

Clearinghouse Rule 00-173

CERTIFICATE

STATE OF WISCONSIN

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TOBACCO CONTROL BOARD

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I, David Gundersen, Executive Director of the Tobacco Control Board and custodian of the official records of the Board, do hereby certify that the annexed rules relating to the tobacco control board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants were duly approved and adopted by this Board on April 13, 2001.

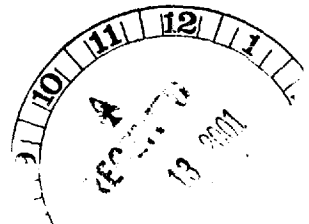
I further certify that this copy has been compared by me with the original on file with the Board and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 13th day of April, 2001.

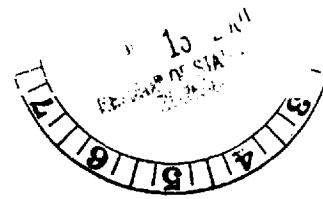


4/13/01

David Gundersen, Executive Director
Tobacco Control Board



ORDER OF THE
TOBACCO CONTROL BOARD
CREATING RULES



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.

Analysis Prepared by the Tobacco Control Board

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3 billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease, and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in 1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board proposes creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule will establish 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.

The Board's authority to create these rules is found in ss. 255.15 (1m) (c) and 227.11 (2), Stats. The rules interpret s. 255.15 (1m), Stats.,

SECTION 1. Chapter TCB 1 is created to read:

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) (c), 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 costs associated with implementing grant objectives and activities, such as the provision of office space, telephone service and employees.

(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) "Culturally competent" means activities that are appropriate and effective for the populations those activities are directed at and that utilize the leadership of those populations in developing, implementing and evaluating those activities.

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

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

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

(8) "Grant" means a monetary award made by the board from the appropriation under s. 20.436 (1) (tc), Stats., to an applicant for the uses specified in s. 255.15 (3) (b), Stats.

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

(10) "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.

(11) "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.

(12) "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., including 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.

(13) "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 competent.

(d) 1. Fund media activities that shall be measured against the following performance-based standards:

a. Create awareness of campaign messages among 80 percent of the target population within 6 months of initiating the campaign message.

b. Create more adverse attitudes toward smoking among 15 percent of the target population within 6 months of initiating the campaign message.

2. As determined appropriate by the Board, specify additional performance-based standards in each grant contract based on the scope and content of the media and counter-marketing 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 no more than 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 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.
- (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 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.

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.

(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.

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.

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

2. The board shall assign a numerical score to each continuation grant application.

3. 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.

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

(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 under sub. (1), 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.

(3) GRANTEE ADMINISTRATION. (a) A grantee may not use grant funds to supplant existing employee 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 employees currently working less than 40 hours per week.

(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 shall be included in an applicant's budget of administrative costs.

(d) Grant recipients shall maintain records for 3 years 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.

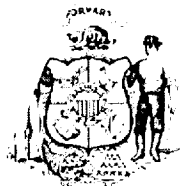
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

Wisconsin Tobacco Control Board

Dated: April 13, 2001

By: 
David Gundersen
Executive Director

SEAL:



Wisconsin Tobacco Control Board

Earnestine Willis

Chair
Physician, Associate Professor
Medical College of Wisconsin

Dionna Austin, Student
Madison High School, Milwaukee

John Benson, Superintendent
Wisconsin Department of Public Instruction

Stuart Berger, Medical Director
Pediatric Heart Transplant Program
Children's Hospital of Wisconsin

Paul Carbone, Professor Emeritus
University of Wisconsin
Comprehensive Cancer Center

William J. Domina
Principle Assistant Corporation Counsel
Waukesha County

Bill Elliott, Dean, College of Communication
Marquette University

Eric Englund, President
Wisconsin Insurance Alliance

Kathleen L. Falk, County Executive
Dane County

Patricia A. Finder-Stone
Registered Nurse/Community Volunteer
De Pere

Gary A. Gonczy
Director of Marketing/Advertising
Kwik Trip, Inc.

Cecelia I. Gore
Program Officer
Jane B. Pettit Foundation

Senator Robert Jauch
25th Senate District
Wisconsin State Senate

Todd Kirkpatrick, Student
University of Wisconsin, Platteville

Representative Rob Kreibich
93rd Assembly District
Wisconsin State Assembly

Representative MaryAnn Lippert,
70th Assembly District
Wisconsin State Assembly
Health Educator

Jack Lockhart, President
State Medical Society

John E. Mielke, Cardiologist
Appleton Cardiology Associates, S.C.

Kristi Morrissey, Student
Sun Prairie High School, Sun Prairie

Brandon R. Scholz, President
Wisconsin Grocers Association

Marian L. Sheridan, Supervisor
School Health Programs
Fond du Lac School District

Frank M. Sterner, President and CEO
E.R. Wagner Manufacturing Co., Inc.

David Gundersen, Executive Director
Wisconsin Tobacco Control Board

April 13, 2001

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703



Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. TCB 1, relating to the tobacco control board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

The rule changes made by this rule will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. These rules apply to the following organizations: the Wisconsin Tobacco Control Board, programs and organizations eligible for funding from the Tobacco Control Board, and programs and organizations funded by the Tobacco Control Board.

Sincerely,

David Gundersen
Executive Director

Enclosure