

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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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?