

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 5. DEPARTMENT OF JUSTICE TOBACCO GRANT PROGRAM
FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

§ 501. Definitions.

Subdivision (a): Administrative costs. California Code of Regulations, title 2, section 61217, defines administrative costs for purposes of grants funded by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016. Including this statutory definition in the regulations is necessary for clarity so that all procedures are in one place.

Subdivision (g): Equipment. Equipment is defined as a tangible item with a per-unit acquisition cost of \$5,000 or more and a useful life of at least one year. This definition is consistent with how other agencies define high-value items. (See Cal. Code Regs., tit. 3, § 303(a)(26); Cal. Code Regs. tit. 9, § 9530(g); Cal. Code Regs., tit. 13, § 1890.00(a)(13); Cal. Code Regs, tit. 14, § 4970.01(q).) This definition is necessary to reduce the administrative costs of justifying the purchasing of, and recordkeeping required for, equipment. By eliminating the requirement to record and track relatively low valued items, more attention and effort can be given to safeguarding the remaining, higher valued equipment. This is especially important for assets purchased with public funds.

Subdivision (l): Minor. Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that the Tobacco Grant Program funds programs that reduce illegal sales of cigarettes and tobacco products to minors and youth. However, “minors” is not defined. This definition is necessary to establish that “minor” means an individual under the legal age to purchase, possess, or use cigarettes or tobacco products. This definition is consistent with law enforcement’s use of the term “minor” in minor decoy operations. Penal Code section 308 provides that the current legal age is 21.

Subdivision (o): Youth. Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that the Tobacco Grant Program funds programs that reduce illegal sales of cigarettes and tobacco products to minors and youth. However, “youth” is not defined. This definition is necessary to establish that “youth” means someone under the legal age of majority.

§ 510. Request for Proposal.

Subdivision (b) establishes that Grants are awarded each calendar year, provided funding is available. This is necessary to clarify the frequency of the Grant awards. Thirty million dollars is awarded to the Department annually to be distributed to local law enforcement agencies.

(Rev. & Tax. Code, § 30130.57, subd. (e)(1).) The Department, in turn, distributes the funds to its Grantees.

§ 521. Project Eligibility.

This section describes the type of projects that can be funded by the Department. Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that funding is “to be distributed to local law enforcement agencies to support and hire front-line law enforcement peace officers for programs, including, but not limited to, enforcement of state and local laws related to the illegal sales and marketing of tobacco to minors, and increasing investigative activities and compliance checks to reduce illegal sales of cigarettes and tobacco products to minors and youth.”

Subdivision (a) allows funding to be used to enforce state and local laws related to the illegal sales and marketing of Tobacco Products to Minors. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place.

Subdivision (b) allows funding to be used to conduct investigative activities and compliance checks to reduce the illegal sales of Cigarettes and Tobacco Products to Minors and Youth. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place.

New subdivision (c) allows funding to be used to enforce state and local laws related to the illegal sales and marketing of Cigarettes to Minors. This is necessary to prevent or reduce illegal sales or marketing of Cigarettes to individuals under the legal age to purchase, possess, or use Cigarettes.

Revenue and Taxation Code section 30130.57, subdivision (e)(1), provides a non-exhaustive list of programs that can be funded. Subdivision (d), renumbered from subdivision (c), allows funding to be used for other programs supporting law enforcement peace officers’ efforts to prevent or reduce illegal sales or marketing of Cigarettes and Tobacco Products to Minors and Youth, including, but not limited to, community outreach and education activities. This is necessary to prevent or reduce illegal sales or marketing of Cigarettes and Tobacco Products to Minors and Youth.

§ 522. Eligible Costs.

Subdivision (a) requires eligible project costs to be documented in the Grant Agreement. This is necessary so that Grantees understand what costs may be reimbursed by the Department.

Subdivision (b)(2) allows travel costs for mileage, meals, and lodging. Reimbursement rates will be documented in the Grant Agreement to ensure travel funds are spent equitably.

Subdivision (b)(7) explains decoys for undercover operations are an eligible cost. This is necessary because undercover operations are an important tool to combat illegal sales of Tobacco Products to Minors and Youth.

§ 531. Administrative Review of Application

In subdivision (b), “scored” was replaced with “evaluated.” This is necessary for consistency of terms. As explained below, section 532 no longer includes a seven-point scoring system.

§ 532. Scoring of Application.

Subdivision (b) provides the five criteria used to evaluate an Application. “Scored” was replaced with “evaluated” for consistency of terms. As explained below, section 532 no longer includes a seven-point scoring system.

In subdivision (b)(1), “description of the problem” was replaced with “significance of the problem.” The phrase “description of the” was deleted from subdivision (b)(2). In subdivision (b)(3), “description of the personnel” was replaced with “qualifications of the personnel.” These revisions are necessary so that the criteria ensure that grants are awarded when an applicant demonstrates merit and ability, undertakes a specific project that addresses significant problems related to tobacco use, and provides vital and innovative contributions to the Tobacco Grant Program.

Subdivision (c) originally provided that there will be a minimum of zero and a maximum of seven points for each evaluation criteria listed in subdivision (b). This subdivision was deleted because the Department may wish to use a different objective process for scoring applicants in each funding round.

§ 533. Grant Award.

Subdivision (a) provides the factors used to determine whether a grant will be awarded for the full or partial amount requested. In subdivision (a)(4), “scoring” was deleted for consistency of terms. As explained above, section 532 no longer includes a seven-point scoring system. The Department’s funding priorities were added as a fifth factor in new subdivision (a)(5). This is necessary to ensure grants are awarded to provide the largest impact to the State of California.

Subdivision (b) was revised to state that the merits review committee will submit its recommendations for funding to the Attorney General or designee for final selection. This is necessary because the Attorney General may wish to retain discretion in the grant making process while giving due consideration to committee recommendations.

Subdivision (c) was revised to explain that the Department’s selections are not subject to an administrative appeal. This provision is necessary to provide for consistent and timely disbursement of Tobacco Grant Program funds and ensure an efficient awarding and disbursement process. Allowing an Applicant to appeal a decision may delay grant funding for all Applicants during the cycle as all funding amounts would need to be placed on hold until the appeal is resolved and then reevaluated if less funding is available for grant funding after the appeal. Also, aggrieved Applicants still have civil remedies available to challenge an award decision and the opportunity to apply for grant funding in future cycles.

§ 542. Progress Reports.

Subdivision (a) was revised to explain that quarterly progress reports are due on January 15th, April 15th, July 15th, and October 15th. These deadlines correspond with the quarterly reimbursement requests in section 541.

§ 544. Project Breach-Termination.

This section was revised to allow the Department to terminate a Grant Agreement based on a Grantee's noncompliance with the terms and conditions of the Grant Agreement *or* these regulations. This ensures the Department can terminate a Grant Agreement when a Grantee is noncompliant, or they are engaged in actions contrary to the program. This is necessary to encourage Grantees to utilize their Grant funding in compliance with the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

CORRECTIONS AND NON-SUBSTANTIAL EDITS

A “non-substantial change is one that clarifies without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. (Cal. Code Regs., tit. 1, § 40.) The following minor additional issues were noted since publication of the Notice of Proposed Rulemaking and Initial Statement of Reasons:

§ 501. Definitions.

Subdivisions are renumbered. Reference citations are updated.

§ 522. Eligible Costs.

Reference citations are updated.

§ 530. Application Requirements.

Non-substantial grammatical changes (changing “the” to “its” and “Youths” to “Youth”) are made.

§ 533. Grant Award.

Non-substantive grammatical changes (adding commas) are made.

§ 541. Reimbursement.

Non-substantive grammatical changes (revising sentence syntax) are made.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

Written comments received during the 45-day public comment period are included in the rulemaking file under Exhibit 13. The Department received the following public comment:

Comment: As a recipient of Prop 56 funding in past cycles, I would advocate for changing the definition of an **Applicant** under Section 501(a) to include *Local Education Agencies*. School districts in receipt of these funds use them for proactive education, identification of illegal patterns of distribution, and addressing underlying causes that expand underage tobacco use.

Please consider this public comment to expand eligible applicants and ideas.

Response: No change has been made in response to this comment. Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that the Department's Tobacco Grant Program funds local law enforcement agencies to support specific programs. However, "local law enforcement agencies" is not defined. The Department proposes to define a "local law enforcement agency" as "a local government entity, such as a county, city, district, public authority, public agency, and any other political subdivision or public corporation that can support and hire law enforcement peace officers (as defined in Penal Code section 830) and is authorized to perform any of the following activities:

- (1) Investigate or conduct an official inquiry into enforcement of state and local laws, ordinances, regulations, and policies related to the illegal sales and marketing of Tobacco Products to Minors and Youth.
- (2) Prosecute or otherwise conduct a criminal or civil proceeding arising from the illegal sales of Tobacco Products to Minors and Youth."

School districts can, and do, employ peace officers to ensure the safety of school district personnel and pupils. (Pen. Code, § 830.32; Ed. Code, § 38000.) Therefore, a school district that otherwise meets the eligibility requirements may apply for funding from the Tobacco Grant Program.

No written comments were received during the 15-day public comment periods.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 11346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action,

or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

These regulations do not impose any burden on affected private persons. Rather, they create an opportunity for local law enforcement agencies to apply for funding to combat illegal tobacco sales and use.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department determines that the proposed regulations do not affect small businesses.

DOCUMENTS INCORPORATED BY REFERENCE

None.

NON-DUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).