

**REVISED PROPOSED REGULATION OF
THE COMMISSION ON OFF-HIGHWAY VEHICLES**

LCB File No. R131-14

April 28, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§1-41, NRS 490.068.

A REGULATION relating to motor vehicles; establishing a program for the awarding of grants for projects concerning off-highway vehicles and related trails and facilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing statutory law directs the Commission on Off-Highway Vehicles to adopt regulations setting forth: (1) who may apply for a grant of money from the Account for Off-Highway Vehicles; (2) procedures for awarding grants of money from the Account; (3) the manner in which applications for grants are to be submitted to the Commission; (4) that an applicant for such a grant of money must provide information satisfactory to the Commission that the applicant has consulted with requisite state, local and federal governmental entities; and (5) the acceptable performance of work on a project for which a grant is awarded. (NRS 490.068) This regulation carries out the statutory directive by creating a system for awarding grants and monitoring grantees in accordance with the requirements of NRS 490.068 and 490.069.

Sections 2-14 of this regulation provide definitions that are applicable to the awarding of grants of money from the Account for Off-Highway Vehicles. **Sections 15-19** of this regulation set forth the provisions with which a person must comply to qualify to apply to the Commission for a grant of money from the Account. **Sections 21-23** of this regulation specify the information that must be included within, and which must accompany, an application requesting a grant of money from the Account.

Section 20 of this regulation provides for the Commission to appoint a Grant Scoring Committee to score the grant applications that are submitted. **Sections 20 and 25** of this regulation specify what must be contained in a request for grant applications that is issued by the Commission.

Sections 25-34 of this regulation set forth the manner in which applications for grants of money from the Account will be requested, publicized and evaluated and approved or rejected. **Sections 35-41** of this regulation establish the manner in which the Commission will monitor

and evaluate projects that are paid for, in whole or in part, by grant money that is disbursed from the Account.

Section 1. Chapter 490 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 41, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 14, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person who qualifies to apply and applies to the Commission for a grant.*

Sec. 4. *“Application” means a request by an applicant to the Commission for the award of a grant.*

Sec. 5. *“Commission” means the Commission on Off-Highway Vehicles created by NRS 490.067.*

Sec. 6. *“Grant” means money disbursed by the Commission from the Account for Off-Highway Vehicles created by NRS 490.069 to a grantee to pay for all or part of the costs of a project.*

Sec. 7. *“Grant Scoring Committee” means the committee appointed by the Commission pursuant to subsection 1 of section 20 of this regulation to score applications.*

Sec. 8. *“Grantee” means an applicant who applies successfully to the Commission for a grant.*

Sec. 9. *“Nonvoting advisers” means the nine nonvoting advisers who are solicited to assist the Commission pursuant to paragraph (d) of subsection 1 of NRS 490.068.*

Sec. 10. *“Notice to Proceed” means the notice provided by the Commission to a grantee pursuant to subsection 1 of section 35 of this regulation approving the date upon which work may begin on the applicable project.*

Sec. 11. *“Office of Grant Procurement, Coordination and Management” and “Office” mean the office created in paragraph (k) of subsection 2 of NRS 232.213.*

Sec. 12. *“Person” has the meaning ascribed to it in NRS 0.039.*

Sec. 13. *“Project” means a project described in subparagraph (1) of paragraph (b) of subsection 3 of NRS 490.069.*

Sec. 14. *“Request for grant applications” means a solicitation that is created and publicized by or on behalf of the Commission, inviting qualified persons to apply for a grant.*

Sec. 15. *From time to time, within the limits of available money and the limits imposed by NRS 490.069, the Commission will issue requests for grant applications.*

Sec. 16. *To qualify to apply to the Commission for a grant, a person must comply with the provisions of sections 17, 18 and 19 of this regulation.*

Sec. 17. *If a person who seeks to apply to the Commission for a grant is a corporate or other legal entity that is registered with the Secretary of State of Nevada or the secretary of state of another state, the entity must be in good standing in the state in which it is registered.*

Sec. 18. *If a person who seeks to apply to the Commission for a grant proposes to carry out a project on public land, the person must, before applying to the Commission, have a written agreement to use the land with any governmental entity having jurisdiction over that land, including, without limitation, any necessary permits, leases, easements and rights-of-way.*

Sec. 19. 1. *At the time a person seeks to apply to the Commission for a grant, the person must have an interest in the real property on which the proposed project will be carried out, such that the interest satisfies the requirements of this section.*

2. *The interest in the real property, whether by way of ownership, lease, rental, easement, right-of-way, written agreement or other legal instrument, must be sufficient in scope and authority to allow the applicant:*

(a) To complete the proposed project; and

(b) To operate and maintain the proposed project after its completion.

Sec. 20. 1. *The Commission will appoint a Grant Scoring Committee to score applications that are submitted to the Commission. The Grant Scoring Committee must consist of nonvoting advisers or members of the Commission, or a combination of both, as selected by the Commission.*

2. *When the Commission issues a request for grant applications, as referenced in section 15 of this regulation, the Commission will ensure that the request sets forth:*

(a) The type of project for which the grant may be used;

(b) The specific factors and criteria that the Grant Scoring Committee will use to evaluate and score an application; and

(c) The form of any specific contract that a successful applicant will be required to enter into with the Commission.

Sec. 21. *An application that is submitted to the Commission to apply for a grant must comply with the provisions of sections 22 and 23 of this regulation.*

Sec. 22. *An application must include verifiable evidence, in writing and satisfactory to the Commission:*

1. Setting forth that each appropriate federal, state or local governmental agency:

(a) Has been consulted by the applicant; and

(b) Has approved the proposed project.

2. Addressing all applicable laws and regulations concerning:

(a) Threatened and endangered species in the area or areas affected by the proposed project;

(b) Ecological, cultural and archaeological sites in the area or areas affected by the proposed project; and

(c) Existing land use authorizations and prohibitions, land use plans, special designations and local ordinances for the area or areas affected by the proposed project.

3. Containing any information related to compliance that is provided by an appropriate federal, state or local governmental agency, and any information or advice provided by any agency, group or natural person.

Sec. 23. Except as otherwise provided in this section, an application must include, in writing and satisfactory to the Commission, the applicant's plan for completing the proposed project not more than 2 years after the Notice to Proceed is issued, as described in subsection 1 of section 35 of this regulation. The Commission may, for good cause shown, waive or otherwise modify the requirement set forth in this section.

Sec. 24. Applications must be requested, publicized and evaluated and approved or rejected in accordance with sections 25 to 34, inclusive, of this regulation.

Sec. 25. When the Commission issues a request for grant applications pursuant to section 15 of this regulation, the Commission will ensure that the request:

1. Is posted on the Internet website of the Commission; and

2. Sets forth, in addition to the requirements of subsection 2 of section 20 of this regulation:

(a) The amount of the grant that is available.

(b) The date by which applications must be received, which must be not later than 60 days after the Commission posts on its Internet website the request for grant applications.

(c) Notice to prospective applicants that the Commission, the Office of Grant Procurement, Coordination and Management and the nonvoting members will not score or take further action with respect to an application that is not complete by the deadline for accepting applications.

(d) All details and definitions that are required for an application to be considered complete.

(e) Such other information, exhibits and addenda as the Commission may determine to be necessary or desirable in carrying out the purposes of sections 2 to 41, inclusive, of this regulation.

Sec. 26. 1. An applicant who desires to submit an application must first submit the application to the Office of Grant Procurement, Coordination and Management for the Office's review, to ensure that the application is complete.

2. If the Office of Grant Procurement, Coordination and Management determines that the application is not complete, it will return the application to the applicant. If the Office determines that the application is complete, it will forward the application to each nonvoting adviser.

Sec. 27. Each nonvoting adviser will:

1. Independently review each grant application received pursuant to section 26 of this regulation to ensure that the application is complete, in compliance with the provisions of sections 2 to 41, inclusive, of this regulation and in compliance with any other regulations adopted pursuant to paragraph (a) of subsection 2 of NRS 490.068; and

2. Within 15 days after receiving an application from the Office of Grant Procurement, Coordination and Management, return the application to the Office, accompanied by the determination of the nonvoting adviser as to the completeness and compliance of the application.

Sec. 28. *1. Within 7 days after receiving an application from a nonvoting adviser pursuant to subsection 2 of section 27 of this regulation, the Office of Grant Procurement, Coordination and Management will:*

(a) Return to the applicant an application that is determined by any nonvoting adviser to be either not complete or not compliant.

(b) With respect to an application that is determined by each nonvoting adviser to be both complete and compliant, assign a number and attach a scoring sheet to the application and forward the application to the individual members of the Grant Scoring Committee.

2. Upon the receipt of an application as described in subsection 1, the individual members of the Grant Scoring Committee will independently score and return the application to the Office of Grant Procurement, Coordination and Management within 30 days after receiving the application.

Sec. 29. *When the Office of Grant Procurement, Coordination and Management receives the scored applications from the Grant Scoring Committee pursuant to subsection 2 of section 28 of this regulation, the Office will:*

- 1. Average the individual scores given to each application by the individual members of the Grant Scoring Committee;*
- 2. Rank the applications from the highest to lowest average score; and*
- 3. Provide to the Commission a ranked list of applicants, subdivided by the particular type of grant for which an application was submitted.*

Sec. 30. At a properly noticed public meeting, the Commission, by majority vote of a quorum of the voting members of the Commission present at the meeting, will:

- 1. Consider the grant applications in the order in which they were ranked by the Office of Grant Procurement, Coordination and Management pursuant to section 29 of this regulation; and*
- 2. Determine whether, and in what amount, to award a grant to an applicant.*

Sec. 31. The Commission will post on its Internet website any grants that it awards pursuant to section 30 of this regulation not later than 5 business days after making those awards.

Sec. 32. Not later than 10 days after the Commission makes the posting required by section 31 of this regulation, an applicant who was otherwise eligible to receive a grant, but whose grant application was unsuccessful, may submit to the Commission a request for reconsideration.

Sec. 33. If an applicant makes a request for reconsideration to the Commission as described in section 32 of this regulation, the Commission will, as soon as is practicable after the expiration of the 10-day period set forth in that section, schedule a public meeting to hear the request for reconsideration of each such grant application.

Sec. 34. *Not later than 30 days after holding the public meeting described in section 33 of this regulation, the Commission will:*

- 1. Issue a final decision on each request for reconsideration that it receives pursuant to section 32 of this regulation; and*
- 2. Post on its Internet website the final decision.*

Sec. 35. *After a grant is awarded, the Commission will:*

- 1. Provide to the successful grantee a Notice to Proceed approving the date upon which work may begin on the applicable project, subject to the conditions of the contract described in section 36 of this regulation.*
- 2. Monitor, evaluate and assist in the carrying out of the grant and the progress and completion of the project in accordance with sections 36 to 41, inclusive, of this regulation.*

Sec. 36. *Except as otherwise provided in this section, after awarding a grant, the Commission will enter into a contract with the grantee for the completion of the proposed project for which the Commission awarded the grant. The Commission will not enter into such a contract if there is an unresolved request for reconsideration that could affect the proposed project.*

Sec. 37. *To enter into a contract with a grantee for the completion of a proposed project, as referenced in section 36 of this regulation, the Commission will send a draft of the contract to the grantee by certified mail, return receipt requested. Unless otherwise expressly approved by the Commission, not later than 90 days after the date on which the grantee receives the draft of the contract, the grantee must execute and finalize the contract and provide to the Commission all information pertinent to the contract that the Commission requests.*

Sec. 38. Unless otherwise expressly approved by the Commission, a contract entered into between the Commission and a grantee, as referenced in section 36 of this regulation, must provide that:

1. The grantee must secure all necessary approvals, clearances and permits not later than 90 days after the contract is entered into; and

2. If the grantee has not secured such necessary approvals, clearances and permits, the Commission will not disburse any grant funds to the grantee.

Sec. 39. A contract entered into between the Commission and a grantee, as referenced in section 36 of this regulation, must specify an end-date for the project for which the grant is awarded. Unless otherwise expressly approved by the Commission, the end-date for the project must provide that the project will be substantially completed not more than 2 years after the Notice to Proceed is provided to the grantee as described in subsection 1 of section 35 of this regulation.

Sec. 40. 1. A grantee shall notify the Commission in writing when the grantee believes that it has completed a project.

2. After receiving written notice as described in subsection 1, the Commission will, at its next public meeting, determine by majority vote whether the project has been completed satisfactorily.

3. If the Commission determines that a project has not been completed satisfactorily:

(a) The Commission will inform the grantee in writing as soon as practicable as to what must be done to achieve satisfactory completion of the project; and

(b) The grantee, after performing the acts that the Commission indicates must be performed, shall resubmit its written notice of completion to the Commission.

Sec. 41. *After a grantee completes a project, the grantee must report to the Commission, in writing, at least once each year by a date to be specified by the Commission, as to how the project is being operated and maintained. The annual reporting required by this section must continue for 20 consecutive years after the project is completed, unless the Commission specifically approves a different duration.*