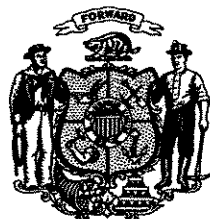


WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-173

AN ORDER to create chapter TCB 1, relating to the tobacco control board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

12-08-00 RECEIVED BY LEGISLATIVE COUNCIL.

01-09-01 REPORT SENT TO AGENCY.

RS:LR:jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

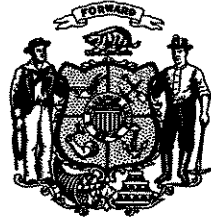
Comment Attached YES NO

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One E. Main St., Ste. 401
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Madison, WI 53701-2536
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CLEARINGHOUSE RULE 00-173

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 255.15 (1m) (c), Stats., requires the Tobacco Control Board to promulgate rules establishing criteria for recipients of grants awarded by the board, including performance-based standards for grant recipients that propose to use the grants for media efforts. The rule does not include these required standards. Rather, s. TCB 1.04 (1) (d) merely states that the board will identify media industry standards and that performance-based standards shall be identified in each grant contract. Additionally, the rule provides that a board appointed subcommittee or advisory group can set the media industry standards. The rule does not appear to meet the intent of statutes to include performance-based standards in the rule.

2. Form, Style and Placement in Administrative Code

- a. In the treatment clause to SECTION 1, the word "Chapter" should precede the notation "TCB."
- b. Section TCB 1.06 (3) should begin with the phrase: "Except as provided in s. TCB 1.05 (5) (a) 1. and sub. (1) (a) 1.,".
- c. In s. TCB 1.07 (2), the phrase "under sub. (1)" should be inserted after the phrase "prohibited activities."

4. Adequacy of References to Related Statutes, Rules and Forms

a. A more specific statutory reference, s. 255.15 (1m) (c), Stats., authorizing the board to create these rules should be inserted into the analysis as well as into s. TCB 1.01.

b. Section TCB 1.03 (7) defines "grant" and lists some of the uses to which the grant funds may be applied. It may be more accurate to cross-reference s. 255.15 (3) (b), Stats., which provides a more complete listing of allowable uses of grant funds than that which is contained in s. TCB 1.03 (7).

c. In s. TCB 1.04 (1) (f), allowable administrative costs should be "no more than 10%" rather than "below 10%" of total costs. See s. 255.15 (3) (c), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the analysis, delete the semicolon in the second paragraph after the word "futures" and insert a comma.

b. In s. TCB 1.03 (1), delete the reference to "indirect or direct" costs. This reference to indirect or direct costs is confusing and does not add anything helpful to the definition. The entire definition should be restated as follows: "'Administrative costs' means costs associated with implementing grant objectives and activities, such as the provision of office space, telephone service and employees."

c. The word "employe" should be spelled "employee" throughout the rule, in accordance with the drafting style adopted by the Legislative Reference Bureau.

d. In s. TCB 1.03 (6), what does the phrase "or other" refer to?

e. In s. TCB 1.03 (11), delete the word "namely," and insert the word "including." The board has additional duties other than those named in that paragraph, and the use of the word "including" clarifies this.

f. Section TCB 1.04 (1) (c) requires the board to fund only programs or projects that are culturally sensitive. A definition of "culturally sensitive" would assist the applicants in determining whether they are meeting this requirement.

g. In s. TCB 1.04 (1) (d), the phrase "the board, its subcommittee or advisory group" should be replaced by the phrase "the board, or a subcommittee or advisory group appointed by the board."

h. In s. TCB 1.04 (2), is there a difference between "monitoring" and "project monitoring"?

i. In s. TCB 1.05 (1) (a) 2., reference is made to "a legally-formed organization." Does this mean an organization which is incorporated under Wisconsin law? If so, this should be clarified.

j. Section TCB 1.05 (3) (b) refers to a continuation grant application form determined by the board to be appropriate. How is an applicant to discover what constitutes an appropriate form?

k. In s. TCB 1.05 (5) (a) 1., the phrase "designated review committee" should be changed to "designated evaluation committee" for consistency with others parts of the rule. Also, it appears that the phrase "to the board" should be inserted after the phrase "subject to appeal." [See also s. TCB 1.06 (1) (a) 1.]

l. Section TCB 1.05 (6) (b) refers to evaluating each application through a "noncompetitive process." The process as described appears to be competitive and insertion of this reference is confusing. Also, in sub. (6) (a) 3., the reference to continuation grants appears misplaced, since par. (b) treats the issue of ranking applications for continuation grants.

m. In s. TCB 1.06 (1) (c), the word "any" should be inserted before the word "county."

n. Section TCB 1.07 (3) (a) states that grant funds may be used to hire a person who will work less than 40 hours per week. Does it matter if a newly hired person works full-time as long as the administrative costs are less than or equal to the 10% requirement?

o. Section TCB 1.07 (3) (c) states that the cost of an audit may be included in an applicant's budget. Clarify whether this is to be included in the administrative cost calculation.

p. Section TCB 1.07 (3) (d) requires grant recipients to maintain records. For how long must the records be maintained?

CHAPTER TCB 1

TOBACCO CONTROL BOARD ACTIVITIES

TCB 1.01	Authority and purpose.
TCB 1.02	Applicability.
TCB 1.03	Definitions.
TCB 1.04	Project eligibility.
TCB 1.05	Application.
TCB 1.06	Grant awards.
TCB 1.07	Restrictions.

TCB 1.01 Authority and purpose. This chapter is promulgated under the authority of ss. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

TCB 1.02 Applicability. This chapter applies to the tobacco control board, to applicants for grants awarded by the board, and to organizations that have been awarded grants by the board.

TCB 1.03 Definitions. In this chapter:

(1) "Administrative costs" means indirect or direct costs, such as the provision of office space, telephone service and any existing employees associated with implementing grant objectives and activities.

(2) "Applicant" means an organization that applies for a grant from the tobacco control board to operate a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(3) "Continuation grant" means a grant awarded by the board to an applicant who received an initial grant for the current funding year and who proposes to continue to operate the same program, or that program as modified in consultation with the board, in the new funding year.

(4) "Evaluation committee" means a committee of board members and other persons invited by board members that reviews and evaluates applications.

(5) "Funding year" means the 12-month period beginning July 1.

(6) "Governmental body" means a state or local agency, board, committee, council, department or public body created by constitution, statute, ordinance, rule or other.

(7) "Grant" means a monetary award made by the board from the appropriation under s. 20.436 (1) (tc), Stats., to an applicant to help the applicant establish or support a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(8) "Initial grant" means a grant awarded for the first time to an applicant.

(9) "Public agency" has the meaning prescribed in s. 46.93 (1m) (e), Stats., namely, a county, city, village, town or school district, an agency of Wisconsin state government or an agency of a county, city, village, town or school district.

(10) "Request for proposals" or "RFP" means a document that describes a grant program, invites applications for the grant and specifies who may apply, application procedures, criteria for awarding grants and conditions and restrictions that accompany grant awards.

(11) "Tobacco control board" or "board" means the 21-member tobacco control board established under s. 15.195 (1), Stats., to carry out the responsibilities set out in s. 255.15 (1m), Stats., namely, to award and monitor grants to applicant organizations for reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(12) "Tobacco prevention and control" means anti-tobacco activities including but not limited to comprehensive efforts in prevention, cessation, policy advocacy, media and countermarketing, evaluation, monitoring, and administrative activities.

TCB 1.04 Project eligibility. (1) The board shall do all of the following:

(a) Fund projects that have prevention and control of tobacco use as their primary goal.

(b) Make funds available to community coalitions such that each county of the state has the opportunity to have at least one anti-tobacco coalition ensuring tobacco prevention and control activities within its geographic borders.

(c) Fund only programs or projects that are culturally sensitive.

(d) Fund media activities that are conducted and evaluated according to media industry standards as identified by the board, its subcommittee, or advisory group. The standards include performance-based outcomes related to media message awareness, attitude change and behavior change. Specific performance-based standards shall be identified in each grant contract based on the scope and content of the media campaign.

(e) Fund programs or projects that demonstrate plans and progress toward achieving program quality criteria and indicators of success specified in the grant RFP and the board strategic plan.

(f) Fund only programs or projects that maintain administrative costs below 10% of total costs.

(g) Fund programs and projects that demonstrate independence from the influence of the tobacco industry.

(2) The board may provide funding to governmental organizations performing or providing support for tobacco prevention and reduction activities, including tobacco education, cessation services, policy development, policy advocacy, monitoring, evaluation, resource distribution, program planning or project monitoring.

TCB 1.05 Application. (1) WHO MAY APPLY. (a) An applicant may be any of the following:

1. A public agency.
2. A legally-formed organization.
3. A coalition of organizations under the auspices of a public agency or a legally-formed organization.
4. The tribal governing body of a federally recognized Wisconsin tribe or band of Indians, or an American Indian organization appointed by the tribal governing body.

(2) SOLICITATION. (a) The board shall solicit applications for initial grants by preparing one or more RFPs, publishing a legal notice of the availability of each RFP at least twice in the official state newspaper no later than 3 weeks before the application deadline, and distributing copies of an RFP on request.

(b) Based upon satisfactory performance and availability of funds, the board may solicit applications annually for continuation grants from current grantees. The board's solicitations shall be published as a legal notice at least twice in the official state newspaper no later than 3 weeks before the application deadline. The board shall provide details of the continuation grant to interested parties upon request.

Note: Persons interested in the Board's solicitation of one or more continuation grants may request details of the solicitation by writing the Tobacco Control Board, 1 West Wilson Street, Room 250, P.O. Box 1190, Madison, Wisconsin 53701-1190.

(3) MAKING APPLICATION. (a) *Initial grants.* 1. An application for an initial grant shall be made on forms included in the RFP.

Note: Interested persons may ask to be placed on a mailing list of parties to be sent future RFPs by writing the Tobacco Control Board, 1 West Wilson Street, Room 250, PO Box 1190, Madison, Wisconsin 53701-1190.

2. The RFP shall specify a date by which the applicant must apply.

3. The application shall be submitted to the board in accordance with the deadline and processes indicated in the RFP.

(b) *Continuation grants.* 1. The board may solicit applications for continuation grants from currently-funded projects in a form determined by the board to be appropriate for the projects.

2. The continuation solicitation shall specify a date by which the applicant must apply.

3. The application shall be submitted to the board in accordance with the deadline, required format and content specifications indicated in the continuation solicitation.

(4) CONTENT OF APPLICATION. An application for an initial grant shall include all of the following:

(a) An application summary sheet.

(b) The application checklist included in the RFP.

Form

what should
containing app.
contain.

- (c) An abstract that briefly describes the project and highlights the project's purpose.
- (d) A summary of the budget request.
- (e) A justification of the proposed budget detailing cost estimates used in compiling the budget request.
- (f) A narrative description of the program.

(g) A statement of assurance of compliance with applicable federal statutes and regulations and state statutes and rules, including the requirements of this chapter and the RFP.

(5) REVIEW OF APPLICATIONS. (a) *Applications for initial grants*. 1. Preliminary review. All initial grant applications shall include all of the application contents specified in sub. (4) and, if applicable, the RFP. The board or its designated ^{evaluation (E)} review committee shall review each application for compliance with the format and content specifications of sub. (4) and the RFP. Applications that fail to meet all of the criteria may not be approved by the board. Rejection of an application for failure to meet form and content specifications is not subject to appeal ^{to the board}. diff than eval. com? really? 227.51 227.52

2. Evaluation criteria. The board or its designated evaluation committee shall evaluate initial grant applications that receive a favorable preliminary review as specified in subd. 1. against criteria specified in sub. (4) and the RFP. The criteria shall include all of the following:

- a. The applicant's organizational and programmatic capacity to implement the proposed project.
- b. The applicant's understanding and ability to communicate the needs of the target population.
- c. The applicant's stated purpose and objectives for the program and methods and timetable for implementing the program.
- d. The extent to which the applicant's proposed budget is clear and justified.
- e. An evaluation plan for the project. ? what is this?

(b) *Criteria for evaluating continuation applications*. The board or its designated evaluation committee shall evaluate continuation grant applications against all of the following criteria:

- 1. The applicant's understanding and capacity to communicate the needs of the target population.
- 2. The applicant's timetable for implementing the continuation of the current program.
- 3. The quality of the program as measured by program objectives and methodology, evaluation methodology and outcomes, fiscal management, documentation of program services, and the involvement of community partners.

(6) RANKING APPLICATIONS. (a) *Ranking applications for initial grants*. 1. The board or its designated evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. The criteria weighting shall be provided in the RFP. initial grant or alt? why can't this be done in the rule?

2. Using the evaluation criteria specified in subs. (4) and (5), the board or its designated evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets each criterion up to the maximum number of points specified in the RFP. The total points assigned to the application for all applicable criteria will be the score for each application.

3. The board shall numerically rank each application for each RFP (and for continuation grants.)

Then what? Grants only
in writing
4

(b) *Ranking applications for continuation grants.* 1. Using evaluation criteria specified in sub. (5) (b), the board or its designated evaluation committee shall evaluate each application through a non-competitive process.

? (5) how is this non-comp? ?
of a continuation grant

2. The board or its designated evaluation committee shall award continuation grants based upon the applicant's demonstration of effective grant administration and achievement of program outcomes during the previous funding period.

TCB 1.06 Grant awards. (1) **MAKING AWARDS.** (a) *Initial grants.* For a given RFP, the board shall award a grant to the applicant with the highest numerical score pursuant to s. TCB 1.05 (6), except that:

1. The board or its designated evaluation committee may reject any application failing to meet the content specifications under s. TCB 1.05 (4). Rejection of an application for failure to meet the content specifications under s. TCB 1.05 (4) is not subject to appeal.

?
to the board

2. The board may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a grant to an applicant.

3. The board or its designated evaluation committee may reject applications submitted by organizations or individuals that have a contractual, corporate, organizational or business responsibility to promote, assist in the promotion of, the use of or the sale of tobacco products for a company involved in the production, distribution or marketing of tobacco products.

(b) *Continuation grants.* The board may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a continuation grant to an applicant.

(c) *Intergovernmental procurements.* In accordance with s. 16.75 (a) and (b), Stats., the board may perform an intergovernmental procurement for purchases of supplies, materials, equipment or contractual services other than printing and stationary, from the federal government, from another state, ~~or~~ from county, city, village, town or other governmental body in the state.

(2) **NOTIFICATION.** The board shall notify all applicants, in writing, within 60 days of the deadline stated in the RFP for an initial grant, or within 30 days of the expiration of an existing grant, of awards for the new funding agreement.

(3) **APPEAL.** An applicant for either an initial grant or a continuation grant may appeal to the board an adverse decision of the board. The appeal shall be in writing and shall fully identify all contested issues. The appeal shall be filed with the board within 10 working days of the date on which the notice of awards is postmarked.

Except as provided in TCB 1.05 (5)(a) and sub. (1)(a)1,

(4) **CONTRACT.** The board shall make all grant awards through a contract between the board and each applicant selected to receive a grant.

(5) **AVAILABILITY OF FUNDS.** (a) The board shall decide in advance of the funding year the amount of funds available for grants from the expected appropriation under s. 20.436 (1) (tc), Stats., and shall announce the availability of funds in one or more RFPs.

(b) All funding decisions shall be contingent upon availability of funds under s. 20.436 (1) (tc), Stats. Any changes in the amount of funds available which were unforeseen at the time of the board's release of an RFP or continuation grant materials shall be accommodated by the board, as appropriate, by means of reduction, elimination or increase in existing awards, by awarding of funds to applicants previously denied due to insufficient funds, or by release of a new RFP or new continuation grant application materials.

(c) Any funds that become available due to a denial of an award to a selected grantee as a result of failure of the selected grantee to sign the required agreement or as a result of termination of a project by the board or grantee shall be reallocated by the board at its discretion but within the limits of the intent of the appropriation and this chapter.

TCB 1.07 Restrictions. (1) **PROHIBITED USE OF FUNDS.** The following activities are prohibited under any grant awarded by the tobacco control board:

(a) Purchasing tobacco use cessation medications.

(b) Developing, implementing and evaluating of non-tobacco related activities and programs.

(c) Supplanting existing anti-tobacco resources and activities.

(2) **VIOLATION OF PROHIBITED ACTIVITIES.** If a grantee conducts prohibited activities, the board may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant contract. *under sub. (j)*

(3) **GRANTEE ADMINISTRATION.** (a) A grantee may not use grant funds to supplant existing employe salaries. Grant funds may be used to hire a person who will work less than 40 hours per week or to increase the hours of existing employes currently working less than 40 hours per week. *under sub. (j)*

(b) A grantee may not use grant funds to purchase capital equipment without the prior written approval of the board, although funds may be used to rent capital equipment. In this paragraph, "capital equipment" means equipment having a value greater than \$5000 and a useful life of more than one year.

(c) Grant recipients shall annually furnish the board with an independent certified audit of grant expenses within 30 days after receipt of the report from the audit firm but no later than 90 days after completion of the grant recipient's fiscal year. The cost of the audit may be included in an applicant's budget. *(as per addendum?)*

(d) Grant recipients shall maintain records and provide information to the board as required by the board for purposes of program and fiscal audits and, at the request of the board, shall appear before the board to respond to any questions about the project and use of the grant monies. *Maintain for how long?*

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

Wisconsin Tobacco Control Board

Dated:

By: _____

David Gundersen
Chair

SEAL:

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 29, 2001

Representative Jim Kreuser
208 North
State Capitol

Dear Representative Kreuser:

Enclosed, please find the roll call record for the executive session held by the Joint Committee for Review of Administrative Rules on March 29, 2001. If you have any questions, please feel free to contact me for clarifications. Thank you for your time.

1. Be it moved that, pursuant to s. 227.24(2)(a), stats, the Joint Committee for Review of Administrative Rules extend the effective period of TCB 1 and NR 47 by 60 days?

Aye No

Thank you,

Maggie Grimm
Office of Assembly Co-Chair Glenn Grothman
JCRAR Assembly Clerk

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 30, 2001

David Gundersen
Tobacco Control Board, Executive Director
1 W. Wilson Street
Madison, WI 53702

Dear Mr. Gundersen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 29, 2001 and adopted the following motion:

TCB 1

Relating to: the administration and awarding of grants for tobacco control and establishing criteria for recipients of the grants.

Moved by Senator Robson, seconded by Senator Hansen that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends TCB 1 at the request of the Tobacco Control Board by 60 days.

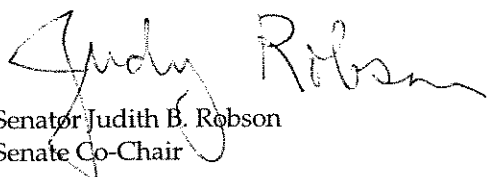
Ayes: (9) Representatives Seratti, Gunderson, Kreuser* and Turner;
Senators Robson, Grobschmidt, Hansen, Schultz and Cowles.
Noes: (1) Representative Grothman
Absent: (1) Representative Kreuser*

Motion Carried

9 Ayes, 1 No, 1 Absent. *voted by paper ballot

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson