

TITLE 14 DEPARTMENT OF PARKS AND RECREATION

NOTICE OF PROPOSED RULEMAKING

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

PROPOSED REGULATORY ACTION

The Department proposes to amend the regulations in the California Code of Regulations (CCR), Title 14, Division 3, Chapter 15, Articles 1 through 5, Sections 4970.00 through 4970.26 pertaining to the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program.

PUBLIC HEARING

The Department has scheduled two public hearings on the proposed rulemaking. The first hearing will be held in Sacramento on August 4, 2015. The meeting will commence at 3:00 p.m.

The location of the first hearing is:

Off-Highway Motor Vehicle Recreation Division Headquarters
1725 23rd Street, Suite 200
Sacramento, CA 95816

The second public hearing on the proposed rulemaking will be held in Bakersfield on August 6, 2015. The meeting will commence at 3:00pm.

The location of the second hearing is:

Kern County Public Services Building
2700 M Street
Bakersfield, CA

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

Such information shall be retained by the Department and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relative to the proposed rulemaking to the Department. The written comment period ends at 5:00 p.m., on August 3, 2015. The Department will consider only written comments received at the Department's office by that time. Written comments may be mailed to the following address:

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

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

AUTHORITY AND REFERENCE

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

Reference Citation: The particular code sections implemented, interpreted, or made specific by these proposed amendments are PRC Sections 5090.32 and 5090.50.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Background and History

Public Resources Code Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003 (Act), as amended, governs off-highway motor vehicle (OHV) grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and State agencies. The Program is administered by the OHMVR Division within the Department. The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat in a manner that will sustain long-term OHV recreation. Assistance is provided in the form of project-specific grant funding. Grants are awarded through a competitive process where applicants and their projects are evaluated using objective criteria.

The Department adopted permanent regulations for the Program, which appear in the California Code of Regulations, Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26.

Objectives and Benefits

The objective of the proposed action is to make improvements to the existing Program.

- The proposed regulations would create one new definition and revise two existing definitions. The creation of the new “Good Standing” definition would be beneficial to program integrity to ensure that public funds are being used accordingly and meeting regulatory compliance. The revised “Indirect Costs” definition would be expanded to include any activity not directly related to the completion of a project, which would allow grant administrators the ability to ensure direct expenses will be used to promote and enhance OHV recreation. The revision to the “Land Manager” definition would expand upon the existing definition to allow for applicants to apply for OHMVR Division grants for projects/activities on private land holdings to further OHV opportunities statewide.
- The proposed regulations would provide applicants with important program dates regarding public comments, appeals, and refunds. Revisions to public comment and appeal submission deadlines are expanded to include the applicable time zone to reduce confusion on behalf of applicants. The revisions also would include specifically when a refund would be due back to the State, which would be beneficial to the State by ensuring that refunds are returned within a reasonable time.
- The proposed revisions would clarify specific guidelines for required documentation necessary for specific projects. The revisions include a requirement that applicants applying for projects on property that they do not legally own, to submit the letter of written permission from the land owner within six months of the preliminary application deadline which in turn would ensure that all project agreements remain current and relevant. The revisions also include that all projects requiring CEQA must complete a full CEQA review prior to receiving funding for project deliverables to ensure regulatory compliance. The revisions would also warrant that acquisition projects must submit an estimate based on a competitive market analysis by a real estate professional and must submit escrows prior to the close of escrow for administrator review. These revisions would benefit the State to ensure public funds have been used appropriately and programmatic interest has been met.
- The proposed revisions would identify new guidelines for eligible costs. Revisions to eligible costs include specific guidelines and requirements for claiming stipends which would lessen ambiguity and provide factual references for administrators and applicants to cite. The revisions would also further clarify what can be claimed under travel expenses and per diem to reduce confusion for applicants. Eligible cost revisions also ensure that facility rents/leases must be directly related to a project completion in order to be eligible under direct costs to

- maintain programmatic interests. The revisions also include new requirements stating that the OHMVR Division will only provide funding for the lease of equipment for each year necessary for a project completion; the OHMVR Division's new policy regarding equipment purchases would ensure that grant funding for equipment would not be perceived as a gift of public funds and would also maintain the programmatic interest that direct costs are only to be used to complete a project. The revisions to eligible costs also eliminate the fifteen thousand dollar per item limit for equipment, imposed on nonprofit applicants, which was found to be too restrictive based on public comment solicitation.
- The proposed revisions would further clarify rules for ineligible costs. The revisions include new languages to identify that grant funds cannot be used within a State Park to reduce confusion on behalf of applicants. The revision also allows OHMVR Division to determine whether damage to equipment is an ineligible cost to ensure programmatic and State interest are being met.
 - The proposed revisions would provide new and revised language to clarify existing regulations and reduce confusion on behalf of applicants. The revision includes revising language in the general application section requiring local government agencies to obtain a resolution from a governing body to receive grant funding prior to applying to ensure applicant eligibility. The revision would also require environmental analysis be completed for activities proposed with matching funds for federal and nonfederal applicants to ensure regulatory compliance.
 - The proposed regulations would also include a new article in the Audits section that would inform applicants and the general public about how the Department of Parks and Recreation conducts audits to the Program over a three year period.
 - The proposed revisions to documents incorporated by reference would provide necessary clarification to several required documents. Clarifying ambiguous terms or questions will ensure applicants are answering the evaluation criteria as intended. The revisions would also contain modifications to the payment request forms to allow for a more clear and concise form for applicants and grant administrators. The revisions also incorporate three new forms to be used in conjunction with project closeouts to simplify grant project expenditures and match documentation for both applicants and administrators. The proposed revisions to appendix documents would also include combining two of the Project Agreement General Provisions together to condense the number down to three from the previous five, which would reduce confusion on behalf of applicants. The evaluation criteria questions for restoration projects would be supplemented to ensure Program funds are providing for OHV opportunities.

The proposed revisions would improve the existing Program. Applicants and program administrators would benefit from the new comprehensible language to the program regulations and incorporated documents. Revisions to the eligible and ineligible costs would allow more funds to be distributed to amongst more applicants/projects which would benefit the entire program and expand OHV opportunities statewide. The OHMVR Division would benefit from revisions to require documentation by ensuring programmatic interest are being met. These actions will allow the Department to more

efficiently support motorized recreation and motorized access to non-motorized recreation throughout the state.

Effect of Proposed Rulemaking

The Department is proposing to amend the OHMVR Grants and Cooperative Agreements Program Regulations, CCR Title 14, Division 3, Chapter 15, Articles 1 through 4, Sections 4970.00 – 4970.26 as follows:

- Section 4970.00* is amended to maintain regulatory language consistency.
- Section 4970.01* is amended to change language for two existing definitions and to add one new defined term.
- Section 4970.04 Table(2)* is amended to update the applicable date of the regulations.
- Section 4970.05 (e)(4)* is amended to update the applicable date of the regulations.
- Section 4970.05(f)(1)* is amended to clarify general application requirements regarding matching funds.
- Section 4970.05(l)* is amended to correct language identifying which applicants are required to obtain and submit a written permission from a land manager.
- Section 4970.05(l)(2)* is amended to ensure project agreements between land managers and applicants meet time specific date range prior to grant submission.
- Section 4970.05(m)* is amended to allow local governments and District applicants more flexibility to apply for OHMVR grants.
- Section 4970.06.1(b)* is amended to specify that CEQA review must be completed prior to funding any project deliverables.
- Section 4970.06.1(c)(1)* is amended to require environmental analysis to include proposed matching funded activities.
- Section 4970.06.1(d)(1)* is amended to require environmental analysis to include proposed matching funded activities.
- Section 4970.06.1(d)(1)(A)* is amended to reduce confusion for the environmental review requirements for federal applicants.
- Section 4970.07(b)(5)* is amended to clarify which applicants must provide written letter of permission to perform proposed project/activities.
- Section 4970.08(b)(3)* is amended to ensure consistent guidelines for applicants claiming stipends.
- Section 4970.08(b)(4)* is amended to avoid confusion regarding what is acceptable to claim for travel expenses and per diem.
- Section 4970.08(b)(10)* is amended to provide applicants a clear and concise understanding of what is acceptable for transportation costs.
- Section 4970.08(b)(12)* is amended to clarify that rent/lease of facilities and/or equipment must be a direct cost.

Section 4970.08(b)(13) is amended to explain the OHMVR's policy regarding how funding for equipment purchases will only provide for the lease of equipment for every year necessary to complete an approved project.

Section 4970.08(b)(13)(D) is amended to allow applicants more flexibility for eligible equipment purchases.

Section 4970.08(b)(13)(E) is amended to ensure equipment purchases are directly related to project implementation/completion.

Section 4970.09(b)(10) is amended to avoid confusion about where grant funding can be spent.

Section 4970.09(b)(12) is amended to clarify the ability of the OHMVR Division to eliminate or reduce costs in applications.

Section 4970.10.4(d)(1)(i) is amended to revised language regarding required documentation.

Section 4970.10.4(e)(2) is amended to reflect what federal agencies can legally agree to regarding acquisition projects.

Section 4970.10.4(e)(3) is amended to identify the deadline for submitting documentation required for acquisition projects.

Section 4970.17(b) is amended to identify the deadline for submitting an appeal.

Section 4970.23 is amended to clarify the ability of the OHMVR Division to withhold approving and/or processing payments requests.

Section 4970.24.1(d) is amended to clarify when refunds are due back to the State once determined one is due by the OHMVR.

Section 4970.25.1 is amended to revise the name of the section to "Performance Audits".

Section 4970.25.1(e) is amended to clarify the deadline for when refunds are due back to the State upon completion of an audit by the OHMVR.

Section 4970.25.3 was created to describe how the Department of Parks and Recreation will audit the OHMVRD Grants and Cooperative Agreements Program.

Consistency With Existing State Regulations

The Department performed an evaluation on whether there were any other regulations concerning Off Highway Motor Vehicle Recreation Grants and Cooperative Agreements and has found that the Department is the only other state agency responsible for this area. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Documents Incorporated by Reference

Soil Conservation Plan (Rev. 5/15) is amended to include language to require applicants to identify projects that must comply with and complete a Soil Conservation Plan.

Payment Request DPR 364(Rev. 5/15) is amended because we are attaching additional payment request forms to form DPR 364. The reason for attaching additional forms is to simplify the payment request system for the Grantees.

General Provision (Rev. 5/15) is amended because we consolidated General Provision documents from five to three. Amended Documents: Project Agreement General Provisions (Non Federal Applicants Only), Project Agreement General Provisions (Federal Agencies Other Than Forest Service). Removed: Program Agreement Provisions (Federal Agencies Other Than Forest Service or Bureau of Land Management, Program Agreement General Provisions (Nonprofits Only). The reason for consolidation is to help prevent Grantee confusion and correct grammatical errors.

Evaluation Criteria Restoration Projects (Rev. 3/15) is amended to include an additional question regarding what extent of the proposed restoration activity is being caused by current OHV damage.

COMPARABLE FEDERAL REGULATION OR STATUTE

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

LOCAL MANDATE DETERMINATION

The Department has determined these proposed regulation amendments do not impose a mandate on local agencies or school districts. Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary.

DISCLOSURES/ESTIMATE OF ECONOMIC AND FISCAL IMPACT

Fiscal Impact on Local Agencies or School Districts: These regulations do not impose any cost on a local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4, Government Code.

Other Nondiscretionary Cost of Savings on Local Agencies: None

Fiscal Impact State Government / Federal Funding to the State: These regulations do not impose any cost or savings to the State or any cost or savings in federal funding to the State.

Economic Impact on Business: The Department has made an initial determination these regulations do not have a significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Housing: These regulations would not have a significant effect on housing costs.

Determination Regarding Effect on Small Businesses: The Department has determined there are no cost impacts on small businesses. This grant program is only available to federal agencies, federally recognized Native American tribes, cities, counties, districts, State agencies, nonprofit organizations, and educational institutions. As such, these amendments will not affect small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT /ANALYSIS

The Department finds that jobs will not be created or eliminated, new businesses will not be created and existing businesses will not be eliminated, nor will existing businesses be expanded because of the proposed action.

This regulatory action benefits the health and welfare of California residents by improving the funding method that helps land managers and partners provide recreational opportunities in the State. This regulatory action also benefits the state's environment by improving the funding method that supports resource protection and restoration activities related to OHV recreation.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSON

Inquiries concerning the proposed action may be directed to Sixto Fernandez, Grants Manager, at (916) 324-1572 or email at sixto.fernandez@parks.ca.gov.

The back-up contact person regarding the proposed action is Matt Whamond, Grants Administrator, at (916) 322-2651 or e-mail at matt.whamond@parks.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. Copies may be obtained by contacting Sixto Fernandez at the e-mail address listed previously. The rulemaking file, which contains all information on which the proposal is based, is located at the OHMVR Division, 1725 23rd Street, Suite 200, Sacramento, California, 95816-7100, and may be obtained upon request. Additionally, the Initial Statement of Reasons and the text of the proposed regulations and documents incorporated by reference may be obtained from the Department's website located at www.ohv.parks.ca.gov at the Grants link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be obtained by contacting Sixto Fernandez at the aforementioned address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of Notice of Proposed Rulemaking, the Initial Statement of Reasons and the text of the regulations will be available through the Division website at www.ohv.parks.ca.gov, under the Grants link.