

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

LCB File No. R131-14

November 26, 2014

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

AUTHORITY: §§1-~~42~~ 54, 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-~~15~~ 14 of this regulation provide definitions that are applicable to the awarding of grants of money from the Account for Off-Highway Vehicles. **Sections 16-20 ~~[12-17]~~** 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 ~~[19-28]~~ 22-24** 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.

Sections ~~[18]~~ 21 and ~~[30]~~ 26 of this regulation specify what must be contained in a request for grant applications that is issued by the Commission.

Sections ~~[31-42]~~ 27-35 of this regulation set forth the manner in which applications for grants of money from the Account will be requested, publicized, evaluated, and approved or rejected.

Sections 36-42 [43-51] 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 42 [51], inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 42 [51], inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 15 [11], 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. *“Grantee” means an applicant who applies successfully to the Commission for a grant.*

Sec. 8. *“Grant Scoring eCommittee” means those members of the Commission or non-voting advisors or combination of both selected by the Commission to score the applications.*

Sec. 9~~[8]~~. *“In-kind match” means cash, materials, volunteer labor or other methods of contribution, approved by the Commission, that an applicant or grantee provides toward:*

- 1. Offsetting the total cost of a project; and*
- 2. Reducing the amount of the grant that will be needed from the Commission to complete the project.*

Sec. 10. *“Non-voting advisors” means the individuals described in subparagraphs (1) through (9) of paragraph (d) of subsection 1 of NRS 490.068.*

Sec. 11. *“Notice to Proceed” means the letter sent by the Commission to a grantee approving the date upon which work may begin on the project subject to the conditions of the contract.*

Sec. 12. *“Office of Grant Procurement, Coordination, and Management” means the office created in paragraph (k) of subsection 2 of NRS 232.213.*

Sec. 13~~[9]~~. *“Person” has the meaning ascribed to it in NRS 0.039.*

Sec. 14~~[10]~~. *“Project” means a project described in subparagraph (1) of paragraph (b) of subsection 3 of NRS 490.069.*

Sec. 15~~[11]~~. *“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. 16~~[12]~~. *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. 17~~[13]~~. *To qualify to apply to the Commission for a grant, a person must comply with the provisions of sections [14]-18 to 20~~[17]~~, inclusive, of this regulation.*

Sec. 18 [14]. *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. 15.—If a person who seeks to apply to the Commission for a grant:~~

~~—1.—Is a nonprofit organization that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), the organization, if otherwise qualified to apply to the Commission for a grant, may apply for a grant of any dollar amount.~~

~~—2.—Is not a nonprofit organization that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), the organization, if otherwise qualified to apply to the Commission for a grant, may apply for a grant of \$10,000 or less.]~~

Sec. 19 [16]. *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. 20 [17]. 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.

~~*[3.—Except as otherwise provided in this subsection, the interest in the real property must be of a duration that extends at least 20 years after the project is proposed to be completed. The Commission may, for good cause shown, waive or otherwise modify the requirement set forth in this subsection.]*~~

Sec. 21 [18]. When the Commission issues a request for grant applications, as referenced in section [12]-16 of this regulation, the Commission will ensure that the request [is written in at least 12-point font and]sets forth:

1. The type of project for which the grant may be used;

2. The specific factors and criteria that the [Commission]-Grant Scoring Committee will use to evaluate and score an application; and, [including, without limitation:

~~*(a) The past performance of the applicant on other projects, if any, for which the applicant received a grant from the Commission;*~~

~~*(b) The weight to be assigned by the Commission to any in-kind matches that will be provided by the applicant;*~~

~~*(c) Any additional weight to be assigned by the Commission to any cash matches or volunteers, or both, that will be provided or arranged for by the applicant; and*~~

~~*(d) Any additional weight to be assigned by the Commission to any labor other than volunteer labor that will be provided or paid for by the applicant;*~~

~~*3. Any questionnaire to be used by the Commission in evaluating and scoring an application;]*~~

4. *The form of any specific contract that a successful applicant will be required to enter into with the Commission.* ~~[- and~~

~~5. Any additional information required by section 30 of this regulation.]~~

Sec. ~~22~~ [19]. *An application that is submitted to the Commission to apply for a grant must comply with the provisions of sections ~~[20]-23~~ to ~~[28]~~ [24], inclusive, of this regulation.*

Sec. ~~23~~ [20]. *An application must include verifiable evidence, in writing and satisfactory to the Commission:* ~~[-]~~

1. ~~S[s]etting forth that the appropriate federal, state, or local [ææh]-governmental agency [entity having jurisdiction over any real property on which the proposed project will be carried out]:~~

(a) ~~[1.] Has been consulted by the applicant; and~~

(b) ~~[2.] Has approved the proposed project.~~

2. Addressing all applicable laws and regulations concerning:

(a) Threatened and endangered species in the area(s) affected by the project;

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

(c) Existing land use authorizations and prohibitions, land use plans, special

designations and local ordinances for the area affected by the project; and

3. Containing any compliance information provided by an appropriate federal or local government agency; and any information or advice provided by any agency, group or individual.

~~[Sec. 21. If an applicant has previously received a grant from the Commission to carry out a project, and that earlier project:~~

~~—1. Is complete, the application must include verifiable evidence, in writing and satisfactory to the Commission, that the earlier project has been completed successfully.~~

~~—2. Is ongoing, the application must include verifiable evidence, in writing and satisfactory to the Commission, that the applicant is making timely progress on the earlier project.]~~

Sec. ~~24~~ ~~[22]~~. *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 ~~[project is begun]~~ Notice to Proceed is issued. The Commission may, for good cause shown, waive or otherwise modify the requirement set forth in this section.*

~~[Sec. 23. An application must be completed in at least 12-point font.~~

~~—Sec. 24. An application must not include a proposed project that, if carried out, would contravene federal or state laws, regulations or policies.~~

~~—Sec. 25. An application must:~~

~~—1. Include any attachments, exhibits and other materials requested by the Commission in the request for grant applications; and~~

~~—2. Be submitted to the Commission as follows:~~

~~—(a) One original hard copy of the application;~~

~~—(b) Two hard copies which are reproductions of the original application; and~~

~~—(c) One electronic copy of the application. The electronic copy:~~

~~—(1) Must be in Portable Document Format (PDF) that can be distributed easily to members of the Commission, its staff and advisors, and posted on the Internet website of the Commission; and~~

~~— (2) Must not exceed 25 megabytes in size, unless the Commission approves a larger size.~~

~~— Sec. 26. An application must include, in writing and satisfactory to the Commission:~~

~~— 1. A description of the proposed project and the site on which the proposed project will be carried out;~~

~~— 2. An explanation of why the proposed project is needed and, if applicable, the expected demand for the proposed project;~~

~~— 3. An estimate of the costs of the proposed project, consistent with the provisions of sections 27 and 28 of this regulation;~~

~~— 4. A budget for the proposed project that is specific and defined clearly; and~~

~~— 5. All supporting documentation necessary to describe or explain the proposed project, including, without limitation, maps, photographs, design drawings, specifications and proof of lawful control of the real property on which the proposed project will be carried out.~~

~~— Sec. 27. The following costs may be included in an application:~~

~~— 1. The cost to pay seasonal and other nonpermanent employees and staff who are hired specifically to perform work on the proposed project, including, without limitation, performing fieldwork on the proposed project.~~

~~— 2. The cost to pay permanent employees and staff, but only insofar as such persons are engaged directly in performing work on the proposed project, including, without limitation, planning, the development of tasks related to the project, the development of time lines for the project, supervision and fieldwork.~~

~~— 3. Expenses related to providing programs and activities that will benefit children.~~

- ~~—4. Expenses related to the hiring of consultants and the performance of services by consultants.~~
- ~~—5. The cost of supplies, materials and tools for the proposed project, including, without limitation:
 - ~~—(a) Equipment;~~
 - ~~—(b) Vehicles; and~~
 - ~~—(c) Supplies to be used by agencies that provide services of law enforcement.~~~~
- ~~—6. The cost of signs and other interpretive aids.~~
- ~~—7. The cost of constructing, reconstructing and maintaining trails for off-highway vehicles.~~
- ~~—8. The cost of constructing bridges, railings, ramps, fences and retaining structures.~~
- ~~—9. Expenses related to stabilizing earthen banks, revegetating land and controlling erosion.~~
- ~~—10. The cost of rehabilitating:
 - ~~—(a) Trails that were formerly used by off-highway vehicles and are now closed; and~~
 - ~~—(b) Areas that have been damaged by off-highway vehicles in the period since the requirement to register off-highway vehicles was imposed pursuant to NRS 490.082.~~~~
- ~~—11. The cost of planning, developing and constructing trailheads to be used by off-highway vehicles, including, without limitation, the cost of planning, developing and constructing parking lots, restrooms and related facilities.~~
- ~~—12. The cost of equipment used to groom snow trails.~~

~~—13. The cost to educate, teach safety to and otherwise provide information to the general public and operators of off-highway vehicles.~~

~~—14. The cost of planning trails to be used by off-highway vehicles.~~

~~—15. The cost of studies, plans and analyses necessary to carry out the proposed project, including, without limitation:~~

~~—(a) Studies of the feasibility and use of trails to be used by off-highway vehicles;~~

~~—(b) Management plans for shared trails to be used by off-highway vehicles; and~~

~~—(c) Analyses of existing and proposed trails to be used by off-highway vehicles.~~

~~—16. The cost of providing food and nonalcoholic beverages to volunteers who will provide work to carry out the proposed project.~~

~~—17. The cost of preparing or arranging for the preparation of environmental assessments, reviews and impact statements.~~

~~—18. The cost of mileage accumulated on vehicles that are used directly to carry out the proposed project.~~

~~—19. Such other costs and expenses as the Commission may particularly approve and specify in a particular request for grant applications.~~

~~—Sec. 28. The following costs must not be included in an application:~~

~~—1. Costs that are not included in the budget for the proposed project.~~

~~—2. The cost to provide insurance for volunteers who will perform work on the proposed project.~~

~~—3. Expenses related to fundraising for, or the promotion of, an organization.~~

~~—4. The applicant's costs, in time and money, to complete the application.~~

- ~~—5.— The cost of facilities that are ornamental in nature and do not provide a direct benefit to the general public or the users of off-highway vehicles.~~
- ~~—6.— Costs that the applicant would incur regardless of whether the applicant carried out the proposed project, including, without limitation, the general overhead costs of the applicant.~~
- ~~—7.— Costs of marketing and advertising.~~
- ~~—8.— The cost of maintaining vehicles that are used directly to carry out the proposed project.~~
- ~~—9.— Depreciation on vehicles, tools and other equipment that are used directly to carry out the proposed project.~~
- ~~—10.— The cost of alcoholic beverages and the cost of food to be served at banquets or parties.~~
- ~~—11.— Expenses related to team-building exercises or bonding activities for staff, employees, volunteers or other personnel.]~~

Sec. 25 ~~[29]~~. Applications for grants must be requested, publicized, evaluated, and approved or rejected in accordance with sections ~~[30]-26~~ to ~~35~~ ~~[42]~~, inclusive, of this regulation.

Sec. 26 ~~[30]~~. When the Commission issues a request for grant applications pursuant to section 16 ~~[12]~~ of this regulation, the Commission will ensure that the request:

- ~~[1.— Is legible.~~
- ~~—2.— Is printed in at least 12-point font.]~~
- 1 ~~[3]~~. Is posted on the Internet website of the Commission.
- 2 ~~[4]~~. Contains, in addition to the requirements of section 21 ~~[18]~~ of this regulation:

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

(b) *The date by which grant 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 will not score or take further action with respect to grant applications that [which]-are not complete by the deadline for accepting applications [incomplete].*

(d) *All details and definitions required for a complete grant application. [Notice to prospective applicants that the Commission may retain not more than 10 percent of the amount of an awarded grant, to pay the cost of administering, monitoring and supervising the grant and its use.*

~~(e) The labor rate with which prospective applicants will be credited for volunteer workers whose labor the applicant will use on the proposed project.~~

~~(f) The type of in-kind matches that a prospective applicant will be required or encouraged to provide to be a successful applicant for a grant.]~~

~~(e [g]) 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 42 [51], inclusive, of this regulation.~~

Sec. 27 [31]. *The application will be sent by the applicant to the Office of Grant Procurement, Coordination, and Management for its review to ensure that the application is complete before forwarding it to the individual Non-Voting Advisors. 1. Sixty days after the Commission posts the request for grant applications on its Internet website, the Commission will post the grant applications that it receives on its Internet website.*

~~2.—Insofar as is practicable, the Commission will notify an applicant if the applicant’s grant application is incomplete, and allow the applicant to submit the materials necessary to complete the application. The Commission will not process or take any further action with respect to a grant application that remains incomplete 60 days after the Commission posts its request for grant applications.~~

~~Sec. 28 [32]. The Non-Voting Advisors shall independently review all of the applications for completeness and compliance with paragraph (a) of subsection 2 of NRS 490.068 and then return the applications to the Office of Grant Procurement, Coordination, and Management within 15 days after receiving the applications. [Not less than 30 days after posting on its Internet website the grant applications it receives in accordance with section 31 of this regulation, the Commission will:~~

- ~~1.—Hold a public meeting to assign a score to each grant application in accordance with the scoring criteria set forth in the request for grant applications; and~~
- ~~—2.—Determine the minimum score necessary for the further consideration of a grant application.]~~

~~Sec. 29 [33]. The Office of Grant Procurement, Coordination, and Management will, within seven days of receipt, assign a number to the complete and compliant applications and attach scoring sheets before forwarding them to the individual members of the Grant Scoring Committee, who shall independently score and return the applications to the Office of Grant Procurement, Coordination, and Management within 15 days after receiving the applications. [Commission will post on its Internet website the determinations it makes pursuant to section 32 of this regulation not later than 3 business days after making the determinations.]~~

~~Sec. 30 [34]. The Office of Grant Procurement, Coordination, and Management will average the individual scores and rank the applications from the highest to lowest average score according to those scores and provide the Commission with a ranked list of applicants by category of grant type. [Except as otherwise provided in this section, not later than 15 days after the Commission makes the posting required by section 33 of this regulation, an applicant whose grant application does not receive the minimum score necessary for further consideration may submit to the Commission a request to make a presentation to the Commission to attempt to persuade the Commission that the grant application should receive a higher score. An applicant may not request to make such a presentation if the grant application that the applicant submitted to the Commission was incomplete.]~~

~~Sec. 31 [35]. At a properly-noticed, public meeting, the Commission, by majority vote of the quorum present, will consider, in the order in which they are ranked, whether and in what amount to award a grant to an applicant. [If an applicant makes a request to the Commission as described in section 34 of this regulation, the Commission will, as soon as is practicable after the expiration of the 15-day period set forth in that section, schedule a public meeting to hear the presentation of each such aggrieved grant applicant.~~

~~Sec. 36.—At a public meeting scheduled as described in section 35 of this regulation, the Commission may, for good cause shown, adjust the score of any applicant who:~~

- ~~—1. Makes a presentation to the Commission; and~~
- ~~—2. Answers to the satisfaction of the Commission any questions that the Commission or its members may ask of the applicant.~~

~~—Sec. 37. The Commission will post on its Internet website any score that it adjusts pursuant to section 36 of this regulation not later than 3 business days after making the adjustment.~~

~~—Sec. 38. After the expiration of the period specified in section 34 of this regulation and, if applicable, the time periods specified in sections 35 and 37 of this regulation, the Commission will hold a public meeting to award grants to the applicants who submitted successful grant applications. The awarding of the grants must be done in accordance with:~~

~~—1. The determinations posted in accordance with section 33 of this regulation;~~

~~—2. Any adjustments to scores that are posted in accordance with section 37 of this regulation;~~

~~—3. The scoring criteria set forth in the request for grant applications; and~~

~~—4. The vote of a majority of the members of the Commission.]~~

~~Sec. 32 [39]. The Commission will post on its Internet website any grants that it awards pursuant to section 31 [38] of this regulation not later than 5 [3] business days after making those awards.~~

~~Sec. 33 [40]. Not later than 10 [15] days after the Commission makes the posting required by section 32 [39] 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. 34 [41]. If an applicant makes a request for reconsideration to the Commission as described in section 33 [40] of this regulation, the Commission will, as soon as is practicable~~

after the expiration of the 10 [~~15~~]-day period set forth in that section, schedule a public meeting to hear the request for reconsideration of each such grant application.

Sec. 35 [~~42~~]. Not later than 30 days after holding the public meeting described in section 34 [~~41~~] of this regulation, the Commission will:

1. Issue a final decision on each request for reconsideration that it receives pursuant to section 33 [~~40~~] of this regulation; and

2. Post on its Internet website the final decision.

Sec. 36 [~~43~~]. After a grant is awarded, the Commission will monitor, evaluate and assist in the carrying out of the grant and the progress and completion of the project in accordance with sections 37 [~~44~~] to 42 [~~51~~], inclusive, of this regulation.

Sec. 37 [~~44~~]. 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. 38 [~~45~~]. To enter into a contract with a grantee for the completion of a proposed project, as referenced in section 37 [~~44~~] of this regulation, the Commission will send a draft of the contract to the grantee by certified mail, return receipt requested. 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. 46.—Costs charged by the Commission to a grantee to pay the Commission's expenses in administering, monitoring and supervising the grant:~~

~~—1. Must not exceed 10 percent of the amount of the grant; and~~

~~—2. Including any other administrative costs, must not exceed the limit set forth in paragraph (a) of subsection 3 of NRS 490.069.]~~

Sec. 39 [47]. A contract entered into between the Commission and a grantee, as referenced in section 37 [44] 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. 40 [48]. A contract entered into between the Commission and a grantee, as referenced in section 37 [44] 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 [date on which the contract] ~~is~~ provided to the grantee.

~~[Sec. 49.—1. Except as otherwise provided in subsection 2, a contract entered into between the Commission and a grantee, as referenced in section 44 of this regulation, must provide that grant funds will be paid from the Commission to the grantee only on the basis of reimbursement, pursuant to which the grantee pays the costs of the project up front, and the Commission reimburses the grantee for allowable costs.~~

~~2.—The provisions of subsection 1 do not prohibit the Commission, for good cause shown, from directly disbursing grant funds to suppliers and other merchants to pay the cost of equipment, materials, supplies and other such costs as the Commission may deem appropriate.]~~

Sec. 41[50]. 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. 42[51]. 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.