the applicable air district due to compliance issues, then this explanation will be provided under subdivision (d)(1)(D) and/or (d)(2)(D) of section 3425. This new subdivision is necessary because project tanks are not required to be in full compliance with all of the requirements of Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations in order to have current operating permits issued by the applicable local agency and current permits to operate issued by the applicable air district.
7. **Section 3425(f)** – Moves existing section 3425(h) to proposed section 3425(f) and modifies this requirement to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. Pursuant to Health and Safety Code section 25299.105, subdivision (a)(3), applicants must provide evidence that all tanks owned and/or operated by the applicant, except for the project tanks, are in compliance with Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. Subdivision (f) implements this

provision by requiring applicants provide a list of all tanks owned and/or operated by the applicant that are not located at the project facility, the street address of each tank, the CERS identification number for each tank, and evidence that each tank meets the permitting requirements imposed under Health and Safety Code chapter 6.7, Health and Safety Code section 41954, and all implementing regulations. Consistent with existing practice, the State Water Board checks CERS for all tanks not at the project facility and consults with the applicable local agency to ensure compliance with Health and Safety Code chapter 6.7 and all implementing regulations.

8. **Section 3425(g)** – Adds this subdivision to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (g) is consistent with Health and Safety Code section 25299.105, subdivision (a)(6). To be eligible for a grant, a RUST grant applicant either must meet the motor vehicle retail requirement or meet the requirements of proposed section 3422.1(b).
9. **Section 3425(h)** – Moves subdivisions (j) and (k) of existing section 3425 to proposed section 3425(h) and modifies it to require applicants to provide the applicant’s most recent Federal Tax Return instead of the most recent California Tax Return for consistency with the tax return requirement for RUST loan applications set forth in proposed section 3424(l). This change also increases efficiency and reduces the documentation required for those RUST grant applicants who also apply for a RUST loan. Also adds a requirement, consistent with existing practice, for the applicant to provide the most recent Federal Tax Return for each of the applicant’s principals. This documentation is necessary to ensure that the applicant meets the definition of a “small business” under section 3420. In addition, modifies the requirement to provide the applicant’s most recent Employee Tax Return to clarify that the applicant may either their most recent California Employee Tax Return or their most recent Federal Employee Tax Return, because both the California Employee Tax Return and the Federal Tax Return provide the information necessary for the State Water Board to ensure that the applicant meets the RUST grant eligibility requirements.
10. **Section 3425(i)** – Moves existing section 3425(l) to proposed section 3425(i) and modifies it to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020. As proposed, subdivision (i) is consistent with Health and Safety Code section 25299.105, subdivision (a)(4), which raised the maximum annual gasoline throughput limit for the two years preceding the application from 900,000 to 1,500,000 and permits the State Water Board to accept alternate documentation for those quarters when California Department of Tax and Fee Administration taxable sales figures are unavailable because the applicant did not own or operate the USTs during that time. Paragraph (1) of proposed subdivision (i) does not list the specific types of documentation that may be acceptable alternatives to California Department of Tax and Fee Administration taxable sales figures

because it is not possible to list all of the possible types of documentation that may be available depending on the applicant's specific circumstances.

11. **Section 3425(j)** – Moves the provision in existing section 3425(c) requiring the applicant to provide the amount of the applicant's grant request to proposed section 3425(j). Subdivision (j) is necessary so that the State Water Board knows how much RUST grant funding the applicant is requesting.
12. **Section 3425(k)(1)** – Moves the requirement to provide a description of the project from existing section 3425(d) to proposed section 3425(k)(1) and modifies it for clarification purposes. As modified, paragraph (1) requiring a complete project description is necessary to determine if the project is eligible for grant funds and to ensure that the proposals, estimates, or contracts provided by the applicant pursuant to proposed subdivision (k)(3) fully encompass the entire project.
13. **Section 3425(k)(2)** – Adds a requirement to provide communications from the applicable air district related to the project and any communications from the applicable local agency related to the project that have not previously been uploaded to the CERS. Currently, applicants may provide communications from the air district or the local agency related to the project in order to comply with existing section 3425(d). Additionally, the State Water Board checks CERS for documents and records related to the applicant's facility and consults with the local agency about the project. In some cases, however, important information in communications from the air district or the local agency related to the project either is not provided to the State Water Board or is not provided to the State Water Board as early as it should be resulting in inefficiencies. Paragraph (2) is necessary to ensure that the State Water Board is provided with all relevant communications from the air district or the local agency related to the project at the time of the loan application.
14. **Section 3425(k)(2)** – Moves existing section 3425(e) to proposed section 3425(k)(3) and modifies it to fully set forth the State Water Board's expectations for proposals, estimates, or contracts consistent with existing practice. In some cases there are additional permitting costs or other project costs that are not included in a contractor's or equipment supplier's proposals, estimates, or contracts, therefore, it is necessary to further modify these provisions to require the applicant to provide estimates of any project costs that are not included in the provided contractor proposals, estimates, or contracts. This provision allows for the State Water Board to include eligible project costs that are not included in contractor proposals, estimates, or contracts in the RUST grant agreement budget. It also serves to identify all applicable permitting requirements in those instances where permits are not included in the contractor's proposal, estimate, or contract.

As modified, paragraph (3) is necessary for the State Water Board to determine whether costs are eligible. It is necessary for the proposals, estimates, or contracts to include ineligible costs and for all permitting costs to be set forth because the

State Water Board needs to ensure that the applicant has sufficient funds to complete the entire project. Incomplete projects do not serve the purpose of the RUST Program.

15. **Section 3425(k)(4)** – Moves the requirement to provide an estimate of the timetable to complete the project from existing section 3425(d) to proposed section 3425(k)(4). Paragraph (4) is necessary for the State Water Board to project when the project will be completed and to ensure that the project will be timely completed.
16. **Section 3425(l)** – Adds a requirement for the applicant to provide information and documentation regarding whether the project tanks are located at a fueling station that is available for public use and there is no other fueling station available for public use within a radius of fifteen miles from the fueling station. This information and documentation are necessary to determine if an applicant meets the requirements in proposed section 3421.1(b) to be eligible for up to \$140,000 in additional grant funds.
17. **Section 3425(m)** – Adds this subdivision to set forth the information and documentation that an applicant must provide if the applicant is requesting that the State Water Board waive paragraph (3) and (4) of section 3422.1(a). Pursuant to proposed section 3422.1(b), the State Water Board may grant this waiver if the project tanks will be removed and will not be replaced with new tanks and the applicant is not eligible for a loan pursuant to section 3422. The project information that the applicant must submit in accordance with proposed section 3425(k) is sufficient for the State Water Board to determine whether the project tanks will be removed and will not be replaced with new tanks. The information and documentation required in proposed subdivision (m) is necessary to determine if the applicant is able to provide adequate collateral and repay a loan for the requested grant amount. This required information and documentation is consistent with the requirements for a loan application and existing practice.
18. **Section 3425(n)** – Moves existing section 3425(m) to proposed section 3425(n) and modifies it to delete the requirement to provide information relating to priority to consistent with amendments to the Health and Safety Code enacted by Chapter 640, Statutes of 2013 removing the priority provision. As proposed, subdivision (n) is necessary because it is not possible to list all the information or documentation that may be necessary for the State Water Board to determine an applicant's eligibility or the amount of RUST loan funding for which the applicant is eligible.

SECTION 3426. LOAN APPLICATION PROCESS

Specific Purpose and Necessity of the Proposed Action

1. **Section 3426(a)(1)** – Modifies this paragraph to make the reference more specific. All of the conditions for RUST loan eligibility are set forth in proposed section 3422.
2. **Section 3426(a)(2)** – Deletes existing subdivision (a)(2) because it is not practicable to require applicants to obtain all permits necessary to complete a project before the applicant may apply for a RUST loan. Consistent with existing operational practice, an applicant may wait until the applicant has an executed loan agreement to obtain permits and use RUST loan funds to pay the permitting fees. Section 3426(a) is renumbered accordingly,

Moves existing section 3426(a)(3) to proposed section 3426(a)(2) and modifies it to specify that the State Water Board must evaluate the applicant's character, capital, and capacity, in order to determine if the applicant is creditworthy. These are the factors typically used throughout the lending industry when determining whether a loan applicant is creditworthy. Proposed section 3420 includes definitions of the terms "character," "capital," and "capacity" that are consistent with the use of those terms by the lending industry.

3. **Section 3426(a)(3)** – Moves existing subdivision (a)(4) to proposed subdivision (a)(3) and modifies it consistent with proposed section 3424(h). Proposed section 3424(h) replaces the previous requirement in existing section 3424(d) that RUST loan applicants submit an environmental audit with a requirement that RUST loan applicants submit an environmental compliance and risks assessment for the project facility in order to better assess the environmental compliance and risks that may impact a RUST loan applicant's ability to repay the requested loan amount. Assessing the environmental compliance and risks for a loan is typical throughout the lending industry.
4. **Section 3426(a)(4)** – Moves existing subdivision (a)(5) to proposed subdivision (a)(4) and modifies it consistent with existing practice to require the State Water Board to evaluate whether the guarantee(s) offered by the applicant are sufficient for the proposed loan. Evaluating the sufficiency of guarantee(s) is typical throughout the lending industry when determining whether to make a loan.
3. **Section 3426(b)** – Modifies this subdivision to delete the language referring to a further evaluation and adding language providing that the State Water Board must provide applicants with the reason for its denial. The deleted language referring to a further evaluation incorrectly implies that an applicant can appeal a denial of a RUST loan application or otherwise obtain a reevaluation of the application. This implication is inconsistent with the clear language in existing section 3426(d) providing that an applicant cannot appeal the denial, but may reapply at any time.

As modified, subdivision (b) is consistent with subdivision (d) and with existing practice.

4. **Section 3426(c)** – Modifies this subdivision for clarification purposes and for consistency with proposed section 3423.
5. **Section 3426(d)** – Modifies this subdivision to add a reference to existing section 3428(e) for clarification and consistency purposes.
6. **Section 3426(e)** – Adds this subdivision to implement the priority provision in Health and Safety Code, section 25299.102, subdivision (a), which provides that the Board shall give priority to those loan applicants that meet the definition of “small business” set forth in Government Code section 14837, subdivision. This priority only applies to those applicants who have submitted complete loan applications and whose loan applications have been approved as eligible for a RUST loan.

SECTION 3427. GRANT APPLICATION PROCESS

Specific Purpose and Necessity of the Proposed Action

1. **Section 3427(a)** – Modifies this subdivision to clarify that the applicant must meet all eligibility requirements and grant funds must be available, before the State Water Board may approve a RUST grant request.
2. **Section 3427(b)** – Adds this subdivision to clarify that the State Water Board must deny a RUST grant application if the applicant does not meet all eligibility requirements. This subdivision also provides that the State Water Board must provide applicants with the reason for its denial of a RUST grant application, consistent with existing practice.
3. **Section 3427(c)** – Adds this subdivision to clarify the terms under which the State Water Board may enter into a RUST grant agreement.
4. **Section 3427(d)** – Modifies this subdivision to add a reference to existing section 3428(e) for clarification and consistency purposes.

SECTION 3428. MISREPRESENTATION; REPAYMENT; INTENTIONAL OR RECKLESS ACTS; DISQUALIFICATION OF APPLICATIONS

Specific Purpose and Necessity of the Proposed Action

1. **Section 3428(d)** – Adds this subdivision to provide that costs that result from the gross negligence or the intentional or reckless acts of the applicant or an agent or representative of the applicant are not eligible for funding from the RUST Program.

Funds from the RUST Program are limited and should not be used for costs that result from gross negligence or recklessness. This provision is necessary to exclude payment for costs from the RUST Program that arise out of these situations.

2. **Section 3428(e)** – Adds this subdivision to authorize the State Water Board to deny any application submitted by an applicant, if the applicant submitted an application to the RUST Program that contained a material error that resulted from misrepresentation, fraud, or other misconduct on the part of the applicant. When reviewing applications, the State Water Board must rely upon statements and information provided by applicants. If an applicant misrepresents a fact on an application for a particular site in order to create eligibility (e.g., providing false documentation of compliance with regulatory requirements that are a condition of eligibility), the actual facts (not complying with the said regulatory requirements) would result in ineligibility for that application anyway. In other words, there is no real penalty for misrepresenting the fact on the application. With this proposed regulation, if an applicant provided a fraudulent statement concerning a material fact on a particular application, any other applications submitted by the applicant for any site would also be barred from participating in the RUST Program. This provision is necessary to deter applicants from making misrepresentations to gain access to the RUST Program.
3. **Section 3428(f)** – Adds this subdivision to clarify that the remedies in this section are in addition to, and do not supersede, or limit any other available remedies, including those remedies set forth in Health and Safety Code sections 25299.112, 25299.113, and 25299.113.1.