

**TITLE 14. NATURAL RESOURCES
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN the California Department of Parks and Recreation (Department) proposes to amend the regulations and documents incorporated by reference described below after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend the regulations in the California Code of Regulations, Title 14, Division 3, Chapter 15, Articles 1 through 5 (CCR), Sections 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06.1, 4970.07, 4970.07.1, 4970.07.2, 4970.08, 4970.09, 4970.10, 4970.10.1, 4970.10.2, 4970.10.3, 4970.10.4, 4970.11, 4970.12, 4970.13, 4970.14, 4970.14.1, 4970.14.3, 4970.15.1, 4970.15.2, 4970.15.3, 4970.15.4, 4970.17, 4970.17.1, 4970.18, 4970.19, 4970.19.1, 4970.19.2, 4970.19.3, 4970.19.4, 4970.19.5, 4970.19.6, 4970.20, 4970.22, 4970.23, 4970.23.1, 4970.23.2, 4970.24.1, 4970.24.2, 4970.25.1, 4970.25.2, Grants and Cooperative Agreements Program – Appendix (Appendix) and adopt CCR Sections 4970.05.2, 4970.08.1, 4970.08.2 pertaining to the Off-Highway Motor Vehicle Recreation Division (OHMVR Division) Grants and Cooperative Agreements Program (Program).

PUBLIC HEARING

The Department has scheduled a telephonic public hearing on the proposed rulemaking. The hearing will be held on June 23, 2020 and can be accessed through the conference line number below. The meeting will commence at 3:00 p.m.

Conference Line: 1 (877) 952-2063
Participant Code: 31875622

The Department may consider scheduling two in-person public hearings on the proposed rulemaking, in lieu of the telephonic public hearing, if current State emergency restrictions are lifted.

The first in-person public hearing will be held in Bakersfield on June 23, 2020. The meeting will commence at 3:00 p.m.

The location of the first hearing, if available, is:

Kern County Public Services Building
2700 M Street
Bakersfield, California

The second in-person public hearing will be held in Sacramento on June 25, 2020. The meeting will commence at 3:00 p.m.

The location of the second hearing, if available, is:

California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
1725 23rd Street, Suite 200
Sacramento, CA

If in-person public hearings are held, the Department will provide reasonable notice of the hearings and hearing locations through its interested parties email list and the OHMVR Division webpage at ohv.parks.ca.gov.

Any interested person, or his or her authorized representative, may present oral or written statements, arguments, or contentions relevant to the proposed action described in the Informative Digest. The Department may impose reasonable limits on oral presentations. The Department requests, but does not require, persons making oral comments at the hearings also submit a written copy of their testimony. Additionally, pursuant to Government Code Section 11125.1, any information presented to the Department during the open hearings in connection with the subject matter open to discussion or consideration becomes part of the public record. Such information shall be retained by the Department and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relative to the proposed rulemaking to the Department. The written comment period ends at 5:00 p.m., on June 22, 2020. The Department will consider only written comments received at the Department's office by that time. Written comments may be mailed to the following address:

California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
Attn: Sixto Fernandez, Grants Manager
Grants and Cooperative Agreements
1725 23rd Street, Suite 200
Sacramento, California 95816-7100

Written comments delivered by email or facsimile will also be accepted by the Department. Written comments may be submitted by email to OHV.Grants@parks.ca.gov or via facsimile at (916) 324-1610. Electronic mail or facsimile transmission must be completed by the deadline given above.

AUTHORITY AND REFERENCE

Authority Citation: The proposed amendments are authorized by Public Resources Code (PRC) Sections 5001.5 and 5003.

Reference Citation: The particular code sections implemented, interpreted, or made specific by these proposed amendments are PRC Sections 5024.1, 5090.01 through 5090.65 and 21000 et seq.; Vehicle Code Sections 38001 and 38006; Education Code Sections 210.3 and 66010.4; 25 CFR Section 83.5(a); 40 CFR part 1500.1 et seq.; U. S. IRC Section 501(c)(3); USC Title 42, Section 4371.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

PRC Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003, as amended, governs the OHMVR Division's 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 Program is administered by the Division within the 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. Grants are awarded through a competitive process where Applicants and their Projects are evaluated using objective criteria.

Effect of the Proposed Rulemaking

Generally, the proposed regulatory revisions will eliminate inconsistencies of terms within the regulations and make the regulatory language more concise, clear, and consistent by adopting, amending, and repealing Program regulations and various documents within the Appendix, incorporated by reference.

Specifically, the proposed regulatory revisions would:

Article 1. General Provisions

Amend CCR Section 4970.00:

The proposed clarifies that the Program regulations pertain to Grant Applications received on or after the first day of the year for each new Grants cycle and updates the PRC reference section citation.

Amend CCR Section 4970.01:

The proposed makes the section language consistent with all sections of the CCR and makes other grammatical changes; clarifies the meaning of statements within the regulatory language, provides more clear definition of terms used throughout the CCR, and/or makes statements more specific; repeals reference to specific auditing standards requirement; adopts a motorized requirement in the Equipment definition.

Amend CCR Section 4970.02:

The proposed makes grammatical changes to the section language and updates the Public Resources Code Reference section citation.

Amend CCR Section 4970.03:

The proposed amends the Section title and makes the section language consistent with all other sections of the CCR.

Amend CCR Section 4970.04:

The specific purpose of this amendment is to make regulatory language consistent throughout the CCR by updating the section table.

Amend CCR Section 4970.05:

The proposed amends the section numbering due to proposed adoption of new Section 4970.05.2; makes the section language consistent with all sections of the CCR, including reference to documents in the Appendix, and makes other grammatical changes; removes redundant language, clarifies the meaning of statements within the regulatory language, and/or makes statements more specific; update the Grants and Cooperative Agreements Program Regulations – Appendix version date; clarifies an Applicant’s required public notification of Application cannot be any sooner than the start of the current Grant cycle; amends reference to the Grants and Cooperative Agreements Program Regulations – Appendix, as incorporated by reference; specifies cash value for volunteer time shall be determined using the Independent Sector California hourly rate instead of the Grantee’s paid classification rate; moves and consolidates nonprofit organization Application requirements to new proposed Section 4970.05.2; repeals land management goal description as part of the Land Manager letter requirement; specifies Application limits of an Applicant who may be under investigation, commits unsound business practices, or are alleged to have committed fraud.

Adopt CCR Section 4970.05.2:

The proposed moves and consolidates nonprofit organization Application requirements from Section 4970.05, incorporates by reference the new Grants and Cooperative Agreements Program Nonprofit Certification form as an Application requirement, and adds Authority and Reference section citations.

Subarticle 1. Environmental Requirements Administration Procedures

Amend CCR Section 4970.06.1:

The proposed amends the Section title, makes statements more specific, and makes the section language consistent with all other sections of the CCR.

Amend CCR Section 4970.07

The proposed moves the On-line Grant Application definition and guidance to Section 4970.01, removes redundant reference to nonprofit status and updates CCR reference; makes the section language consistent with all sections of the CCR, including reference to documents in the Appendix, and makes other grammatical changes.

Amend CCR Section 4970.07.1

The proposed clarifies the Division's referenced webpage.

Amend CCR Section 4970.07.2

The proposed makes the section language consistent with all sections of the CCR.

Amend CCR Section 4970.08

The proposed makes the section language consistent with all sections of the CCR, including reference to documents in the Appendix, and makes other grammatical changes; clarifies the meaning of statements within the regulatory language, and/or makes statements more specific; corrects reference to the California Department of Human Resources website; separates eligible transportation costs into nonprofit Grantees and other Grantee subsections; eliminates a nonprofit organization's allowance for transportation costs, in excess of 100 miles, to be used as matching Grant funds; clarifies reimbursement for transportation costs for other Grantees is allowed from base of operations to the Project site; repeals and moves eligible Equipment cost requirements for nonprofit Grantees in Section 4970.08(b)(12), and other Grantees in Section 4970.08(b)(13), to new Sections 4970.08.1 and 4970.08.2 respectively.

Adopt CCR Section 4970.08.1

The proposed restructures and adopts language from repealed Section 4970.08(b)(12) in to new Section 4970.08.1 regarding eligible equipment costs for nonprofit Grantees; clarifies the meaning of statements within the regulatory language, and/or makes statements more specific; repeals requirement that all equipment lists the Division as the lien holder; adopts an equipment use fee reimbursement limit for Equipment acquired with funds outside the Program; adopts a provision allowing reimbursement of Equipment maintenance costs and repairs (with specific limitations) on Equipment acquired with Grant funds from the Program; adopts provisions allowing reimbursement of Heavy Equipment fuel costs on equipment acquired with funds outside the Program and equipment acquired with Grant funds from the Program; adopts a provision allowing reimbursement of Heavy Equipment maintenance costs (with specific limitations) on Heavy Equipment acquired with Grant funds from the Program; adds Authority and Reference section citations.

Adopt CCR Section 4970.08.2

The proposed adopts language regarding eligible equipment costs for Grantees excluding nonprofit Grantees; adopts a provision allowing reimbursement of equipment use fees for equipment acquired with funds outside the Program; adopts a provision allowing reimbursement of equipment fuel costs used on Project activities; adopts a provision allowing reimbursement of regular maintenance on equipment acquired with Grant funds from the Program; adopts a provision allowing reimbursement of equipment transportation costs from its normal storage location to the Project site; adopts a provision allowing reimbursement of equipment repair due to normal wear and tear of equipment provided the Grantee justifies and is approved by the Division for repairs; adopts a requirement that the cost of equipment shall not exceed the minimum requirements for completion of the Project; adds Authority and Reference section citations.

Amend CCR Section 4970.09

The proposed makes the section language consistent with all sections of the CCR; clarifies the meaning of statements within the regulatory language, and/or makes statements more specific; adds language stating purchases made and not used on the Project may be ineligible for reimbursement; adds Project recognition activities are ineligible for reimbursement.

Article 2. Types of Projects and Specific Application Requirements

The proposed amends the Section title.

Amend CCR Section 4970.10

The proposed adds an Acquisition Project type exception for a \$1,500,000 maximum funding request for that project type.

Amend CCR Section 4970.10.1

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, removes redundant language, updates CCR reference, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.10.2

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, reorders subsections to be consistent with Sections 4970.10.1 and 4970.10.2, removes redundant language, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.10.3

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, removes redundant language, reorders subsection language to be consistent with similar subsections, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.10.4

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, makes the section language consistent across all sections of the CCR, and divides subsection (e)(1) into four separated subsections.

Amend CCR Section 4970.11

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, removes redundant language, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.12

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, reorders subsection language to be consistent with similar subsections, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.13

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, makes the section language consistent across all sections of the CCR, and adds additional Application requirements for education curriculum standards.

Article 3. Application Evaluation System and Funding

Amend CCR Section 4970.14

The proposed clarifies the meaning of statements within the regulatory language and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.14.1

The proposed clarifies the meaning of statements within the regulatory language and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.14.3

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.15.1

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.15.2

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.15.3

The proposed clarifies the Division's determination of proportional funding for law enforcement Grants.

Amend CCR Section 4970.15.4

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.17

The proposed makes the section language consistent.

Amend CCR Section 4970.17.1

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.18

The proposed makes the section language consistent across all sections of the CCR.

Article 4. Project Administration Procedures

Amend CCR Section 4970.19

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, makes the section language consistent across all sections of the CCR, removes redundant section of subsection (a), and clarifies an OHV Grant Agreement cannot be executed if any State grant refund is due to the State.

Amend CCR Section 4970.19.1

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.19.2

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, makes the section language consistent across all sections of the CCR, and specifies a Project Cost Estimate adjustment may be denied if the adjustment does not have prior approval by the Division.

Amend CCR Section 4970.19.3

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and divides subsection (b) into two separated subsections.

Amend CCR Section 4970.19.4

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.19.5

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.19.6

The proposed clarifies the meaning of statements within the regulatory language and makes statements more specific.

Amend CCR Section 4970.20

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR; requires equipment acquired with Grant funds from the Program is kept in Grantee's inventory for its useful life; adopts exceptions to the provision that equipment is only used on Projects for which it was purchased, including where equipment was partially acquired with funds outside the Program the equipment may be used for non-Project activities and where equipment is used for other OHV purposes the Grantee is required to obtain Division approval for the equipment use; repeals language pertaining to disposition of equipment no longer in usable condition and the transfer of surplus equipment and instead requires a Grantee to obtain written Division approval prior to the disposition of any equipment, deletes reference to Section 4870.08(13)(B) as that subsection has been repealed.

Amend CCR Section 4970.22

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR; repeals specific record keeping requirements and replaces with a general statement of record keeping requirements and clarifies the requirements apply to associated Project contractors and subcontractors; adopts transportation record keeping requirements; specifies additional Equipment use record keeping requirements; specifies additional record keeping requirements for matching funds expenditures specific to volunteer logs and specifies cash value for volunteer time shall be determined using the Independent Sector California hourly rate instead of the Grantee's paid classification rate.

Amend CCR Section 4970.23

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.23.1

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend CCR Section 4970.23.2

The proposed amends the Section title, clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent with all sections of the CCR, including reference to documents in the Appendix, and makes other grammatical changes.

Amend CCR Section 4970.24.1

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR; specifies required Equipment photographs include the OHV sticker and Vehicle Identification Number.

Amend CCR Section 4970.24.2

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Subarticle 1. Audits

Amend CCR Section 4970.25.1

The proposed amends the Section title, clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR; repeals subsection (b) requirements and relocates and further specifies these requirements in amended renumbered subsection (c), including additionally requiring auditor access to all Project records and interview Project staff during normal business hours; repeals provision requiring the Department Audit Office to coordinate with the Division to confirm completion of Project deliverables.

Amend CCR Section 4970.25.2

The proposed clarifies the meaning of statements within the regulatory language, makes statements more specific, and makes the section language consistent across all sections of the CCR.

Amend Grants and Cooperative Agreements Program –Appendix (Rev. 1/19)

The proposed updates the Appendix version, Table of Contents, Public Review Process form, Project Accomplishment Report – Law Enforcement form, and adopts a new Nonprofit Certification form.

Comparable Federal Regulations

The proposed amendments do not duplicate or conflict with federal regulations or statutes.

Policy Statement Overview and Anticipated Benefits of the Proposed Rulemaking

The overall objective of the proposed action is to improve the Program's regulatory language, documents incorporated by reference, and ensure public funds are being spent wisely and within the State's best interest in supporting motorized recreation. These proposals, based on Division experience implementing the Program, will also reduce confusion for Applicants and Grantees and make the regulatory language concise, clear, and consistent by adopting, amending, and repealing Program regulations and various documents within the Appendix, incorporated by reference.

Determination of Inconsistency/Incompatibility with Existing Regulations

After conducting an evaluation for any regulations related to this area, the Department has found that there are no other regulations concerning grants that 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. Therefore, the Department has determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE

Grants and Cooperative Agreements Program – Appendix (Rev. 1/19)

MANDATED BY FEDERAL LAW OR REGULATIONS

None.

OTHER STATUTORY REQUIREMENTS

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on Local Agencies and School Districts: None.

Cost to any Local Agency or School District: None.

Cost or Savings to any State Agency: None.

Other Non-Discretionary Cost or Savings Imposed of Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Significant Effects on Housing Costs: None.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including Ability to Compete: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department finds that jobs, at worst would not be affected, but, mostly likely may see an increase in the creation of jobs. Additionally, the Department finds that at worst, no new business will be created and no business will be eliminated; however, the Department finds that it is likely that private businesses may be created and or expanded because of the proposed action.

This regulatory action benefits the health and welfare of California residents by improving the funding method that assists Land Managers and partners to provide recreational opportunities within the State. This regulatory action also benefits the State's environment by improving the funding method that supports resource protection and Restoration activities related to OHV Recreation.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTING

None.

SMALL BUSINESS DETERMINATION

The Department has determined there are no cost impacts on small businesses. Program history has shown that small businesses benefit by the Program. Many of the Grant funds go to entities that utilize small businesses when they purchase goods and services. The proposed changes will provide a more streamline and efficient program that should boost the ability of small business to capture revenue from the various Grantees.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period or at the public hearing.

CONTACT PERSON(S)

Inquiries concerning the proposed action may be directed to:

Sixto Fernandez, Grants Manager
California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
1725 23rd Street, Suite 200
Sacramento, CA 95816
(916) 324-1572
sixto.fernandez@parks.ca.gov.

The back-up contact person regarding the proposed action is:

Ethan Mathes, Compliance Officer
California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
1725 23rd Street, Suite 200
Sacramento, CA 95816
(916) 323-0157
ethan.mathes@parks.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Department will make the entire rulemaking available for inspection and copying throughout the rulemaking process at its office located at California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division, 1725 23rd Street, Suite 200, Sacramento, CA 95816.

As of the date this Notice of Proposed Rulemaking is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the express terms of the regulation, the Initial Statement of Reasons, any information upon which the proposed rulemaking is based, and an economic impact assessment contained in the Initial Statement of Reasons. Copies may be obtained by contacting the above contact person at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After any public hearings and consideration of all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the Department makes substantive modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting Sixto Fernandez, Grants Manager at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout is available through the Division Website at www.ohv.parks.ca.gov, under the Grants link.