DEPARTMENT OF PARKS AND RECREATION
OFF-HIGHWAY MOTOR VEHICLE RECREATION DIVISION
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS

FINAL STATEMENT OF REASONS

INTRODUCTION

Public Resources Code (PRC) 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 grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and State agencies. The Act was most recently amended by Senate Bill 742 (SB 742) which had an effective date of January 1, 2008. SB 742 extended the Act to January 1, 2018, deleted certain obsolete provisions, and made significant amendments to the provisions that guide the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program (Program).

The Program is administered by the OHMVR Division within the Department of Parks and Recreation (Department). The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality Off-Highway Vehicle (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 reimbursable grant funding.

Following enactment of SB 742, the Department proposed permanent regulations, which were adopted and appear in the California Code of Regulations (CCR) as Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26. These regulations apply to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008. Under the approved regulations, grant funding may be requested using a two-step process with separate preliminary and final application submittals. This process ensures public review and comment, allows for preliminary review by the OHMVR Division, and provides the opportunity for applicants to submit stronger, more competitive final applications. The OHMVR Division requires application submission using the On-Line Grant Application (OLGA) system, a web-based system that allows the applicants to develop and submit their application via the internet.

Upon completion of the 2008/09 grants cycle, the OHMVR Division identified areas in the regulations that warrant revision. As a result, the Department is proposing to amend portions of CCR Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26 and documents incorporated by reference. These amendments to the regulations will

eliminate confusing aspects of the Program, ensure OHV Trust Funds are disbursed appropriately, and increase efficiency for applicants and staff.

The Notice of Proposed Rulemaking regarding amendments to Program regulations and documents incorporated by reference was published in the California Regulatory Notice Register on August 28, 2009. Two public hearings were held; the first on October 1, 2009, in San Diego and the second on October 13, 2009, in Sacramento. One individual submitted written comments during the 45-day comment period and four individuals commented at the first public hearing. No comments were received at the second public hearing.

Comments received during the 45-day comment period and at the public hearings resulted in several substantive changes to the proposed regulations. Additionally, the Department made a typographical correction to the proposed regulation text which is also included in the revised regulations. The Department made the revisions to the proposed regulations available for an additional 15-day comment period commencing October 20, 2009, and ending November 4, 2009. No comments were received during the additional 15-day comment period and no changes were made to the proposed regulations and documents incorporated by reference.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents other than those incorporated by reference in proposing these amendments.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSE - 45 DAY COMMENT PERIOD AND PUBLIC HEARINGS

In accordance with Government Code Section 11346.9(a)(3), comments received during the 45-day comment period and the two public hearings are summarized below. The comments are organized by regulation section and followed by the Department response. Complete comments or testimony are included in the rulemaking file.

SECTION 4970.05(e)(2)

Comment
The commenter finds the timeframe for the public review process to be confusing.
- Ed Waldheim, Friends of Jawbone, Friends of El Mirage, California Trail Users Coalition (CTUC)

Department Response
The Department is taking no action on the comment. The date specified for notification of the public by the applicant coincides with the public review and comment period that

is clearly indicated on Table 2 – Grants Cycle. The proposed language is consistent with Table 2.

SECTION 4970.05(k)

Comment
The commenter requests the necessary documentation for nonprofit organizations be clearly described and more specific.
- Ed Waldheim, Friends of Jawbone, Friends of El Mirage, CTUC

Department Response
The Department is taking no action on the comment. The proposed language directs nonprofit organizations to fulfill one of two options to confirm their eligibility as an applicant. A nonprofit may provide a) documentation from the Internal Revenue Service (IRS) substantiating 501(c)(3) status, or b) confirmation as a 501(c)(3) available on the IRS website. The two options identified for nonprofit applicants provide straightforward direction and should preclude applicants from submitting cumbersome or extraneous documentation, such as tax statements or financial reports.

Regarding the first option, the Department reviewed several IRS letters during the 2008/09 grants cycle and found the IRS does not issue a standardized “letter of determination”. Although documents reviewed by OHMVR Division staff varied in appearance and wording, the status of the nonprofit was clearly indicated.

SECTION 4970.08(b)(12)(D)

Comment
The commenters believe the grant request limitation of $5000 for equipment purchased by nonprofit organizations is too low and should be increased.
- Ed Waldheim, Friends of Jawbone, Friends of El Mirage, CTUC
- Allen Wessel, Desert Group Search and Rescue
- Rick Buckreis, Desert Group Search and Rescue

Department Response
The Department concurs with the comments and has revised the proposed regulation. The maximum grant request for a nonprofit organization has been increased from $5000 to $15,000 for any single piece of equipment. The total grant request for equipment purchases by a nonprofit applicant may not exceed $30,000.

SECTION 4970.11(f)(2)

Comment
The commenter notes his affiliated organizations have produced maps containing limited Global Positioning System (GPS) data, but is not clear what is required by the amended regulation.
- Ed Waldheim, Friends of Jawbone, Friends of El Mirage, CTUC

Department Response
The Department is taking no action on the comment. The regulation section in question is specific to Restoration projects and requires GPS coordinates for the project location. The inclusion of GPS data on other maps is not affected by this regulation.

SECTION 4970.15.3(c)

Comment
The commenter is opposed to the minimum law enforcement grant being awarded to each applicant instead of per project. The commenter's agency receives funding under three different projects and reduced funding may impair its ability to provide law enforcement services.
- Jason Dell, San Bernardino County Sheriff

Department Response
The Department is taking no action on the comment. The proposed regulation ensures all applicants receive an equal base level of funding and does not reward an applicant merely for submitting multiple projects. The proposed regulation in no way restricts applicants from requesting appropriate levels of funding tailored to their individual circumstances.

SECTION 4970.17(d)

Comment
The commenter opposes the universal funding delay presented in the proposed language. The commenter states an appeal "should only affect the grants that it could possibly alter or change" and there is "potential for abuse" of the appeal process.
- Tom Tammone

Department Response
The Department has modified the proposed regulation so the receipt of an appeal does not automatically delay all project agreements. The Department recognizes an appeal may not be relevant to applications in other categories and therefore, it would be appropriate to delay only those applications directly affected. However, the Department also recognizes an appeal may involve an issue applicable to all applications, such as the scoring of a general criteria item. In such an instance, resolution of the appeal could change the scores for all applications and alter funding

recommendations. Under the modified language the Department would still have the ability to delay the execution of all project agreements until an appeal is resolved, if circumstances warranted.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSE -15 DAY COMMENT PERIOD

No comments were received.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED AMENDMENT OF THE REGULATIONS

The following provides the specific purpose and necessity for each proposed amendment to sections in CCR Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26 and documents incorporated by reference.

4970.00 – APPLICATION OF CHAPTER

Specific Purpose
Section 4970.00 is amended to refer to the date of the current regulation revisions.

Necessity
The amendment to Section 4970.00 is necessary to ensure applicants are using the most up-to-date version of the Program regulations.

4970.01 – DEFINITIONS

Specific Purpose
Section 4970.01 is amended to remove unnecessary definitions, reduce confusion caused by synonymous definitions, correct grammar and capitalization, and maintain consistency in several definitions. The definitions are also relettered to maintain alphabetical order.

Necessity
The amendments to Section 4970.01(b) and Section 4970.01(bb) are necessary to eliminate confusion caused by two terms used in the regulations and the Project Cost Estimate. “Administrative Costs” and “Indirect Costs” are used interchangeably, but the presence of both terms confused applicants when preparing required cost estimates. Applicants often sought advice as to how the definitions should be differentiated. The deletion of “Administrative Costs” from the regulations will resolve confusion, and addition of typical examples to “Indirect Costs” will help applicants understand the term.

The amendment to Section 4970.01(c) is necessary to improve the grammar of the definition. This change is not substantial and does not materially alter the content of the regulations.

The amendment to Section 4970.01(e) is necessary to remove an acronym that is not used elsewhere in the regulations. This change is not substantial and does not materially alter the content of the regulations.

The amendment to Section 4970.01(f) is necessary to remove a definition that is not used in the regulations or documents incorporated by reference.

The amendment to Section 4970.01(i) is necessary to make reference to the PRC consistent throughout the regulations. This change is not substantial and does not materially alter the content of the regulations.

The amendment to Section 4970.01(z) is necessary to correct punctuation and remove capitalization for an undefined term not used in the regulations or documents incorporated by reference. These changes are not substantial and do not materially alter the content of the regulations.

The amendment to Section 4970.01(dd) is necessary to indicate an acronym, because the term has been used previously in Section 4970.01(v). This change is not substantial and does not materially alter the content of the regulations.

4970.05 – GENERAL APPLICATION REQUIREMENTS

Specific Purpose
Section 4970.05(e) is amended to identify the time period and define the steps an applicant must take when notifying the public of the opportunity to review and comment on applications.

Necessity
The amendments are necessary to ensure interested parties receive equal opportunity to comment on the applications. During the 2008/09 grants cycle, applicants issued notice on a variety of dates and no explicit guidance was provided in the regulations. The specified notification date now clearly corresponds with the beginning of the public comment period and will eliminate any ambiguity. The amendments also facilitate comment opportunity by clarifying that notice must be sent to any individuals who have requested notice.

Specific Purpose
Section 4970.05(k) is amended to identify specific items to be submitted by nonprofit organizations in order to verify their 501(c)(3) status.

Necessity
The amendments are necessary to provide clear direction to applicants. During the 2008/09 grants cycle, nonprofit applicants were required to demonstrate status as a 501(c)(3) organization, but no specific documents were identified for the applicant to submit. Applicants submitted a variety of documentary evidence, and the OHMVR Division expended additional time and effort to research and verify the status of many

applicants. The OHMVR Division is now identifying two specific options that may be supplied by the applicants in order to comply with the requirement.

Specific Purpose
Section 4970.05 (l) is amended to remove an unnecessary word.

Necessity
The amendment is necessary to remove an extraneous word from the regulations. The revision clarifies applicants should only request a written agreement from the land manager having jurisdiction over the land where a project is proposed.

Specific Purpose
Section 4970.05(m) is amended to eliminate the requirement for a governing body resolution from entities not specified in PRC 5090.50(c)(1). The amendments also clarify the purpose of the governing body resolutions that must be submitted.

Necessity
The proposed amendments in this section are necessary to align the regulations with PRC Section 5090.50(c)(1). First, the amendments will remove the requirement for a resolution from educational institutions, nonprofit organizations, and federally recognized Native American tribes, as these are not required in statute. Second, the purpose of the governing body resolution is revised to indicate a general approval to request funding, rather than authorize specific applications, which is consistent with PRC Section 5090.50(c)(1). Requirements for a project-specific resolution were found to be problematic by several applicants. Some applicants were unable to place resolutions on the governing body's agenda in a timely manner and draft resolutions were submitted instead.

4970.06 – ENVIRONMENTAL REQUIREMENTS

Specific Purpose
Section 4970.06.1(c)(1) is amended to explain the necessary documentation a city, county, district, state agency, educational institution or nonprofit organization applicant must provide. The subsections within Section 4970.06.1(c)(1) are also renumbered and minor edits were made to maintain numerical order.

Necessity
The amended language under Section 4970.06.1(c)(1)(A) is necessary to inform applicants of specific evidence required for projects that are completed in phases. Applicants requesting funding under 4970.06.1(b) in the 2008/09 grants cycle had difficulty using the existing Environmental Review Data Sheet (ERDS) to account for phased projects. Phased projects that include preparation of environmental documentation are allowed under Section 4970.06.1(b), but existing documents did not clearly accommodate the phased approach.

Section 4970.06.1(c)(1)(D) is also amended to clarify when other documentation may be allowed to demonstrate compliance with the California Environmental Quality Act (CEQA). Some applicants during the 2008/09 grants cycle did not submit a Notice of Exemption (NOE) or ERDS for projects they had determined to be exempt under CEQA, which delayed reviewing projects for CEQA compliance. Applicants no longer have discretion as to whether they should submit an NOE and ERDS for categorically exempt projects, as the revised language is no longer applicable to such projects.

Specific Purpose
Section 4970.06.1(c)(2)(A) is amended to remove inconsistent language.

Necessity
The section is revised to eliminate a deadline that was inconsistent with the grants cycle. As applicants do not submit their environmental documentation until the final filing date, the OHMVR Division cannot request clarifying information until after that date.

Specific Purpose
Section 4970.06.1(c)(3)(C)(2) is amended to remove unnecessary language.

Necessity
It is redundant to specify the OHMVR Division will be completing CEQA review of applications in time for approval as pursuant to CEQA. Such review must be completed prior to project approval.

Specific Purpose
Section 4970.06.1(d)(1) is amended to explain the necessary documentation a federal agency or federally recognized Native American tribe applicant must provide for projects submitted pursuant to Section 4970.06.1(b).
Necessity
The amended language under Section 4970.06.1(d)(1) is necessary to inform applicants of specific evidence required for projects that are completed in phases. Applicants requesting funding under 4970.06.1(b) in the 2008/09 grants cycle had difficulty using the existing ERDS to account for phased projects. Phased projects that include preparation of environmental documentation are allowed under Section 4970.06.1(b), but existing documents did not clearly accommodate the phased approach.

Specific Purpose
Section 4970.06.1(d)(2)(D) is amended to remove unnecessary language.

Necessity
It is redundant to specify the OHMVR Division will be completing CEQA review of applications in time for approval as pursuant to CEQA. Such review must be completed prior to project approval.

4970.07 – APPLICATION SUBMISSION

Specific Purpose
Section 4970.07(a) is amended to remove capitalization from the word “internet”.

Necessity
The amendment to Section 4970.07(a) is necessary to correspond with common usage of the word “internet”. This change is not substantial and does not materially alter the content of the regulations.

Specific Purpose
Section 4970.07(b) is amended to include specific documentation that must be submitted with the preliminary application when the applicant is a nonprofit organization or educational institution.

Necessity
The amendments to Section 4970.07(b) are necessary to describe documentation needed from a nonprofit or educational institution applicant. During the 2008/09 grants cycle the OHMVR Division reviewed several applications that were later found to be noncompliant due to their nonprofit status or lack of written agreement with the land manager. By requiring the documents at the time of preliminary application, applications are more likely to be complete and the unnecessary review of ineligible applications will be avoided.

Specific Purpose
Section 4970.07(d) is amended to specify that the OHMVR Division will provide comments to applicants regarding the compliance of their preliminary application.

Necessity
Section 4970.07(d) is necessary to clearly indicate the OHMVR Division will provide comments to applicants regarding their applications. Applicants may revise their applications based on OHMVR Division preliminary review or comments from the public. These amendments specify the OHMVR Division comments will be relevant to compliance with the applicable requirements.

Specific Purpose
Section 4970.07.2 is amended to describe actions the OHMVR Division may take to address duplicate projects or adjust funding requests and proposed activities in final applications.

Necessity
During the 2008/09 grants cycle, several situations were presented that could have resulted in the funding of items or activities that were incompatible or inappropriate for the Program. For example, identical project deliverables were requested as different projects; identical projects were submitted under different funding categories; and, activities and costs that were excessive or incompatible with the Program were

requested. As a result, the regulations must enumerate when specific grant requests and project activities may be adjusted or eliminated. Thus, Section 4970.07.2(d) specifies that items duplicated on multiple projects will be awarded to the highest-scoring project.

Under the current regulations, the OHMVR Division only has the ability to reject the entire application. Since an application may include multiple projects, most of which are compliant, it may be inappropriate to reject the entire application. Section 4970.07.2(e) is amended to indicate a noncompliant application, or project contained therein, may be rejected by the OHMVR Division. Lastly, it may be necessary for the OHMVR Division to reduce requested amounts or delete components of an application to ensure projects contain reasonable and supported costs and activities. The proposed language in Section 4970.07.2(f) specifies the specific considerations for such revisions.

4970.08 – ELIGIBLE PROJECT COSTS

Specific Purpose
Section 4970.08(a) is amended to correspond with changes in Section 4970.01(b).

Necessity
The amendment to Section 4970.08(a) is necessary to avoid confusion about eligible costs. The current language inadvertently combines two defined terms, “Administrative Costs” and “Indirect Costs”. The term “Administrative Costs” is being removed from the regulations to lessen confusion, and the change in this section is consistent with the proposed deletion. Removing the extra word will prevent misunderstanding by applicants about what is considered an eligible cost.

Specific Purpose
Section 4970.08(b)(11) is amended to specify the cost to rent or lease equipment as an eligible cost.

Necessity
The amendment is necessary to eliminate confusion on the part of applicants. The OHMVR Division considers the cost to lease or rent equipment an eligible cost, but the current regulations only specify facilities. Thus, applicants may have thought only the lease or rent of facilities was allowed in the Program. Including the term “Equipment” will prevent misunderstanding by applicants.

Specific Purpose
Section 4970.08(b)(12) is amended to specify nonprofit organizations may request a maximum of $15,000 per individual piece of equipment and the total grant request for equipment may not exceed $30,000 per applicant.

Necessity
The proposed Section 4970.08(b)(12)(D) provides a necessary safeguard for the investment of OHV Trust Funds. The long-term existence of a nonprofit organization is less predictable than other applicants, and should a 501(c)(3) nonprofit organization dissolve, its assets may be distributed to other nonprofit organizations. The Department would have no oversight regarding the disposition of grant-funded equipment. Thus, grant-funded equipment could potentially go to organizations that would not otherwise receive funding through the Program. The Department finds limiting the cost of equipment purchases far more practical than maintaining a lien or partial interest in equipment purchases. This restriction does not prevent a nonprofit organization from renting or charging for the use of equipment with a value greater than the limits.

4970.10 – OPERATION AND MAINTENANCE (O&M)

Specific Purpose
Section 4970.10(d) is amended to improve consistency in the regulations.

Necessity
The amendment to Section 4970.10(d) is necessary to make reference to the PRC consistent throughout the regulations. This change is not substantial and does not materially alter the content of the regulations.

Specific Purpose
Section 4970.10.1(d)(1)(C) is amended to specify the applicant must identify the actual size of the project area for a ground operations project.

Necessity
The amended regulation eliminates confusion by requiring identification of the precise size of the project area in ground operations projects. The intent of the regulation is to indicate the actual size of the area directly affected by the ground operation activities. During the 2008/09 grants cycle some applicants identified the size of the administrative unit in which the project would occur, rather than the actual project dimensions.

Specific Purpose
Section 4970.10.3(c) is amended to correct grammar and capitalization.

Necessity
The amendment to Section 4970.10.3(c) is necessary for grammatical consistency and to remove capitalization for common, undefined terms used in the regulations. These changes are not substantial and do not materially alter the content of the regulations.

Specific Purpose
Section 4970.10.4(d) is amended to correct capitalization.

Necessity
The amendment to Sections 4970.10.4(d)(2)(C) and 4970.10.4(d)(3)(b) are necessary to remove capitalization for common, undefined terms used in the regulations. These changes are not substantial and do not materially alter the content of the regulations.

Specific Purpose
Section 4970.10.4(e) is amended to ensure real property acquired under the Program will continue to be used for the purpose for which it was obtained. The remaining subdivisions under Section 4970.10.4 are also renumbered as a result of this revision to maintain the appropriate order.

Necessity
The addition of Section 4970.10.4(e) is a necessary precaution to ensure OHV Trust Funds are appropriately used to acquire property that will sustain OHV recreation pursuant to PRC Section 5090.50. The OHMVR Division considered scenarios where an applicant might purchase property under the Program, then subsequently sell the property to a buyer that might prohibit OHV recreation. By requiring the applicant to impose deed restrictions or other measures on the property, the sustained benefit to OHV recreation is ensured.

4970.11 – RESTORATION

Specific Purpose
Section 4970.11(f)(1)(B) is amended to specify damage addressed under a restoration grant application is the result of OHV activity.

Necessity
The amended regulation Section 4970.11(f)(1)(B) is necessary to establish a nexus between the restoration project and OHV recreation. The proposed amendment requires any damage being addressed under a restoration project must have been caused by OHV use pursuant to PRC Section 5090.50(b)(2).

Specific Purpose
Section 4970.11(f)(1)(C) is amended to ensure the applicant identifies the actual project area for a restoration project.

Necessity
The amended regulation eliminates confusion by requiring identification of the precise size of the project area in restoration projects. The intent of the regulation is to indicate the actual size of the area being restored. Some applicants identified the size of the administrative unit in which the project would occur or provided the estimated size of the viewshed related to the project.

Specific Purpose
Section 4970.11(f)(2) is amended to specify GPS coordinates must be included on project-specific maps.

Necessity
The amended regulation requires applicants use readily-available GPS information to show the precise location of the restoration project area. The OHMVR Division or interested parties may wish to visit completed projects, and a successful restoration project may repair damaged areas so thoroughly that finding the location would be difficult without GPS assistance.

4970.14 – EVALUATION CRITERIA

Specific Purpose
Section 4970.14.1 is amended to be consistent with defined terms and to account for applicants working with more than one land manager.

Necessity
The amendment to Section 4970.14.1(b)(1) is necessary to add “OHV”, consistent with the defined term “OHV Opportunities”.

The amendment to Section 4970.14.1(c) is necessary to indicate applicants with multiple land managers should use data from all partners to complete the general criteria. In the 2008/09 grants cycle, some applicants partnering with multiple land managers completed the general criteria portion of the application using data from only one land manager. This may result in an inaccurate score for the applicant.

Specific Purpose
Section 4970.14.3(a) is amended to correct grammar and capitalization.

Necessity
The amendment to Section 4970.14.3(a) is necessary to improve grammar and remove capitalization for a common, undefined term used in the regulations. These changes are not substantial and do not materially alter the content of the regulations.

4970.15 – FUNDING DISTRIBUTION

Specific Purpose
Section 4970.15.1(a) is amended to cross-reference an existing regulation and alert applicants to a situation where the specified distribution of funds might not be possible.

Necessity
The proposed regulation section is necessary to eliminate confusion if ground operations funding requests do not account for at least 70% of the available funding. This scenario occurred in the 2008/09 grants cycle and some applicants were unsure

how funds would be distributed. This amendment directs applicants to the appropriate section discussing how funds will be distributed under this circumstance.

Specific Purpose
Section 4970.15.1, Table 4 – Example of Score Calculation for GO Projects, is amended to be consistent with the revised general criteria score.

Necessity
The proposed regulation section is necessary to provide correct information in the example provided in the table. The general criteria score is proposed to increase from 103 to 105 and the revisions reflect this increase, thereby providing an accurate example.

Specific Purpose
Section 4970.15.2, Table 5 – Example of Score Calculation for Restoration Projects, is amended to be consistent with the revised general criteria score.

Necessity
The proposed regulation section is necessary to provide correct information in the example provided in the table. The general criteria score is proposed to increase from 103 to 105 and the revisions reflect this increase, thereby providing an accurate example.

Specific Purpose
Section 4970.15.3(c) is amended to specify the base funding for law enforcement grants is awarded per each applicant, not per project.

Necessity
The proposed regulation section is necessary to provide the base funding of $10,000 to each law enforcement applicant, as opposed to each project. Law enforcement is the only funding category that guarantees a minimum funding amount to successful applicants. As currently written, the minimum amount is awarded for every project. Since a single application may contain multiple projects, those applicants submitting several projects receive more base funding than applicants submitting a single project. The proposed regulation eliminates this disparity and treats all law enforcement applicants equally. Restricting the base funding to each applicant has the added benefit of increasing the pool of funds available for law enforcement projects since less money will be set aside as guaranteed minimum amounts.

4970.17 – APPEAL PROCESS

Specific Purpose
Section 4970.17(d) is added to explain an appeal received by the OHMVR Division may delay the final award of any project agreements in all funding categories.

Necessity
The proposed amendment is necessary to indicate possible ramifications associated with receipt of an appeal. In some instances an appeal may not be relevant to projects in other funding categories and therefore, it would be appropriate to delay only those projects directly affected. Alternatively, an appeal may involve an issue applicable to all applications, such as the scoring of a general criteria item. In the latter situation, resolution of the appeal could change the scores for all projects and alter funding recommendations. Thus, the proposed language indicates the Department has the option to delay the execution of all project agreements until an appeal is resolved, if circumstances warranted.

4970.19 – PROJECT AGREEMENT

Specific Purpose
Section 4970.19(a) is amended to refer to the Director of the Department of Parks and Recreation.

Necessity
The proposed amendment is necessary to ensure consistency when referring to the Director of the Department of Parks and Recreation throughout the regulations.

Specific Purpose
Section 4970.19.2 is amended to correct capitalization and grammar.

Necessity
The proposed amendment is necessary to remove capitalization from a term not defined in the regulations and to correct grammar by adding the word “the”. These changes are not substantial and do not materially alter the content of the regulations.

Specific Purpose
Section 4970.19.4 is amended to correct grammar.

Necessity
The proposed amendment is necessary to correct grammar by ensuring verb tense agreement in the paragraph. This change is not substantial and does not materially alter the content of the regulations.

Specific Purpose
Section 4970.19.6 is amended to remove a duplicate authority and reference to the section.

Necessity
The proposed amendment is necessary to remove unnecessary, duplicate language. This change is not substantial and does not materially alter the content of the regulations.

4970.20 – EQUIPMENT MANAGEMENT REQUIREMENTS

Specific Purpose
Section 4970.20(a) is amended to refer to “grantee” instead of “applicant”.

Necessity
The proposed amendment is necessary to ensure consistency with defined terms in the regulations. This section is specific to successful applicants that have been awarded a grant. The recipient of a grant is defined as a “grantee” by the Program and the proposed amendment reflects this distinction.

4970.21 – DEVELOPMENT PROJECT PROCEDURES

Specific Purpose
Section 4970.21(b) is amended to delete the acronym “ADA”.

Necessity
The proposed amendment is necessary to remove an acronym that is not used elsewhere in the regulations. This change is not substantial and does not materially alter the content of the regulations.

4970.22 – ACCOUNTING PRACTICES

Specific Purpose
Section 4970.22(a) is amended to delete the acronyms or indicate acronyms for previously defined terms.

Necessity
The proposed amendment is necessary to remove four acronyms that are not used elsewhere in the regulations and deletes the term associated with the acronym “AICPA”, which is included in the definition found in Section 4970.1(e). These changes are not substantial and do not materially alter the content of the regulations.

Specific Purpose
Section 4970.22(b) is amended to delete capitalization and acronyms or indicate acronyms for previously defined terms.

Necessity
The proposed amendment is necessary to remove capitalization for the common, undefined term “force account”. This change is not substantial and does not materially alter the content of the regulations.

Specific Purpose
Section 4970.22(d)(1) is amended to delete an extraneous word from the regulations.

Necessity
The proposed amendment is necessary to improve grammar. This change is not substantial and does not materially alter the content of the regulations.

Specific Purpose
Section 4970.22(f)(1) is amended to specify the matching funds for any project must be expended within the performance period of the project.

Necessity
The proposed amendment eliminates confusion about matching funds. The OHMVR Division was asked several times if matching funds could be spent prior to the performance period of the grant. This section now clearly explains matching funds are subject to the same requirements as grant funds and must be expended within the grant performance period.

4970.24 – PROJECT CLOSEOUT

Specific Purpose
Section 4970.24(c) is amended to make clear what will be forwarded to the Audits Office.

Necessity
The proposed amendment is necessary to improve grammar and make specific the Project file will be delivered to the Audits Office. The previous language was unclear and awkward.

SUBARTICLE 1. AUDITS

4970.25.1 Performance Audits

Specific Purpose
Section 4970.25.1 is amended to remove capitalization from an undefined term and to improve grammar.

Necessity
The proposed amendments are necessary to remove capitalization from “performance audit”. The phrase is not included in the definitions, but the expectations and requirements of such an undertaking are detailed within Section 4970.25.1(a) and (b).

The proposed amendments are also necessary to improve grammar in Sections 4970.25.1(a) and 4970.25.1(c)(1) by including the word “the” and improving subject-verb agreement, respectively. These changes are not substantial and do not materially alter the content of the regulations.

4970.26 – HOW TO CONTACT THE OHMVR DIVISION

Specific Purpose
Section 4970.26(b) is amended to be consistent with a term defined in the regulations.

Necessity
The proposed amendment is necessary to adjust wording within the regulations to ensure consistency with Section 4970.01(n), which defines the term “Division Website”. This change is not substantial and does not materially alter the content of the regulations.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED AMENDMENT TO DOCUMENTS INCORPORATED BY REFERENCE INTO THE REGULATIONS

The following provides the specific purpose and necessity for each proposed amendment to documents incorporated by reference.

ENVIRONMENTAL REVIEW DATA SHEET (ERDS)

Specific Purpose
The ERDS is amended to add Item 2, accommodating those applicants applying for two-phased projects, which include the preparation of environmental documentation, pursuant to Section 4970.06.1(b). The remaining Items are also renumbered as a result of this revision to maintain the appropriate order.

Necessity
The existing ERDS does not readily allow applicants to explain if their project is a two-phased project pursuant to Section 4970.06.1(b). The addition of this Item enables the applicant and reviewer to immediately identify these types of projects.

Specific Purpose
Item 6 is amended to include projects in all areas, not just those with steep slopes or highly erosive soils, that may have a significant impact on the environment.

Necessity
This amendment ensures all applicants will address the potential for soil erosion or loss of topsoil caused by their project. Some applicants in the 2008/09 grants cycle did not respond to this item since their location did not include steep slopes or highly erosive soils. The proposed wording of the item will be applicable to all applicants, regardless of location or terrain.

Specific Purpose
Item 9 is amended to allow applicants to explain “Yes” or “No” answers.

Necessity
The existing question prompts applicants for an explanation only if they answer “Yes”. The proposed amendment ensures all applicants, whether answering “Yes” or “No”, will address the potential of the project to impact historical or cultural resources.

PROJECT COST ESTIMATE

Specific Purpose
The document is amended to replace the term “Administrative Costs” with “Indirect Costs”.

Necessity
The amendment is necessary to eliminate confusion and correspond with the revised definition of “Indirect Costs”. “Administrative Costs” may be captured under the “Staff Category” on the Project Cost Estimate.

PROJECT AGREEMENT GENERAL PROVISIONS (Federal Agencies Only)

Specific Purpose
The document is added to include general provisions for federal agencies other than the United States Forest Service (USFS) or the Bureau of Land Management (BLM).

Necessity
Other federal agencies besides the USFS and BLM are eligible applicants, but the Appendix does not include general provisions to account for other federal agencies.

EVALUATION CRITERIA – General Criteria

Specific Purpose
Item 1(b)(iv) is amended to allow land managers to utilize the most current available documentation to determine OHV visitation.

Necessity
The proposed revision is needed to allow land managers to use current, publicly available documentation of their OHV visitation. In the 2008/09 grants cycle, land managers were instructed to use specific documents to establish OHV visitation. The OHMVR Division observed the prescribed documents were frequently outdated and several land managers indicated the information was not reflective of the current OHV use.

Specific Purpose
Item 4 is amended to use a defined term and adjust scoring for applicants that do not have an OHV program.

Necessity
First, the proposed amendment is necessary to eliminate confusion by replacing the phrase “indirect overhead costs” with the defined term, “Indirect Costs”.

Second, the item is amended to address those applicants requesting OHV Trust Fund monies, but that do not maintain an OHV program. The question in Item 4 was designed to give additional points to land managers that fund their OHV programs with sources besides the OHV Trust Fund. However, the current wording treats an applicant with no OHV program the same as an applicant using no OHV Trust Fund money to sustain its OHV program. Hence, applicants that do not allow OHV use received an advantage over land managers with OHV programs that did use OHV Trust Fund money. This scenario is contrary to the intent of the Program, and the proposed amendment will not award points under Item 4 to applicants that do not have an OHV program.

Specific Purpose
Item 8 is amended to specify training courses are for the public and to adjust the points awarded for approved training courses. The description box on Item 8 is amended to specify the description should address all parts of the question.

Necessity
It is necessary to specify in the instructions for 8(d) that points are awarded for training classes available to the public. Several applicants included training courses for agency personnel, which is not the intent of the question.

It is necessary to reword the frequency of the training to accurately reflect environmental conditions in which the applicants are operating. Several applicants indicated that points awarded in Item 8(d) were unfair because of the seasonal nature of operations, such as in the extreme desert. Because visitation and staffing drop significantly in the summer, it would be impossible to offer courses on a weekly basis. Thus, the proposed language is revised to capture the total number of training courses offered, rather than the interval at which they are presented.
It is necessary to instruct the applicants to describe their education efforts for Items 8(a) through (d). The appearance of the instructions led some applicants to address education efforts relative only to Item 8(d).

EVALUATION CRITERIA – Acquisition Project Criteria

Specific Purpose
Item 4 is amended to direct the applicant to explain the statement checked in the item.

Necessity
It is necessary to allow all applicants to describe each statement marked on the item. Existing language requires the applicant to list a reference document, and only if “Applicant’s operational budget” was selected. Federal agencies were unable to cite a reference document because their annual budgets are dependent on future

Congressional action. Furthermore, the OHMVR Division found it reasonable and prudent to expect any applicant to explain how development and operation of the project would be funded in the future.

Specific Purpose
Item 6 is amended to indicate what is meant by meeting(s) with the general public.

Necessity
It is necessary to explain the level of formality expected to qualify as a meeting with the general public to discuss the proposed project. The OHMVR Division found many applicants indicated meetings were held with the general public, but the explanations appeared to describe informal or routine visitor contact.

EVALUATION CRITERIA – Development Project Criteria

Specific Purpose
Item 3 is amended to specify only diversified OHV use should be indicated for the development project.

Necessity
It is necessary to request only OHV uses are included in the response to the item. Points are awarded for the range of diversified OHV uses available at proposed OHV facilities. Several applicants in the 2008/09 grants cycle included non-OHV use activities, which is not the intent of the question.

Specific Purpose
Item 9 is amended to indicate what is meant by meeting(s) with the general public.

Necessity
It is necessary to explain the level of formality expected to qualify as a meeting with the general public to discuss the proposed project. The OHMVR Division found many applicants indicated meetings were held with the general public, but the explanations appeared to describe informal or routine visitor contact.

Specific Purpose
Item 11 is amended to direct the applicant to explain the statement checked in the item.

Necessity
It is necessary to allow all applicants to describe each statement marked on the item. Existing language requires the applicant to list a reference document, and only if “Applicant’s operational budget” was selected. Federal agencies were unable to cite a reference document because their annual budgets are dependent on future Congressional action. Furthermore, the OHMVR Division found it reasonable and prudent to expect any applicant to explain how operation of the project would be funded in the future.

EVALUATION CRITERIA – Education and Safety Criteria

Specific Purpose
Item 6 is amended to indicate what is meant by meeting(s) with the general public.
Necessity
It is necessary to explain the level of formality expected to qualify as a meeting with the general public to discuss the proposed project. The OHMVR Division found many applicants indicated meetings were held with the general public, but the explanations appeared to describe informal or routine visitor contact.

Specific Purpose
Item 7 is amended to include directions to describe each statement checked in the item.

Necessity
It is necessary for applicants to describe each statement that was marked on the item. The level of detail provided in the project description did not always support the answers provided in Item 7.

Specific Purpose
Item 8 is amended to specify the number of times individuals are exposed to the education or safety message. A description box is added to Item 8.

Necessity
During the 2008/09 grants cycle several applicants were confused by the phrasing of the item and had difficulty selecting the appropriate answer. The revision makes clear how the applicants should calculate their responses.

It is necessary for applicants to describe each statement that was marked on the item. The level of detail provided in the project description did not always support the answers provided in Item 8.

Specific Purpose
Item 10 is amended to include directions to describe each statement checked in the item.

Necessity
It is necessary for applicants to describe each statement that was marked on the item. The level of detail provided in the project description did not always support the answers provided in Item 10.

Specific Purpose
Item 11 is amended to direct the applicant to describe each “Yes” response.

Necessity
It is necessary for applicants to describe each “Yes” response. The level of detail provided in the project description did not always support the answers provided in Item 11.

EVALUATION CRITERIA – Ground Operations Project Criteria

Specific Purpose
Item 4 is amended to indicate what is meant by meeting(s) with the general public.

Necessity
It is necessary to explain the level of formality expected to qualify as a meeting with the general public to discuss the proposed project. The OHMVR Division found many applicants indicated meetings were held with the general public, but the explanations appeared to describe informal or routine visitor contact.

EVALUATION CRITERIA – Planning Project Criteria

Specific Purpose
Item 4 is amended to indicate what is meant by meeting(s) with the general public.

Necessity
It is necessary to explain the level of formality expected to qualify as a meeting with the general public to discuss the proposed project. The OHMVR Division found many applicants indicated meetings were held with the general public, but the explanations appeared to describe informal or routine visitor contact.

EVALUATION CRITERIA – Restoration Project Criteria

Specific Purpose
Item 7 is amended to indicate what is meant by meeting(s) with the general public.

Necessity
It is necessary to explain the level of formality expected to qualify as a meeting with the general public to discuss the proposed project. The OHMVR Division found many applicants indicated meetings were held with the general public, but the explanations appeared to describe informal or routine visitor contact.

ALTERNATIVES DETERMINATION

The proposed revisions to the regulations provide clarity for the public and future applicants of the Program and ensure consistency with the statute. The regulations were developed by OHMVR Division staff with public input. Alternatives to the regulations were considered by the Department but were rejected since all provisions in the proposed regulations are necessary to comply with the statute and to provide clear and concise guidance to potential grant and cooperative agreement applicants.

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 persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts. Participation in the Program is voluntary.