

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

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The Department's Tobacco Grant Program provides annual funds to local law enforcement agencies throughout California. To date, the Tobacco Grant Program has distributed approximately \$124 million dollars in grant funding to approximately 260 grantees through a competitive process.

Funding for the Tobacco Grant Program was a result of the passage of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (Proposition. 56) increasing taxes on cigarettes and other tobacco products by \$2.00 starting in April 2017. The initiative allocates a portion of annual revenue to the Department, which in turn reimburses local law enforcement programs designed to prevent or reduce illegal sales or marketing of cigarettes and tobacco products to minors and youth.

Section 30130.57 of the Revenue and Taxation Code does not detail how the Department will administer the program. As such, the Department must establish, through regulations, criteria for funding, application procedures, requirements for recordkeeping and reporting, and other matters fundamental to the creation, implementation, and operation of a successful grant program.

The proposed regulations will provide uniform procedures to administer the program, ensure applications are evaluated in a consistent and fair manner, and guide applicants through the application process.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The purpose and intent of Proposition 56 included saving the lives of Californians and saving state and local government money in the future by reducing smoking and tobacco use among all Californians, but particularly youth; and funding efforts to reduce cigarette smuggling, tobacco tax evasion, and illegal sales of tobacco products to minors. (Initiative Measure (Prop. 56, § 2, approved Nov. 8, 2016.)

This proposed regulatory action will ensure the Tobacco Grant Program has uniform standards, internal controls, and guidelines to ensure consistent and effective administration of the program. In addition, the regulations will ensure the program funds law enforcement programs designed to prevent or reduce illegal sales or marketing of cigarettes and tobacco products to minors and youth.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

§ 500. Applicability and Scope.

The Department has established regulations for the administration of the Tobacco Grant Program, funded by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund. The purpose of this section is to describe the scope of the chapter. This is necessary to inform the regulated community that the chapter establishes applicable criteria and procedures for the Tobacco Grant Program.

§ 501. Definitions.

This section defines 14 key terms that are used in the proposed regulations. The definitions are necessary to avoid any confusion that might result if these terms were not defined and to ensure uniform application throughout the regulations.

- (a) Applicant: Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that the Department’s Tobacco Grant Program funds Local Law Enforcement Agencies. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place.
- (b) Application: This definition is necessary to establish common terms for reference and provide clarification of the language used in the regulations.
- (c) Budget. This definition is necessary to establish common terms for reference and provide clarification of the language used in the regulations.
- (d) Cigarette: 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. Including this statutory definition in the regulations is necessary for clarity so that all procedures are in one place.
- (e) Department: This definition is necessary to clarify that the term “Department” refers to the Department of Justice.
- (f) Equipment: This definition is necessary to establish common terms of reference and provide clarification of the language used in these regulations. This definition will help ensure tracking of high-value Equipment.
- (g) Grant: This definition is necessary to clarify that funds are provided in the form of reimbursement for actual expenditures.
- (h) Grantee: This definition is necessary to establish common terms of reference and provide clarification of the language used in these regulations.
- (i) Grant Agreement: This definition is necessary to establish common terms of reference and provide clarification of the language used in these regulations.
- (j) Local Law Enforcement Agency: Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that the Tobacco Grant Program funds local law enforcement agencies to support specific programs. However, “local law enforcement agencies” is not defined. This definition is necessary to establish who is eligible to apply for Tobacco Grant Program funding.
- (k) 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 “minors” means someone under the legal age of majority.

- (l) Project: This definition is necessary to establish common terms of reference and provide clarification of the language used in these regulations.
- (m) Tobacco Products: 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. Including this statutory definition in the regulations is necessary for clarity so that all procedures are in one place.
- (n) 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 an individual under the legal age to purchase, possess, or use cigarettes or tobacco products. Penal Code section 308 provides that the current legal age is 21.

§ 510. Request for Proposal.

Subdivision (a) establishes that the Department shall post a Request for Proposal (RFP) that will contain information regarding the application process, requirements, and deadlines. This is necessary to define the process the Department will utilize for announcing funding opportunities and the application process so an interested party can apply for a Grant.

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.

Subdivision (c) establishes that Grant funds are contingent on the passing and enactment of the California State Budget. This is necessary to clarify the Department cannot award Grant funding without first receiving funding from the California State Budget.

§ 520. Applicant Eligibility.

This section establishes that Local Law Enforcement Agencies may apply for a Grant. Revenue and Taxation Code section 30130.57, subdivision (e)(1), specifies that the Tobacco Grant Program funds local law enforcement agencies. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place. This section also eliminates confusion and reduces the likelihood an ineligible Applicant will apply for a Grant.

§ 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 the Tobacco Grant Program funds local law enforcement agencies to support specific programs. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place.

§ 522. Eligible Costs.

Subdivision (a) states costs shall be directly related to the Project and approved by the Department to be eligible for reimbursement. This is necessary to ensure Grantees are only reimbursed for expenses that serve the goals and objectives of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016. It also ensures Grantees successfully complete their Projects through the most efficient and cost-effective means available.

Subdivision (b) states an Applicant shall document Project costs in the Budget. This is necessary to provide direction to Applicants and help ensure the Department can accurately evaluate and score each Application.

Subdivision (b)(1) makes personnel and administrative costs eligible for reimbursement. Personnel benefit charges shall be calculated in proportion to the actual time worked on a Project. This subdivision is necessary to ensure proposed costs directly support the Project. Subdivision (b)(1) further provides that administrative costs are limited to five percent of the Grant. Revenue and Taxation Code section 30130.57, subdivision (f), limits administrative costs to five percent. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place.

Subdivision (b)(2) allows travel costs that do not exceed the rates paid to State of California employees. Due to the variance between travel policies and reimbursement rates of Applicants, the Department will use one standard rate, established by the California Department of Human Resources, to ensure travel funds are spent equitably.

Subdivision (b)(3) allows the Grantee to purchase supplies and materials that are necessary to accomplish the Project. This subdivision is necessary to ensure proposed costs directly support the Project.

Subdivision (b)(4) allows for Grantees to purchase Equipment as long as the cost does not exceed the minimum amount necessary to accomplish the Project. This is necessary to ensure proposed costs directly support the Project.

Subdivision (b)(5) explains media campaigns are eligible costs. This is necessary because media campaigns reduce the number of tobacco users, increase quit rates, and reduce Youth initiation and smoking.

Subdivision (b)(6) explains training is an eligible cost if the training is sponsored by the Department or related to the Grantee's Project. This is necessary to ensure proposed costs directly support the Project.

Subdivision (b)(6) 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.

§ 523. Ineligible Costs.

Subdivision (a) explains that all costs that do not meet the criteria in Section 522 are ineligible Project costs. This is necessary to ensure proposed costs directly support the Project.

Subdivisions (a)(1) and (2) explain that expenditures outside the Project performance period or work or services performed outside the Project are ineligible costs. This is necessary to ensure proposed costs directly support the Project.

Subdivision (a)(3) explains that real estate purchase or lease costs are ineligible costs. This is necessary to inform Applicants that the Department has exercised its discretion to not fund real estate costs to ensure the funding will be disbursed and spent on activities that will have the greatest impact on meeting the goals and objectives of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

Subdivision (a)(4) explains that goods or services for personal use are ineligible costs. This is necessary to ensure proposed costs directly support the Project.

Subdivision (a)(5) explains law enforcement materials and supplies are ineligible costs. This is necessary to inform Applicants that the Department has exercised its discretion to not fund law enforcement materials or supplies to ensure the funding will be disbursed and spent on activities that will have the greatest impact on meeting the goals and objectives of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

Subdivision (b) explains that Grant funds shall not to be used to supplant existing state or local funds for the Grantee's Project. Revenue and Taxation Code section 30130.57, subdivision (e), prohibits funding that supplants existing state or local funds. Including this statutory requirement in the regulations is necessary for clarity so that all procedures are in one place.

§ 530. Application Requirements.

Subdivision (a) lists the information that must be included in a Grant Application. This is necessary to ensure the Department has sufficient information to accept and score an Application. The required information also assists the Department in determining what are eligible costs.

Subdivisions (b) and (c) require an Applicant to provide a detailed problem statement and Project description. This is necessary to ensure the Department has sufficient information to evaluate and score an Application.

Subdivision (d) requires an Applicant to certify that it does not receive funding from a manufacturer, distributor, or advertiser of cigarettes or Tobacco Products. This is necessary to ensure that the Applicant does not have a conflict of interest.

Subdivision (e) requires an Applicant to certify that the requested Grant funds will not supplant existing state or local funds. Revenue and Taxation Code section 30130.57, subdivision (e),

prohibits funding that supplants existing state or local funds. This subdivision is necessary because the Department is not able to independently verify that the requested funds do not supplant existing state or local funds.

Subdivision (f) requires an Applicant to provide letters of intent if it intends to contract with another entity to achieve the Project. This is necessary to provide verification that the Applicant can meet its Project objectives.

§ 531. Administrative Review of Application.

Subdivision (a) sets forth the administrative review process for the Department's evaluation of Applications. This subdivision is necessary to provide a fair evaluation of all Applications based on eligibility, completeness, timeliness of submission, and adherence to the RFP.

Subdivision (b) explains that an Applicant who does not pass the administrative review will be rejected. This subdivision is necessary to provide the Applicant with a clear understanding of the administrative review process and ensure procedures are consistent for all Applicants.

§ 532. Scoring of Application.

Subdivision (a) sets forth the merits review process for the Department's evaluation of Applications. This subdivision is necessary to provide the Applicant with a clear understanding of the merits review process and ensure procedures are consistent for all Applicants. The merits review committee shall initially assess whether or not the proposed Project is eligible under Section 521. This is necessary to confirm that the Project meets the requirements of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

Subdivision (b) provides the five criteria used to score an Application. This is necessary to ensure a competitive grant program, provide a fair and clear process, provide program transparency, and ensure procedures are consistent for all Applicants. 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 (b)(5) explains that an Applicant's historical performance under the existing or prior Grant Agreement is evaluated during the merits review. This is necessary to encourage Grantees to utilize their grant funding efficiently and appropriately and ensure the Department considers the performance records of poorly performing Grantees when evaluating and scoring grant Applications.

Subdivision (c) explains there is a minimum of zero and a maximum of seven points for each evaluation criteria. This subdivision is necessary to provide the Applicant with a clear understanding of the merits review process and ensure procedures are consistent for all Applicants.

§ 533. Grant Award.

Subdivision (a) provides the factors used to determine whether a Grant will be awarded for the full or partial amount requested. This is necessary to ensure a competitive Grant program, provide a fair and clear process, provide program transparency, and ensure procedures are consistent for all Applicants. The Department needs the ability to adjust funding requests during the award period to ensure a maximum number of Grants are awarded to provide the largest impact to the State of California.

Subdivision (b) explains that the Department will notify the Applicant of the Grant award, including the amount, or the denial of a Grant award. This is necessary so that an Applicant can start planning next steps.

Subdivision (c) establishes the Department's authority for final selection, and explains that the selections are not subject to an appeal. This is necessary to provide for consistent and timely disbursement of Tobacco Grant Program funds and ensure the grant process is clear and concise for all parties. Allowing an Applicant to appeal a decision may delay all grant funding for the cycle or until the appeal is resolved as all funding amounts would need to be reevaluated after the appeal is resolved. This would have a disparate impact on the other Grantees.

§ 540. Grant Agreement.

Subdivision (a) explains that 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. This section is necessary to complete the Grant Agreement and ensure the entity funded has the authority to receiving grant funding.

Subdivision (b) requires an Applicant selected for a grant award to return a letter of intent to accept the award within 15 days. This subdivision is necessary to provide for consistent and timely disbursement of Tobacco Grant Program funds. If an Applicant does not want to accept a grant award, the Department can award funds to a different Applicant.

Subdivision (c) establishes the minimum terms and conditions of the Grant Agreement. It also explains that the Grantee is responsible for all aspects of compliance with the Grant Agreement. These provisions are necessary to ensure fiscal accountability for the Project.

§ 541. Reimbursement.

Subdivision (a) explains that reimbursement payments cannot be provided until a fully executed Grant Agreement is returned to the Department. This ensures adherence to the terms and conditions set forth in the Grant Agreement.

Subdivision (b) provides that eligible costs incurred may only be reimbursed if a request is submitted to the Department on a quarterly basis along with an itemization of expenditures. Quarterly requests are necessary so that the Department can accurately track remaining funding

and assess requests to amend Grant Agreements. Submitting quarterly payment requests allows the Department to compare payment requests with the Grantee's quarterly progress reports. Requiring documentation of costs incurred ensures the appropriate awarding of funds and prevents fraudulent use of grant funds.

Subdivision (c) explains that the Department may withhold approval of reimbursement requests if the Grantee fails to adhere to the statutes or regulations governing the Tobacco Grant Program or any term of the Grant Agreement. This is necessary to help the Department enforce the terms and conditions of the Tobacco Grant Program and prevent fraudulent use of Grant funds.

§ 542. Progress Reports.

Subdivision (a) requires Grantees to submit quarterly progress reports and other information requested by the Department related to the Grant. This is necessary to help the Department track funds and evaluate Grantee progress toward completing Project goals.

Subdivision (b) provides the Department with authority to 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. This is necessary to encourage Grantees to utilize their Grant funding efficiently and appropriately.

§ 543. Grant Agreement Amendments.

Subdivision (a) explains that Grant Agreements can be amended upon approval by the Department, provided the amendment is consistent with the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 and this Chapter. Providing an option for Grant Agreement amendments ensures appropriate flexibility. Amendments are necessary because it can be difficult for Grantees to spend Project costs over the course of a year and a Grantee may need to shift funding within their agreement to complete their Projects.

Subdivision (b) provides the process and limitations for Grant Agreement amendments and Budget modifications. 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. This is necessary because it can be difficult for Grantees to spend Project costs over the course of a year and a Grantee may need to shift funding within their agreement to complete their Projects. This is further necessary to provide Grantees with a clear process and ensures procedures are consistent for all Grantees.

Subdivision (c) provides that 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. This is necessary to ensure Grants are amended in a timely manner while grant activities are still ongoing. This section provides Grantees with a clear process and ensures procedures are consistent for all Grantees.

§ 544. Project Breach-Termination.

This section allows 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.

§ 545. Recordkeeping.

Subdivisions (a), (b), and (c) require the Grantee to keep records of all labor and personnel activity related to the Project, all travel claims, and all other records related to Project expenditures. This ensures necessary information is documented and retained by the Grantee for the purposes of any future audit. This requirement aids the Department in enforcing the proposed regulations, conducting audits, and preventing diversion and other fraudulent activity.

Subdivision (d) requires the Grantee to retain all documents, records, receipts, and financial accounts related to the Project for five years from the expiration of the Grant Agreement, or in accordance with the Grantee's records retention period, whichever is longer. This ensures necessary information is documented and retained by the Grantee for the purposes of any future audit. This requirement aids the Department in enforcing the proposed regulations, conducting audits, and preventing diversion and other fraudulent activity.

§ 546. Audits.

Subsection (a) explains that the Department may conduct an audit of the Grantee's expenditure of Grant funds audits. Audits provide public transparency and ensure that the revenues generated by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 are used for their designated purpose.

Subsection (b) through (e) set forth the Grantee's duty to cooperate with an audit, authority in which the Department shall conduct a financial audit, as well as the consequences of failing to comply with the Grant Agreement, regulations, and any other law. Audits help ensure fiscal accountability and guard against diversion of funds or other activities outside the objectives of the Tobacco Grant Program. The provisions are necessary to ensure the program has adequate internal controls and provides a clear process that is consistent for all Grantees.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

These regulations implement Proposition 56, which is intended to reduce the consumption of tobacco products. The initiative allocates a portion of annual revenue to the Department, which in turn reimburses local law enforcement programs designed to prevent or reduce illegal sales or marketing of cigarettes and tobacco products to minors and youth. To the extent that tobacco companies and retailers are impacted by grant-funded activities, such impacts are the result of the statute being implemented and not the regulations.

The Department concludes:

- (1) It is unlikely that the proposal would create private sector jobs within the state because only local law enforcement agencies are eligible for grant funds.
- (2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because grant funds are only available to existing local law enforcement agencies.
- (3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because Grant funds are only available to existing local law enforcement agencies.

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of California residents by funding programs that combat cigarette and tobacco smoking. According to Proposition 57:

Tobacco use is the single most preventable cause of death and disease in California, claiming the lives of more than 40,000 people every year. Each year thousands of Californians require medical and dental treatment as a result of tobacco use. (Initiative Measure (Prop. 56, § 1(a), approved Nov. 8, 2016)

- (2) The proposal would not benefit worker safety because it does not regulate worker safety standards.
- (3) Vast quantities of cigarette butts, foil wrappers, battery, plastic and electronic components of electronic cigarettes, lighters, and cigarette packs, are improperly discarded. This tobacco product waste contaminates waterways, poisons aquatic life, blocks drains, chokes birds, creates unsightly litter, and requires public entities to spend large sums on ongoing clean-up operations. The proposed regulations, to the extent they result in reduced use of tobacco products, will reduce environmental degradation.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing these regulations.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations set forth administrative criteria and requirements for a State funded Grant program that will disburse funds to local law enforcement agencies to combat illegal

tobacco sales and use. There are no provisions within the proposed regulations that place additional burdens, obligations, or expenses on existing businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

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

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations. 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.

Performance Standard as Alternative:

The proposed regulations do not mandate the use of specific technology or equipment or prescribe a specific standard. The proposed regulations do not impose any mandates on any law enforcement agency. Seeking grant funding from the Department is voluntary. However, agencies that wish to receive grant funding must comply with the procedures created by these regulations.