

**TITLE 14. NATURAL RESOURCES
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS
INITIAL STATEMENT OF REASONS**

Subject Matter of Proposed Regulations: Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program (Program).

Sections Affected: Amend the California Code of Regulations, Title 14, Division 3, Chapter 15 (CCR) Sections 4970.01, 4970.03, 4970.05.1, 4970.06.1, 4970.07.2, 4970.08, 4970.08.1, 4970.08.2, 4970.09, 4970.10, 4970.10.1, 4970.13, 4970.17.1, 4970.19, 4970.19.2, 4970.20, 4970.23.2, 4970.24.1, 4970.26.

BACKGROUND AND PROBLEM STATEMENT

Public Resources Code Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003, as amended, governs Off-Highway Vehicle (OHV) grants and cooperative agreements with cities, counties, Districts, U.S. Forest Service, U.S. Bureau of Land Management, other Federal Agencies, State and Federally Recognized Native American Tribes, Nonprofit organizations, Educational Institutions, Certified Community Conservation Corps, and State agencies.

The Grants and Cooperative Agreements Program (Program) is administered by the OHMVR Division (Division) within the California Department of Parks and Recreation (Department). The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat in a manner that will sustain long-term OHV recreation. Assistance is provided in the form of project-specific grant funding.

Except for Law Enforcement projects, grants are awarded through a competitive process where applicants and their proposed projects are evaluated using objective criteria (law enforcement grants are awarded on a “need” based system). Grantees awarded grants and/or cooperative agreements submit reimbursement requests to the Division for funding throughout the term of the grantee’s project and once completed, all projects are reviewed for compliance with Program regulations. Grants and cooperative agreements are further subject to audit by the Department Audit Office and in some cases grant funds are returned to the State when they are found not in compliance with Program regulations.

The purpose of the proposed action is to make improvements to the existing Program through amendments to Program regulations and documents incorporated by reference. The proposed regulation revisions will address specific issues, as outlined below, based on the Division’s ongoing experience administering grants and/or cooperative agreements thereby ensuring public funds are being spent judiciously and within the

State's best interest. Additionally, the proposed regulation revisions will allow for a clearer understanding of the regulations by both grantees and Division staff, as well as address outstanding programmatic issues related to the review and award of grants and/or cooperative agreements.

SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND NECESSITY

Article 1: General Provisions

CCR Section 4970.01:

Amend CCR Section 4970.01(e) and (qq):

Specific purpose: The specific purpose of this amendment is to revise existing terminology to be consistent with current nomenclature when referring to Native American Tribes within California.

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3.1.

Amend CCR Section 4970.01(e)

Specific purpose: The specific purpose of this amendment is to update numbering of 4970.01(f) through 4970.01(qq) to reflect the alphabetical order of the definitions with the change from "State Recognized Native American Tribe" to "California Native American Tribe".

Benefit/Necessity: The updated numbering is necessary to ensure that definitions are organized alphabetically.

Amend CCR Section 4970.01(u):

Specific Purpose: The specific purpose of this amendment is to correct the word "statues" to read "statutes".

Benefit/Necessity: The proposed amendment is necessary to correct a spelling error within the definition of "Good Standing".

Amend CCR Section 4970.01(v):

Specific Purpose: The specific purpose of this amendment is to revise existing regulatory terminology to be consistent with current nomenclature when referring to Native American Tribes within California.

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3.1.

Amend 4970.03(a)(6)

Specific Purpose: The specific purpose of this amendment is to revise existing regulatory terminology to be consistent with current nomenclature when referring to Native American Tribes within California.

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3.

Amend 4970.03(b) Table 1:

Specific Purpose: The specific purpose of this amendment is to revise existing regulatory terminology to be consistent with current nomenclature when referring to Native American Tribes within California

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3.

CCR Section 4970.05:

Amend 4970.05.1(d):

Specific Purpose: The specific purpose of this amendment is to relocate subsection (f) to subsection (d) in order to improve the flow of information.

Benefit/Necessity: The proposed amendment is necessary to improve the flow of information regarding the subject matter being presented.

Amend 4970.05.1(e):

Specific Purpose: The specific purpose of this amendment is to relocate subsection (o) to subsection (e) to improve the flow of information and include language that broadens the number of recognized governmental agencies that can investigate applicants.

Benefit/Necessity: The proposed amendment is necessary to improve the flow of information about the information being presented. Additionally, the amendment ensures that applicants who may be under investigation by any government agency cannot apply to the Program until such investigation is complete. Restricting an investigative body solely to the Attorney General is too restrictive and does not adequately safeguard the taxpayer's funds.

Amend 4970.05.1(f)(1-2):

Specific Purpose: The specific purpose of this amendment is to adjust the numbering of this section following the movement of subsections (d) through (e).

Benefit/Necessity: The proposed amendment is necessary to reduce confusion with regards to information being presented.

Amend 4970.05.1(g)(2):

Specific Purpose: The specific purpose of this amendment is to ensure applicants are aware that inventories of equipment must include heavy equipment.

Benefit/Necessity: The proposed amendment is necessary as equipment, in its regulatory definition, does not include items classified as heavy equipment. The Division must also maintain records of heavy equipment purchased by a grantee through the program.

Amend 4970.05.1(g)(1-8):

Specific Purposes: The specific purpose of this amendment is to renumber sections 1-8 to improve clarity for reading. The content of subsection (g) (1-8) has not changed.

Benefit/Necessity: The proposed amendment is necessary to reduce confusion regarding information being presented. The content of subsection (g) (1-8) has not changed.

Amend 4970.05.1(g)(5)(D)

Specific Purpose: The specific purpose of this amendment is to require land manager letters state how HMP and Soils Plan requirements will be addressed by both the land manager and the applicant if the project requires such reports. .

Benefit/Necessity: The proposed amendment is necessary to ensure that both the applicant and the land manager have communicated and recorded how each party will be participating in the HMP and Soils process.

Repeal 4970.05.1(o):

Specific Purpose: The specific purpose of this amendment is to remove this section and move it to 4970.05.1(e).

Benefit/Necessity: The proposed amendment is necessary to reduce confusion regarding information being presented.

Subarticle 1: Environmental Requirements

CCR Section 4970.06.1

Amend 4970.06.1(c):

Specific Purpose: The specific purpose of this amendment is to revise existing regulatory terminology to be consistent with current nomenclature when referring to Native American Tribes within California.

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3.1.

Amend 4970.06.1(c)(1):

Specific Purpose: The specific purpose of this amendment is to revise existing regulatory terminology to be consistent with current nomenclature when referring to Native American Tribes within California.

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3.1

CCR Section 4970.07.2

Amend 4970.07.2(f) (4):

Specific Purpose: The specific purpose of this amendment is to include heavy equipment as an item which associated costs can be decreased or eliminated by the Division.

Benefit/Necessity: The proposed amendment is necessary as equipment, in its regulatory definition, does not include items classified as heavy equipment. This amendment is necessary to ensure that heavy equipment costs submitted by grantees to the Division can be reviewed and adjusted by staff to only allow for the reimbursement of actual costs.

CCR Section 4970.08

Amend 4970.08 (b)(6)

Specific Purpose: The specific purpose of this amendment is to remove “etc.”.

Benefit/Necessity: The proposed amendment is necessary to eliminate a redundancy within the parenthesis and to improve the readability and clarity of the text.

Amend 4970.08 (b)(9)(B)

Specific Purpose: The specific purpose of this amendment is to provide specific examples of eligible costs and documentation related to transportation of which are accepted by the Division.

Benefit/Necessity: The proposed amendment is necessary to specify what documentation will be accepted by the Division in order to be reimbursed for transportation costs. The revision to the language are common ways transportation fees can be documented.

Amend 4970.08(b)(10):

Specific Purpose: The specific purpose of this amendment is to provide clarity to grantees that all written material containing the “OHV Funds at Work” logo must have Division approval prior to publishing and distribution to the public.

Benefit/Necessity: This proposed amendment is necessary to ensure consistent and appropriate messaging to the public regarding various written materials funded by the Program.

Amend 4970.08(b)(10):

Specific Purpose: The specific purpose of this amendment is to update the title of the logo that is to appear on materials funded by the Division and maintain consistency throughout the CCR.

Benefit/Necessity: The proposed amendment is necessary to ensure that applicants are aware of the proper name of the logo that needs to go on grant funded publications.

Amend 4970.08(b)(10)(A):

Specific Purpose: The specific purpose of this amendment is to specify that all grant funded materials be available to the public for free.

Benefit/Necessity: The proposed amendment is necessary to ensure that all materials funded by the Program be made available to the public for free.

Repeal 4970.08(b)(11):

Specific Purpose: The specific purpose of this amendment is to disallow the renting or leasing of a facility for office space.

Benefit/Necessity: Past misuse of leased or rented facilities paid for with grant funds for purposes not directly related to OHV use and the inability for Division staff to uniformly enforce appropriate facility use has led to this change being proposed. The proposed amendment is necessary to ensure that taxpayer funds are being spent appropriately and are being used on activities that are directly related to OHV Recreation in California.

Amend 4970.08(b)(12):

Specific Purpose: The specific purpose of this amendment is to renumber the section following the repeal of section 4970.08 (b) (11).

Benefit/Necessity: The proposed amendment is necessary to retain consistent numbering within the CCR.

Amend 4970.08.1(c)(4)

Specific Purpose: The specific purpose of this amendment is to specifically state that repairs to equipment purchased with Program funds may be reimbursed upon Division approval and only at a license repair facility.

Benefit/Necessity: The proposed amendment is necessary to ensure that work on Program purchased equipment be done by qualified repair personnel to ensure proper repair is completed.

Amend 4970.08.1(c)(5)

Specific Purpose: The specific purpose of this amendment is to renumber the section following the addition of section 4970.08.1(c)(4).

Benefit/Necessity: The proposed amendment is necessary to retain consistent numbering within the CCR.

CCR Section 4970.08.2

Amend 4970.08.2(a)(2)

Specific Purpose: The specific purpose of this amendment is to add “mileage” as a method for a grantee to seek reimbursement for fuel costs.

Benefit/Necessity: The proposed amendment is necessary to provide the grantee flexibility to recover fuels costs for the project aside from only gas receipts. It also provides guidance to the grantee that fuels costs can only be reimbursed for actual costs.

Amend 4970.08.2(b)(2)

Specific Purpose: The proposed amendment is necessary to provide the grantee flexibility to recover fuels costs for the project aside from only gas receipts. It also provides guidance to the grantee that fuels costs can only be reimbursed for actual costs. Sections 2-4 were formerly combined and needed to be separated out for clarity; the subsection’s language and intent has not changed.

Benefit/Necessity: The proposed amendment is necessary to provide the grantee flexibility to recover fuels costs for the project aside from only gas receipts. It also provides guidance to the grantee that fuels costs can only be reimbursed for actual costs.

Adopt 4970.08.2(b)(3)

Specific Purpose: The specific purpose of this amendment is to provide clarity to the grantee that maintenance costs may be reimbursed if the maintenance is consistent with the equipment’s manufacturer’s maintenance schedule. Additionally, this amendment requires that all maintenance be completed by a licensed repair facility. Sections 2-4 were formerly combined and needed to be separated out for clarity; the subsection’s language and intent has not changed.

Benefit/Necessity: The proposed amendment is necessary to provide the grantee further clarity on how maintenance costs for equipment may be recovered through the Program.

Amend 4970.08.2(b)(4)

Specific Purpose: The specific purpose of this amendment is to update the numbering of the section following the adoption of section (3). Sections 2-4 were formerly combined and needed to be separated out for clarity. The subsection’s language and intent has not changed.

Benefit/Necessity: The proposed amendment is necessary to be consistent with the numbering system within the current regulations.

Amend 4970.08.2(c)

Benefit/Necessity: The specific purpose of this amendment is to specify that a grantee may only seek reimbursement for transportation costs at their actual cost.

Specific Purpose: The proposed amendment is necessary to maintain consistency with sections of the regulations that state transportation costs may not exceed actual costs.

CCR Section 4970.09

Amend 4970.09 (b)(15)

Specific Purpose: The specific purpose of this amendment is to disallow the renting or leasing of a facility for office space.

Benefit/Necessity: Past misuse of leased or rented facilities paid for with grant funds for purposes not directly related to OHV use and the inability for Division staff to uniformly enforce appropriate facility use has led to this change being proposed. The proposed amendment is necessary to ensure that taxpayer funds are expended appropriately and are used in ways that are directly related to OHV recreation in California. This amendment is consistent with the repeal of CCR section 4970.08(b)(11).

Article 2: Project Types and Specific Application Requirements.

CCR Section 4970.10

Amend 4970.10(f) table 3

Specific Purpose: The specific purpose of this amendment is to revise existing terminology to be consistent with current nomenclature when referring to Native American Tribes within California.

Benefit/Necessity: The proposed amendment is necessary to update terminology used in these regulations when referring to Native American Tribes within California. The revised language uses the current nomenclature used in California Public Resources Code 21080.3

CCR Section 4970.10.1

Repeal 4970.10.1(d)(3)

Specific Purpose: The specific purpose of this amendment is to repeal a section that has become irrelevant to the ground operations project type.

Benefit/Necessity: The proposed amendment is necessary as the section contains requirements that are irrelevant for ground operations activities when those activities are conducted for emergency purposes.

Amend 4970.10.1(d)(4)

Specific Purpose: The specific purpose of this amendment is to update the numbering of the section following the removal of section (3)

Benefit/Necessity: This amendment is necessary to remain consistent with the numbering system within the regulations.

CCR Section 4970.13

Amend 4970.13 (e)(2)(B)

Specific Purpose: The specific purpose of the amendment is to remove reference to the “loan program”, which no longer exists.

Benefit/Necessity: This amendment is necessary to remove reference to a program to loan grantees safety equipment that the Division no longer offers.

Article 3: Application Evaluation System and Funding.

CCR Section 4970.17.1

Amend 4970.17.1(f)

Specific Purpose: The specific purpose of this amendment is to revise the expiration date of the contingency list.

Benefit/Necessity: The proposed amendment is necessary to allow the Division to fully utilize unused grant funds during any given grant cycle.

Article 4: Project Administration Process

CCR Section 4970.19

Amend 4970.19(d)

Specific Purpose: The specific purpose of this amendment is to achieve consistency of terms used within the CCR when using the defined term “Good Standing”.

Benefit/Necessity: The proposed amendment is necessary for clarity and consistency in the use of specialized terminology within the CCR.

CCR Section 4970.19.2

Amend 4970.19.2

Specific Purpose: The specific purpose of this amendment is to specify that project amendments will only be needed solely for time extensions

Benefit/Necessity: The proposed amendment is necessary to ensure that grantees are made aware that changes to the Project Cost Estimate will no longer require a formal amendment

CCR Section 4970.20

Amend 4970.20

Specific Purpose: The specific purpose of this amendment is to ensure grantees have the same regulatory management requirements for regular equipment, heavy equipment and trailers.

Benefit/Necessity: The proposed amendment is necessary to ensure that equipment, heavy equipment, and trailers are cared for and managed in a consistent manner.

Amend 4970.20(a)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

Amend 4970.20(b)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

Amend 4970.20(b)(1)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

Amend 4970.20(b)(2)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

Amend 4970.20(d)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

Amend 4970.20(e)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

Amend 4970.20(f)

Specific Reason: The specific purpose of this amendment is to increase readability by reducing redundancy.

Benefit/Necessity: The proposed amendment is necessary to ensure that requirements related to equipment, heavy equipment, and trailers are clear to understand.

CCR Section 4970.23.2

Amend 4970.23.2(f)

Specific Reason: The specific purpose of this amendment is to promote consistency throughout the CCR as GPS coordinates and photos are required documentation for payment advances but were not previously listed as such for payment reimbursements.

Benefit/Necessity: The proposed amendment is necessary to ensure grantees provide GPS coordinates and photos of project areas for payment reimbursements like the requirement for payment advances.

CCR Section 4970.24.1

Amend 4970.24.1(a)(3)

Specific Purpose: The specific purpose of this amendment is to update the submission requirements for project documentation.

Benefit/Necessity: The proposed amendment is necessary to require grantees provide necessary documents in an electronic format as opposed to “hard copies”. Electronic documentation has become a more effective and efficient way to maintain official records within the Program.

Amend 4970.24.1(a)(5)

Specific Purpose: The specific purpose of this amendment is to provide consistency with equipment, heavy equipment and trailers with regards to providing photos to the Program and the affixing of the “OHV Funds at Work” logo requirement.

Benefit/Necessity: The proposed amendment is necessary to ensure consistency in the regulatory requirements of equipment, heavy equipment and trailers.

Adopt 4970.24.1(e)

Specific Purpose: The specific purpose of this amendment is to require grantees obtain Division Approval prior to any modifications to the project cost estimate.

Benefit/Necessity: The proposed amendment is necessary to prevent a grantee from making unilateral changes to the project cost estimate.

Adopt 4970.24.1(e)(1):

Specific Purpose: The specific purpose of this amendment is to clarify to grantees that any change to a project cost estimate made without prior Division approval may not be reimbursed.

Benefit/Necessity: The proposed amendment is necessary to ensure effective communication between the grantee and the Division as it relates to the expenditures of grant funds.

Article 5: Contacting the OHMVR Division.

CCR Section 4970.26

Amend 4970.26(a)

Specific Purpose: The specific purpose of this amendment is to update the mailing address for the Division.

Benefit/Necessity: The proposed amendment is necessary to ensure that correspondence reaches the Division at its most current address.

Amend 4970.26(c)

Specific Purpose: The specific purpose of this amendment is to update the contact information for the Program, namely the removal of the fax number and the updating of the email address.

Benefit/Necessity: The proposed amendment is necessary to ensure that correspondence reaches the Program at its new email address, and to reflect the removal of a fax number that is no longer associated with the Program.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not impose any mandates on agencies or organizations. Participation in the Program is voluntary and does not mandate the use of specific technologies or equipment.

UNDERLYING DATA / DOCUMENTS RELIED UPON

There were no underlying data or documents relied upon.

ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Existing law restricts eligible Program applicants to cities, counties, Districts, State agencies, federal agencies, State and Federally Recognized Native American tribes, Educational Institutions, Nonprofit organizations and Certified Community Conservation Corps. The proposed regulatory action would apply only to those applicants.

The Program is voluntary and is intended to supplement an applicant's existing budget, not be the sole budgetary component to it. The Division finds that jobs, at worst would not be affected, but mostly likely foresee increase in job creation throughout the State as grantees would possibly need to hire individuals to complete their grant funded projects. Furthermore, the Division finds that at worst, no new business will be created, no business eliminated, and no expansion of businesses currently doing business with the state of California due to grant funds being infused into the local community. The

Program history has shown that local small businesses typically benefit from grants funds being used in their area as grantees typically utilize local businesses when purchasing goods and services with grant funds.

This regulatory action benefits the health and welfare of California residents by providing recreational opportunities in the State. This regulatory action benefits the state's environment by providing broader funding for resource protection and restoration activities.

CONSIDERATION OF ALTERNATIVES

There is no reasonable alternative to the regulatory proposal that would be more effective in carrying out the purpose for which the action being proposed. No reasonable alternative would be as effective or less burdensome to affected private persons and be equally effective in achieving the purposes of the regulations in a manner that ensures full compliance with the law being implemented or made specific.

BUSINESS IMPACT

The Program supports the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles, and programs involving off-highway motor vehicle safety or education.

The Program is voluntary and provides supplementary funding to the operating budgets of Program participants. The Department has found that since the inception of this Program, there has not been an adverse economic impact on businesses. On the contrary, the Department has found that a positive impact on businesses is generated when OHV recreationalists spend money in local communities close to areas they recreate; they spend on local goods and services, (e.g., gasoline, food, lodging, souvenirs) close to the areas they recreate. As a result, the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability to compete.

DUPLICATION / CONFLICT WITH FEDERAL REGULATIONS

The Department has determined that the proposed rulemaking action does not unnecessarily duplicate or conflict with federal regulations contained in the Code of Federal Regulations. Participation in the Program is voluntary and is not addressed in the Federal Code of Regulations.

