

Title 11. DEPARTMENT OF JUSTICE  
Notice published January 12, 2018

**NOTICE OF PROPOSED RULEMAKING ACTION**

Notice is hereby given that the Department of Justice (Department) proposes to adopt sections 999.300 to 999.337 of Title 11, Division 1, Chapter 19, of the California Code of Regulations (CCR), described below, after considering all comments, objections, and recommendations regarding the proposed action. These proposed regulations concern the establishment and operation of a grant-making program to fund local enforcement of tobacco-related laws, as mandated by Proposition 56, the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

**PUBLIC HEARING**

The Department will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed regulations, as follows:

**Date: February 28, 2018**

**Time: 2:30-5:00 p.m.**

**Location: 1616 Capitol Ave., Sacramento, California**

**WRITTEN COMMENT PERIOD**

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on **February 26, 2018** at 5:00 p.m. Only written comments received by that time shall be reviewed and considered by the Department before it adopts a regulation.

Monica Gable, Senior Legal Analyst, CA Department of Justice, P.O. Box 944255, Sacramento, CA 94244-2550 email: [monica.gable@doj.ca.gov](mailto:monica.gable@doj.ca.gov), facsimile (916) 323-0813

Note that under the California Public Records Act (Gov. Code, § 6250 et seq.), written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

**AUTHORITY and REFERENCE**

The Department proposes the adoption of California Code of Regulations Title 11, Division 1, Chapter 19, Sections 999.300 to 999.337, pursuant to the authority vested in it by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016, Revenue & Taxation Code, section 30130.57. The proposed regulations will implement, interpret, and make specific the provisions of Revenue & Taxation Code, section 30130.57, subdivision (e)(1). (Gov. Code, § 11346.5(a)(2); 1 CCR 14.)

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Summary of Existing Laws and Regulations:**

In November 2016, California voters approved Proposition 56, the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (the Act). (Codified at Rev. & Tax. Code, §§ 30130.50 – 30130.57.) This measure increased the excise tax rate on tobacco products for the purpose of reducing smoking and thus reducing mortality, disease, healthcare costs, loss of productivity, and other adverse impacts of smoking. The Act also established the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund (the Fund) and designated the distribution of revenues from the Fund. (Rev. & Tax. Code, §§ 30130.53, 30130.55, 30130.57.)

Among other designations of tax revenues, the Act provides that an annual amount of \$48,000,000 shall be used for the purpose of funding certain law enforcement efforts. (Rev. & Tax. Code, § 30130.57, subd. (e).) The Act sets forth these law enforcement efforts as follows:

- (i) to reduce illegal sales of tobacco products, particularly illegal sales to minors;
- (ii) to reduce cigarette smuggling, tobacco tax evasion, the sale of tobacco products without a license and the sale of counterfeit tobacco products;
- (iii) to enforce tobacco-related laws, court judgments, and legal settlements; and
- (iv) to conduct law enforcement training and technical assistance activities for tobacco-related statutes. (Rev. & Tax. Code, § 30130.57, subd. (e).)

The Act apportions annual distribution of these funds in four different ways: \$6,000,000 to the Department of Tax and Fee Administration (formerly the Board of Equalization), \$6,000,000 to the Department of Public Health, \$6,000,000 to the Attorney General, and \$30,000,000 to the Department of Justice/Office of the Attorney General (the Department) to be distributed to local law enforcement agencies. (Rev. & Tax. Code, § 30130.57, subd. (e)(1)—(4).) It is the last of these – the grant-making program of the Department – that is the subject of these proposed regulations.

The Act provides that the Department distribute \$30,000,000 annually to local law enforcement agencies to support and hire front-line law enforcement peace officers for certain programs. (Rev. & Tax. Code, § 30130.57, subd. (e)(1).) These programs include, but are not limited to, enforcement of state and local laws related to the illegal sales and marketing of tobacco to minors and increasing investigative activities and compliance checks to reduce illegal sales of cigarettes and tobacco products to minors and youth. (*Ibid.*)

### **Effect of the Proposed Rulemaking:**

The proposed regulations implement, interpret, and make specific Revenue & Taxation Code, section 30130.57, subdivision (e)(1). This measure provides \$30 million funding each year to the Department to be distributed to local law enforcement agencies. The proposed regulations establish a grant program, administered by the Department, and set forth criteria for eligibility for applicants and projects, and procedures for applications, review, appeal, record-keeping, audits, and other matters, in accord with best practices for grant-making programs.

### **Comparable Federal Regulations:**

There are no existing federal regulations or statutes comparable to the proposed regulations.

### **Policy Statement Overview and Anticipated Benefits of the Proposed Regulations:**

Proposition 56 provides a structure for funds to be distributed by the Department to certain entities and for certain purposes. The proposed regulations provide details as to which entities are eligible to apply, the criteria for funding, the procedures for application, review or appeal, the requirements for recordkeeping, or other matters fundamental to a successful grant program. (See Rev. & Tax. Code, § 30130.57, subd. (e)(1).)

The Department has made an initial determination that the proposed regulations will benefit California residents in numerous ways. The proposed regulations will establish and advance the operation of a grant program to expand and enhance local enforcement of tobacco-related measures. This is likely to reduce illicit use of and exposure to tobacco products, in particular by youth. The Act includes the following findings regarding tobacco use: over 40,000 Californians die every year from tobacco-related diseases; California taxpayers pay \$3.5 billion each year for tobacco-related healthcare expenses; and the cost of lost productivity in California each year as a result of tobacco use is estimated at over \$10 billion. (See Healthcare Research and Prevention Tobacco Tax Act, 2016 Cal. Legis. Serv. Prop. 56, § 1, subs. (a) & (b) (Proposition 56) (West).) Accordingly, the proposed regulations will benefit California in the following ways:

1. *Public health:* Expanded and more effective local enforcement of tobacco-related measures, including additional efforts to prevent predatory marketing to youth and sales to minors, is likely to reduce youth initiation and illicit use of and exposure to tobacco products. This will have a public health benefit.
2. *Economic wellbeing:* Use of and exposure to tobacco products is associated with a large loss in productivity. To the extent that the grant program results in a reduction in youth initiation, and illegal sales of and exposure to tobacco products, it will promote economic vitality.
3. *Compliance:* The grant program will finance additional local enforcement and retailer education, and this will increase compliance with tobacco laws.
4. *Safety:* Combustible tobacco products are a major cause of fires in California. Electronic cigarettes or their batteries can explode. The proposed regulations, to the extent they result in reduced use of illicit tobacco products, will reduce the likelihood of fire and explosion.
5. *Environmental sustainability:* Vast quantities of cigarette butts, foil wrappers, batteries, 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.
6. *Efficient, transparent and effective government:* The proposed regulations establish a grant program that will efficiently and fairly distribute funds to local government agencies, promote effective enforcement, and the process will be transparent to applicants, recipients and the public.

**Determination of Inconsistency/Incompatibility with Existing State Regulations:**

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the implementation of the Department’s grant-making program under Proposition 56, to distribute funds to local law enforcement agencies to enforce tobacco-related laws.

**Forms Incorporated by Reference:**

No documents or forms are incorporated by reference.

**Mandated by Federal Law or Regulations**

The proposed regulations are not mandated by federal statute or regulation. (See Gov. Code, §§ 11346.2, subd. (c); 11346.9.)

**Other Statutory Requirements**

None. (See Gov. Code, § 11346.5, subd. (a)(4).)

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on Local Agencies and School Districts: The proposed regulations will not impose a mandate on any local agency or school district that requires reimbursement pursuant to Government Code section 17500 et seq. (Gov. Code, § 11346.5, subd. (a)(5).)

Cost to any Local Agency or School District: The proposed regulations will not result in any cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630. (Gov. Code, § 11346.5, subd. (a)(6); SAM §§ 6601-6616.) Rather, the proposed regulations establish a grant program that may provide funding to local agencies.

Cost or Savings to any State Agency: The proposed regulations will not result in any cost or savings to any state agency, per Government Code section 11346.5, subdivision (a)(6) and SAM sections 6601-6616, other than the administrative costs for the grant program which are included within the funding.

Other Non-Discretionary Cost or Savings Imposed on Local Agencies: The proposed regulations will not result in any other non-discretionary cost or savings to any state agency, per Government Code section 11346.5, subdivision (a)(6) and SAM sections 6601-6616, other than the administrative costs for the grant program which are included within the funding.

Cost or Savings in Federal Funding to the State: The proposed regulations will not result in any cost or savings in federal funding to the state. (Gov. Code, § 11346.5, subd. (a)(6); SAM §§ 6601-6616.)

Significant Effect on Housing Costs: The proposed regulations will not result in any significant effect on housing costs. (Gov. Code, § 11346.5, subd. (a)(12).)

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: None.

Results of the Economic Impact Assessment (EIA): The proposed regulations will not have a direct adverse economic impact on businesses or jobs in California because they do not regulate California businesses or jobs. Rather, they govern the distribution of state funds to local law enforcement agencies. The proposed regulations therefore will not create new or eliminate existing jobs within the state, create new or eliminate existing businesses within the state, or expand businesses currently doing business within the state. (See Gov. Code, § 11346.3, subd. (b)(1)(A)-(C).) As discussed elsewhere, the proposed regulations will be likely to have a positive economic impact insofar as they benefit the health and welfare of California residents, worker safety, and the state's environment. (See Gov. Code, § 11346.3, subd. (b)(1)(D).)

Cost Impacts on Representative Person or Business: The proposed regulations will not result in any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Business Report: None.

Small Business Determination: The proposed regulations will not affect small businesses per 1 C.C.R. section 4, subdivision (a). This is because the proposed regulations do not regulate California businesses or jobs. Rather, they merely govern the distribution of state funds to local law enforcement agencies. As discussed elsewhere, the proposed regulations will be likely to have a positive economic impact insofar as they benefit the health and welfare of California residents, worker safety, and the state's environment.

Consideration of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. To the extent the Department identified or considered specific alternatives not discussed here, they are addressed in the Initial Statement of Reasons.

## **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Monica Gable, Senior Legal Analyst, Department of Justice, P.O. Box 944255, Sacramento, CA 94244-2550, email: [monica.gable@doj.ca.gov](mailto:monica.gable@doj.ca.gov), facsimile: (916) 323-0813

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. Requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations,

if any, or other information upon which the rulemaking is based, should also be addressed to the above contact person.

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Nicholas Wellington, Deputy Attorney General, Department of Justice, 1515 Clay Street, 20<sup>th</sup> floor, Oakland, CA 94612, email: [nicholas.wellington@doj.ca.gov](mailto:nicholas.wellington@doj.ca.gov), facsimile: (510) 622-2121

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 1300 I Street, Sacramento. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the express terms of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Monica Gable at the address listed above.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, OAL may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulations should be addressed to Monica Gable at the address listed above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Monica Gable at the address listed above.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed regulations, can be accessed through the Department's website at <https://oag.ca.gov/meetings/public-participation>.