

Final 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, Articles 1 through 5 (CCR), Sections 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05 (renumbered to 4970.05.1), 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

Hearing Dates: June 23, 2020 and June 25, 2020

UPDATED INFORMATION

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

15-Day Notice (July 14, 2020 through July 29, 2020)

The California Department of Parks and Recreation (Department) published a 15-day Availability of Modified Text and Modified Text on July 14, 2020. The originally proposed language was updated to include amendments to CCR Sections 4970.05.1, 4970.08, and 4970.24.1.

Amend CCR Section 4970.05.1(e)(2)(E):

Specific Purpose: The specific purpose of this amendment is to adopt additional language providing an allowance to notify the public through a virtual meeting to satisfy the requirement that Grant Applicants notify the public of their Grant Application.

Benefit/Necessity: The proposed amendment is necessary to provide Grant Applicants, due to recent health events in the state that limit in-person meetings, an additional option to hold a virtual meeting in order to meet the requirement to notify the public of a Grant Application.

Amend CCR Section 4970.08(b)(9):

Specific Purpose: The specific purpose of this amendment is to make grammar consistent and clarify eligible costs for transportation of materials, supplies, and personnel are for the transportation between the Project site and Project area only.

Additionally, “material” is amended to “material(s)”.

Benefit/Necessity: The proposed amendment is necessary to reduce confusion when interpreting regulatory language and clarify the geographic limits of eligible transportation costs. Existing regulations are not sufficiently defined, and Grantees may confuse that transportation costs may apply within a Project site; however, consistent with policy, transportation costs are eligible for transportation outside of the Project site.

Additionally, “material” is amended to “material(s)” to clarify eligible costs apply to both movement of material and materials.

Amend CCR Section 4970.24.1(c):

Specific Purpose: The specific purpose of this amendment is to make the section language consistent with subsection (a) by adding language that the final Grantee payment request must be within 120 days of the Project end date.

The specific purpose of this amendment is to amend “shall” to “may” regarding the determination of eligible expenditures or suspension of future payments when the final payment request is received after 120 days from the Project end date.

Benefit/Necessity: The proposed amendment is necessary to reduce confusion when interpreting the regulatory language by clarifying the final Grantee payment request must be within 120 days of the Project end date, consistent with subsection (a). Existing language does not clearly indicate what “after one hundred twenty (120) calendar days” is referencing.

The proposed amendment is necessary to provide latitude for Grants staff, when evaluating whether to withhold or suspend payment, to evaluate whether unforeseen circumstances may have led to a late request (more than 120 days from the Project end date) for final payment. For example, it has been the OHMVR Division’s (Division) experience that recent late payment requests were due to the Federal government’s furlough and/or other unforeseen circumstances.

15-Day Notice (November 4, 2020 through November 19, 2020)

The California Department of Parks and Recreation (Department) published a 15-day Availability of Modified Text and Modified Text on November 4, 2020. The originally proposed language was updated to include amendments to CCR Sections 4970.1, 4970.05.1, 4970.06.1, 4970.08, 4970.09, 4970.13, 4970.17.1, 4970.19.4, 4970.22, 4970.23.1, 4970.23.2, 4970.24.1, 4970.24.2, 4970.25.1, and Appendix.

Additionally, CCR Section 4970.07.2 was withdrawn from the rulemaking file as the proposed capitalization changes to the language in this section are already in existing language.

The full Regulatory Chapter number and title were added to the proposed language heading for clarity.

The Department made further non-substantive changes to the language and Appendix forms, including capitalization of the text due to its existence in current language, adding Authority and Reference Code, removing unnecessary form revision dates, punctuation changes, grammatical changes for clarity, and cross references.

Substantive changes made to the language and Appendix are noted below.

Amend CCR Section 4970.05.1:

Specific Purpose: The specific purpose of this amendment is to add reference to the required Public Review Process form and add information where the Independent Sector rate can be found on the Division website.

Benefit/Necessity: The proposed amendment is necessary to clarify that Applicants must complete the Public Review Process form in the Appendix showing how each Applicant complied with the Application public review process and clarify how an Applicant can find information on the Independent Sector rate; the rate may otherwise be difficult to locate on the internet and create confusion as to the specific rate is for the specified Grant cycle.

Amend CCR Section 4970.13:

Specific Purpose: The specific purpose of this amendment is to remove additional Application requirements for education curriculum standards

Benefit/Necessity: The proposed amendment is necessary to clarify the additional education curriculum standards are not required as the Department is unable to provide specific guidance on the basis, or how the Applicant would comply with these standards.

Amend CCR Section 4970.22:

Specific Purpose: The specific purpose of this amendment is to add information where the Independent Sector rate can be found on the Division website.

Benefit/Necessity: The proposed amendment is necessary to clarify how an Applicant can find information on the Independent Sector rate; the rate may otherwise be difficult to locate on the internet and create confusion as to the specific rate is for the specified Grant cycle.

Amend Appendix – Table of Contents

Specific Purpose: The specific purpose of this amendment is to update the Table of Contents based on changes to forms within the Appendix since the Department's last rulemaking.

Benefit/Necessity: The proposed amendment is necessary to clarify and update the Appendix due to various updates to documents within the Appendix, additions of documents to the Appendix, and removal of documents from the Appendix.

Amend Appendix – Public Review Process Form

Specific Purpose: The specific purpose of this amendment is to add the option for Applicants to verify public verification of a Grant Application through the publication of a notice in a newspaper.

Benefit/Necessity: The proposed amendment is necessary to allow Applicants to notify the public of its Grant Application using multiple mediums commonly available to the public, such as a website, news release, and newspaper. This will give the public a commonly available means to be made aware of an Applicant’s Application for Grant funds so that they may review the Application and provide public input.

Amend Appendix – Nonprofit Certification (New 1/21)

Specific Purpose: The specific purpose of this amendment is to remove the requirement that nonprofit Applicants maintain bylaws which repudiate certain sections of the Corporations Code.

Benefit/Necessity: The proposed amendment is necessary so as to not unduly burden nonprofits with the repudiation of certain Corporation Code requirements as the Department is unable to fully delineate its authority for a nonprofit to repudiate these requirements.

LOCAL MANDATE

A mandate is not imposed on local agencies or school districts.

ALTERNATIVES DETERMINATION

The Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private person and then the proposed regulations, or be more cost effective to affected private persons and equally effective in implementing statutory policy or other provisions of law.

The OHMVR Program is voluntary and intended to supplement an Applicant’s existing budget for off-highway recreation. This regulatory action ultimately benefits the health and welfare of California residents by supporting off-highway motorized vehicle recreational opportunities in the State. Additionally, this regulatory action benefits the State’s environment by providing broader funding for resource protection and Restoration activities.

INCORPORATION BY REFERENCE

As part of the Notice of Proposed Rulemaking and Originally Proposed Language the Department proposed amendments to several documents, incorporated by reference, that are within the Grants and Cooperative Agreements Program Regulations –

Appendix (Rev. 1/21). These documents were available for public review as part of the Notice of Proposed Rulemaking.

The Department incorporates by reference the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/21) as it would be impractical and cumbersome to publish the entire document directly in the CCR due to the voluminous collection of forms and certifications within the Appendix. Additionally, these forms and certifications are readily available to Applicants and Grantees on the Department web page and its On-line Grants Application database where Applicants and/or Grantees may complete these forms and certifications.

SUMMARY AND RESPONSE TO COMMENTS

Comments Received During the 45-Day Comment Period:

Jeff Aardahl, Defenders of Wildlife (by emailed letter dated June 8, 2020):

Comment: Mr. Aardahl commented:

1. Section 4970.02 (Program Purpose): The California Department of Parks and Recreation (DPR) proposes to amend Section 4970.02 to state:

“The purpose of the Grants program is to provide well managed OHV Recreation by providing financial assistance to eligible agencies and organizations that develop, maintain, operate, expand, support, or contribute to well managed high quality OHV recreation areas, roads, and trails, and to responsibly maintain the wildlife soils and habitat of project areas in a manner that will sustain long term OHV Recreation in accordance with the legislative provisions and intent of the act commencing at PRC Section 5090.10.”

Comment: This statement of Program Purpose is not just misleading in how it is worded, it does not comply with the governing statutory provisions relating to management of OHV recreational uses and turns the intent of the Public Resources Code (PRC) provisions relating to management of OHV recreational uses on its head. The intention of the statute is to require the “conservation of significant natural and cultural resources” in connection with OHV recreational uses and to manage OHV use areas in a manner that “conserves natural and cultural resources and improvement of natural resources over time.” PRC § 5090.43(a). See also, §§ 5090.35(a), 5090.10 (definition of “conservation”).

As amended in 2017, PRC Section 5090.10 provides: “Conservation” and “conserve” mean activities, practices, and programs that protect and sustain soils, plants, wildlife, habitats, and cultural resources in accordance with the standards adopted pursuant to Section 5090.35. PRC Section 5090.35(a) requires the Off-Highway Motor Vehicle Recreation Division (Division) to provide for “the protection of public safety, the appropriate utilization of lands, and the

conservation of natural and cultural resources.” These management prescriptions are described as “of the highest priority.” PRC § 5090.35(a). Further, “The Division shall take steps necessary to prevent damage to significant natural and cultural resources within state vehicular recreation areas,” PRC § 5090.35(a). Section 5090.35(c)(1) further requires the Division to prepare a wildlife habitat protection plan that conserves and improves wildlife habitats for each state vehicular recreation area.” PRC § 5090.35(d) requires the Division to “monitor annually in each state vehicular recreation area to determine whether soil conservation standards are being met and the objectives of wildlife habitat protection plans are being met.” PRC § 5090.43 (a) provides “Areas shall be developed, managed and operated for the purpose of providing the fullest appropriate public use of the vehicular recreational opportunities present...while providing for the conservation of cultural resources, and the conservation and improvement of natural resources values over time.”

The Program Purpose, as stated in Proposed Section 4970.02, under the above referenced statutory provisions, must not be to promote and manage OHV use for the purpose of sustaining “long term OHV recreation” but rather to manage OHV recreational uses in a manner that will ensure sustainability (conservation) of cultural and natural resources, including vegetation and wildlife, over time. The OHMVR Division's mission statement cannot be carried out in connection with the grants program unless the applicant will implement “conservation” through “activities, practices, and programs that sustain soil, plants, and wildlife and their habitation in accordance with the standards adopted pursuant to §5090.35.” PRC Sections 5090.10, 5090.43(a), 5090.35(a). Stating that the goal of the grants program is to “responsibly maintain the wildlife, soils, and habitat of project areas” is a considerably lower standard than the mandate to “conserve natural and cultural resources” and to ensure “sustainability of cultural and natural resources” over time. To “responsibly maintain the wildlife, soils, and habitat of project areas” is a lesser degree of protection than ensuring “conservation of natural and cultural resources in a sustainable manner over time.”¹ To “maintain” implies to keep the wildlife, soils, and habitat in a non-deteriorating condition, but is not the same as “sustaining and conserving those resources over time.”

The basic legal error is that the OHMVR Division has, in its proposed revision of the Program Purpose regulation, inverted the qualifying phrases contained in the governing statute.

Pursuant to the PRC provisions cited above, it is absolutely clear that the purpose of the statute is not to provide “sustainable long term OHV Recreation” but instead to guarantee that OHV Recreational uses will be regulated and managed in a manner that conserves natural and cultural resources, including wildlife and wildlife habitat in a sustainable manner over time. PRC Sections 5090.10, 5090.43(a), 5090.35(a).

PRC Section 5090.50(a) provides “The Division shall develop and implement a grant and cooperative agreement program to support the planning, acquisition,

development, maintenance, administration, operation, enforcement, and restoration, and conservation of trails, trailheads, and other facilities associated with the use of off highway motor vehicles and programs involving off highway motor vehicle safety or education.” The Grants and Cooperative Agreements Program is required to include provisions relating to management of trails, trailheads, and other facilities according to the “conservation” standard.

PRC Section 5090.50 (b)(1)(A) iterates this conservation standard when it provides that 50% of the funds appropriated pursuant to 5090.61 “shall be expended solely for grants and cooperative agreements for the acquisition, maintenance, operation planning, development or conservation of authorized trails and facilities associated with the use of off highway motor vehicles for recreation or motorized access to non-motorized recreation.”

The OHMVR Division is also not authorized to “fund trail construction unless the trail is capable of complying with the conservation specifications prescribed” in the statute, and the OHMVR Division “shall not fund trail construction where conservation is not feasible.” PRC § 5090.35(e).

Further the proposed Program Purpose statement introduces the terms “well-managed” and “high quality” which have no statutory basis and are not defined in the document.

The Program Purpose, proposed Section 4970.02, must therefore be rewritten to state:

“The purpose of the Grants and Cooperative Agreements Program is to 1) provide financial assistance to eligible agencies that acquire, maintain, operate, develop OHV recreation areas, roads and trails, including the conservation of such areas, and 2) to responsibly sustain and conserve the wildlife, soils, and habitat of Project areas in accordance with the legislative provisions and intent of the act commencing at PRC Section 5090.10.”

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.02 and is not relevant to the proposed amendments.

Further, the Division believes existing CCR Section 4970.02 sufficiently captures the Program’s purpose as related to off-highway motor vehicle recreation and is consistent with Public Resource Code, Division 5, Chapter 1.25 (PRC).

Comment: Mr. Aardahl commented:

2. Additional Recommendations: Section 4970.10(d) of the proposed regulations provides that “Projects that affect lands identified as inventoried roadless areas by the U.S. Forest Service shall certify that the Project complies with PRC

Section 5090.50(b)(1) (C).” We believe that it is necessary to include as well in proposed Section 4970.10(e), the following provisions of PRC 5090.50(b)(1)(B)(i-ii):

(B) (i) Give preference to applications that sustain existing authorized off highway motor vehicle recreation opportunities.

(B) (2) Give additional consideration to applications that improve facilities that provide motorized access to non-motorized recreation opportunities.

This will ensure consistency with PRC Section 5090.50(b)(1)(a) that provides for grants and cooperative agreements for facilities that “provide motorized access to non-motorized recreation.” It is important that applicants for grants are informed that grants are available for motorized access to non-motorized recreational opportunities. It is likewise important to emphasize that the Grants and Cooperative Agreements Program is not to give preference to applications that propose new roads or trails for OHV recreational uses.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10 and is not relevant to the proposed amendments.

The Grant Application scoring methodology, included in Project evaluation criteria as part of the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19), gives preference to Grant Applications that sustain off-highway motor vehicle recreation and/or improve facilities that provide motorized access to non-motorized recreation. Grant Applications which propose to sustain off-highway motor vehicle recreation and/or improve facilities that provide motorized access to non-motorized recreation are awarded additional evaluation criteria points over Applications that do not include these Project objectives.

Comment: Mr. Aardahl commented:

3. Comments on Grants to Federal Agencies: The two primary federal agencies receiving funding for off-highway vehicle activities are the Bureau of Land Management (BLM) and U.S. Forest Service (USFS). These two agencies allow various types of off-highway vehicle recreation on millions of acres of land they manage in California, and annually receive millions of dollars in grant funding to maintain off-highway vehicle recreation, restore habitat damaged by unauthorized vehicle use and support law enforcement and monitoring.

The proposed regulations should clearly state that in order to be eligible to receive funding under the Grants and Cooperative Agreements program, the BLM and USFS off-highway vehicle recreation programs must conform to state law, including the requirement to manage OHV use areas in a manner that “conserves natural and cultural resources and improvement of natural resources over time.” PRC § 5090.43(a). This also includes the requirement to comply with

the soil conservation standards, and development and implementation of a wildlife habitat protection program. A team of subject matter experts should be established by the DPR to review the off-highway vehicle use programs of the BLM and USFS to determine if they conform to state law and, if not, to identify changes that need to be made in order for these agencies to be eligible to apply for and receive funding under the Grants and Cooperative Agreements Program.

Department Response: Reject the comment. The comment is not directed at any specific proposed regulatory changes nor suggests any specific amendments to the language in any section of the CCR.

Bruce Whitcher, Central Coast Trail Riders Association (by emailed letter dated June 16, 2020):

Comment: Mr. Whitcher commented:

Section 4970.06.01 doesn't include any proposed changes, but has long been unclear. Please consider publishing a modified text to clarify this section, with respect to submission of NEPA documents by non-profit organizations who apply to perform projects on federal land where NEPA has been completed.

This section calls for completion of the ERDS, but when this is done in OLGA it leads to error messages unless the box is checked indicating the project is NOT considered a project under CEQA. Nearly all ground ops projects are considered ground disturbing activity but the Division accepts NEPA in lieu of CEQA certification.

Department Response: Reject the comment with conditions. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.06.01 and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Mr. Whitcher commented:

4970.06.01 (d) calls for submission of NEPA documents such as a Decision Memo, finding of no significant impact, or Record of Decision by federal agencies or Federally Recognized Native American Tribe Applicants. This section should include non-profit organizations who submit NEPA documents such as a decision memo, finding of no significant impact or a record of decision for ground operation / trail maintenance type projects on federal land.

Department Response: Reject the comment with conditions. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.06.01(d) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Mr. Witcher commented:

The OHV Division provided handouts at the 2018-19 Grants workshop that differentiated “transportation costs” from “operating costs”, however this was never put into regulation. We received Division comments on our G18 grant application requesting expense reallocation of transportation costs to “operating costs” that led us to believe these definitions have been implemented, however this change doesn’t appear to have been added to this proposed section.

4970.08 (b) (9) states that:

“Transportation costs for moving material, supplies, and personnel. (A)

Nonprofit Grantees shall be limited to reimbursement for cost of transportation to and from the Project site, up to one hundred (100) miles in each direction. Any cost exceeding the 100 mile maximum may be claimed only as match. All transportation costs shall be stated as a “per mile” charge cost in the Project Cost Estimate (Rev. 1/11) (refer to Appendix, incorporated by reference) and shall not exceed the federal Internal Revenue Service standard mileage business rate provided as of the start of the Grants Cycle for which the cost is being requested.”

Please consider:

- 1. adding a definition of “transportation costs” to “Definitions, 4970.01”. Consider defining transportation costs as “cost of moving material, supplies, and personnel from a location outside the project area to and from a project site, up to 100 miles in each direction”.*
- 2. Add a definition of “operating costs” to this section: “costs of the use of equipment during project activities within the project area.”*
- 3. Amend 4970.08.1 to include “operating costs” to clarify when a daily use fee may be charged.*

4970.08(b) (9) could be interpreted to limit eligible transportation costs to a “per mile” charge that shall not exceed the standard IRS business rate. This would exclude a use fee as an eligible project cost for non-profit organizations using equipment purchased outside the program.

However 4070.08.1 indicates that non-profit may charge a use fee for equipment purchased with funds outside the program, limited to \$150 per day, in addition to a mileage charge. This section doesn’t make any distinction between “transportation costs” and “operating costs” and there is no description of the terms and conditions under which a non-profit grantee may charge a use fee.

We suggest including separate sections to address “transportation cost” and “operating cost” as was described in the 2018-19 grants workshop.

- 1. Retain 4970.08 (9) which describes “transportation costs”; add a definition of “transportation costs” to the Definitions 4970.01: Transportation costs are costs incurred by moving material, supplies, and personnel from a location outside the project area to and from a project site, up to 100 miles in each direction”.*
- 2. Add “operating costs” to this section: “Operating costs are costs incurred by the use of equipment during activities within the project area.”*
- 3. Amend 4970.08.1 to read:*

Eligible Equipment / Heavy Equipment Costs – Nonprofit Grantee. (a) The maximum Grant requested for Equipment purchases shall not exceed thirty thousand (\$30,000) dollars per Grantee. (b)

“Equipment acquired solely with funds outside this Grants program. Operating costs: (1) A use fee may be charged in accordance with the Grantee’s local fair market rental rates, but shall never exceed the Grantee’s actual cost or a maximum of one hundred and fifty (\$150) dollars per piece of Equipment per day, whichever is less, for the cost of operating Equipment during project activities; (2) A “per mile” fee, ~~for the cost of operating Equipment during Project activities,~~ may be charged for a maximum of one hundred and fifty (150) miles per day for the cost of operating Equipment during project activities. Any amount beyond the 150 mile maximum amount may only be charged as match. (3) A “per mile” fee may be charged, up to one hundred (100) miles in each direction, for transporting Heavy Equipment to and from the Project site.” (this sentence should be deleted as duplicative: heavy equipment transportation addressed by 4970.08.1 (d) (4).)

Department Response: Accept and reject the comment. The Department does not propose to add additional definition to CCR Section 4970.01; however, CCR Section 4970.08(b)(9) is amended to include additional language that better describes the meaning of eligible transportation costs of materials, supplies and personnel by adding “from a location outside the Project Area and from a Project site”.

Further, the comment is rejected as eligible “transportation costs” for Equipment are described in CCR Sections 4970.08.1 and 4970.08.2 and “operating costs”, as they pertain to use of equipment during Project activities, are described in proposed CCR Section 4970.08.1.

Additionally, eligible Project costs are broadly defined in CCR Section 4970.08(a) as “...costs directly or indirectly related to the work identified in the Project Description. There is no strict differentiation of “operating costs” for purposes of eligible costs; if a Grantee uses Equipment on a Project in accordance with these regulations, the costs are eligible for that Project.

Comment: Mr. Witcher commented:

4070.08.1 - In the past equipment use fees charged by grantees have been limited to local fair market rates. Grant administrators have oversight of charges and frequently ask applicants to adjust rates through Division comments. Limiting the rate to \$150/day reduces the flexibility of allowing local fair market rates that can vary by area, requiring grantees to accept rates that may be below market, causing them to operate at a loss. Once these regulations are promulgated a rulemaking would be required to adjust rates that periodically fluctuate according to local costs. Past grant regulations were more equitable than the current proposal.

Department Response: Reject the comment. Staff studied and compared the cost of Equipment use fees requested by Grantees over a three-year Grant cycle and determined the maximum \$150/day rate is necessary to limit excessive reimbursement of Equipment costs that greatly exceed the value of the Equipment of Grantee owned Equipment as well as sufficiently provides for reimbursement of rental Equipment at a fair market rate.

Comment: Mr. Witcher commented:

Fuel costs: (4070.08.1(e) (2).

Non-profit grantees are limited to reimbursement for heavy equipment fuel costs; 4970.08.1(e) (2). However all other grantees are allowed fuel costs to cover the use of all equipment used for project activities 4970.08.2 (a) (2). With the new and stringent record keeping requirements for vehicle mileage and use fees accounting for fuel used by non-profits should not be difficult. We see no reason why non-profits should be denied reimbursement for fuel costs, which can be substantial, when this is an eligible cost for all other grantees. The justification of this section in the ISOR would apply equally to both non-profit and other grantees.

Department Response: Reject the comment. Grantees may be reimbursed for Equipment use through “per mile” fees in CCR Section 4970.08.1. The “per mile” reimbursement is intended for nonprofits to reimburse both fuel costs as well as wear and tear on Equipment. Nonprofit Grantees are allowed the same ability to reimburse their Project costs for fuel; reimbursement for fuel use has historically been, and will continue to be, considered a component of the “per mile” reimbursement costs. All other Grantees are not allowed to claim a “per mile” fee to cover fuel costs, and thus may claim their direct fuel costs.

Genivieve Rasmussen, Bureau of Land Management (by emailed letter dated June 22, 2020):

Comment: Ms. Rasmussen commented:

4970.01. Definitions

(t) Current Language "Good Standing" means that the Grantee is at all times adhering to the statutes and regulations governing the Grants and Cooperative Agreements Program and/or that the Grantee does not have any outstanding refund(s) due to the Department from any other grant(s) program(s) administered by the Department.

Recommend: Grantee does not have any outstanding requested in writing refund(s) due to the Department from any other grant(s)...

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.01 and is not relevant to the proposed amendments.

Additionally, the Department, in accordance with CCR Section 4970.24.1, issues any refund due to the State in writing.

Comment: Ms. Rasmussen commented:

(w) Current Language: "Ground Disturbing Activity" means any earth moving Project-related activity. The act of installing and/or replacing a sign, placing of boulders or other material to delineate a Facility, or sweeping sand/dirt from a paved road are not considered a "Ground Disturbing Activity".

Recommend: ... Facility, sweeping sand/dirt from a paved road or identified in a CEQA/NEPA document are not considered a "Ground Disturbing Activity".

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.01 and is not relevant to the proposed amendments.

Additionally, CEQA/NEPA analyses do not always assess or describe Project activities based on ground disturbance and therefore would not provide a consistent metric for purposes of determining whether a Project includes a "Ground Disturbing Activity".

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

(bb) Current Language: "Medical" means a person requested medical aid and was treated by emergency service personnel.

Recommend: and was treated by emergency service personnel or first responder.

Note: Not all personnel are considered emergency service personnel such as maintenance staff and are usually the personnel that are first on scene, but most are considered first responder and can apply basic medical need until emergency service personnel arrive on scene.

Note: based on the comment, the commenter erroneously cited subsection “(bb)” and should have cited subsection “(cc)”

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.01 and is not relevant to the proposed amendments.

Additionally, the Department considers reference to “emergency service personnel” in CCR Section 4970.01(cc) to include first responders.

Comment: Ms. Rasmussen commented:

4970.03. Determining Applicant Eligibility.

Table 1:

Recommend: On Table 1 add Non-profit and planning and development

Note: Many non-profits have skill level to implement planning activities and have flexibility for partner funding, this will overall limit cost to both Federal and County government.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.03 and is not relevant to the proposed amendments.

Further, Applicant eligibility for specific Project types are set in statute and may only be amended through the state legislative process.

Comment: Ms. Rasmussen commented:

4970.05. General Application Requirements.

Recommended Changes to Regs

- Allow for Public meeting to be virtually attended*

4970.05. General Application Requirements.

(e.2) Current Language: ...Application review and public comments. Public notification efforts shall include at least one of the following:

Add: (D) Public meeting or hearing conducted by the Applicant, allowing for virtual meetings if needed

Note: based on the comment, the commenter erroneously cited subsection “(D)” and should have cited subsection “(E)”

Department Response: Accept the comment. CCR Section 4970.05(e)(2)(E) is amended to allow for public meetings or hearings to be “held either in-person or virtual”.

Comment: Ms. Rasmussen commented:

Add: (F) Social Media (Facebook, Twitter, etc.)

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.05 and is not relevant to the proposed amendments.

Further, existing regulation is inclusive to many forms of preliminary Application notification; the Department believes notification via social media is not as effective in notifying a large public audience.

Comment: Ms. Rasmussen commented:

4970.10. Operation and Maintenance (O&M)

(a) Current Language: Operation and maintenance of Facilities; Conservation; Development; planning; or acquisition associated with the use of OHVs for Recreation or motorized access to non-motorized recreation.

Recommend: Operation and maintenance of Facilities; Conservation; Development; planning; administration or acquisition associated with the use of OHVs for Recreation or motorized access to non-motorized recreation.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10 and is not relevant to the proposed amendments.

Additionally, “administration” of Operation and Maintenance Projects is allowable as an eligible Indirect Cost.

Comment: Ms. Rasmussen commented:

*(f) Applicants may apply for Project types as shown in Table 3:
Change: On Table 3 add Non-profit to planning*

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10 and is not relevant to the proposed amendments.

Further, Applicant eligibility for specific Project types are set in statute and may only be amended through the state legislative process.

Comment: Ms. Rasmussen commented:

4970.10.1 Ground Operations (GO)

(c.8) add: Or any item that would be considered minor on the ground improvements that is less than \$10,000 (e.g., such as a picnic table or Kiosk.)

Note: Some locations may need a minor improvement like adding a kiosk, this would be and under the minimum cost for development grant.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10.1 and is not relevant to the proposed amendments.

Further, the Division, on a case by case basis, allows for certain minor ground improvements in Ground Operations Projects.

Comment: Ms. Rasmussen commented:

(c.9) add: Maintenance of all roads including access roads within or entry into a designated OHV area.

Note: Maintaining access routes for OHV areas are essential for safe and responsible OHV recreation

Department Response: Reject the comment. Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10.1 and is not relevant to the proposed amendments.

Additionally, funding for access roads that are not lawful for off-highway vehicle use violate statutory provisions for Project funding.

Comment: Ms. Rasmussen commented:

4970.10.3. Planning

(a) Current Language: Development and preparation of plans for future Projects which propose organization, Development, operation, Conservation and/or maintenance to sustain long-term OHV Recreational use.

Recommend: Development and preparation of plans for future Projects which propose organization, Development, operation, Conservation and/or maintenance to sustain long-term OHV Recreational use. Planning Projects may also provide programmatic management coordination for Federal Agencies.

Department Response: Reject the comment. Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10.3 and is not relevant to the proposed amendments.

Programmatic management of Planning Projects is allowable as an eligible Indirect Cost.

Comment: Ms. Rasmussen commented:

(c) Examples of Deliverables

Add: (4) Provide funding for OHV Program Coordinator and Specialist to facilitate statewide/district recreation opportunities and natural resource conservation where OHV recreation occurs on federally managed public lands

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10.3 and is not relevant to the proposed amendments.

Planning Projects generally provide for funding of direct on the ground off-highway recreation opportunities. Project funding may be approved, on a case by case basis for Grantee personnel to implement a Planning Project.

Comment: Ms. Rasmussen commented:

4970.23.2 Reimbursements

Add: With the exception for Federal Agencies any records containing Privacy Identifiable Information (PII), these records include safeguarding information of Federal Employees, Contractors and Volunteers. Documents containing PII can be viewed at secure Federal Government Office where documents reside.

Examples of PII are:

- Any Document containing information as home addresses, home telephone numbers, personal cell phone numbers, logins and associated passwords, government and personal*

banking information (i.e. credit card numbers, account numbers, etc.), Social Security Numbers (SSN) (even if only the last four digits are displayed), etc.

- Supervisors' records pertaining to employees, time and attendance records*
- Credit card statements without redacted credit card number*
- Hard copy travel authorizations/vouchers*

Note: Per Instruction Memorandum No. 2015-052 Subject: Safeguarding Privacy. Information we can no longer provide hard copy documents to leave a federal office. Our FBMS statements can provide the necessary audit information. Both Credit card statements and Travel vouchers are automated and automatically is calculated in the FBMS system.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.23.2 and is not relevant to the proposed amendments.

Further, the Division does not require Personally Identifiable Information (PII) as part of the required documentation for reimbursement. It is the discretion of the Grantee to redact any PII from documents prior to submittal to the Division.

Comment: Ms. Rasmussen commented:

D.5: Project Administration

Current Language: shall be returned to the State within one hundred twenty (120) days of completion of the Project or end of the Project performance period, whichever is earlier.

Recommend: When the OHMVR Division and/or Parks and Recreation State Auditor determines there is a refund due to the State and is notified in writing, the grantee shall remit the refund due within (120) days of completion of the Project or end of the Project performance period, whichever is earlier.

Note: A refund letter is required from OHMVR as documentation by BLM to submit for refunds.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

Additionally, the Department, in accordance with CCR Section 4970.24.1, issues any refund due to the State in writing.

Comment: Ms. Rasmussen commented:

G.1: Financial Records

Current Language: During regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this agreement or matters related thereto.

Recommend:

Add:

During regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this agreement or matters related thereto. With the exception of any records containing Privacy Identifiable Information (PII), these records include safeguarding information of Federal Employees, Contractors and Volunteers. Documents containing PII can be viewed at secure Federal Government Facility.

Examples of PII are:

- Any Document containing information as home addresses, home telephone numbers, personal cell phone numbers, logins and associated passwords, government and personal banking information (i.e. credit card numbers, account numbers, etc.), Social Security Numbers (SSN) (even if only the last four digits are displayed), etc.*
- Supervisors' records pertaining to employees, time and attendance records*
- Credit card statements without redacted credit card number*
- Hard copy travel authorizations/vouchers*

Note: Per Instruction Memorandum No. 2015-052 Subject: Safeguarding Privacy. Information we can no longer provide hard copy documents to leave a federal office. Our FBMS statements can provide the necessary audit information. Both

Credit card statements and Travel vouchers are automated and automatically is calculated in the FBMS system.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

The Division does not typically require PII as part of the required documentation for inspection. The Division, as a matter of policy, would work with the Grantee to ensure PII is not included in copied records.

Comment: Ms. Rasmussen commented:

Evaluation Criteria - General Criteria

5. At any time in the last two complete calendar years prior to the current Grant Cycle, has the applicant been not in Good Standing with the Division:

- *No (10 points)*
- *Yes (No Points)*
- *First time Applicants or Applicants without active projects in the last two complete calendar years. (5 points)*

Change:

- *No (10 points)*
- *Yes, when applicant corrects errors within 30 days of notification from OHMVR. (5 points)*
- *Does not respond in timely manner (0 points)*
- *First time Applicants or Applicants without active projects in the last two complete calendar years. (5 points)*

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

7. Prevention of OHV trespass

a. Is site a completely fenced facility such that OHV trespass into neighboring properties and/or closed areas is prevented?

- *No (answer items b and c)*
- *Yes (10 points, explain and then skip to item 8)*

Change: Delete Criteria OHV trespass

Note: This criterion favors a confined OHV experience that you might have in a SVRA. Majority of the OHV experience in California is "not" fenced and confined. This criteria also does not allow for natural barriers to keep OHV from trespassing, thus rewards open areas and not dispersed long distance OHV recreation opportunities.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

8. Natural and Cultural Resources

Change: Delete

Note: Same as above

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

11.B. OHV Education

Applicant or Land Manager provides hosted onsite formal programs, educational talks, school field trips, etc.

Change: Applicant or Land Manager provides formal programs educational talks, school field trips, etc.

Note: Many Schools cannot provide transportation to a site, or do not have funding to bus youth to BLM field sites. Not allowing outreach at partner sites and to provide in school programs greatly decreases our programs and ability to educate youth.

C. Daily (5 points) Change: During regular office hours (5 points)

D. Provide a detailed explanation of Land Manager's onsite education efforts relative to item d.

Change: Provide a detailed explanation of Land Manager's education efforts relative to item d.

Note: This puts the remote applicant without open riding areas and training facilities at a disadvantage to provide this training. Training can be instructed at a partner's facility.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

12a. OHV outreach efforts are accomplished through the Applicant or Land Manager's website:

Change: OHV outreach efforts are accomplished through the Applicant or Land Manager's website and/or Social media site

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

DEVELOPMENT PROJECT CRITERIA

2c. Provide name and date of Reference document that supports the selection:

Note: Cultural site information is protected data and cannot be provided, since all application information is available for public view.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

6. Current Language: least 50% of the construction materials used for the Project contain recycled content, such as:

Change: least 50% of the construction materials used for the Project contain recycled content or Natural Material, such as:

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Rasmussen commented:

EDUCATION AND SAFETY CRITERIA

2. Note: This is repetitive of the General Application. Question 5, if this stays then same comments as previous question.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Chris Horgan, Stewards of the Sequoia (by emailed letter dated June 22, 2020):

Comment: Mr. Horgan commented:

ISSUE ONE- "Performance" Audit

The OHV Regulations must comply with the dominant California Code, Public Resources Code - PRC § 5090.50 which clearly states-

(h) The department shall conduct an annual financial audit of the grants and cooperative agreements program. During each year, the department shall also conduct, or cause to be conducted, an audit of the "performance" of a minimum of 20 percent of grant and cooperative agreement recipients.

AMENDMENT- One A

Therefore the underlying subservient OHV Grant regulation 4970.25.1 must be amended to comply with the PRC as follows-

The OHV regulations should not be amended as proposed to state a financial audit of 20% of the grantees. It must be a "performance audit" of 20% of grantees to comply with PRC 509.50.

Department Response: Reject the comment. In accordance with PRC Section 5090.50(h), the "...the department shall also conduct, or cause to be conducted, an audit of the performance of a minimum of 20 percent of grant and cooperative agreement recipients." Additionally, consistent with PRC Section 5003 whereas "...the department may establish rules and regulations not inconsistent with law for the

government and administration of the property under its jurisdiction...” the Division has established in CCR Section 4970.25.1 that the audit of the performance of Agreements shall be made through a financial audit of Grantees.

Further, the Department, in accordance with CCR Section 4970.24.1, conducts, “...a Project performance review of all Projects. Project performance reviews may include, but are not limited to, review of a Project to determine progress toward its completion, review of the implementation of HMP and Soil Conservation Plan, or other requirements contained in the Project Agreement.”

Therefore, through the authority in both PRC and CCR, the Department conducts both a financial audit and performance review of Grantees.

Comment: Mr. Horgan commented:

AMENDMENT- One B

It is helpful to understand what a "performance" Audit is per the State Audit Department (below)- [https://www.auditor.ca.gov/aboutus/"performance"](https://www.auditor.ca.gov/aboutus/)_audits

"The California State Auditor conducts "performance" audits that are either mandated by statute or requested by the Legislature. "performance" auditing is the systematic and objective examination of evidence to provide an independent assessment of the "performance" and management of an organization or activity against objective criteria as well as assessments that provide a prospective focus or create best practices. "performance" audits provide information to improve operations and facilitate decision making by parties with responsibility to oversee or initiate corrective action and improve public accountability. These audits cover a wide variety of objectives, including objectives related to providing perspective, analysis, guidance, or summary information or in assessing:"

The purpose of the PRC 5090.50 is clearly to ensure that the OHV Division encourages the highest performing or most effective grants and OHV regulation 4970.25.1 must reflect this.

In keeping with PCR 5090.50 Performance Audits statute and to provide further clarification about Performance Audits the OHMVR should amend their regulation 4970.25.1 Section A by adding the below State Auditors definition of Performance Audits-

The "performance" auditing of 20% of the grantees are not punitive and will purely be the systematic and objective examination of evidence to provide an independent assessment of the "performance" and management of an organization or activity against objective criteria as well as assessments that provide a prospective focus or create best practices. "Performance" audits will provide information to improve operations and facilitate decision making by the

OHV Division to oversee or initiate corrective action and improve public accountability. These audits cover a wide

variety of objectives, including objectives related to providing perspective, analysis, guidance, or summary information or in assessing. The OHV Division will seek to encourage more cost effective grants.

Department Response: Reject the comment. “Performance audits”, as defined by the State Audits Department, refer to audits conducted by the State Audits Department. The Department Audits Office audits are not under the purview of the State Audits Department, and therefore not considered a performance audit as defined by the State Audits Department. Nothing precludes the Department from conducting a financial audit of Grantees, which may include a measure of how the Grants program is performing based on the findings of the Department’s Audit Office audit of Grants.

Comment: Mr. Horgan commented:

ISSUE TWO - Approved Grant Contact Fulfillment

California Department of Parks and Recreation drafts grant project agreement contracts with the grantees which OHMVR close out and approve. The current practice by the CDPR OHV Division auditors has been to question and disallow the costs for specific contracted line items even though they have been fulfilled per the contract. This undermines the grant program making it impossible for grantee to know if CDPR is going to honor the contract.

AMENDMENT- Two

The following should be added to the OHV regulations 4970.25.1 to be in keeping with the mission of the OHV Division to enhance OHV recreation and to maximize grant performance and to ensure that audits cannot undermine approved OHMVR contracts and prevent the OHMVR from breaching contracts with grantees-

Once the grant is closed out by the OHV Division grant administrator at the completion of the grant cycle it is assumed the grant was completed to the satisfaction of the OHV Division and there can be no changes to the contract. Audits cannot alter or disallow contracted line items. Financial Audits are solely to determine if there has been fraud or malfeasance, not to question contract line items or contracted amounts. Should an audit find any discrepancy other than malfeasance or fraud the information will be used to help OHMVR staff to address future grants.

Department Response: Reject the comment. Public Resources Code Section 5090.50 grants the Audits Office independent authority to conduct Project audits. These audit

findings may or may not have differing outcomes from the Division's Project performance review.

Additionally, Grantees may request a review of the Audits Office findings where the Division must review and respond to the requested review. The Division has final authority to determine any refunds due back to the State.

Comment: Mr. Horgan commented:

ISSUE THREE - Audit Is A Recommendation

CDPR Audit Reports are recommendations. The Audit reports do not require the CDPR to demand any refund. The OHV Division could use their discretion to determine which if any of these audit findings should be acted on. Instead they have accepted the audit findings wholesale even though the audits were not in keeping with PCR 5090.50 requirements and the grantees completed the contracts fully and provided more work than contracted.

CDPR already approved all of the grant expenses and reports as supportable, therefore if any of the expenses are not supportable the CDPR is at fault, not the grantee.

AMENDMENT- Three

The following should be added to the OHV regulations 4970.25.1-

OHV Audits are a recommendation which OHV staff must consider. In the case of grants which have fulfilled the contract or provided more work than contracted for no punitive action will be sought.

Department Response: Reject the comment. Public Resources Code grants the Audits Office independent authority to conduct Project audits. These audit finding may or may not have differing outcomes from the Division's Project performance review.

Additionally, Grantees may request a review of the Audits Office findings where the Division must review and respond to the requested review. The Division has final authority to determine any refunds due back to the State.

Comments Received During the June 23, 2020 Public Hearing:

Jane Arteaga, Bureau of Land Management:

Comment: Ms. Arteaga commented that the Bureau of Land Management (BLM) supports Division amendments to equipment requirements in the proposed regulations.

Department Response: Accept the comment. The Department accepts comments in support of its proposed language.

Comment: Ms. Arteaga suggested amending CCR, Section 4970.01(t) “Good Standing” definition that outstanding refunds should be requested in writing. Ms. Arteaga stated offices are not getting refund letters which may impact an agencies good standing.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.01 and is not relevant to the proposed amendments.

Additionally, the Department, in accordance with CCR Section 4970.24.1, issues any refund due to the State in writing.

Comment: Ms. Arteaga suggested amending CCR Section 4970.01(cc) by adding first responders to the definition of “Medical”. Ms. Arteaga noted emergency service personnel are not always the first on scene when medical attention is needed.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.01 and is not relevant to the proposed amendments.

Additionally, the Department considers reference to “emergency service personnel” in CCR Section 4970.01(cc) to include first responders.

Comment: Ms. Arteaga suggested amending CCR Section 4970.05(e)(2)(E) and add subsection (F) that allows for a virtual meeting, if needed, to notify the public of Applicant’s Grant application or the option to notify the public via social media. Ms. Arteaga noted, with current health conditions, as well as use of social media, these would be viable options to inform the public.

Department Response: Accept the comment. CCR Section 4970.05(e)(2)(E) is amended to allow for public meetings or hearings to be “held either in-person or virtual”.

Comment: Ms. Arteaga suggested adding CCR Section 4970.10.1(c)(8) to allow for on the ground improvements valued at less than \$10,000. Ms. Arteaga noted Development Projects do not allow for Grants at this amount and would benefit Projects such as installing a picnic table or kiosk.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.10.1 and is not relevant to the proposed amendments.

Further, the Division, on a case by case basis, allows for certain minor ground improvements in Ground Operations Projects.

Comment: Ms. Arteaga suggested amending the ‘General Application Requirements D.5.’ by requiring written notification of a Division refund request as the BLM requires written notification in order to process refunds to the Division.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

Additionally, the Department, in accordance with CCR Section 4970.24.1, issues any refund due to the State in writing.

Comment: Ms. Arteaga suggested amending ‘General Application Requirements G.1.’ by clarifying the BLM cannot disclose personally identifiable information when the Division reviews records. She noted Federal law restricts disclosure of personally identifiable information.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

The Division does not typically require PII as part of the required documentation for inspection. The Division, as a matter of policy, would work with the Grantee to ensure PII is not included in copied records.

Comment: Ms. Arteaga suggested deleting ‘General Evaluation Criteria 7.’ specific to prevention of trespass due to the varied terrain of BLM’s off-highway trails that makes it difficult to fence in the areas.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Ms. Arteaga suggested amending ‘General Evaluation Criteria 11.B.’ by removing reference to hosted onsite education as the requirement can be restrictive when schools are unable to transport students out to the BLM educational event.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in the Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/19) and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Dan Stephenson, Bureau of Land Management:

Comment: Ms. Stephenson commented that Division grants should fund non- “green sticker” trails that access “green sticker” recreation with a limit to miles funded so long as they go to off-highway areas.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed and is not relevant to the proposed amendments.

Additionally, funding for access roads that are not lawful for off-highway vehicle use, violate statutory provisions for Project funding.

Beth Padon, Partners for Archeological Site Stewardship:

Comment: Ms. Padon commented the Division should consider amending CCR Section 4970.08 related to eligible project costs. Ms. Padon suggested that workshop training be included as eligible grant costs.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed and is not relevant to the proposed amendments.

Additionally, workshop training, depending on the specific type of training, may be allowable as an eligible Indirect Cost.

Bruce Witcher, Central Coast Trail Riders Association:

Comment: Mr. Witcher suggested amending CCR Section 4970.06.1 to clarify National Environmental Policy Act (NEPA) document submission requirements for nonprofit grantees.

Department Response: Reject the comment with conditions. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.06.01 and is not relevant to the proposed amendments.

However, the Department believes the comment merits further staff research for possible inclusion into a future rulemaking file.

Comment: Mr. Witcher suggested defining “transportation costs” and “operating costs” in CCR Section 4970.01 as he believed the definitions of these costs have been unclear. Mr. Witcher further noted confusion in regulations regarding when a daily use fee and/or mileage may be reimbursed.

Department Response: Accept and reject the comment. The Department does not propose to add additional definition to CCR Section 4970.01; however, CCR Section 4970.08(b)(9) is amended to include additional language that better describes the

meaning of eligible transportation costs of materials, supplies and personnel by adding “from a location outside the Project Area and from a Project site”.

Eligible transportation costs for Equipment is described in CCR Sections 4970.08.1 and 4970.08.2.

“Operating costs” as they pertain to use of equipment during Project activities are described in proposed CCR Section 4970.08.1.

Eligible Project costs are broadly defined in CCR Section 4970.08(a) as “...costs directly or indirectly related to the work identified in the Project Description. There is no strict differentiation of “operating costs” for purposes of eligible costs; if a Grantee uses Equipment on a Project in accordance with these regulations, the costs are eligible for that Project.

Comment: Mr. Witcher noted fuel costs can only be reimbursed for heavy equipment and suggested adding language that would allow reimbursement of fuel for other equipment such as power tools.

Department Response: Reject the comment. Grantees may be reimbursed for Equipment use through “per mile” fees in CCR Section 4970.08.1. The “per mile” reimbursement is intended to reimburse fuel costs as well as wear and tear on Equipment.

Comment: Mr. Witcher requested the local market rate allowance for equipment is amended and not limited to \$150 per day.

Department Response: Reject the comment. Staff studied and compared the cost of Equipment use fees requested by Grantees over a three-year Grant cycle and determined the maximum \$150/day rate is necessary to limit excessive reimbursement of Equipment costs that greatly exceed the value of the Equipment of Grantee owned Equipment as well as sufficiently provides for reimbursement of rental Equipment at a fair market rate.

Joe Chavez, United States Forest Service:

Comment: Mr. Chavez suggested amending CCR Section 4970.08(b)(9) to clarify whether the direct purchase of fuel for the cost of transporting equipment could be reimbursed.

Department Response: Reject the comment. CCR Section 4970.08(b)(9) allows agencies to be reimbursed for the cost of fuel to transport material, supplies, and personnel, as specified. Additionally, CCR Section 4970.08.2 allows agencies to be reimbursed for moving Equipment, as specified, which includes fuel costs.

Comment: Mr. Chavez suggested amending CCR Section 4970.24.1 that would allow requests for final payment received after 120 days “may” be ineligible instead of “shall” be ineligible due to additional time grantees might need to submit their payment request.

Department Response: Accept the comment. CCR Section 4970.24.1 is amended to allow that requests for final payment received after 120 days “may” be ineligible instead of “shall” be ineligible.

Garrett Villanueva, United States Forest Service:

Comment: Mr. Villanueva suggested allowing the preparation of equipment as an eligible direct project cost. Mr. Villanueva noted these costs are currently considered only as indirect eligible costs per current regulation definition.

Department Response: Reject the comment. Equipment preparation does not directly result in the completion of the Project and/or the management or administration of a Project and may be reimbursed as Indirect Project costs only.

Marisa Williams, Bureau of Land Management:

Comment: Ms. Williams requested eligible equipment reimbursement costs are understood in regulation to include the BLM’s ‘working capital fund’ rate rather than just the fair market rental rate.

Department Response: Reject the comment. The comment does suggest any specific amendments to the language in any section of the CCR.

Agency equipment reimbursement is based on the Grantee’s local fair market rate and may not exceed the Grantee’s actual cost. Local fair market rate may include the Grantee agency rate, which will be evaluated when Project expenditures are submitted for reimbursement.

Comments Received During the June 25, 2020 Public Hearing:

There were no public comments received.

Comments Received During the 15-Day Comment Period (July 14, 2020 through July 29, 2020):

There were no public comments received.

Comments Received During the 15-Day Comment Period (November 4, 2020 through November 19, 2020):

Bruce Brazil, CORVA (by email dated November 6, 2020):

Comment: Mr. Brazil commented:

Section 4970.01, Definitions

(q) "Equipment". The addition of "must be motorized and" is not clear. Does this mean that the item must be propelled by a motor or that a motor is used to energize it, like a compressor, electric generator, or portable cement mixer? This may also eliminate items like a heavy duty trailer under this description. Some items may not fit under the (y) Heavy Equipment definition and would be better suited here with a clarified definition.

Department Response: Reject the comment. The comment is not directed at specific regulatory changes proposed in CCR Section 4970.01 and is not relevant to the proposed amendments.

Additionally, the Department believes the addition of "motorized" adds sufficient clarity that the definition of "Equipment" includes any item valued over \$5,000 and is equipped with a motor.

However, the Department believes the comment merits further staff research for possible additional explanation and inclusion into a future rulemaking file.