

**Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
FINDING OF EMERGENCY**

The Director of the Department of Parks and Recreation finds that an emergency exists, and that adoption of amended Off-Highway Motor Vehicle Recreation Division (OHMVR) Regulations is necessary to preserve the public peace, health and safety, as well as the general welfare of off-road recreation enthusiasts of California.

Specific Facts Showing the Need for Immediate Action

These emergency regulations are necessary to affect the implementation of AB 2274 which became effective on January 1, 2003 and the companion bill AB 2666, which became effective on January 1, 2005. The OHMVR Division Regulations incorporate the changes to address key elements of the statute that are not covered in the current regulations, which were adopted on December 31, 2003. These regulatory changes are essential for the immediate preservation of the public peace, health and safety and general welfare, and to comply with legislative intent.

These emergency regulations are necessary to implement the legislative mandates for the 2005/2006-grant cycle. The filing deadline for 2005/2006 grant applications is June 3, 2005. Emergency regulations will allow time for applicants to submit their applications in accordance with the legislative mandates of AB 2274 and AB 2666 without the interruption of vital law enforcement, life saving visitor service activities, resource management, and restoration activities.

There is not sufficient time for the OHMVR Division to develop regulations through the normal OAL process, and initiate another grant cycle in time to meet the June 3, 2005 deadline for submission of grant projects. The Department of Parks and Recreation has determined that the present circumstance concerning the 2005/2006 grants does constitute an emergency pursuant to Government Code section 11346.1.

The provisions of AB 2274 mandate the following changes: establishment of policies by the OHMVR Commission for the general guidance of the Director and the OHMVR Division; funding emphasis on restoration areas that have been environmentally degraded; the requirement that all cooperative agreements with federal agencies and federally recognized Native American tribes shall be subject to the uniform application of soil, wildlife, and wildlife habitat protection standards; and the requirement for a 25% match for local agencies for law enforcement grants.

The OHMVR Commission policies provide the basis upon which the program is implemented. The incorporation of these policies into the regulations is necessary to wholly enable the statutory provision. The adoption of this section of the regulations is imperative for the public general welfare because the policies provide an approach to off-highway motor vehicle recreation that includes activities designed to protect the environment as well as to sustain off-highway vehicle recreation opportunity. Without the inclusion of these policies in the emergency regulations, the specificity and clarity needed to comply with the legislative intent of the statute would be deficient.

The language of AB 2274 provides that 30% of the Conservation and Enforcement Services Account (CESA) allocated by the OHMVR Commission must go toward

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restoration. In the current regulations, restoration activities are included in the resource management project category, which also includes other types of activities such as natural resource conservation. To comply with the statute and to facilitate the tracking of funds allocated for restoration activities, the emergency regulations propose stand-alone restoration grants that clearly define the types of activities and the eligible costs that may be included in these grants. Without the inclusion of this provision in the regulations, we lack the clarity and the accounting of the type of activities that can be charged to the CESA.

Prior to the passage of AB 2666, which became effective on January 1, 2005, the existing code was confusing in that it intermingled mandates that were sometimes inappropriate for either soil standards or wildlife habitat protection. AB 2666 language clarifies provisions in the statute that require grant or cooperative agreement recipients to develop soil conservation standards or wildlife habitat protection programs for certain projects. The emergency regulations reorganize and separate the requirements and provide the necessary clarity to implement the intent of the statute.

The inclusion of the Wildlife Habitat Protection Program/Habitat Management Program in regulations is designed to sustain a viable species composition for OHMVR project areas as defined in the statute. This inclusion is essential to comply with the requirement that all cooperative agreements with federal agencies and federally recognized Native American tribes shall include the uniform application of soil, wildlife, and wildlife protection standards.

The incorporation of the match requirement section in the regulations is imperative for public health and safety. The match will provide additional funding or in-kind contributions for law enforcement grants that protect public safety through the enforcement of vehicle, penal and other relevant codes. Other measures under this category include the provision of patrols in efforts to reduce or eliminate trespass onto private lands, resource damage, and wilderness intrusions. In addition, the match requirement for law enforcement grants can provide additional funding for search and rescue efforts, emergency medical services, and enforcement of noise regulations.

This additional funding will help direct off-highway vehicle users to designated trails, and identify illegal riding areas immediately so that they can be restored to their natural state. Without the additional funding/contributions provided by the match requirement, the extent to which the enforcement staff performs protection and preventive patrols will be reduced, and the possibility of resource damage by unauthorized off-highway vehicle use may increase.

Statement of Emergency

If the emergency regulations are not certified by OAL it will jeopardize the OHMVR Division's ability to comply with AB 2274 and AB 2666, which is currently in effect.

1. Specific facts that describe the threat to the public peace, health and safety, or general welfare:

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If additional funding or in-kind contributions are not made available, public safety will be endangered because the level of law enforcement being performed will be reduced.

If the grants are not funded in a timely manner there may be an interruption in service or a significant reduction in the level of services provided by applicants, which may result in the immediate degradation of off-highway sites in California. The off-highway grant and cooperative agreement recipients maintain the peace through the use of law enforcement officers. The officers provide for the health and safety of visitors by patrolling riding areas and providing emergency medical treatment to accident victims, and by performing signing, barrier installation, and maintenance that reduce the risk of accidents.

Without funding, restoration efforts may be delayed, and natural and cultural resource sites may be further damaged. Routine trash pick up, restroom cleaning, and portable toilet pumping will be reduced or eliminated. This may present a health and safety hazard to the public as well as natural and cultural resources.

2. How the proposed regulations address the threat to the public peace, health and safety, or general welfare:

The proposed emergency regulations will allow the Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division to consider grant applications for the 2005/2006 grant cycle in compliance with the mandates of AB 2274 and AB 2666. In doing so, the public peace, health and safety, and general welfare of off-highway vehicle enthusiasts as well as the public at large would continue uninterrupted. If the 2005/2006 grant cycle does not operate under these revised regulations, the cities, counties, and federal agencies that provide off-highway vehicle recreation may not receive adequate funding to ensure compliance with the statute. Any reduction in levels of service will have a significant impact on the public peace, health and safety, or general welfare of hundreds of thousands of off-highway recreation enthusiasts.

3. Why there has not been sufficient time to comply with the normal regulatory adoption procedures:

Absent the adoption of these emergency regulations, the OHMVR Division will be out of compliance with portions of the legislation enacted on January 1, 2003. If the Division proceeds under the normal rulemaking process, funding allocations for the 2005/2006-year may be in violation of existing law. The Governor appointed a new Deputy Director of the OHMVR Division in June 2004 after the 2004/2005-grant cycle was well underway. Under new leadership, the Division has undergone an extensive stakeholder driven fact finding and information gathering process. The result of this exercise has been the development of these emergency regulations to conform to the requirements of AB 2274 and AB 2666 and to improve the grant application and evaluation process as part of an effort to move toward a more efficient and accountable program for the 2005/2006-grant cycle. There was not sufficient time to develop these new regulations

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using the results of stakeholder input and submit them through the regular OAL process before the next grant cycle (June 2005), thus the need for emergency regulations.

Authority and Reference Citations

Authority Citations

All authority citations in the regulations reference sections 5001.5 and 5003 of the Public Resources Code.

Reference Citations

4970.00. DEFINITIONS

Implemented: Sections 4442, 4442.5, 5024.1, 5090.04, 5090.05, 5090.06, 5090.07, 5090.10, 5090.11, 5090.35, 5090.50, 5090.51(b), and 5090.64(b)(1) and (2), and 21000 et seq., PRC; CCR, Title 14, Section 4852 and Sections 15000 et seq.; CVC Sections 38000, 38006, 38012, and 38225(c); 25 USC 479a and 479a-2; 42 USC 4371; CFR part 1500.1 et seq.; 43 USC 1601 et seq.; Education Code Section 210.1; U.S. Internal Revenue Code Section 501(c)(3).

4970.01. PROGRAM PURPOSE

Implemented: Sections 5090.02 and 5090.32(d), PRC
Repealed: Sections 5090.10 and 5090.35, PRC

4970.02. COMMISSION'S GUIDING POLICIES

Implemented: Section 5090.23, PRC

4970.03. COMMISSION'S ANNUAL PROGRAM REVIEW MEETING

Implemented: Sections 5090.24(f) and 5090.32, PRC

4970.04. GENERAL APPLICATION REQUIREMENTS

Implemented: Sections 5090.32, and 5090.50, PRC

4970.05. ACQUISITION PROJECTS

Implemented: Sections 5090.32, 5090.35, 5090.50, and 5090.53, PRC; Title 1, Division 7, Chapter 16, Section 7260 et seq., Government Code

4970.06. DEVELOPMENT PROJECTS

Implemented: Sections 5090.32, 5090.35, 5090.50, 5090.53, PRC; Public Law 101-336, July 26, 1990, 104 Stat 327

4970.07. EQUIPMENT

Implemented: Sections 5090.32 and 5090.50, PRC

4970.08. FACILITIES OPERATION AND MAINTENANCE (FO&M) PROJECTS

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Implemented: Sections 5090.32 and 5090.50, PRC

4970.09. LAW ENFORCEMENT PROJECTS

Implemented: Sections 5090.32, 5090.50, and 5090.64(b)(2), PRC; CVC 38000 et seq.

4970.10. OHV SAFETY OR EDUCATION PROGRAM PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.11. PLANNING PROJECTS

Implemented: Sections 5024.1, 5090.32, 5090.35, 5090.50, and 5090.53, PRC

4970.12. RESOURCE MANAGEMENT PROJECTS

Implemented: Sections 5090.32, 5090.35, 5090.50, and 5090.53, PRC

4970.13. RESTORATION PROJECTS

Implemented: Sections 5090.32, 5090.35, 5090.50, 5090.53 and 5090.64(a), PRC

4970.14. STUDIES AND SCIENTIFIC RESEARCH

Implemented: Sections 5024.1, 5090.32, 5090.35, 5090.50, and 5090.53, PRC

4970.15. TRAIL MAINTENANCE, TRAIL CONSERVATION, AND TRAIL REROUTE PROJECTS

Implemented: Sections 5090.32, 5090.35, 5090.50, and 5090.53, PRC

4970.16. CEQA REQUIREMENTS

Implemented: Sections 5090.32 and 5090.50(g), PRC

4970.17. WHPP/HMP AND SOIL CONSERVATION REQUIREMENTS

Implemented: Sections 5090.32, 5090.35, 5090.50, and 5090.53, PRC

4970.18. MATCH REQUIREMENTS

Implemented: Section 5090.51, PRC

4970.19. APPLICATION EVALUATION

Implemented: Sections 5090.24 and 5090.32, PRC

4970.20. COMMISSION ALLOCATION OF FUNDS AND APPROVAL OF GRANT AND COOPERATIVE AGREEMENT PROGRAM APPLICATIONS

Implemented: Sections 5090.32 and 5090.61, PRC

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4970.21. APPLICATION INSTRUCTIONS AND PROJECT
ADMINISTRATION PROCEDURES

Implemented: Section 5090.32, PRC

4970.22 ACCOUNTING, AUDITS AND ANNUAL PERFORMANCE REVIEW

Implemented: Section 5090.32

Informative Digest/Policy Statement Overview

The Department has determined that the existing regulations in CCR, Title 14, Division 3, Chapter 15, Articles 1 through 8, Sections 4970.00 through 4970.32, which were adopted on December 31, 2003, are cumbersome and do not clearly reflect previous changes in statute. The new format of these proposed emergency regulations combines sections of the existing regulations and provides more specific information pursuant to the standard of clarity provided in Government Code section 11349.

The proposed regulation amendments include a new section that makes specific the OHMVR Commission policies. These policies have been established to provide general guidance to the Department Director and the Division in accordance with the statute.

The number of project categories within the OHMVR Program regulations has been increased from eight to eleven to more accurately reflect the policies and priorities established by the OHMVR Commission. The new project categories also facilitate the evaluation of applications and the allocation of funds while ensuring compliance with the funding categories required in statute.

The emergency regulations also provide a section that requires a Wildlife Habitat Protection Program/Habitat Management Program and a Soils Conservation Strategy for certain types of projects and applicants as required in the statute. This section clearly indicates which applicants and projects must comply, and discusses the components that are required within the Wildlife Habitat Protection Program/Habitat Management Program.

The current regulations do not clearly provide the standards by which applicants can determine whether they must comply with the matching fund requirement in statute. These emergency regulations include a new section that clarifies and makes specific the types of projects and applicants that are required by statute to provide matching funds or the equivalent value of services, material, or property used.

In addition, certain sections of the existing regulations have been repealed since they are procedural in nature and/or already exist in the State Administrative Manual. The language in these repealed sections has been incorporated into the Department's OHMVR Policies and Procedures Manual as appropriate.

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The proposed emergency regulations, CCR, Title 14, Division 3, Chapter 15, Articles 1 through 5, Sections 4970.00 through 4970.21 provide clear and concise guidelines and standards for the OHMVR Program as follows:

CCR § 4970.00 provides definitions that clarify terms that are applicable or unique to the OHMVR Program. Nine definitions are being added to this section to clarify terms in the statute and/or in the proposed regulations. Eight definitions are being amended to further clarify language in the statute or in the text of the regulations. Thirteen definitions are being deleted since they are no longer in the text of the regulation.

CCR § 4970.01 sets forth the purpose for the OHMVR Grant and Cooperative Agreement Program. This section is being amended to further clarify the legislative intent of the statute.

CCR § 4970.02 is a new section that is added to make specific the OHMVR Commission policies that provide general guidance to the Department Director and the Division.

CCR § 4970.03 identifies the role of the OHMVR Commission and the Division at the beginning of the grant cycle.

CCR § 4970.04 provides the general requirements that apply to all grant and cooperative agreement applications.

CCR § 4970.05 provides (1) the purpose of acquisition projects, (2) the agencies and organizations that are eligible to apply, (3) eligible costs associated with acquisition projects, and (4) the specific application and content requirements for acquisition projects.

CCR § 4970.06 provides (1) the purpose of development projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for development projects.

CCR § 4970.07 provides (1) the purpose for equipment applications, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for equipment applications.

CCR § 4970.08 provides (1) the purpose of facilities operation and maintenance projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for facilities operation and maintenance projects.

CCR § 4970.09 provides (1) the purpose of law enforcement projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for law enforcement projects.

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CCR § 4970.10 provides (1) the purpose of OHV safety or education program projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirement for OHV safety or education program projects.

CCR § 4970.11 provides (1) the purpose of planning projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific applications and content requirement of planning projects.

CCR § 4970.12 provides (1) the purpose of resource management projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for resource management projects.

CCR § 4970.13 provides (1) the purpose of restoration projects, (2) the agencies and organizations that are eligible to apply, (3) eligible costs for restoration projects, and (4) the specific application and content requirements for restoration projects.

CCR § 4970.14 provides (1) the purpose of studies, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements to studies.

CCR § 4970.15 provides (1) the purpose of trail maintenance, trail conservation, and trail reroute projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for trail maintenance, trail conservation, and trail reroute projects.

CCR § 4970.16 identifies the specific environmental documentation that is required to be included in grant and cooperative agreement applications for projects that require CEQA compliance.

CCR § 4970.17 identifies the projects and applicants that require a Habitat Management Program and a Soil Conservation Strategy in grant and cooperative agreement applications, and (2) the potential closure process for such projects.

CCR § 4970.18 identifies the projects and applicants that are required to provide matching funds or the equivalent in value of services, materials, or property used.

CCR § 4970.19 requests the OHMVR Commission to establish funding targets and priorities for each grant cycle and to provide an evaluation and scoring process for grant and cooperative agreement applications.

CCR § 4970.20 provides the process through which the OHMVR Commission allocates funds, which includes public hearings to obtain input from applicants and the general public. This section also identifies the Division's responsibility to administer the funds allocated by the Commission.

CCR § 4970.21 provides the Division's responsibility to update as necessary grant and cooperative agreement application instructions and project administration procedures.

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CCR § 4970.22 provides the Department of Parks and Recreation's responsibility to audit projects and the grantees responsibility to maintain and retain records, documents, and accounts.

Mandate on Local Agencies or School Districts

The Director of the Department of Parks and Recreation has determined that the proposed emergency regulations do not impose a mandate requiring reimbursement by the State, pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. Local agencies or school districts will not be required to incur additional costs in order to comply with the proposed emergency regulations.

Cost Estimate

The Director of the Department of Parks and Recreation has determined that the regulations will not involve costs to any local agency or school district, other non-discretionary cost or savings to local agencies, cost or savings to any State agency, or cost or savings in federal funding to the State.