

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

LCB File No. R122-20

September 29, 2021

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

AUTHORITY: §§ 1-30, NRS 490.068.

A REGULATION relating to off-highway vehicles; revising provisions governing the issuance of grants from the Account for Off-Highway Vehicles; revising provisions relating to applications for such grants; revising provisions governing the supervision of projects funded by such grants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates: (1) the Off-Highway Vehicles Program in the State Department of Conservation and Natural Resources; and (2) the Commission on Off-Highway Vehicles in the Department. (NRS 232.1585, 490.067) Existing law authorizes the Commission to award grants of money from the Account for Off-Highway Vehicles to fund certain projects related to off-highway vehicles. (NRS 490.068, 490.069) The Commission is required to adopt regulations setting forth who may apply for such grants and the manner in which a grant application may be submitted. (NRS 490.068) Existing regulations establish the procedure to be used by the Commission to award grants and the requirements for the supervision of projects for which a grant has been awarded. (NAC 490.127-490.1465) **Sections 2 and 3** of this regulation define necessary terms. **Sections 9, 11, 12, 17, 19 and 23-28** of this regulation transfer certain responsibilities regarding the awarding of grants and supervision of projects from the Commission to the Program. **Section 4** of this regulation requires the Program to monitor funded projects to ensure that maintenance is occurring in accordance with the grant agreements.

Section 13 of this regulation requires a person who seeks to apply for a grant for a project on public land to obtain a letter of support for impacting the land from the governmental entity that has jurisdiction over the land. **Section 14** of this regulation requires a person who seeks to apply for a grant for a project on private land to have an interest in the real property on the private land sufficient to operate and maintain the project for a period of at least 25 years or for the normal life of the project, whichever is longer.

Section 15 of this regulation requires a grant application to comply with the provisions of the applicable request for grant applications issued by the Program.

Existing regulations require a grant application to include evidence that the applicant has consulted and obtained approval for the proposed project from each appropriate federal, state or local governmental entity. (NAC 490.137) **Section 16** of this regulation requires an applicant to

include evidence that the applicant has consulted and obtained approval for the proposed project from each appropriate private entity as well.

Existing regulations establish certain information which must be included in a request for grant applications. (NAC 490.1385) **Section 19** of this regulation requires certain additional information to be included in the request.

Section 27 of this regulation requires a grantee to show due diligence in moving forward with a project for which a grant was received and authorizes the Program to terminate the grant agreement upon 30 days' written notice if the grantee fails to do so.

Section 29 of this regulation requires a grantee to submit quarterly reports and coordinate a final inspection of the project. **Section 29** also requires the Program, if it finds that a project has not been completed satisfactorily, to withhold final payment for the project until the project is completed satisfactorily.

Existing regulations require the Commission to appoint a grant scoring committee to review and score applications for off-highway vehicle grants with the assistance of the Office of Grant Procurement, Coordination and Management in the Department of Administration. (NAC 490.139-490.1405) **Sections 5, 20-22 and 30** of this regulation remove references to the grant scoring committee and the Office of Grant Procurement, Coordination and Management and instead require the Program to review and rank grant applications with the input of a technical advisory committee formed by the Director of the State Department of Conservation and Natural Resources and submit the ranked applications to the Commission.

Section 1. Chapter 490 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Program” means the Off-Highway Vehicles Program created by NRS 232.1585.*

Sec. 3. *“Technical advisory committee” means a committee formed by the Director of the State Department of Conservation and Natural Resources pursuant to NRS 232.1585.*

Sec. 4. 1. *The Program shall monitor funded projects on a 5-year cycle to ensure maintenance of the projects in accordance with the grant agreements.*

2. To meet the monitoring requirement, the Program may request that grantees submit an independent, third-party report demonstrating how the project is being operated and maintained.

Sec. 5. *The technical advisory committee shall provide input to the Program on the scoring of grant applications based on the merit of the applications and any funding priorities identified by the Commission during its public meetings.*

Sec. 6. NAC 490.127 is hereby amended to read as follows:

490.127 As used in NAC 490.127 to ~~490.1465,~~ **490.146**, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 490.1275 to 490.133, inclusive, *and sections 2 and 3 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 7. NAC 490.129 is hereby amended to read as follows:

490.129 “Grant” means money ~~disbursed~~ **awarded** by the Commission *to be disbursed* 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. 8. NAC 490.130 is hereby amended to read as follows:

490.130 “Grantee” means an applicant who ~~applies successfully to~~ **is awarded a grant by** the Commission . ~~for a grant.~~

Sec. 9. NAC 490.131 is hereby amended to read as follows:

490.131 “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. 10. NAC 490.1325 is hereby amended to read as follows:

490.1325 “Project” means a project described in ~~subparagraph~~ **subparagraphs (1) to (9), inclusive**, of paragraph ~~(b)~~ **(c)** of subsection ~~3~~ **2** of NRS 490.069.

Sec. 11. NAC 490.133 is hereby amended to read as follows:

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

Sec. 12. NAC 490.1335 is hereby amended to read as follows:

490.1335 From time to time, within the limits of available money and the limits imposed by NRS 490.069, the ~~{Commission will}~~ *Program shall* issue requests for grant applications.

Sec. 13. NAC 490.135 is hereby amended to read as follows:

490.135 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}~~ *obtain* a ~~{written agreement to use}~~ *letter of support for impacting* 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. 14. NAC 490.1355 is hereby amended to read as follows:

490.1355 1. At the time a person seeks to apply to the Commission for a grant ~~{}~~ *to carry out a project on private land*, 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 ~~{}~~ *on private land*, 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 *for a period of not less than 25 years* after its completion ~~{}~~ *or for the normal life of the project, whichever is longer.*

Sec. 15. NAC 490.1365 is hereby amended to read as follows:

490.1365 An application that is submitted to the Commission to apply for a grant must comply with the provisions of NAC 490.137 and 490.1375 ~~{}~~ *and the applicable request for grant applications issued pursuant to NAC 490.1335.*

Sec. 16. NAC 490.137 is hereby amended to read as follows:

490.137 An application must include verifiable evidence, in writing : ~~{and satisfactory to the Commission;}~~

1. Setting forth that each appropriate *private entity or* 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 *private entity or* federal, state or local governmental agency, and any information or advice provided by any agency, group or natural person.

Sec. 17. NAC 490.1375 is hereby amended to read as follows:

490.1375 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.

Sec. 18. NAC 490.138 is hereby amended to read as follows:

490.138 Applications must be requested, publicized and evaluated and approved or rejected in accordance with NAC 490.1385 to ~~[490.143,]~~ **490.1415**, inclusive.

Sec. 19. NAC 490.1385 is hereby amended to read as follows:

490.1385 ~~{When the Commission issues}~~ **The Program shall ensure that** a request for grant applications **issued** 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, the Office of Grant Procurement, Coordination and Management and the nonvoting members will}~~ **Program shall** not score or take further action with respect to an application that is not complete by the deadline for accepting applications.
 - (d) **The types of projects pursuant to paragraph (c) of subsection 2 of NRS 490.069 for which the grant may be used.**
 - (e) **The specific factors and criteria that will be used to evaluate and score applications.**
 - (f) **The form of any specific grant agreement that a successful applicant will be required to enter into with the Program.**
 - (g) All details and definitions that are required for an application to be considered complete.
 - ~~{(e)}~~ **(h)** 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,]~~ **490.146**, inclusive.

Sec. 20. NAC 490.140 is hereby amended to read as follows:

490.140 ~~{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.}~~ *If an incomplete or noncompliant grant application is submitted to the Program, the Program may return the application to the applicant for correction. The Program shall not accept a corrected application submitted after the final deadline for accepting applications.*

Sec. 21. NAC 490.1405 is hereby amended to read as follows:

490.1405 ~~{When the Office of Grant Procurement, Coordination and Management receives the scored applications from the Grant Scoring Committee pursuant to subsection 2 of NAC 490.140, the Office will:}~~ *The Program shall:*

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;}~~ *based on input from the technical advisory committee;* 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. 22. NAC 490.141 is hereby amended to read as follows:

490.141 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. 23. NAC 490.1415 is hereby amended to read as follows:

490.1415 The ~~{Commission will}~~ *Program shall* 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.}~~

Sec. 24. NAC 490.1435 is hereby amended to read as follows:

490.1435 After a grant is awarded, the ~~{Commission will:}~~ *Program shall:*

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}~~ *any* conditions of the ~~{contract}~~ *grant agreement* described in NAC 490.144.

2. Monitor ~~{,}~~ *and* evaluate ~~{and assist in}~~ the *progress in* carrying out ~~{of}~~ the grant and the ~~{progress and}~~ completion of the project in accordance with NAC 490.144 to ~~{490.1465.}~~ *490.146, inclusive.*

Sec. 25. NAC 490.144 is hereby amended to read as follows:

490.144 ~~{Except as otherwise provided in this section, after awarding}~~ *After* a grant ~~{}~~ *is awarded*, the ~~{Commission will}~~ *Program shall* enter into a ~~{contract}~~ *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. 26. NAC 490.1445 is hereby amended to read as follows:

490.1445 ~~{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*, not later than 90 days after the date on which the grantee receives the draft of the ~~{contract,}~~ *grant agreement from the Program*, 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. *The Program shall transmit a notice to the grantee, electronically or by mail, once the Program has executed and finalized the grant agreement.*

Sec. 27. NAC 490.145 is hereby amended to read as follows:

490.145 Unless otherwise expressly approved by the ~~{Commission, a contract entered into between the Commission and}~~ *Program*, a grantee ~~{, as referenced in NAC 490.144, 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.}~~ *must show due diligence in*

moving forward with the project within 90 days after the Notice to Proceed is provided to the grantee as described in subsection 1 of NAC 490.1435. If the grantee fails to demonstrate such due diligence, the Program may terminate the grant agreement after giving 30 days' written notice to the grantee of its intention to do so.

Sec. 28. NAC 490.1455 is hereby amended to read as follows:

490.1455 A ~~contract entered into between the Commission and a grantee, as referenced in NAC 490.144,~~ **grant agreement** 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. 29. NAC 490.146 is hereby amended to read as follows:

490.146 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.]~~ **submit quarterly reports regarding the project, as directed in the request for grant applications issued pursuant to NAC 490.1335, and shall coordinate a final inspection of the project by the Program before requesting final payment.**

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

- (a) The ~~{Commission will}~~ *Program shall* 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 Program shall withhold the final payment until the project has been completed satisfactorily; and*
- (c) The grantee, after performing the acts that the ~~{Commission}~~ *Program* indicates must be performed, shall resubmit ~~{its written notice of completion}~~ *the final reimbursement request and quarterly report* to the ~~{Commission.}~~ *Program.*

Sec. 30. NAC 490.1295, 490.1305, 490.1315, 490.139, 490.1393, 490.1395, 490.142, 490.1425, 490.143 and 490.1465 are hereby repealed.

TEXT OF REPEALED SECTIONS

490.1295 “Grant Scoring Committee” defined. “Grant Scoring Committee” means the committee appointed by the Commission pursuant to subsection 1 of NAC 490.1393 to score applications.

490.1305 “Nonvoting advisers” defined. “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.

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

490.139 Submittal of application for grant to Office.

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.

490.1393 Grant Scoring Committee: Appointment of members; information included in grant request.

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.

490.1395 Grant Scoring Committee: Review of application for grant by nonvoting advisers. 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.

490.142 Submittal of requests. 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.

490.1425 Public meeting to hear requests. 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.

490.143 Final decision on requests; posting of decisions on Internet website. 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.

490.1465 Annual report. 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.

