

TITLE 14. DEPARTMENT OF PARKS AND RECREATION

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Parks and Recreation proposes to repeal the regulations described below and to adopt new regulations after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to repeal the regulations contained in the California Code of Regulations (CCR), Title 14, Division 3, Chapter 15, Articles 1 through 8, Sections 4970.00 through 4970.32 pertaining to the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program and to adopt new permanent regulations, CCR Title 14, Division 3, Chapter 15.5, Articles 1 through 5, Sections 4970.49 through 4970.72, that will further clarify the provisions of Public Resources Code (PRC) § 5090.01 et seq.

PUBLIC HEARINGS

The Department will hold two public hearings on the proposed rulemaking. The hearings will be held:

Date: Wednesday, May 31, 2006

Time: 4 pm – 9 pm

Location: Hilton Garden Inn
2540 Venture Oaks Drive,
Sacramento, CA
(916) 568-5400

- and -

Date: Friday, June 2, 2006

Time: 3 pm – 8 pm

Location: Ontario Hilton
700 North Haven Avenue
Ontario, CA
(909) 980-0400

At the hearings, 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, that persons who make oral comments at the hearing 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 comments other than those presented at the public hearings may be submitted to the Department as described below.

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 May 22, 2006. The Department will consider only written comments received at the Department's office by that time (in addition to those comments received at the public hearing). All written comments shall be submitted to the following address:

Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
Attn: Janelle Miller, Manager
Grants and Winter Recreation
P.O. Box 942896
Sacramento, California 94296-0001

Written comments can also be hand delivered to the contact person listed above at the following address:

Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
1725 23rd Street, Suite 200
Sacramento, California 95816

Written comments that are not more than 10 pages will be accepted by the Department via facsimile at (916) 324-1610. A fax transmission must be completed by the deadline given above.

Written comments may also be delivered electronically to Janelle Miller at jrmiller@parks.ca.gov by the deadline given above.

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

John Pelonio, Supervising Ranger, phone number (916) 324-5734 or e-mail address: jpelonio@parks.ca.gov.

AUTHORITY AND REFERENCE

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

Reference Citation: The particular code sections implemented, interpreted, or made specific by these proposed new regulations are Public Resources Code (PRC) § 5090.24, 5090.32, 5090.35, 5090.50, 5090.51, 5090.53, 5090.61 and 5090.64.

INFORMATIVE DIGEST

Background and History

Amendments to PRC § 5090.01 et seq, which became effective in 2003 (AB 2274) and again in 2005 (AB 2666), prescribed changes to and clarified many provisions of the statute affecting both off-highway vehicle (OHV) recreation and the OHMVR Grants and Cooperative Agreements Program application, monitoring, and funding processes.

The OHMVR Grants and Cooperative Agreements Program Regulations, CCR, Title 14, Division 3, Chapter 15, Articles 1 through 8, § 4970.00 through 4970.32, which were permanently adopted in December 2003, provided revisions to the prior regulations to comply with some of the amendments to the statute which became effective in 2003 (AB 2274). Under the 2003 regulations, grants for cities, counties, appropriate districts, nonprofit organizations, educational institutions and cooperative agreements for federal agencies and Native American tribes were awarded during the 2004/2005 grant cycle for acquisition, development, law enforcement, operations and maintenance, resource management, safety and education, and equipment projects. However, the instructions on how to apply for grants or cooperative agreements (OHV Grant Application Guide, June 2000), which were incorporated by reference into the 2003 permanent regulations, were not revised to be consistent with the current statute and regulations. Therefore, the Department determined that the 2003 regulations are internally inconsistent and cannot be administered in a lawful manner.

In addition, the 2003 regulations language did not provide the specificity necessary to clarify to potential applicants and the public (1) all the requirements within the application process, and (2) the evaluation criteria to be utilized in the competitive awarding of grants and cooperative agreements.

In order to implement the legislative mandates for the 2005/2006 grant and cooperative agreement application cycle and to avoid the delay which would result from the regular rulemaking process, the Department submitted revised regulations to the Office of Administrative Law (OAL) in April 2005 under emergency regulations procedures. The

emergency regulations were approved by OAL and were to remain in effect until August 10, 2005.

The OHMVR Division from June 2005 through September 2005 was in the process of reviewing grant and cooperative agreement applications for the 2005/2006 funding cycle. The process continued through the actual allocation of funds by the OHMVR Commission in February 2006. At the end of July 2005, in order to ensure the integrity of the competitive grants and cooperative agreements process, the Department requested and received OAL approval for the readoption of the emergency regulations, which were to remain in effect until December 6, 2005. Because the Commission had not completed its funding determinations by this date, the Department requested and received OAL approval for the second readoption of the emergency regulations, which remained in effect until April 5, 2006. This second readoption allowed the Division time to review and identify elements of the entire application and funding process, including the Commission's funding allocations, which might need improvement/revision in adopting permanent regulations.

With the implementation of the 2005 emergency regulations in the 2005/2006 funding cycle, the Department has learned about aspects of the OHMVR Grants and Cooperative Agreements Program, including the text of the emergency regulations, the application instructions, the application evaluation system, and administrative procedures which will need further attention in the process of permanently adopting the regulations. Although the 2005 emergency regulations significantly revised the 2003 OHMVR Grants and Cooperative Agreements Program Regulations, the Department is proposing to make additional revisions to the regulations, including the documents incorporated by reference, in the permanent adoption process to provide the clarity that is necessary to ensure that the program is administered in an efficient and effective manner and is consistent with the statute.

Effect of Proposed Rulemaking

The Department has determined that the 2003 permanent regulations in CCR, Title 14, Division 3, Chapter 15, Articles 1 through 8, § 4970.00 through 4970.32 are cumbersome and do not fully reflect the 2003 (AB 2274) and 2005 (AB 2666) amendments to the statute. The Department is proposing to repeal the existing permanent regulations for the following reasons:

- The definitions in Article 1 do not provide the specificity and the clarity that is necessary to ensure that potential applicants and the public understand the requirements of the regulations;
- The language in Articles 2 and 3 is not written and displayed in a manner that can be easily understood by potential applicants and the public;
- The OHV Grant Application Guide, June 2000, which is incorporated by reference in Article 7, was not revised to be consistent with the amendments to the statute;
- The language in Articles 4 and 5 is procedural in nature and is being included in the new OHMVR Division Manual, which is incorporated by reference in the

- proposed regulations; and
- The language in Articles 6 and 8 require significant revision to clarify and be consistent with the statute.

The Department is proposing to adopt the 2006 OHMVR Grants and Cooperative Agreements Program Regulations, CCR Title 14, Division 3, Chapter 15.5, Articles 1 through 5, § 4970.49 – 4970.72 to provide the necessary clarity, guidelines, and standards for the OHMVR Program as follows:

CCR § 4970.49 provides the application of Chapter 15.5.

CCR § 4970.50 provides definitions that clarify terms in the statute and/or the proposed regulations.

CCR § 4970.51 sets forth the reason for the OHMVR Grants and Cooperative Agreements Program. It identifies what is to be accomplished with funds received from the program. It further clarifies the legislative intent and purpose of the OHMVR Program as provided in the statute.

CCR § 4970.52 identifies the role and responsibilities of the OHMVR Commission at the beginning of the application cycle.

CCR § 4970.53 identifies the general application requirements that apply to all grant and cooperative agreement applications. The Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements (March 2006), which includes the application instructions, the application evaluation system, and the administrative procedures, is incorporated by reference. It also provides the OHMVR Division's responsibilities in the application submission process.

CCR § 4970.54 identifies (1) the purpose of acquisition projects, (2) the agencies and organizations that are eligible to apply for acquisition projects, (3) specific examples of and eligible costs associated with acquisition projects, and (4) the specific application and content requirements for acquisition projects.

CCR § 4970.55 identifies (1) the purpose of conservations projects, (2) the agencies and organizations that are eligible to apply for conservation projects, (3) specific examples of and eligible costs associated with conservation projects, and (4) the specific application and content requirements for conservations projects.

CCR § 4970.56 identifies (1) the purpose of development projects, (2) the agencies and organizations that are eligible to apply for development projects, (3) specific examples of and eligible costs associated with development projects, and (4) the specific application and content requirements for development projects.

CCR § 4970.57 identifies (1) the purpose of equipment projects, (2) the agencies and organizations that are eligible to apply for equipment projects, (3) specific examples of and eligible costs associated with equipment purchases and repairs, (4) the specific application and content requirements for equipment projects, and (5) the required use, identification, registration, maintenance, and disposal of equipment purchased, leased, or rented with OHV Trust funds.

CCR § 4970.58 identifies (1) the purpose of facilities operation and maintenance projects, (2) the agencies and organizations that are eligible to apply for facilities operation and maintenance projects, (3) specific examples of and eligible costs associated with facilities operation and maintenance projects, and (4) the specific application and content requirements for facilities operation and maintenance projects.

CCR § 4970.59 identifies (1) the purpose of law enforcement projects, (2) the agencies and organizations that are eligible to apply for law enforcement projects, (3) specific examples of and eligible costs associated with law enforcement projects, and (4) the specific application and content requirements for law enforcement projects.

CCR § 4970.60 identifies (1) the purpose of off-highway vehicle (OHV) safety and/or education program projects, (2) the agencies and organizations that are eligible to apply for OHV safety and/or education program projects, (3) specific examples of and eligible costs associated with OHV safety and/or education program projects, and (4) the specific application and content requirements for OHV safety and/or education program projects.

CCR § 4970.61 identifies (1) the purpose of planning projects, (2) the agencies and organizations that are eligible to apply for planning projects, (3) specific examples of and eligible costs associated with planning projects, and (4) the specific application and content requirements for planning projects.

CCR § 4970.62 identifies (1) 1) the purpose of restoration projects, (2) the agencies and organizations that are eligible to apply for restoration projects, (3) specific examples of and eligible costs associated with restoration projects, and (4) the specific application and content requirements for restoration projects.

CCR § 4970.63 identifies (1) the purpose of scientific research projects, (2) the agencies and organizations that are eligible to apply for scientific research projects, (3) specific examples of and eligible costs associated with scientific research projects, and (4) the specific application and content requirements for scientific research projects.

CCR § 4970.64 identifies (1) the purpose of trail maintenance projects, (2) the agencies and organizations that are eligible to apply for trail maintenance projects, (3) specific examples of and eligible costs associated with trail maintenance projects, and (4) the specific application and content requirements for trail maintenance projects.

CCR § 4970.65 identifies the specific environmental documentation that is required in all grant and cooperative agreement applications for projects that require CEQA compliance and it identifies the OHMVR Division's responsibilities in the review of the required environmental documentation.

CCR § 4970.66 identifies (1) the purpose of a Wildlife Habitat Protection Program (WHPP) / Habitat Management Program (HMP), (2) the projects that require a WHPP/HMP in grant and cooperative agreement applications, (3) the components to be included in a WHPP/HMP, and (4) the OHMVR Division's responsibilities in reviewing each WHPP/HMP.

CCR § 4970.67 identifies the projects that require evidence that a soil conservation program has been met in grant and cooperative agreement applications and provides that the soil conservation program shall comply with the statute, the Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91) and the OHMVR Division Manual.

CCR § 4970.68 identifies which types of projects in which types of facilities require that a funding match shall be provided by city, county, appropriate district, educational institution, and nonprofit organization applicants; and also provides that federal agencies and federally recognized Native American tribes are exempt from the funding match requirement.

CCR §4970.69 provides that grants and cooperative agreements shall be awarded on a competitive basis and identifies the application evaluation system to be used by the OHMVR Division.

CCR § 4970.70 identifies (1) the OHMVR Division's responsibilities in forwarding evaluated applications to the Commission for funding consideration, (2) the Commission's responsibilities to review the applications forwarded by the OHMVR Division and to award funding allocations after hearing public and agency testimony, and (3) the OHMVR Division's responsibilities once the allocated applications are returned from the Commission.

CCR § 4970.71 identifies (1) the record keeping responsibilities of all grantees, (2) the Department of Parks and Recreation's responsibility to conduct audits and provide final audit reports to grantees, and (3) the grantees' responsibility to refund any overpayments to the State that have been identified in the audit.

CCR § 4970.72 identifies (1) the OHMVR Division's responsibility to conduct performance reviews, which include desk reviews and site visits, (2) to develop reports regarding site visits, which contain comments and recommendations designed to improve grantees' programs, and (3) the grantees' responsibility to address the comments and recommendations.

POLICY STATEMENT OVERVIEW

The objective of the proposed regulations is to ensure that the OHMVR Grants and Cooperative Agreements Program is administered in an effective and efficient manner and is consistent with the statute by providing the following:

- Specific regulation language to provide more clarity to potential applicants and the public – the scope of definitions has been broadened and also clarified;
- Incorporation by reference of a comprehensive manual that will include clear and concise application instructions, an application evaluation system, and administrative procedures that will provide the clarity necessary to ensure a smoother application process;
- Clarification of documentation requirements including required environmental documentation to provide more clarity to future applicants; and
- Evaluation criteria that will ensure defensible standards and competitive awarding of grants and cooperative agreements.

COMPARABLE FEDERAL REGULATION OR STATUTE

The proposed action does not differ substantially from an existing comparable federal regulation or statute. The proposed regulations do not duplicate or conflict with federal statutes and federal regulations.

LOCAL MANDATE DETERMINATION

The Department has determined that these proposed regulations 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 that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, nor do they impose any nondiscretionary cost or saving on local agencies.

Fiscal Impact on State Government: 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 that these regulations do not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. The OHV funds are used only on land managed by local and federal agencies and federally recognized Native American tribes.

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.

Assessment of Effect on Jobs and Businesses: Adoption of these regulations will not: (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

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

Determination Regarding Effect on Small Businesses: The Department has determined that there are no cost impacts on small businesses because this is a grant program for federal agencies, federally recognized Native American tribes, cities, counties, appropriate districts, non-profit organizations, and educational institutions.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative that it considered or that 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.

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 expressed terms of the proposed action. Copies may be obtained by contacting Janelle Miller at the e-mail address or phone number listed above. The rulemaking file, which contains all information on which the proposal is based, is located at the Off-Highway Motor Vehicle Recreation Division, 1725 23rd Street, Suite 200, Sacramento, California, 94296-0001, and may be obtained upon request. Additionally, the Initial Statement of Reasons and the text of the proposed regulations may be obtained from the Department's website located at www.ohv.parks.ca.gov at the Grants and Regulations link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearings and considering 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 its completion, a Final Statement of Reasons may be obtained by contacting Janelle Miller at the aforementioned address and will be made available through the Division website at www.ohv.parks.ca.gov, at the Grants and Regulations link.