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To: Members of the State Board of Health

From: Natalya Verscheure, Tobacco Program Manager, PSD *NV*

Through: Elizabeth Whitley, Division Director *EW*

Date: May 2, 2016

Subject: Request for Rulemaking Hearing
Proposed Amendments to 6 CCR 1015-5, Tobacco Education, Prevention, and Cessation Programs, with a request for the rulemaking hearing to occur in July of 2016

Attached is a copy of the proposed amendments to the Rules pertaining to the Tobacco Education, Prevention, and Cessation Grant Program (6 CCR 1015-5). The proposed amendments are part of periodic rule review and in response to the feedback received from grant applicants, application reviewers and oversight committee members regarding grant making process efficiencies.

The proposed amendments consist of technical language clean up to better align the rules language with the authorizing statute C.R.S 25-3.5-801, *et seq.* These are proposed in Sections 1.1 (Definitions), 1.2 (Program Goals and Services), 1.4 (Criteria for Selecting Entities), 1.5 (Awarding of Program Grants), and 1.7 (Conflict of Interest).

Proposed changes to Section 1.1 (Definitions) include adding the definition of grant funds that fall under the purview of these rules.

Statute does not dictate competition when awarding grants, but current rules do not distinguish between competitive and non-competitive awards. In Section 1.3 (Procedures for Grant Application) introduces core and competitive components to the grant making process and subsequent application contents, review and award requirements. The core component grants shall support proposals to implement evidence-based strategies. The competitive component grants shall support grants seeking to advance the evidence base through development, implementation and evaluation of innovative and/or promising practices. Each component has its own set of application requirements. Proposed changes to this section reflect feedback received after the FY 16-18 grant awards, specifically a burdensome application process for non-competitive grants and a desire to streamline and improve grant funding opportunities to local public health agencies.

Proposed changes to Section 1.6 (Responsibilities of Grantees) include clarifying grantee's program evaluation requirements to be more consistent with the statutory language.

The overall intention of these proposed amendments is to make rules pertaining to the Tobacco Education, Prevention, and Cessation Grant Program consistent with the authorizing legislation, to be responsive to the grant making process feedback, to streamline and simplify grant making processes and increase ease and efficiency in working with the program.

The State Tobacco Education and Prevention Program (STEPP) hereby respectfully requests the Board schedule a public rule making hearing in July 2016 to consider these proposed amendments.

Attachments:

Proposed Changes to 6 CCR 1015-5

Statement of Basis and Purpose

Regulatory Analysis

Stakeholder Comments

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
6 CCR 1015-5, Tobacco Education, Prevention, and Cessation Programs
May 18, 2016

Basis and Purpose.

The department proposes to improve and clarify language contained in 6 CCR 1015-5, which governs the Tobacco Education, Prevention and Cessation Grant program. The purpose of these amendments is to revise sections 1.1 through 1.7 of the Rules that were adopted by the State Board of Health on March 2, 2006. Upon review of the rules, the proposed changes consist of updating, repealing and aligning the language with the authorizing statute.

The proposed changes include an addition to the definitions to identify the grant funds to which these rules pertain.

The statute doesn't dictate competition when awarding grants, but the current rules do not distinguish between competitive and non-competitive awards. The proposed changes include changes for more efficient and streamlined grant making process, especially in the areas of non-competitive funding.

The proposed changes also include clarification of the grantee evaluation requirements.

All of the proposed changes will provide clarity, making the grant making process be more efficient and less burdensome to the grantees and oversight committee.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statute: C.R.S. 25-3.5-801 *et seq.*

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
___X___ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
___X___ No

Does this rule incorporate materials by reference?

_____ Yes
___X___ No

Does this rule create or modify fines or fees?

_____ Yes
___X___ No

REGULATORY ANALYSIS

for Amendments to
6 CCR 1015-5, Tobacco Education, Prevention, and Cessation Programs
May 18, 2016

- 1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

Stakeholders include nonprofit, public or governmental organizations representing organizations applying for grant funds. The proposed rules changes would streamline the grant funding processes for non-competitive grants. The proposed rules make changes in response to issues raised by the stakeholder feedback on the current grant making processes.

- 2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

These changes should have positive impact on the non-competitive grantees applying for these funds and would have no impact on competitive awards. The proposed amendments introduce core and competitive components to the program services with subsequent application contents, review and award requirements. Additionally, there are technical revisions to the rules to align with the statutory language.

- 3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The costs of administering the program in the department is not expected to change based on the proposed rules. The proposed rule changes are in response to the feedback received from stakeholders on program's grant making process. There are no expected changes to state revenue resulting from changes to this rule.

- 4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

If no action is taken on this rule, overall program efficiency improvements may not be realized. Inaction is contrary to the continuous quality improvement efforts and culture of the program and CDPHE. The proposed rule changes are in response to the feedback received from stakeholders on program's grant making process.

- 5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

There are no less costly alternatives to achieve the purpose of the rule.

- 6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**

There are no alternative rules or methods considered. Existing rules need to be periodically reviewed and updated based on stakeholder feedback and aligned with the statute. There is no alternative to the rulemaking.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

Because the proposed changes are largely qualitative, the data used in the analysis includes stakeholder feedback survey data.

STAKEHOLDER COMMENTS

for Amendments to
6 CCR 1015-5, Tobacco Education, Prevention, and Cessation Programs
May 18, 2016

The following individuals and/or entities were included in the development of these proposed rules:

State Tobacco Education, Prevention and Cessation Program, Tobacco Review Committee (including public comment opportunities), A 35 grantees and public health at large, via public comment period, Colorado Association of Public Health Officials (CALPHO), and Public Health Improvement Steering Committee(PHISC)

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

Same as above.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

No major factual or policy issues were encountered through the process of stakeholder feedback. The proposed changes are for the purpose of improving the clarity and feedback received from a variety of stakeholders is favorable to the proposed rule changes. Program responses to the feedback are posted and publically available. Feedback supported the program's intent to allow for streamlined and more efficient grant making process by introducing core and competitive aspects of grants and separating non-competitive nature of the core funding allocation and subsequent application requirements that fall into this category.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

There is no health equity or environmental justice impact as a result of the proposed rule change. The effect of the program is, however, intended to improve health equity for those who are disproportionately affected by tobacco. The program is interested in fostering more joint community collaborations so that pooling of funds can create larger teams that serve a broader number of people at a higher overall level. We believe the proposed changes provide greater flexibility to the program and the Tobacco Review Committee in order to continue to have discussions about the best way to allocate funding across the state to maximize the impact of the funding on the community.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Service Division

6 CCR 1015-5

TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS

.....

1.1 Definitions

- (4) "Division" means the Prevention Services Division ~~formerly known as the Emergency Medical Services and Prevention Division.~~

- (6) ~~"The Grant Program" Tobacco Education Program (TEP)~~ means the state tobacco education, prevention, and cessation grant program established pursuant to Section 24-22-117(2)(c), C.R.S., and Section 25-3.5-801, C.R.S. *et seq.*, and administered by the Colorado Department of Public Health and Environment.

- (8) "A35 Grant Funds" means the grant funds from moneys annually appropriated to the department from the tobacco education programs fund created in Section 24-22-117, C.R.S. The cash fund shall consist of moneys collected from the cigarette and tobacco taxes imposed pursuant to Section 21 of Article X of the state constitution.

1.2 Program Goals and Services

- (1) **Program Goals.** ~~The grant program goals are The TEP is~~ to provide funding for community based and statewide programs for the purposes of:

- (a) Reducing initiation of tobacco use by children and youth;
- (b) Promoting cessation of tobacco use among youth and adults; and
- (c) Reducing exposure to second-hand smoke;
- (d) Decreasing tobacco-related disparities.

1.3 Procedures for Grant Application

The Division shall solicit applications for two components of the program services: a Core Component and/or a Competitive Component. The Core Component grants shall support proposals to implement current evidence-based strategies and established best practices. The Competitive Component grants shall seek to advance the evidence base for tobacco control through the development, implementation, and evaluation of innovative and/or promising practices.

- (1) **Core Component Grant Application Contents.**

- 31 (a) At a minimum, all applications shall be submitted to the Division in accordance
32 with these rules and shall contain the following information:
- 33 (i) Project description, including how the applicant will implement the
34 proposed strategies, needs of the population(s) or community to be
35 served, and potential challenges or barriers to implementing proposed
36 work.
- 37 ~~(i) A description, of the experience of the applicant including work with the~~
38 ~~target community and in providing tobacco education, cessation and~~
39 ~~prevention services.~~
- 40 (ii) A description of program infrastructure.
- 41 ~~A description of the specific needs of the population to be served.~~
- 42 ~~(iii) A plan for hiring and retaining qualified staff that represents the~~
43 ~~community's racial and cultural diversity.~~
- 44 ~~(iv) A description of the applicant's capacity to comply with and monitor the~~
45 ~~implementation of the grant requirements.~~
- 46 ~~(v) A description of all program evaluation activities.~~
- 47 ~~(vi) The scope of community support for the program and for the applicant as~~
48 ~~the lead organization in its implementation.~~
- 49 ~~(vii) A description of the existing partnerships between the applicant and~~
50 ~~other key partners.~~
- 51 ~~(viii) A summary of the major strengths of the applicant and the community~~
52 ~~that will lead to successful implementation of the program.~~
- 53 (iii) A detailed scope of work or work plan.
- 54 (iv) A detailed operating budget.
- 55 (2) **Competitive Component Grant Application Contents.**
- 56 ~~(a) At a minimum, all applications shall be submitted to the Division in accordance~~
57 ~~with these rules and shall contain the following information:~~
- 58 ~~(i) A description of the experience of the applicant including work with the~~
59 ~~target community and in providing tobacco education, cessation and~~
60 ~~prevention services.~~
- 61 ~~(ii) A description of the specific needs of the population to be served.~~
- 62 ~~(iii) A plan for hiring and retaining qualified staff that represents the~~
63 ~~community's racial and cultural diversity.~~
- 64 ~~(iv) A description of the applicant's capacity to comply with and monitor the~~
65 ~~implementation of the grant requirements.~~
- 66 ~~(v) A description of all program evaluation activities.~~
- 67 ~~(vi) The scope of community support for the program and for the applicant as~~
68 ~~the lead organization in its implementation.~~

69 (vii) A description of the existing partnerships between the applicant and
70 other key partners.

71 (viii) A summary of the major strengths of the applicant and the community
72 that will lead to successful implementation of the program.

73 (ix) A detailed scope of work or work plan.

74 (x) A detailed operating budget.

75 (b) In addition to the requirements contained in Section 1.3(a), if the entity applying
76 for a grant is a school district or board of cooperative services it shall
77 demonstrate that:

78 (i) The program to be operated with A35 Grant Funds ~~moneys received~~
79 ~~from the TEP~~ has not been previously provided by the school district or
80 board of cooperative services; and

81 (ii) Demonstrate that the program is specifically designed to appeal to and
82 address the concerns of the age group to which the program will be
83 presented.

84 ~~(32)~~ **Timelines for Grant Application**

85 *****

86 **1.4 Criteria for Selecting Entities**

87 (1) The Division and, ~~after October 1, 2005,~~ the Review Committee shall solicit applications
88 and recommend the Board award grants for proposals in accordance with the programs
89 authorized by title 25, article 3.5, part 8, C.R.S.

90 (2) At a minimum, the Division shall use the following criteria for selecting potential grantees:

91 (a) The applicant meets the definition of an "entity" as defined in Section 1.1;

92 (b) The entity submits a completed application in accordance with the requirements
93 in Section 1.3;

94 (c) The entity does not use ~~TEP grant monies~~ A35 Grant Funds to supplant funding
95 for existing programs;

96 (d) The entity has the capacity to adequately administer and implement the program;

97 (e) The entity demonstrates that it complies with the requirements of Section 1.2;

98 (f) The entity demonstrates that its geographic service area and/or the population
99 served is consistent with the goal of establishing programs throughout the state
100 and providing services to persons of all ages; and

101 ~~(g) The entity demonstrates that the proposed program is consistent with the~~
102 ~~Colorado tobacco prevention and control strategic plan.~~

103 (3) In reviewing grant applications for programs for persons with mental illness, the Division
104 and ~~after October 1, 2005,~~ the Review Committee shall consult with the programs for
105 public psychiatry at the University of Colorado Health Sciences Center, the National
106 Alliance for the Mentally Ill, the Mental Health Association of Colorado, the Department of
107 Human Services and other entities as appropriate.

108 (4) The Review Committee shall review and evaluate the applications received and make
109 recommendations to the Board regarding those entities that may receive grants and the
110 amounts and duration of said grants.

111 **1.5 Awarding of Program Grants** - The Board shall award grants to the selected entities, specifying
112 the amount and duration of the grant.

113 (1) **Criteria for the Grant Amount and Duration of Program Grants.**

114 ~~The Board shall specify the duration of the grant; however, no grant awarded shall~~
115 ~~exceed three years without renewal.~~ At a minimum, the Board shall consider the following
116 factors when determining amount and duration, as appropriate:

117 ~~(a) Community readiness;~~

118 ~~(ab) Community need;~~

119 ~~(be) The scope of work;~~

120 ~~(ce) Population served;~~

121 ~~(de) The level and types of services to be provided;~~

122 ~~(ef) The availability of tobacco tax funds; and~~

123 ~~(fg) The capacity of the grantee.~~

124 ~~(2) Criteria for Duration of Program Grants. The Board shall specify the duration of~~
125 ~~the grant; however, no grant awarded shall exceed three years without renewal. At a~~
126 ~~minimum, the Board shall consider the following factors for determining the duration of~~
127 ~~the grant, as appropriate:~~

128 ~~(a) Community readiness;~~

129 ~~(b) Community need;~~

130 ~~(c) The scope of work;~~

131 ~~(d) Population served;~~

132 ~~(e) The level and types of services to be provided;~~

133 ~~(f) The availability of funds; and~~

134 ~~(g) The capacity of the grantee.~~

135 ~~(23) Funds for Youth and Young Adults.~~ The Board shall assure that the majority of the
136 total amount awarded each year is awarded to evidence-based programs and programs
137 that prevent and reduce tobacco use among youth and young adults.

138 ~~(34) Funds to eliminate health disparities.~~ The Board shall assure that at least fifteen
139 percent of the total amount awarded each year is awarded for the purpose of eliminating
140 health disparities among minority and high-risk populations that have higher than average
141 tobacco burdens.

142 ~~(45) Funds to grantees of the Tony Grampsas youth services program.~~ The Board shall
143 allocate up to 15% of the total amount awarded each year to grantees of the Tony
144 Grampsas youth services program, Section 25-20.5-201, C.R.S., for proven tobacco
145 prevention and cessation programs.

146 **1.6 Responsibilities of Grantees**

- 147 (1) **Program Evaluation.** Grantees shall be responsible for program evaluation consisting
148 of the following:
- 149 (a) ~~An evaluation of the implementation of the program, including but not limited to~~
150 ~~the number of persons served and the services provided, The development and~~
151 ~~implementation of a detailed written evaluation plan and the preparation of a final~~
152 ~~evaluation report. At minimum, the plan shall describe how the grantee will~~
153 ~~measure the effects of the program against the goals it set out to accomplish;~~
154 and
 - 155 (b) ~~An explanation- determination~~ of how the results achieved by the program
156 contribute to the achievement of the ~~Division program goals~~ Grant Program goals
157 as stated in Section 1.2 (1).
- 158 (2) **Annual Reports.** Grantees shall submit annual reports to the Division ~~at no later than 30~~
159 ~~days after~~ the end of the reporting period. At a minimum, the reports shall include the
160 following information:
- 161 (a) The number of persons served and the services provided;
 - 162 (b) The amount of the grant award received by the grantee for the reporting period;
 - 163 (c) The results achieved by the program, specifying the goals of the program and the
164 criteria used in measuring attainment of the goals; and
 - 165 (d) An explanation of how the results achieved by the program contribute to the
166 achievement of program goals as stated in Section 1.2 (1).

167 **1.7 Conflict of Interest**

168 *****

- 169 (2) **Conflict of Interest.** ~~Prohibited Behavior.~~ No person who is involved in the activities
170 specified in Subsection (1) of this section shall have a conflict of interest, as that term is
171 defined in Section 1.1(2) herein.
- 172 (3) **Responsibilities of Persons with a Potential Conflict of Interest.** A person who
173 believes that he or she may have a conflict of interest shall disclose such conflict of
174 interest as soon as he or she becomes aware of the conflict of interest.
- 175 (a) If the person is a member of the Review Committee, that person shall not vote on
176 the matter for which the conflict of interest is relevant. Other activities of
177 members of the Review Committee are subject to paragraph (c) of this paragraph
178 (3).
 - 179 (b) If the person is a member of the Board and acting in his or her capacity as a
180 Board member, the person shall publicly disclose the conflict of interest to the
181 Board. ~~if~~ the Board determines the existence of a conflict of interest, the person
182 shall recuse himself or herself from any of the activities specified in Section
183 1.7(1) relating thereto.
 - 184 (c) Any other person shall disclose the conflict of interest in writing to the division. If
185 the Division determines the existence of a conflict of interest, the person shall
186 recuse himself or herself from any of the activities specified in Section 1.7(1)
187 relating thereto.
188