

The original proposed regulation is shown by single underlined text; the proposed revisions are shown in double underline for additions and double ~~strikeout~~ for deletions.

## CALIFORNIA CODE OF REGULATIONS

### TITLE 11. LAW

#### DIVISION 1. ATTORNEY GENERAL

#### CHAPTER 19. REGULATIONS ADOPTED PURSUANT TO PROPOSITION 56 HEALTHCARE, RESEARCH AND PREVENTION TOBACCO TAX ACT OF 2016

#### MODIFIED TEXT OF PROPOSED REGULATIONS

##### **§ 999.300. Applicability and Scope.**

(a) This Chapter shall be known as the Department of Justice regulations adopted pursuant to Proposition 56, the Healthcare, Research and Prevention Tobacco Tax Act of 2016, or the DOJ ~~Proposition 56~~ Tobacco Grant Program regulations.

(b) These regulations are only applicable to grants funded by the Department of Justice from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.

Note: Authority cited: Revenue and Taxation Code, section 30130.57, subd. (e). Reference: Revenue and Taxation Code, section 30130.57.

##### **§ 999.301. Definitions.**

(a) For purposes of this chapter, the following definitions apply:

- (1) Additional Conditions. Conditions imposed based on past performance or an assessment of the potential risk for non-compliance with grant program requirements or grant agreement terms and conditions by an applicant or recipient.
- (2) Administrative Costs. Necessary and reasonable indirect expenses as allowed under the terms and conditions of the Grant Agreement.
- (3) Administrative Review. A review of an Application for completeness, timeliness and eligibility.
- (4) Allowable costs. Costs incurred to further the objectives of the Grant that are allowable under the Act, the Grant's terms and conditions, the Request for Proposals, and these regulations. In the event of a conflict, the Grant's terms and conditions will take precedence.
- (5) Application. A formal request, usually in the form of a Proposal, by a Local Law Enforcement Agency to receive a Grant from the Department from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.
- (6) Application Requirements. The elements of an Application that must be completed and the items which must be included, as set forth in a Request for Proposals.
- (7) Audit. A systematic and objective inspection, evaluation, and verification of a Recipient's accounts, financial management systems, and internal controls, conducted in accordance with the Generally Accepted Government Auditing Standards and Revenue and Tax Code, sections 30130.56 and 30130.57, subdivisions (e)(1), (f) & (g), designed to accomplish any one or more of the following: to monitor compliance with the requirements of the grant

- program and the terms and conditions of the Grant Agreement; to assess the quantity, quality, timeliness and cost of services the Recipient produces and delivers under the terms and conditions of the Grant Agreement; and to assess the performance of any contract entered into by a Recipient relating to a Grant. The same definition applies to each secondary recipient of a Grant under a Joint Application.
- (8) Audit Finding. A determination of compliance or non-compliance with the requirements of the grant program or the terms and conditions of the Grant, as a result of an Audit.
  - (9) Closeout. The process by which the Department determines that all necessary administrative actions and all required Grant activities have been completed by a Recipient, and then closes a Grant.
  - (10) Contractor. An entity or person, including a consultant, that enters into a contract with a Recipient to perform an activity.
  - (11) Department. The California Department of Justice.
  - (12) Disqualification. Removal of an Application from the application process due to one or more bases for disqualification as set forth in these regulations or a Request for Proposals.
  - (13) Eligibility Criteria. The minimum requirements an entity must meet to be eligible to apply for an award under a specific grant program.
  - (14) Eligible. Possessing the minimum requirements for an entity to submit an Application and receive a Grant.
  - (15) Equipment. Tangible personal property having a useful life of more than one year and a per-unit acquisition cost of \$1,000 or more.
  - (16) Grant. An award of financial assistance made to a Recipient, the principal purpose of which is the transfer of funds to carry out a program or project of public benefit authorized and intended by Revenue and Taxation Code, section 30130.57, subdivision (e)(1), these regulations, a Request for Proposals, and the Grant Agreement between the Recipient and the Department.
  - (17) Grant Agreement. The final agreement entered into between the Department and a Recipient, or primary Recipient in the case of a Joint Application, which sets forth the terms and conditions of the Grant.
  - (18) Grant Duration. Three years or as otherwise provided by a Request for Proposals or Grant Agreement.
  - (19) Inspection Data. Information regarding inspection, licensing or enforcement activity by a Recipient under the terms of the Grant, including but not limited to information about retail violations, citations, communications, surveys and inspections. Inspection Data includes information regarding such activities whether or not a violation was found or a citation issued. A Request for Proposals or Grant Agreement may contain further information about what constitutes Inspection Data, how it is to be gathered and retained by a Recipient, and how it is to be reported to the Department.
  - (20) Joint Application. A formal request to receive a Grant that is submitted by more than one Local Law Enforcement Agency. A Joint Application includes a primary applicant and at least one secondary applicant.
  - (21) Local Law Enforcement Agency. A division, department, board, office, section, or branch of local government, or institution of public education, that employs one or more persons appointed and duly sworn as a peace officer; city police department; county sheriff's department; police protection and community services district; agency of a city, county, city and county, special district, or other political subdivision of the state that is authorized to

enforce criminal statutes, regulations, or local ordinances; city or county health department that is authorized to conduct workplace inspections; city, county or regional public transit agency; city, district or county housing authority; police or school resource office of a K-12 school district; police department of the University of California, California State University, or California Community Colleges; city, district, or county attorney's office; or any other local public agency that employs one or more sworn peace officers.

- (22) Merits of the Proposal. The relation between the elements of an Application and the Evaluation Criteria as set forth in these regulations and, if applicable, the Request for Proposals.
- (23) Merits Review. Review of an Application by the Department to evaluate the Merits of the Proposal.
- (24) Minor: A person who is under the minimum age for sale of Tobacco Products as established by California law.
- (25) Performance Measure. An indicator used to assess how well a Project is achieving its desired objectives.
- (26) Project. An undertaking that is planned to conduct activities and achieve stated goals and objectives for which funds were awarded by the Department to a Recipient from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.
- (27) Proposal. A document that contains all necessary information to describe the project plans, objectives, outcomes, Performance Measures, Scope of Work, and budget of a proposed Project.
- (28) Recipient. A Local Law Enforcement Agency to which a Grant is awarded. A Recipient includes a primary or a secondary Recipient as specified in a Grant Agreement arising from a Joint Application.
- (29) Records Retention Period. The period of time after the Grant is closed out that a Recipient must maintain records related to the Grant, which is three years.
- (30) Request for Proposals or RFP. A document requesting Applications, Proposals or submissions, and setting forth the requirements of a specific grant program, including but not limited to the application requirements.
- (31) Scope of Work. A detailed description of the work to be performed under a Grant. The Scope of Work typically includes a proposed or approved Proposal, and due dates for performance and reporting.
- (32) Site Visit. A visit to a project, inspection or enforcement activity site, or an alternative site such as a program or headquarters office, to evaluate project progress and monitor compliance with the terms and conditions of the Grant Agreement.
- (33) Supplant. Replace or reduce the amount of funds currently being appropriated for an existing program or activity because Grant funds are available or expected to be available to fund that same program or activity. The effect of supplanting would be to reduce the total amount that would have been available for the purpose stated in the Application or Grant Agreement.
- (34) Suspension. A temporary cessation of a Grant and grant project activities due to noncompliance with grant program requirements or Grant Agreement terms and conditions.
- (35) Termination. The ending of a Grant and grant project activities, in whole or in part, at any time prior to the specified end of the Grant Duration.
- (36) Tobacco Products. The same meaning as in Revenue & Taxation Code, section 30130.50, subdivision (b).

(37) Unallowable Costs. Costs that are not allowable under the Grant Agreement, these regulations, or state law.

(b) This section does not preclude the Department from establishing additional definitions in a Request for Proposals, ~~application form or instructions for an application form~~. Additional definitions shall not be inconsistent with this section.

Note: Authority cited: Bus. & Prof. Code, § 22950.5, subd. (c); Health & Saf. Code, § 104495, subd. (a); Rev. & Tax. Code, §§ 30013, 30121, 30130.50, subds. (a) & (b), 30130.55, subd. (b)(1), 30130.57, subds. (e) & (g); Penal Code §§ 830, et seq. Reference: Revenue and Taxation Code, section 30130.57.

### **§ 999.302. Request for Proposals.**

(a) The Department shall issue Requests for Proposals for the grant program.

(b) At a minimum, a Request for Proposals shall include information about the following:

(1) Name of the grant program.

(2) Source of funding or authority for the grant program.

(3) Approximate amount of available funding.

~~(4) Minimum and/or maximum grant amount that may be requested.~~

~~(5) Pre-award process schedule, including but not limited to the approximate date awards are expected to be announced.~~

~~(6) Method(s) to submit an Application.~~

~~(7) Deadline to submit an Application.~~

~~(8) The merits review panelists.~~

~~(9) The rubric used by the merits review panel to score the Applications.~~

~~(10) Grant Duration.~~

~~(11) Other information to assist an applicant in submitting a complete application.~~

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

### **§ 999.303. Eligibility, Applications, and Joint Applications.**

(a) Any Local Law Enforcement Agency in California is eligible to submit an Application in response to a Request for Proposals.

(b) Applications shall be consistent with the Act, these regulations, and the Request for Proposals.

(c) The Department may include document templates and examples, answers to frequently asked questions, examples of prior awards, ~~an application form, instructions for an application form,~~ and other documents, as part of a Request for Proposals.

(d) An Application and a Joint Application shall include a Proposal.

(e) An Eligible Local Law Enforcement Agency may submit one or more Applications.

(f) An Eligible Local Law Enforcement Agency may submit one or more Joint Applications.

(g) An Eligible Local Law Enforcement Agency may submit one or more Applications and one or more Joint Applications.

(h) A Joint Application shall include, in addition to other requirements set forth in the Request for Proposals, the following information:

(1) Complete identification of all entities that are jointly applying for the Grant.

- (2) A designation of the primary applicant and of all secondary applicants.
- (3) A statement from the primary applicant indicating that the primary applicant agrees to assume responsibility for performance of the Projects in the event a Grant is made.
- (4) A statement from each secondary applicant identifying and acknowledging each responsibility that the secondary applicant shall assume in the event a Grant is made to the primary applicant.
- (5) A statement setting forth the benefits and disadvantages reasonably likely to arise from joint, as distinct from separate, performance of the Project.
- (6) A declaration indicating whether any primary or secondary applicant is also submitting a separate Application or is a primary or secondary applicant in any other Joint Application, and briefly identifying such application(s).
- (i) Applicants shall submit Applications to the Department at the address provided in the Request for Proposals.

Note: Authority cited: Rev. & Tax. Code, §§ 30013, 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.304. Competitive Process.**

All Grants will be made on a competitive basis, unless otherwise specified in the Request for Proposals.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.305. Administrative Review.**

- (a) Applications will undergo an Administrative Review by the Department to determine whether Application Requirements are satisfied, including but not limited to those of timeliness and completeness of the Application and of eligibility of the applicant, as set forth in the Request for Proposals, the Act, and these regulations.
- (b) Applications not meeting Application Requirements, and Applications received from ineligible entities, will be disqualified.
- (c) Applications received from applicants that meet the Eligibility Criteria and the Application Requirements will undergo a Merits Review.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.306. Disqualification.**

- (a) Applications that do not meet the Application Requirements and Eligibility Criteria as set forth in these regulations and the Request for Proposals ~~may~~ shall be disqualified.
- (b) Bases for disqualification include the following:
  - (1) The applicant or one of the applicants is not Eligible.
  - (2) The Application includes activities with dates outside the Grant Duration period.
  - (3) The funding amount requested is less than the minimum award amount allowable or exceeds the maximum award amount allowable, if applicable.

- (4) The Application is incomplete, including an Application with one or more unanswered questions on an application form, without a complete Proposal, or with missing, blank, or unreadable attachments.
- (5) The Application includes Unallowable Costs.
- (6) The Application was submitted after the submission period ended.
- (c) The Department shall notify applicants of disqualification and the reason(s) for disqualification.
- (d) An applicant may appeal disqualification of its Application.
- (e) An applicant that successfully appeals disqualification may amend its Application.
- (f) An applicant may request the Department to be permitted to amend its Application.
- (g) The Department may, with the assent of an applicant, cure a defective Application that would otherwise be disqualified.
- (h) The remedy for an appeal that is successful in whole or in part may, at the Department's discretion, be provided either during the current or the subsequent fiscal year.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.307. Merits Review.**

- (a) Applications that satisfy the Administrative Review shall be reviewed by a merits review panel according to evaluation criteria set forth in the regulations and Request for Proposals. The purposes of the Merits Review are to evaluate the merits of each Application that satisfies Administrative Review and make recommendations as to whether or not to award grants and for what amounts.
- (b) The merits review panel shall apply the evaluation criteria for awards and ~~may~~ shall include consideration of the following elements as they relate to the purposes and requirements set forth in the Act, regulations, and Request for Proposals:
  - (1) The extent to which the proposed activities fulfill the purposes, priorities and requirements of the grant program.
  - (2) The relevance, effectiveness, feasibility, efficiency, Performance Measures, and impact of the proposed activities.
  - (3) The capacity of the applicant to comply with all the terms and conditions as proposed in the Application and to administer a Grant successfully.
- (c) For each Application that the merits review panel recommends be awarded a Grant, the panel shall also make a recommendation as to the amount of funding, based on the factors set forth in the regulations and Request for Proposals.
- (d) The merits review panel shall provide its recommendations as to approval or denial of Applications, and as to the amount of funding for successful Applications, to the Attorney General or designee.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.308. Evaluation Criteria for Merits Review.**

- (a) The Department shall award or deny Grants and funds based on an assessment as to the extent to which applicants and Projects proposed in Applications satisfy the following criteria:

- (1) Enforcement of state or local laws relating to the sale of Tobacco Products.
- (2) Enforcement of state or local laws relating to the marketing of Tobacco Products.
- (3) Enforcement of state or local laws relating to restrictions on use of Tobacco Products.
- (4) Investigative activities to reduce sales of Tobacco Products to Minors.
- (5) Compliance checks to reduce sales of Tobacco Products to Minors.
- (6) Capacity to support front-line law enforcement peace officers to achieve the purposes stated in (1) through (5) above. Such Projects may utilize non-sworn personnel and may include inspections, monitoring, surveys, retailer education, training, development of best practices, community policing, prosecution of matters arising from enforcement, adjudication of matters arising from enforcement, and the accurate and complete collection, reporting, and analysis of data, Inspection Data, and other information relating to the Projects approved in the Grant Agreement.
- (7) Capacity to hire front-line law enforcement peace officers to achieve any of the purposes stated in (1) through (5) above. This may include payment of over-time to personnel.
- (8) Projects that do not use Grant funds to Supplant any existing state or local funding of activities that have the same purposes as those of the Act.
- (9) Capacity to gather, retain, and report Inspection Data regarding the activities identified in the Application.
- (10) Capacity to comply with other administrative requirements of the Grant, including submission of progress and final reports.
- (b) The Department may award or deny Grants and may allot funds based on a determination as to whether the Projects proposed in the Application satisfy additional criteria set forth in the Request for Proposals.
- (c) The Department shall award or deny Grants and funds based on an assessment as to the extent to which the Projects proposed in the Applications enforce, or monitor, promote or investigate adherence to state or local laws that further the purposes of the Act.
- (d) The Department shall award or deny Grants and funds based on an assessment as to the extent to which the Projects proposed in the Applications promote the purposes of the Act.
- (e) The Department may award or deny Grants and funds based on an assessment of indicia of support for the Application from local stakeholders including, but not limited to, tobacco control and prevention programs; public health, health and human services, or environmental health departments; local lead agencies; community-based or youth-oriented organizations; and local elected officials.
- (f) The Department shall award or deny Grants and funds based on an assessment as to the extent to which the Projects proposed in the Applications will result in hiring of, or support for, front-line law enforcement peace officers, for programs relating to tobacco law enforcement as set forth in subdivisions (a) through (d) above, as applicable.
- (g) The Department shall assess Joint Applications based on all the factors set forth in subdivisions (a) through (f) above, as applicable, together with an assessment of whether the Joint Application demonstrates that the primary and secondary applicants have the capacity to perform the Project set forth in the Joint Application.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e); Healthcare, Research and Prevention Tobacco Tax Act, 2016 Cal. Legis. Serv. Prop. 56, §§ 1 & 2 (Proposition 56) (West). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.309. Recommendation for Funding.**

(a) The merits review panel shall make a funding recommendation for each Application, other than those that were disqualified or denied, based on the following criteria:

(1) Amount of available funding.

(2) Amount of funding requested.

(3) The merits of the Application under the evaluative criteria set forth in the regulations.

(4) The Department's program, enforcement and research priorities, if any.

(5) Indicia of support for the Application from local stakeholders including, for example, tobacco control and prevention programs; public health, health and human services, or environmental health departments; local lead agencies; community or youth organizations; and local elected officials.

(6) Indicia of the likely benefits of the scale of operations.

(7) Indicia that the funds granted will not be used to Supplant existing state or local funds used for the same purpose.

(8) Other factors in accordance with grant program requirements as set forth in the Request for Proposals.

(b) Recommendations of Grant awards, denials, and funding, will be submitted to the Attorney General or designee for final approval.

(c) Awards, denials and funding decisions by the Attorney General or designee may be appealed. ~~are final and not subject to appeal.~~

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e); Healthcare Research and Prevention Tobacco Tax Act, 2016 Cal. Legis. Serv. Prop. 56, §§ 1 & 2 (Proposition 56) (West). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.310. Merits Reviewers.**

(a) Merits reviewers shall have experience, qualifications and expertise that qualifies them to perform technical and substantive reviews of the Applications, and may include subject matter experts designated by the Department and individuals not employed by the Department.

(b) The Attorney General or designee shall select the merits reviewers.

(c) No merits reviewer may review an Application submitted by an agency that employs or contracts with that merits reviewer, employs or contracts with a member of that individual's family, has had an employment or contractual relationship with the agency within the previous twelve months, or has charged or prosecuted that individual or a member of that individual's family within the previous twelve months.

(d) Information about the members of the merits review panel shall be included in the Request for Proposals.

(e) The merits review panelists shall receive instruction regarding scoring the merits of Applications prior to reviewing any Application and shall follow the scoring rubric.

(f) Each member of the merits review panel shall make a written declaration regarding confidentiality and impartiality, and declaring no conflict of interest, prior to reviewing any Application.

~~(g)~~ A merits review panel shall have two or more members.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.



**§ 999.311. Award Notification.**

(a) All applicants shall be notified of disqualification, denial, award, or other decision, by letter, electronic mail or other method deemed reliable by the Department.

(b) Notification of award does not authorize commencement of grant activities. Grant activities may not begin until a Grant Agreement between the Recipient and the Department is fully executed.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.312. Grant Agreement.**

(a) A written Grant Agreement is required for all Grants.

(b) A Grant Agreement will include the following, as applicable:

(1) Grant Agreement number.

(2) Name of the Recipient.

(3) Grant Duration.

(4) Grant award amount.

(5) Name of Grant manager for the Recipient.

(6) Name of Grant manager for the Department.

(7) Name of the authorizing official for the Recipient.

(8) Name of the fiscal or accounting official for the Recipient.

(9) Request for Proposals.

(10) Signed Application submitted by the Recipient.

(11) Approved Project Proposal, Scope of Work and budget.

(12) General terms and conditions.

(13) Program specific terms and conditions.

(14) Signature of the Attorney General or designee of the Department.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.313. Joint Grant Agreement.**

(a) A written Grant Agreement is required for a Grant awarded to more than one local law enforcement agency on the basis of a Joint Application.

(b) A joint Grant Agreement will include, in addition to the items required for all Grant Agreements, the following:

(1) Name of the primary Recipient.

(2) Name of each secondary Recipient.

(3) The division of funds between each Recipient, if applicable.

(4) Name of the Grant manager for the primary Recipient.

(5) Name of the official contact for the Grant for each secondary Recipient.

(6) Name of the authorizing official for the primary Recipient.

(7) Name of the authorizing official for each secondary Recipient.

(8) Name of the fiscal or accounting official for the primary Recipient.

(9) Approved designation, between the primary and each secondary Recipient, of responsibilities for performance of the Grant.

(10) A statement from the primary Recipient indicating assumption of responsibility for performance of the Project(s) in the event a Grant is made.

(11) A statement from each secondary Recipient identifying and acknowledging each responsibility that the secondary Recipient shall assume in the event a Grant is awarded.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.314. Prior Approval Required.**

(a) Prior written approval by the Department is required for changes to an approved Project, Scope of Work, or budget.

(b) The Recipient shall submit a request in writing to the Department's Grant manager or designee for prior approval of the following:

(1) Revision of the Project, including the objectives, Performance Measures, outcomes, or reporting obligations.

(2) Revision of the Scope of Work, including the activities, dates, or deliverables.

(3) Budget changes, including line item shifts or changes to the approved use of funds. In the Grant Agreement the Department may set a threshold at which a line item shift is required.

(4) Extension of the Grant Duration.

(5) Purchase of equipment with a purchase price of over \$5,000 per item not included in the approved budget.

(6) Travel not included in the approved budget.

(7) Contracting out or obtaining the services of a third party not included in the approved budget or Grant Agreement.

(8) Changes in Recipient organization.

(9) Withdrawal of a secondary recipient from a Project that is part of a Joint Application.

(10) Use of program income for purposes not in accordance with the Grant Agreement, Act or regulations.

(11) Other circumstances for which prior approval is required under the terms of the Grant Agreement or Request for Proposals.

(c) Failure to obtain prior written approval may result in the Department pursuing remedies for non-compliance.

(d) The Department may waive a prior approval requirement; such waiver must be in writing.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subds. (e)(1) & (f). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.315. Access.**

(a) Upon reasonable notice, Recipients shall allow the Department or designee access to the writing, as defined in Evidence Code, section 250, relevant to the Grant or Project, the project sites (if applicable), and any employees or contractors who may reasonably have information related to the Grant or Project.

(b) Upon reasonable notice, Recipients shall allow the Department or designee to accompany the Recipient on Grant-related activities.

(c) Upon request and within a reasonable time period, Recipients shall provide to the Department or designee requested information and writing, as defined in Evidence Code, section 250, relevant to the Grant or Project.

(d) Failure to allow access or provide requested information or writing, as specified in subdivisions (a) through (c) above, may result in the Department pursuing remedies for non-compliance.

(e) Recipients shall allow the California State Auditor access to perform the audits required by Revenue and Taxation Code, section 30130.56, subdivision (a).

Note: Authority cited: Evid. Code, § 250; Rev. & Tax. Code, §§ 30130.56, subd. (a); 30130.57, subds. (e)(1) & (f). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.316. Performance Compliance and Responsibility.**

(a) Grants and funding are subject to performance compliance reviews in the form of Site Visits, interviews with Recipients, contractors and other stakeholders, and review of grant reports, progress reports, citations issued, adjudicatory records, Inspection Data, and other writing, as defined in Evidence Code, section 250.

(b) Performance compliance review may be performed by the Department or by an evaluator designated by the Department.

(c) Grants and funding are subject to ongoing performance compliance review based on accurate and timely submission of Inspection Data to the Department as required under the terms of the Grant Agreement.

(d) Completion of Grant-related activities or closeout of the Grant does not preclude the Department or designee from conducting a performance compliance review of the Recipient.

(e) Recipients are subject to audit by the California State Auditor, as required by Revenue and Taxation Code, section 30130.56, subdivision (a).

(f) The Recipient of a Grant is the responsible agency and may not transfer or assign the Grant to another entity without prior authorization from the Department.

(g) Any liability arising from Grant-related activities shall be the responsibility of the Recipient. The State of California and the Department disclaim responsibility for any such liability.

Note: Authority cited: Evid. Code, § 250; Rev. & Tax. Code, §§ 30130.56, subd. (a); 30130.57, subds. (e)(1) & (f). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.317. Financial Compliance.**

(a) Grants are subject to a financial compliance review in the form of an Audit, an agreed-upon-procedure, or both.

(b) Completion of Grant activities or closeout of the Grant does not preclude the Department or designee from conducting a financial compliance review of the Grant.

(c) Recipients are subject to audit by the California State Auditor, as required by Revenue and Taxation Code, section 30130.56, subdivision (a).

Note: Authority cited: Rev. & Tax. Code, §§ 30130.56, subd. (a); 30130.57, subds. (e)(1) & (f). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.318. Reports.**

- (a) Progress reports, final reports, and Inspection Data shall be submitted to the Department in accordance with the reporting requirements set forth in the regulations and Grant Agreement.
- (b) Extensions of report and Inspection Data due dates must be approved by the Department in writing.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.319. Withholding of Ten Percent Pending Closeout.**

- (a) Ten percent of the Grant amount may be withheld by the Department pending approval by the Department of the final report, and resolution of any performance issues or Audit Findings prior to closeout.
- (b) The ten percent withholding may not be appealed.
- (c) The ten percent withholding may subsequently be reduced or waived by the Department.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.320. Use of Program Income.**

- (a) Program income, if any, may be reinvested into the Project for which the Grant was awarded or returned to the Department, or the Department may approve other uses of program income in accordance with the general purposes of the Grant.
- (b) Program income does not include fines, penalties, legal costs or attorney's fees collected as a result of enforcement actions by the Recipient.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.321. Procurement of Goods or Services.**

- (a) The Recipient shall follow its own written procurement policies and procedures when procuring goods or services for activities relating to performance of the Grant, except where directed otherwise by the Department.
- (b) All documents related to the procurement of goods or services shall be maintained by the Recipient for the Records Retention Period and provided to the Department upon request.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.322. Use of Contractors; Recipient Responsibilities; Written Agreement; Invoices.**

- (a) Recipients may contract for services, either as set forth in the Grant Agreement or with prior written approval from the Department.
- (b) Contractor services must be for the purpose of achieving the Grant objectives, including but not limited to supporting front-line law enforcement peace officers.
- (c) Recipients are responsible for ensuring that each Contractor complies with Grant requirements, regulations, and the Grant Agreement, including, if applicable, collecting and reporting of Inspection Data.

(d) Contracting out shall not affect the Recipient's overall responsibility for the management of the Project, and the Recipient shall reserve sufficient rights and control to enable it to fulfill its responsibilities for the Grant.

(e) Recipients shall have a written agreement with each contractor. At a minimum, the written agreement will include:

(1) Identification of the parties.

(2) Beginning and ending dates of the contract.

(3) Dollar amount of the contract.

(4) A description of the activities, services or deliverables to be performed with a time schedule and a budget.

(5) Payment provisions.

(6) Grant Project requirements with which the contractor must comply.

(f) Recipients shall award contracts in accordance with the terms of the Grant Agreement and the requirements in the regulations for competitive process and procurement of goods and services.

(g) Contractor invoices shall include sufficient information to allow a third party, including but not limited to the Department and the State Auditor, to determine whether the expenditures invoiced were allowable and reasonably necessary to the performance of the Grant. Contractor invoices lacking sufficient detail may be a basis for a finding that the Recipient has not complied with the terms of the Grant.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.323. Administrative Costs.**

A Recipient shall not use more than 5 percent of the funds received for Administrative Costs.

Note: Authority cited: Rev. & Tax Code, section 30130.57, subd. (f). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.324. Program Costs.**

(a) Program costs may include the reasonable and necessary cost of Tobacco Products purchased during Grant-related enforcement operations.

(b) Program costs may include reasonable and necessary costs incurred to obtain identification and electronic payment documents for use by Minors.

(c) An applicant shall include program costs in the Proposal, if the applicant intends to apply Grant funds towards those program costs.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.325. Records of Tobacco Products.**

(a) Recipients shall maintain property records for Tobacco Products purchased or otherwise obtained during the course of performing a Project supported by a Grant.

(b) Property records for Tobacco Products shall include:

(1) A description of the Tobacco Product, including but not limited to the brand and quantity.

(2) An invoice or receipt, or declaration attesting to absence of invoice or receipt.

- (3) The date the Tobacco Product was purchased or otherwise obtained.
- (4) The purchase cost, if applicable.
- (5) The full name and address of the retailer or individual from whom the Tobacco Product was obtained.
- (6) Information about the disposition of the Tobacco Product, if applicable, including date of disposal.
- (c) Property records of Tobacco Products, or copies thereof, shall be maintained for the Records Retention Period.
- (d) A Recipient shall retain and preserve the Tobacco Products purchased or otherwise obtained during the course of performing a Project supported by a Grant, in accordance with the Recipient's written policies regarding retention, destruction or forfeiture of such items.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.326. Travel.**

- (a) Travel will be in accordance with the Recipient's written travel policies, subject to the requirements of this section and any conditions in the Grant Agreement.
- (b) Travel costs will be substantiated by receipts to the extent required by the Recipient's written travel policies. These receipts will be made available to the Department upon request.
- (c) Travel costs consist of the reasonable and necessary charges for commercial fares, public transportation, private vehicle, overnight and day parking of private or rental vehicles, bridge and road tolls, meals, lodging, and incidentals, and other reasonable and necessary charges incurred for travel necessary for the performance of the Grant.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.327. Travel Transportation Expenses.**

Travel transportation expenses may be included within an Application, and a subsequent Grant, as follows:

- (a) Transportation expenses incurred by a Recipient using an official vehicle are allowable in accordance with the Recipient's written policies and procedures.
- (b) Public transportation is allowable up to the actual expenses incurred for economy travel. Public transportation includes commercial air, rail, bus, taxi, and transportation network.
- (c) Vehicle rental is allowable up to the actual expenses incurred for rental of an economy class vehicle.
- (d) Mileage for using a privately-owned vehicle is allowable at the standard mileage rate established by the U.S. Internal Revenue Service and in effect at the time of travel. Travel logs shall be utilized to substantiate mileage costs.
- (e) Parking is allowable up to the actual expenses incurred, provided less expensive nearby parking was not available in which case reimbursement may not exceed the price of that less expensive alternative.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.328. Meals, Incidentals, Lodging Expenses While Traveling.**

Expenses incurred or reasonably anticipated to be incurred while traveling may be included within an Application, and a subsequent Grant, as follows:

(a) Expenses for meals, incidentals, and lodging, while traveling, are allowable, in accordance with the written policies and procedures of the Recipient and any conditions in the Grant Agreement.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1); Gov. Code, §§ 19820, 19822. Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.329. Equipment Property Records.**

(a) Recipients shall maintain property records for Equipment purchased using a Grant, for the Records Retention Period.

(b) Property records for Equipment shall include:

(1) A description of the Equipment.

(2) A serial number or other identification number, if available.

(3) The acquisition date.

(4) The acquisition cost, including the cost of any necessary accessories and all incidental costs incurred to put the asset into place and ready for its intended use.

(5) Information regarding the location, use and condition of the Equipment.

(6) Information regarding the ultimate disposition of the Equipment, if applicable, including date of disposal and sale price.

(c) Recipients may maintain copies, rather than originals, of property records for Equipment.

(d) Recipients shall allow the Department or designee access to Equipment property records upon request.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.330. Records Retention; Access.**

(a) Recipients shall maintain records relating to the Application, Grant, Proposal, Grant Agreement, and performance of Projects, for the Records Retention Period. Such records include:

(1) Reports regarding enforcement activities, inspections, community meetings, and educational programs, relating to performance under the terms of the grant.

(2) Personnel activity reports and associated payroll records.

(3) Travel reimbursement claims, including receipts for lodging, per diem and transportation.

(4) Documents supporting calculation or methodology for determining Administrative Costs.

(5) Documents supporting calculation or methodology for determining whether or not funds were Supplanted.

(b) Recipients shall allow the Department or designee access to records identified in subsection

(a) above, upon request.

(c) Recipients may maintain copies, rather than originals, of records relating to the Application, Grant, Proposal, Grant Agreement, and performance of Projects.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.331. Remedies for Noncompliance.**

The Department may take one or more of the following actions for failure by a Recipient to comply with the Act, regulations or Grant Agreement terms and conditions:

- (a) Disqualification from consideration for future Grants.
- (b) Withholding of payments.
- (c) Recovery of funds paid to the Recipient.
- (d) Imposition of additional conditions on the Recipient.
- (e) Termination of the Grant Agreement.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.332. Additional Conditions.**

(a) The Department may impose Additional Conditions on a Recipient for reasons including:

- (1) Late submission of Inspection Data or progress reports.
- (2) Findings of an Audit or agreed-upon-procedure.
- (3) History of unsatisfactory performance.
- (4) Noncompliance with terms and conditions of current or previous Grant Agreements.
- (5) A determination by the Department that imposing Additional Conditions is reasonably necessary to monitor the progress of the Grant, ensure the Recipient manages the Grant in compliance with the terms and conditions of the Grant Agreement, or ensure the Recipient expends the Grant funds in an effective, efficient, and allowable manner.

(b) Upon imposition of Additional Conditions, Recipients will be notified in writing of the following:

- (1) The Additional Conditions imposed.
- (2) The reasons for imposing the Additional Conditions.
- (3) The date the Additional Conditions are effective.
- (4) The actions required, if any, to remove the Additional Conditions.
- (5) The timeframe in which the required actions must be completed.
- (6) The consequences of continued noncompliance.

(c) The Department may take into consideration the imposition of Additional Conditions on a Recipient during evaluation of any Application submitted by the Recipient in the future.

(d) A Recipient may appeal the imposition of Additional Conditions.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

**§ 999.333. Termination.**

(a) The Department may terminate a Grant Agreement for a Recipient's noncompliance with the Act, regulations, or the terms and conditions of the Grant Agreement.

(b) Upon Termination of a Grant Agreement, the Recipient will be notified in writing of the following:

- (1) The reasons for Termination.



- (2) The date the Termination is effective.
- (c) The Department may take into consideration the Termination of a Grant during evaluation of any Application submitted by the Recipient in the future.
- (d) A Recipient may appeal Termination.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.334. Closeout.**

- (a) The Department shall conduct closeout review activities prior to closing out each Grant. Closeout review activities include the following:
  - (1) Review of the final report to ensure it is sufficient and complete.
  - (2) Verification that any performance issues are resolved.
  - (3) Verification that any Audit or agreed-upon-procedure findings are resolved.
- (b) A closeout notification will be issued and the final invoice payment, if applicable, will be processed when closeout review is completed.
- (c) The closeout notification will include:
  - (1) Name of the Grant Agreement.
  - (2) Grant Agreement number.
  - (3) Balance of unexpended Grant funds after payment of final invoice, if applicable.
  - (4) Acknowledgment that the Grant is closed.
  - (5) Post-grant property management and disposition requirements, if applicable.
  - (6) Record retention requirements, if different from the Records Retention Period.
  - (7) Additional post-grant requirements, if applicable.
- (d) Closeout activities will be completed no more than 30 business days from the date a complete final report and complete final invoice are received, or the date of final resolution of any performance or financial compliance issues, whichever is later.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subds. (e)(1), (f) & (g). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.335. Allowable Costs; Reasonable Costs; Allocable Costs.**

- (a) Costs must meet the following general criteria to be allowable:
  - (1) Must be reasonable for the performance of the Grant, and allocable to the Grant.
  - (2) Must be accorded consistent treatment. In the event a cost is assigned in one way and another cost incurred for the same purpose in like circumstances was previously allocated in another way, the Recipient shall provide a description of both the current and the prior assignments. The description shall be sufficient for the Department to ascertain whether or not funds have been Supplanted.
  - (3) Must be adequately documented.
  - (4) Must be allowable under, or otherwise comply with, the Act, regulations, and terms and conditions of the Grant Agreement.
  - (5) Must be in compliance with applicable state and local laws.
- (b) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was

made to incur the cost. In determining the reasonableness of a given cost, consideration will be given to:

- (1) Whether the cost is generally recognized as ordinary and necessary for the proper and efficient performance of the Grant.
- (2) The requirements of the grant program and the terms and conditions of the Grant Agreement.
- (3) Market prices for comparable goods or services for the geographic area.
- (4) Whether the Recipient deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase a cost.
- (c) A cost is allocable to the Grant if the cost is incurred for Grant-related activities.
- (d) Unless otherwise provided for in the Grant Agreement, if a cost is incurred for the performance of Grant-related activities and also for other non-Grant-related activities, and benefits both Grant and non-Grant activities, the proportion that is incurred for the performance of Grant-related activities may be approximated using reasonable and properly documented methods and assigned to the Grant.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subds. (e) & (f). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.336. Guidance on Allowable and Unallowable Costs.**

- (a) The Department may include in the Request for Proposals a list of allowable and unallowable items of costs as guidance for applicants.
- (b) The Department's failure to mention a particular item of cost is not intended to imply the cost is allowable or unallowable. Final determination of allowability will be made by the Department.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.

#### **§ 999.337. Appeals.**

- (a) Actions that may be appealed include:
  - (1) Disqualification of an Application.
  - (2) Imposition of Additional Conditions.
  - (3) Suspension or Termination of a Grant Agreement.
  - (4) Delay of payment.
  - (5) Denial of an Application in whole or in part.
- (b) Appeals must be in writing, postmarked within 30 calendar days of the date of the notification of the action, and mailed or emailed to the Department at the address provided in the Request for Proposals.
- (c) An appeal shall include:
  - (1) A copy of the notification or other communication from the Department.
  - (2) The name of the applicant or Recipient, as applicable.
  - (3) The Grant Agreement, Application or other identification number, if applicable.
  - (4) The title of the Application or Grant Agreement.
  - (5) The reasons the action by the Department should not be imposed, including any documentation to support the appeal.
  - (6) The signature of the authorized representative of the appellant.
- (d) Appeals not postmarked or electronically transmitted in a timely fashion will be denied.

(e) The action or actions specified in the notification shall remain in effect while the appeal is under review.

(f) The Department shall issue a decision on the appeal no later than 630 calendar days from the date the appeal is received, unless notice is provided in writing to the appellant that the decision will be issued at a later date.

(g) A successful appeal may be remedied either during the course of the current funding cycle or in a subsequent funding cycle that may be during the course of the following fiscal year.

(h) The Attorney General, or designee of the Attorney General who is employed by the Department, shall make the final decision regarding all appeals that meet the requirements of this section.

Note: Authority cited: Rev. & Tax. Code, § 30130.57, subd. (e)(1). Reference: Revenue and Taxation Code, section 30130.57.