

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

LCB FILE NO. R122-201

**The following document is the initial draft regulation proposed
by the agency submitted on 06/30/2020**

CHAPTER 490

Section 1. NAC 490.1275 “Applicant” defined. (NRS 490.068) “Applicant” means a person *or entity* who qualifies to apply and applies to the Commission for a grant.

Sec. 2 “Director” defined. “Director” means the Director of the State Department of Conservation and Natural Resources as created pursuant to NRS 232.030.

Sec. 3 NAC 490.129 “Grant” defined. (NRS 490.068) “Grant” means money ~~disbursed~~ *awarded* 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. 4 NAC 490.1295 “~~Grant Scoring Technical Advisory Committee~~” defined. (NRS 490.068) “~~Grant Scoring Technical Advisory Committee~~” means ~~the a~~ *committee that may be formed by the Director to provide input to* ~~appointed by~~ the Commission *to score grant applications based on merit of applications and funding priorities as identified during a public meeting of the Commission on Off-highway Vehicles.* ~~pursuant to subsection 1 of NAC 490.1393 to score applications.~~

Sec. 5 NAC 490.130 “Grantee” defined. (NRS 490.068) “Grantee” means an applicant who ~~applies successfully to~~ *is awarded a grant by* the Commission. ~~for a grant.~~

~~**Sec. 6 NAC 490.1305 “Nonvoting advisers” defined. (NRS 490.068)** “Nonvoting advisers” means the nine nonvoting members of advisers who, by virtue of the office they hold, are solicited to assist the Commission pursuant to paragraph (d) of subsection 1 of NRS 490.068.~~

Sec. 7 NAC 490.131 “Notice to Proceed” defined. (NRS 490.068) “Notice to Proceed” means the notice provided by the ~~Commission~~ *Program* to a grantee pursuant to subsection 1 of NAC 490.1435 approving the date upon which work may begin on the applicable project.

~~**Sec. 8 NAC 490.1315 “Office of Grant Procurement, Coordination and Management” and “Office” defined. (NRS 490.068)** “Office of Grant Procurement, Coordination and Management” and “Office” mean the office created in paragraph (i) of subsection 2 of NRS 232.213.~~

Sec. 9 “Program” defined. “Program” means the Off- Highway Vehicles Program created in the State Department of Conservation and Natural Resources by subsection 1 of NRS 232.1585.

Sec. 10 NAC 490.1325 “Project” defined. (NRS 490.068) “Project” means a project described in ~~subparagraph~~ *subparagraphs* (1) *through* (9) of paragraph ~~(b)~~ *(c)* of subsection 2 of NRS 490.069.

Sec. 11 NAC 490.133 “Request for grant applications” defined. (NRS 490.068) “Request for grant applications,” means a solicitation that is created and publicized by or on the behalf of the *Commission Program*, inviting qualified ~~persons~~ *applicants* to apply for a grant.

Sec 12 “Product” defined: “Product,” means the result of a project(s) funded by an OHV grant that has been satisfactorily completed.

Applications for Grant

Sec. 13 NAC 490.1335 *Request for Grant application applications requests* issued within limits of available money. (NRS 490.068) From time to time, within the limits of available money and the limits imposed by NRS 490.069, the *Commission Program* will issue *a Request for Grant Applications*.

Sec. 14 NAC 490.134 Qualifications to apply for grant. (NRS 490.068) To qualify to apply to the Commission for a grant, ~~a person~~ *an applicant* must comply with the provisions of NAC 490.1345, 490.135 and 490.1355.

Sec. 15 NAC 490.1345 Entity applying for grant must be in good standing. (NRS 490.068) If ~~a person who~~ *an applicant* 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 such~~ entity must be in good standing in the state in which it is registered.

Sec. 16 NAC 490.135 ~~Written agreement with Letter of Support from~~ governmental agency required to apply for a grant ~~under certain circumstances~~ *project on public land*. (NRS 490.068) If ~~a person who~~ *an applicant* seeks to apply to the Commission for a grant ~~proposes~~ to carry out a project on public land, the ~~person applicant~~ must, ~~before applying to the Commission, have~~ *obtain a written agreement letter of support to use impact the land with any from the* governmental entity having jurisdiction over that land. ~~, including, without limitation, any necessary permits, leases, easements and rights-of-way.~~

Sec. 17 NAC 490.1355 Interest in real property required to apply for grant. *project on private land*. (NRS 490.068)

1. At the time ~~a person~~ *an applicant* seeks to apply to the Commission for a grant, *project on private land*, the ~~person applicant~~ 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.~~ *projects for 25 years after completion, or for the normal life of the product, whichever is longer.*

Sec. 18 NAC 490.1365 ~~Application for grant~~ *Grant Application* required to comply with certain provisions. (NRS 490.068) An application that is submitted to the Commission to apply for a grant must comply with the *Request for Grant Applications and* provisions of NAC 490.137 and 490.1375.

Sec. 19 NAC 490.137 Contents of ~~application for grant~~ *Grant Application: Generally.* (NRS 490.068) An application must include verifiable evidence, in writing ~~and satisfactory to the Commission:~~

1. Setting forth that each appropriate *private entity*, 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. 20 NAC 490.1375 Contents of ~~application for grant~~ *Grant Application: Plan for completion of project.* (NRS 490.068) 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 NAC 490.1435. The *Commission Program* may, for good cause shown, waive or otherwise modify the requirement set forth in this section.

Approval or Rejection of Applications and Awarding of Grants

Sec. 21 NAC 490.138 Request, publication, evaluation and approval or rejection of ~~application for grant~~ *Grant Application.* (NRS 490.068) Applications must be requested, publicized, ~~and~~ evaluated, and approved or rejected in accordance with NAC 490.1385 to 490.143, inclusive.

Sec. 22 NAC 490.1385 Request for ~~application for grant~~ *Grant Applications: Posting on Internet website; content.* (NRS 490.068) ~~When the Commission issues a request for grant applications~~ *The Program will ensure that the Request for Grant Applications* pursuant to NAC 490.1335, ~~the Commission will ensure that the request:~~

1. Is posted on the Internet website of the *Commission Program*; and
2. Sets forth: ~~in addition to the requirements of subsection 2 of~~ NAC 490.1393:
 - (a) The amount of ~~the~~ grant ~~that is~~ *funds being made* 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 Program, 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 NAC 490.127 to 490.1465, inclusive.

(f) *The types of projects for which the grant may be used, pursuant to NRS 490.069(2)(c).*

(g) *The specific factors and criteria that will be used to evaluate and score applications.*

(h) *The form of any specific grant agreement that a successful applicant will be required to enter into with the Program.*

Sec. 23 ~~NAC 490.139— Submittal of application for grant to Office. (NRS 490.068)~~

~~—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. 24 ~~NAC 490.1393— Grant Scoring Committee: Appointment of members; information included in grant request. (NRS 490.068)~~

~~—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 NAC 490.1335, 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. 25 ~~NAC 490.1395— Grant Scoring Committee: Review of application for grant by nonvoting advisers. (NRS 490.068)~~— Each nonvoting adviser will:

~~—1.— Independently review each grant application received pursuant to NAC 490.139 to ensure that the application is complete, in compliance with the provisions of NAC 490.127 to 490.1465 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. 26 NAC 490.140 ~~Return Submission of incomplete or noncompliant application for grant Grant Applications; scoring of complete application.~~ (NRS 490.068) *If an incomplete or noncompliant Grant Application is submitted to the Program, it may be returned for correction, provided the final deadline for accepting applications is met.*

~~1. Within 7 days after receiving an Application from a nonvoting adviser pursuant to subsection 2 of NAC 490.1395, 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. 27 NAC 490.1405 ~~Ranking of application for grant Grant Applications.~~ (NRS 490.068) ~~Office of Grant Procurement, Coordination and Management from the Grant Scoring Committee pursuant to subsection 2 of NAC 490.140; The Office Program~~ will:

~~1. Average the individual scores given to each application by the individual members of the Grant Scoring Committee;~~

~~—2.—1. Rank the applications based on input from the Technical Advisory Committee from the highest to lowest average score; and~~

~~—3. 2. Provide to the Commission a ranked list of applicants, subdivided by the particular type of grant for which an application was submitted applications with supporting documentation and scoring sheets.~~

Sec. 28 NAC 490.141 **Determination of award of grant.** (NRS 490.068) 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 NAC 490.1405;~~ and

2. Determine whether, and in what amount, to award a grant to an applicant.

Sec. 29 NAC 490.1415 **Posting of awarded grants on Internet website.** (NRS 490.068) The ~~Commission~~ *Program* will post on its Internet website any grants ~~that it the Commission awards~~ pursuant to NAC 490.141. ~~not later than 5 business days after making those awards.~~

Requests for Reconsideration

~~Sec. 30—NAC 490.142—Submittal of requests. (NRS 490.068)—Not later than 10 days after the Commission makes the posting required by NAC 490.1415, 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. 31 NAC 490.1425 Public meeting to hear requests. (NRS 490.068) If an applicant makes a request for reconsideration to the Commission as described in NAC 490.142, 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. 32 NAC 490.143 Final decision on requests; posting of decisions on Internet website. (NRS 490.068) Not later than 30 days after holding the public meeting described in NAC 490.1425, the Commission will:~~

~~—1. Issue a final decision on each request for reconsideration that it receives pursuant to NAC 490.142; and~~

~~—2. Post on its Internet website the final decision.~~

Completion of Project

Sec. 33 NAC 490.1435 Provision of Notice to Proceed to grantee; *Commission Program* to monitor, and evaluate and assist project. (NRS 490.068) After a grant is awarded, the *Commission Program* 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 NAC 490.144.

2. Monitor, and evaluate and assist in the carrying out of the grant and the progress and completion of the project in accordance with NAC 490.144 to 490.1465.

Sec. 34 NAC 490.144 Grant Agreement Contract for completion; exception. (NRS 490.068) Except as otherwise provided in this section, after awarding a grant award, the *Commission Program* will enter into a *grant agreement* 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. 35 NAC 490.1445 Procedure Time limit for for entering into contract grant agreement for completion. (NRS 490.068) ~~To enter into a contract with a grantee for the completion of a proposed project, as referenced in NAC 490.144, 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 Program*, the agreement must, not later than 90 days after the date on which the grantee receives the draft of the *contract grant agreement*, the grantee must execute and finalize the *contract grant agreement* and provide to the *Commission Program* all information pertinent to the *contract grant agreement* that the *Commission Program* requests. *Notice of grant agreement will be provided electronically or by mail.*

Sec. 36 NAC 490.145 Contents of contract: Generally. Proof of due diligence in moving forward with completion of project (NRS 490.068) Unless otherwise expressly approved by the *Commission Program*, a contract entered into between the Commission and a grantee, as referenced in NAC 490.144, must provide that: *a grantee must show due diligence in moving forward with the project within 90 days of the notice to proceed.*

~~—1.— The a 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. *proven such due diligence, the Program will provide a 30-days notice, after which the Program may terminate the grant agreement.*~~

Sec. 37 NAC 490.1455 ~~Contents of contract:~~ End-date for project. (NRS 490.068) ~~A contract *Grant agreements* entered into between the Commission and a grantee, as referenced in NAC 490.144, must specify an end-date for the project for which the grant is awarded. Unless otherwise expressly approved by the **Commission Program**, 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 NAC 490.1435.~~

Sec. 38 NAC 490.146 Notification; satisfactory completion. (NRS 490.068)

1. A grantee *shall submit quarterly reports, as directed in the Request for Applications, and shall in writing when the grantee believes that it has completed a project. **coordinate a final inspection by the Program prior to requesting final payment.***

~~—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.—~~ **2.** If the **Commission Program** determines that a project has not been completed satisfactorily:

(a) The **Commission Program** will inform the grantee electronically or by mail as soon as practicable as to what must be done to achieve satisfactory completion of the project; ~~and~~

(b) ***The Program will hold final payment until the project is complete; and***

(c) The grantee, after performing the acts that the **Commission Program** requires, shall resubmit *the final reimbursement requests and quarterly report* ~~its written notice of completion~~ to the **Commission Program**.

~~**Sec. 39 ~~NAC 490.1465~~ Annual report. (NRS 490.068)** 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.~~

Sec. 40 NAC 490.1466 Monitoring of past grant projects. (NRS 490.068) *The Program will monitor funded projects on a five-year cycle to ensure maintenance is occurring according to the grant agreements. To meet this monitoring requirement the Program may request that grantees submit an independent, third party report showing how the project is being operated and maintained.*