

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

TEXT OF PROPOSED REGULATIONS

The initial proposal (noticed on January 7, 2022) is illustrated by single blue underline. Changes made during the first 15-day comment period are illustrated by green double-underline for proposed additions and ~~orange double-strikethrough~~ for proposed deletions. Changes made during this second 15-day comment period are illustrated by **bold double-underline** for proposed additions and ~~bold double-strikethrough~~ for proposed deletions.

Article 1. General Provisions

§ 500. Applicability and Scope.

This chapter shall be known as the Department of Justice Tobacco Grant Program regulations. The regulations apply to Grants funded by the Department of Justice from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 501. Definitions.

The following definitions shall apply wherever the terms are used throughout this Chapter.

(a) “Administrative costs” has the same meaning as that in California Code of Regulations, title 2, section 61217.

~~(a)~~ **(b)** “Applicant” means a Local Law Enforcement Agency that has submitted an Application for a Grant.

~~(b)~~ **(c)** “Application” means a submitted proposal by an Applicant for a Grant.

~~(c)~~ **(d)** “Budget” means approximate cost of the Project, prepared for expense and planning purposes only.

~~(d)~~ **(e)** “Cigarette” has the same meaning as that in Revenue and Taxation Code section 30130.50,

subdivision (a).

(ef) “Department” means the California Department of Justice.

(fg) “Equipment” means any tangible item with a per-unit acquisition cost of \$5,000 or more and a useful life of at least one year.

(gh) “Grant” means an award of funds made by the Department, in the form of reimbursement to the Grantee for actual expenditures incurred in performing the Project, as authorized by Revenue and Taxation Code section 30130.57, subdivision (e)(1), and this Chapter.

(hi) “Grantee” means an Applicant that has been awarded a Grant.

(ij) “Grant Agreement” means the written agreement between the Department and a Grantee, setting forth the terms and conditions of the use of Grant funds.

(jk) “Local Law Enforcement Agency” means 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.

~~(kl) “Minor” means an individual under 18 years old~~**the legal age (as specified in Penal Code section 308) to purchase, possess, or use Cigarettes or Tobacco Products.**

~~(lm) “Project” means the activities and deliverables described in the Application to be accomplished through a Grant Agreement with funding.~~

~~(mn) “Tobacco Products” has the same meaning as that in Revenue and Taxation Code section 30130.50, subdivision (b).~~

~~(no) “Youth” means an individual under the legal age (as specified in Penal Code section 308) to purchase, possess, or use Cigarettes or Tobacco Products~~**18 years old.**

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Sections 30121, 30130.50 and 30130.57, Revenue and Taxation Code; **Sections 308 and 830, Penal Code; Section 61217, title 2, California Code of Regulations.**

Article 2. Application

§ 510. Request for Proposal.

(a) The Department shall issue a Request for Proposal (RFP) on the Department’s website at <https://oag.ca.gov/tobaccogrants> for available Grants. An RFP shall include information about the following:

- (1) The approximate amount of available funding.
- (2) Deadline to submit an Application.
- (3) Application requirements, as defined in Sections 530 and 531.
- (4) Eligibility requirements as defined in Sections 520 and 521.
- (5) Eligible Project cost requirements as defined in Section 522.
- (6) The criteria that the Department will use to evaluate the Applications as defined in Sections 531 and 532.

(b) Grants shall be awarded each calendar year, provided funding is available.

(c) Allocation of funds is contingent on the enactment of the state budget. The Department does not disburse funds until the budget has passed and is signed by the Governor.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

Article 3. Eligibility and Eligible Costs

§ 520. Applicant Eligibility.

A Local Law Enforcement Agency is eligible to apply for a Grant.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 521. Project Eligibility.

The Project must include one or more of the following law enforcement efforts to be eligible for a Grant:

(a) Enforcing state and local laws related to the illegal sales and marketing of ~~Cigarettes and Tobacco Products to Minors and Youth.~~

(b) Conducting investigative activities and ~~retailer~~ compliance checks ~~concerning~~ to reduce the illegal sales or marketing of Cigarettes and Tobacco Products to Minors and Youth.

(c) Enforcing state and local laws related to the illegal sales and marketing of Cigarettes to Minors.

(ed) 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.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 522. Eligible Costs.

(a) Eligible Project costs are costs documented **in the Grant Agreement** and directly related to the work identified in the Project description and approved by the Grant Agreement. Final determination of eligibility will be made by the Department.

(b) All costs charged to the Project shall be documented within the Budget of the Project.

Eligible Project costs include, but are not limited to:

(1) Personnel and Administrative: Costs reported for reimbursement must be based on actual wages for Grantee's staff or contracted staff, and may include benefits (e.g., health care, vacation, sick leave, retirement and/or social security contribution) that are customarily paid by the Grantee. Personnel benefit charges shall be calculated in proportion to the actual time worked on a Project. No more than five percent of the Grant shall be used for administrative costs.

(2) Travel: Costs ~~shall not exceed the rates posted at the State of California Department of Human Resources at <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>~~ **for mileage, meals, and lodging.** Grantees shall retain all records described in Section 545.

(3) Operational: Supplies and materials may be purchased for a specific Project, provided the items are claimed at a cost no higher than the original purchase price paid by the Grantee. Items not specifically listed in the Grant Agreement must be approved by the Department prior to purchase.

(4) Equipment: The cost of Equipment purchased for the Project shall not exceed the minimum amount necessary to accomplish the Project. Expenditures shall reflect costs outlined in the budget narrative as defined in Section 530.

(5) Media Campaigns.

(6) Training that is sponsored by the Department for the California Healthcare, Research, and Prevention Tobacco Tax Act of 2016 Tobacco Fund, or related to the Project for which the Grant was awarded.

(7) Decoys for undercover operations.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code; ~~Section 61217, title 2, California Code of Regulations.~~

§ 523. Ineligible Costs.

(a) All costs that do not meet the criteria in Section 522 are ineligible Project costs. Ineligible Project costs include, but are not limited to:

(1) Expenditures outside the Project performance period as specified in the Grant Agreement;

(2) Work or services performed outside of the Project description in the Grant Agreement;

(3) Any real estate purchase or lease;

(4) Goods or services for personal use, including but not limited to, awards, award certificates or ribbons, balloons, briefcases, calendars, cleaning supplies, coffee pots and supplies, food and beverages, gift cards, hand sanitizers, Kleenex/tissue paper, luggage, luggage carriers, picture frames, eating utensils, fans, heaters, and refrigerators.

(5) Law enforcement materials and supplies, including but not limited to, firearms and related accessories, vests, uniforms, K9, pepper spray, vehicles, and vehicle trailers.

(b) Grant funds shall not to be used to supplant existing state or local funds for the Grantee's Project. Supplant means using Grant funds to pay for costs that are already funded within the Grantee's budget, or for which other state or local funds have already been received, in order to reallocate existing funds for other purposes.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

Article 4. Application Submittal, Review, and Grant Award

§ 530. Application Requirements.

(a) An Application must contain the following:

- (1) A cover sheet that shall include: Applicant name; authorized representative's name, classification/position, address, phone number and email address; contact person's name, classification/position, address, phone number, and email address.
- (2) A signature page signed by a representative authorized to submit the Application.
- (3) Requested Grant amount; Project or Grant funding duration (24 or 36 months); and a brief summary of the description of the Project and ~~theirs~~ goals and objectives.
- (4) A problem statement, as described in subdivision (b).
- (5) A description of how the Grant will be spent, as described in subdivision (c).
- (6) A Budget of eligible costs for the Project for 24 months or 36 months. The Budget shall contain the description and cost of the salaries, overtime, and benefits for each classification/position for each fiscal year, operating expenses and Equipment for each fiscal year, travel, administrative costs, and other expenses. Applications shall include a budget narrative justifying each cost. Applications shall also identify any state or local funding sources and amounts for the proposed Project.
- (7) A narrative of previous tobacco Grant awards received from the Department, if applicable.
- (8) Certifications, as described in subdivisions (d) and (e).
- (9) Letters of intent, if applicable, as described in subdivision (f).

(b) Problem statement. An Applicant's problem statement shall describe a specific Cigarette or Tobacco Product related problem; a reasonable estimate of the scale of the problem, including how the problem affects Minors and Youth~~s~~; the geographic area in which the problem persists, including, but not limited to, population data, relevant demographic and socio-economic characteristics of the community; Cigarette or Tobacco Product use rates and patterns, including, but not limited to, the rates and patterns of use in the community, particularly of Minors and Youth, the number of Cigarette or Tobacco Product retailers in the geographic area, and data regarding sales to Minors and Youth and specific problem locations; and any other factors contributing to the Cigarette or Tobacco Product related problems in the geographic area. The problem statement may be supported by studies, research summaries, crime statistics, or data

from the California Department of Public Health.

(c) Project description. An Applicant's Project description shall include an explanation of how the Project will address the problem identified in the Applicant's problem statement, a list and narrative description of Project goals and order of priority, desired outcomes and an explanation of how the Applicant will measure those outcomes and the success of the Project, and a timeline for completing each goal measured in three-month increments. The Project description shall also specify the personnel positions that will be funded to carry out the Project, a description of the duties of each position, and the percentage of time that will be allocated to each duty.

(d) Certification regarding conflicts. An Applicant shall certify in its Application that it does not receive funding from a manufacturer, distributor, or advertiser of Cigarettes or Tobacco Products.

(e) Certification regarding supplanting. An Applicant shall certify in its Application that the requested Grant funds will not supplant existing state or local funds dedicated for the same purpose.

(f) Letters of intent. Any Applicant intending to contract with another entity to achieve the Project objectives shall provide a letter of intent signed by an official representative of each contractor conveying an intention to contract with the Applicant.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 531. Administrative Review of Application.

(a) The Department will review the Applications to ensure they are submitted by eligible Applicants, meet the requirements of Section 530, and are received by the Department in accordance with the RFP described in Section 510.

(b) The administrative review is a pass/fail evaluation. Only Applications that pass this review shall be ~~scored~~ **revaluated** under Section 532.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 532. Scoring of Application.

(a) Applications that pass the administrative review under Section 531 shall be reviewed by a merits review committee. The merits review committee shall initially assess whether or not the proposed Project is eligible under Section 521. This will render a pass/fail score.

(b) Each Application that qualifies after the review under subdivision (a) will be ~~scored~~**evaluated** according to the following criteria:

(1) The ~~description of the~~ **significance of the** problem to be addressed.

(2) The ~~description of the~~ proposed Project and its goals and objectives, and the extent to which the proposed Project addresses the problem.

(3) The ~~description~~ **qualifications** of the personnel required to implement the Project.

(4) The completeness, accuracy, and reasonableness of the estimated Budget.

(5) The capacity of the Applicant to achieve its stated goals and objectives. In assessing capacity, the Department may consider indicators of community support for the proposed Project, including letters of stakeholder support and information about the Applicant's community outreach efforts. In assessing capacity of an Applicant that is a party to an existing or prior Grant Agreement, the Department shall consider the Applicant's historical performance under the existing or prior Grant Agreement.

~~(c) There will be a minimum of zero and a maximum of seven points for each evaluation criteria listed in subdivision (b).~~

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 533. Grant Award.

(a) Grants will be awarded for the full or partial amount requested, or denied, based on the following factors:

(1) Amount of available funding;

(2) Number of Applicants;

(3) Amount of funding requested by Applicants; ~~and~~

(4) The merits of the Application based on the ~~scoring~~ criteria set forth under Section 532; **and**

(5) The Department's funding priorities.

(b) The merits review committee will submit its recommendations for funding to the Attorney General or designee for final selection. The Department shall notify the Applicant of the Grant award, including the amount, or the denial of a Grant award.

(c) The Department's selection(s) are final and not subject to **administrative appeal**.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

Article 5. Grant Agreement, Reimbursement, Progress Reports, Recordkeeping, and Audits

§ 540. Grant Agreement.

(a) Applicants selected for a Grant award shall provide a resolution of the Applicant's governing body, if one exists, authorizing the Applicant to enter into a contract with the State and identifying the person authorized to execute the contract for the Applicant. The resolution shall expressly authorize future amendments, if any, for the purpose of increasing funding provided in the original contract, without an additional resolution from the governing body.

(b) The Grantee shall return a letter of intent to accept the award within 15 calendar days of the date of the Department's written award notice. The Grant Agreement shall then be prepared and executed with the Grantee.

(c) The terms and conditions of a Grant shall be set forth in a Grant Agreement entered into by the Department and the Grantee. A Grantee has the sole responsibility for the fiscal management of Grant funds, recordkeeping, reporting, performance of the Project, and all other aspects of compliance with this Chapter and the Grant Agreement. The Grant Agreement shall include, but is not limited to, the following:

(1) Grant amount.

(2) Grantee contact information.

(3) Grant duration.

(4) Description of the Project funded by the Grant award in Section 533.

(5) Budget with eligible costs.

(6) The Grantee's agreement to indemnify and hold harmless the Department, and all

officers, agents and employees of the same, from and against any and all claims, liabilities, or losses of any kind or nature, whether direct or indirect, arising from or relating to the Project or use of the Grant.

(7) The Grantee's agreement to comply with the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 and this Chapter.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 541. Reimbursement.

(a) Reimbursement payments cannot be provided until a fully executed Grant Agreement is returned to the Department.

(b) Eligible costs incurred may only be reimbursed if a request is submitted to the Department on a quarterly basis on January 15th, April 15th, July 15th, and October 15th with an itemization of expenditures that shall include, but is not limited to:

(1) Purchases: paid invoices and/or receipts;

(2) Services: paid invoices and/or receipts;

(3) Timekeeping and Equipment logs: transaction register or other electronically generated reports; and

(4) Training and Travel: paid invoices and/or receipts.

(c) The Department is responsible for approving and processing reimbursement requests. The Department reserves the right to withhold approval of reimbursement requests if the Grantee is, at any time, not adhering to **the Grant Agreement or** the statutes or regulations governing the Tobacco Grant Program ~~or the Grant Agreement~~, or if the Grantee has not submitted any outstanding documentation or reports required by this Chapter.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 542. Progress Reports.

(a) Grantees must submit quarterly progress reports and other information requested by the

Department related to the Grant. Quarterly progress reports shall **be submitted on January 15th, April 15th, July 15th, and October 15th and shall** describe Grant activities undertaken pursuant to the Grant Agreement during the reporting period. The final quarterly report shall describe Grant activities completed up to the end of the term of the Grant award.

(b) The Department may withhold the final reimbursement claim(s) or 10 percent of the Grant amount, whichever is more, pending approval by the Department of the final quarterly report.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 543. Grant Agreement Amendments.

(a) A Grantee may request a change in the use of Grant funds, the Project description, or the duration of the Grant award, or other changes related to the Project or Budget under the Grant Agreement by submitting a written request to the Department that includes the reasons the change is needed and that demonstrates the change is consistent with the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 and this Chapter.

(b) With the exception of Budget modifications, only one amendment is allowed during the duration of the Grant. Grantees may request up to three Budget modifications per fiscal year. Budget modifications are limited to moving funds from one fiscal year to another or realigning funds to increase a line item by no more than 10 percent of the original amount awarded for the line item.

(c) Requests to extend the duration of the Grant will not be considered unless received by the Department at least six months prior to the end of the duration of the Grant award.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 544. Project Breach-Termination.

Failure of a Grantee to comply with the Grant Agreement ~~and~~ or this Chapter ~~may~~ shall be treated by the Department as a breach of contract. If the Department determines there is a breach of the Grant Agreement, the Department shall give the Grantee written notification. If the

Grantee does not commence action to remedy the breach within 30 calendar days of the date of the written notice, the Department may terminate the Grant Agreement and void the Department's obligations. The Project shall remain subject to all recordkeeping and audit requirements contained in this Chapter.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 545. Recordkeeping.

(a) Personnel Records: The Grantee shall document and keep records of all labor and personnel activity related to the Project, including payroll and attendance records and reports produced by an electronic timekeeping system.

(b) Travel Claims: The Grantee shall document and identify the personnel time, date of activity, work performed, and miles or other travel related to the Project.

(c) Other Records: The Grantee shall maintain all receipts, invoices, and records of procurement of goods or services related to the Project.

(d) Record Retention: The Grantee shall retain all documents, records, receipts, and financial accounts related to the Project as required by this section and as otherwise necessary to substantiate the purpose for which the funds were spent for five years from the expiration of the Grant Agreement, or in accordance with the Grantee's records retention period, whichever is longer.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Section 30130.57, Revenue and Taxation Code.

§ 546. Audits.

(a) The Department has the authority to conduct an audit of the Grantee's expenditure of Grant funds.

(b) Grantees shall cooperate with the Department by providing any and all documents, records, receipts, and financial account records described in Section 545 to the Department upon request.

(c) One or more of the following shall be grounds for an audit exception, which may require the

refund of amounts paid with Grant funds: (1) failure to fully complete the work or services described in the Project description under the terms and conditions of the Grant Agreement; (2) failure to assess the performance of any contract entered into by a Grantee relating to a Grant as agreed to in the Grant Agreement; and (3) failure to maintain documents, records, receipts, and financial accounts supporting the expenditures reimbursed with Grant funds.

(d) The Department shall confirm the completion of the work or services described in the Project description and may inspect and/or make copies of any books, records, or reports of the Grantee pertaining to the Project.

(e) Upon completion of an audit, if there is a refund due to the state, the Grantee shall remit the refund due within 60 calendar days from the notification to the Grantee by the Department.

Note: Authority cited: Section 30130.57, Revenue and Taxation Code. Reference: Sections 30130.56 and 30130.57, Revenue and Taxation Code.