

**ADOPTED REGULATION OF THE
STATE EMERGENCY RESPONSE COMMISSION**

LCB File No. R120-08

Effective December 17, 2008

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

AUTHORITY: §§1-18 and 20, NRS 459.735 and 459.740; §19, NRS 459.740.

A REGULATION relating to emergency planning; revising provisions concerning grants issued by the State Emergency Response Commission to local emergency planning committees and state agencies; repealing provisions requiring a state agency which receives an allocation of money from the Commission to submit an annual progress report to the Commission; and providing other matters properly relating thereto.

Section 1. NAC 459.99135 is hereby amended to read as follows:

459.99135 Pursuant to NRS 459.742 and in accordance with the provisions set forth in NAC 459.99138 to 459.99146, inclusive, the Commission may:

1. Use the fees collected by the Commission pursuant to NAC 459.9918 to 459.991825, inclusive, and deposited in the Contingency Account for Hazardous Materials to issue grants to local emergency planning committees for the operating, planning, training and equipment needs of the local emergency planning committees to carry out the emergency plans of the local emergency planning committees;

2. Use the fees collected pursuant to subsection 4 of NRS 482.379365 and deposited in the Contingency Account for Hazardous Materials to issue grants to local emergency planning committees for the ~~[operating;]~~ planning, training, *supply* and equipment needs of the local emergency planning committees to ~~[carry out the emergency plans of the local emergency planning committees;]~~ *support preparedness to combat terrorism;* and

3. Use any money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 and deposited in the Contingency Account for Hazardous Materials to issue grants to local emergency planning committees for the planning and training needs of the local emergency planning committees to carry out the emergency plans of the local emergency planning committees.

Sec. 2. NAC 459.99136 is hereby amended to read as follows:

459.99136 1. ~~Before a~~ A local emergency planning committee *or an authorized representative acting on behalf of a local emergency planning committee* may submit an application for a grant pursuant to the provisions of NAC 459.99138 to 459.99146, inclusive. ~~the~~ *The Commission may approve the application for the grant but will not provide funding for the grant unless the* local emergency planning committee ~~must meet to determine and approve, based upon the needs of its emergency planning district,~~ *has met and approved* the amount of funding ~~it will request~~ *requested* in the application.

2. In submitting an application for a grant pursuant to NAC 459.99138 to 459.99146, inclusive, a local emergency planning committee may request funding to provide planning, training and equipment to certain persons and entities, including, without limitation:

- (a) State and local entities;
- (b) Private companies;
- (c) Nonprofit corporations;
- (d) Public utilities owned and operated by political subdivisions of the State; and
- (e) General improvement districts involved in preventing and responding to incidents involving hazardous materials or mitigating such incidents.

Sec. 3. NAC 459.99138 is hereby amended to read as follows:

459.99138 If a local emergency planning committee is in compliance with all applicable provisions of the Nevada Revised Statutes and the Nevada Administrative Code relating to local emergency planning committees and the official policies of the Commission, the Commission may provide a portion of the money from fees collected by the Commission pursuant to ~~[subsection 4 of NRS 482.379365 and]~~ NAC 459.9918 to 459.991825, inclusive, to the local emergency planning committee for reasonable and appropriate operating costs of the local emergency planning committee, as determined by the Commission, including, without limitation, office supplies, overhead expenses and costs related to meetings of the local emergency planning committee.

Sec. 4. NAC 459.99139 is hereby amended to read as follows:

459.99139 A local emergency planning committee may, in its application for a grant from the Commission, request grant money from the fees collected by the Commission pursuant to ~~[subsection 4 of NRS 482.379365 and]~~ NAC 459.9918 to 459.991825, inclusive, for planning that is necessary to carry out the emergency plan of the local emergency planning committee ~~[]~~ *or pursuant to subsection 4 of NRS 482.379365 for planning to support preparedness to combat terrorism.*

Sec. 5. NAC 459.99141 is hereby amended to read as follows:

459.99141 1. Except as otherwise provided in subsection 2, a local emergency planning committee may, in its application for a grant from the Commission, request grant money from the fees collected by the Commission pursuant to ~~[subsection 4 of NRS 482.379365 and]~~ NAC 459.9918 to 459.991825, inclusive, for training that is necessary to carry out the emergency plan of the local emergency planning committee ~~[]~~ *or pursuant to subsection 4 of NRS 482.379365 for training to support preparedness to combat terrorism.*

2. ~~[A]~~ *Except for grant money to attend a training conference, a* local emergency planning committee may not request grant money from the Commission pursuant to subsection 1 ~~[to]~~ :

(a) *To pay for training that is necessary to carry out the emergency plan of the local emergency planning committee* unless the local emergency planning committee previously submitted a request to the State Fire Marshal to participate in a training program provided by the State Fire Marshal pursuant to NRS 477.039 and the State Fire Marshal declined to provide such training.

(b) *To pay for training to support preparedness to combat terrorism unless the local emergency planning committee previously submitted a request to the Division of Emergency Management of the Department of Public Safety to participate in a training program provided by the Division and the Division declined to provide such training.*

Sec. 6. NAC 459.99142 is hereby amended to read as follows:

459.99142 1. A local emergency planning committee may, in its application for a grant from the Commission for planning or training, request grant money from the fees collected by the Commission pursuant to ~~[subsection 4 of NRS 482.379365 and]~~ NAC 459.9918 to 459.991825, inclusive, for services to be provided by a consultant or contractor which relate to planning or training to carry out the emergency plan of the local emergency planning committee ~~[]~~ *or pursuant to subsection 4 of NRS 482.379365 for planning or training to support preparedness to combat terrorism.*

2. A request made pursuant to subsection 1 must include, without limitation:

(a) ~~[The]~~ *Two or more competitive bids that were submitted to the local emergency planning committee by consultants or contractors;*

(b) *An itemized list of the* scope of the services to be provided by the consultant or contractor ~~[-]~~ *who was selected by the local emergency planning committee;* and

~~[(b) A]~~

(c) *An itemized* quote for the costs of the services to be provided by the consultant or contractor . ~~[-, which must not exceed \$450 per day.]~~

Sec. 7. NAC 459.99143 is hereby amended to read as follows:

459.99143 1. A local emergency planning committee may, in its application for a grant from the Commission, request grant money from the fees collected by the Commission pursuant to ~~[-subsection 4 of NRS 482.379365 and]~~ NAC 459.9918 to 459.991825, inclusive, for equipment that is necessary to carry out the emergency plan of the local emergency planning committee ~~[-]~~ *or pursuant to subsection 4 of NRS 482.379365 for equipment to support preparedness to combat terrorism.*

2. Except as otherwise provided in this subsection, the request for equipment must be for equipment designated on the list of appropriate equipment for matters relating to emergency response of hazardous materials *or to support preparedness to combat terrorism* that is provided by the Commission. The local emergency planning committee may include a request for equipment not designated on the list provided by the Commission if the local emergency planning committee includes a quote for the cost of the equipment in the application.

Sec. 8. NAC 459.99145 is hereby amended to read as follows:

459.99145 1. Except as otherwise provided in subsection 2, a local emergency planning committee may, in its application for a grant from the Commission, request grant money from the money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. §

11005 for training that is necessary to carry out the emergency plan of the local emergency planning committee.

2. ~~[A]~~ *Except for money to attend a training conference, a* local emergency planning committee may not request grant money from the Commission pursuant to subsection 1 to pay for training unless the local emergency planning committee previously submitted a request to the State Fire Marshal to participate in a training program provided by the State Fire Marshal pursuant to NRS 477.039 and the State Fire Marshal declined to provide such training.

Sec. 9. NAC 459.99146 is hereby amended to read as follows:

459.99146 1. A local emergency planning committee may, in its application for a grant from the Commission for planning or training, request grant money from the money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 for services to be provided by a consultant or contractor which relate to planning or training to carry out the emergency plan of the local emergency planning committee.

2. A request made pursuant to subsection 1 must include, without limitation:

(a) ~~[The]~~ *Two or more competitive bids that were submitted to the local emergency planning committee by consultants or contractors;*

(b) *An itemized list of the* scope of the services to be provided by the consultant or contractor ~~[;]~~ *who was selected by the local emergency planning committee;* and

~~[(b)–A]~~

(c) *An itemized* quote for the costs of the services of the consultant or contractor . ~~[, which must not exceed \$450 per day.]~~

Sec. 10. NAC 459.99156 is hereby amended to read as follows:

459.99156 1. If circumstances pertaining to the use of grant money change after the award of a grant to a local emergency planning committee, the local emergency planning committee ~~may~~ *shall* submit to the Commission a request, on a form approved by the Commission, to revise the use of the grant money for another purpose.

2. ~~Except as otherwise provided in subsection 4, if~~ *If* the request to revise the use of grant money constitutes a change of 10 percent or more of the total amount of the grant or constitutes a significant change to the scope of the intent of the original grant application, before the local emergency planning committee may carry out the change, the request must be:

(a) Approved by the Chairman of the Funding Committee; and

(b) If required by the Chairman of the Funding Committee, reviewed and approved by the Funding Committee on the record at a meeting of the Funding Committee.

3. The Chairman of the Funding Committee will approve or deny a request described in subsection 2 within 5 working days after receiving the request. If applicable, the Funding Committee will, within 5 working days, schedule a ~~hearing~~ *meeting* to review the request. The local emergency planning committee will be notified of any action taken concerning the request within 5 working days after the action is taken.

~~[4.—A local emergency planning committee may appeal any action taken pursuant to this section to the Commission. If a local emergency planning committee appeals an action pursuant to this subsection, the local emergency planning committee may carry out a change described in subsection 2 upon approval by the Commission on the record at a meeting of the Commission.]~~

Sec. 11. NAC 459.99161 is hereby amended to read as follows:

459.99161 Pursuant to paragraph (d) of subsection 2 of NRS 459.735 and in accordance with the provisions set forth in NAC 459.99163 to 459.99167, inclusive, the Commission may:

1. Allocate the fees collected by the Commission pursuant to NAC 459.9918 to 459.991825, inclusive, and deposited in the Contingency Account for Hazardous Materials to state agencies for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials;

2. Allocate the fees collected pursuant to subsection 4 of NRS 482.379365 and deposited in the Contingency Account for Hazardous Materials to state agencies for the ~~operating,~~ planning, training, *supply* and equipment needs of state and local personnel to ~~respond to accidents and incidents involving hazardous materials;~~ *support preparedness to combat terrorism;* and

3. Allocate any money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 and deposited in the Contingency Account for Hazardous Materials to state agencies for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials.

Sec. 12. NAC 459.99163 is hereby amended to read as follows:

459.99163 1. Except as otherwise provided in subsection 2, a state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request money from the fees collected by the Commission pursuant to ~~subsection 4 of NRS 482.379365 and~~ NAC 459.9918 to 459.991825, inclusive, for training state and local personnel to respond to accidents and incidents involving hazardous materials ~~or pursuant to subsection 4 of NRS 482.379365~~ *for training to support preparedness to combat terrorism.*

2. ~~A~~ *Except for an allocation of money to attend a training conference, a* state agency may not request money from the Commission pursuant to subsection 1 ~~to~~ :

(a) To pay for training state and local personnel to respond to accidents and incidents involving hazardous materials unless the state agency previously submitted a request to the

State Fire Marshal to participate in a training program provided by the State Fire Marshal pursuant to NRS 477.039 and the State Fire Marshal declined to provide such training.

(b) To pay for training to support preparedness to combat terrorism unless the state agency previously submitted a request to the Division of Emergency Management of the Department of Public Safety to participate in a training program provided by the Division and the Division declined to provide such training.

Sec. 13. NAC 459.99164 is hereby amended to read as follows:

459.99164 1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request money from the fees collected by the Commission pursuant to ~~subsection 4 of NRS 482.379365 and~~ NAC 459.9918 to 459.991825, inclusive, for services to be provided by a consultant or contractor which relate to the training of state and local personnel to respond to accidents and incidents involving hazardous materials ~~or pursuant to subsection 4 of NRS 482.379365 for training to support preparedness to combat terrorism.~~

2. A request made pursuant to subsection 1 must include, without limitation:

(a) ~~The~~ *Two or more competitive bids that were submitted to the state agency by consultants or contractors;*

(b) *An itemized list of the* scope of the services to be provided by the consultant or contractor ~~who was selected by the state agency;~~ and

~~(b)–A]~~

(c) *An itemized* quote for the costs of the services to be provided by the consultant or contractor . ~~which must not exceed \$450 per day.~~

Sec. 14. NAC 459.99165 is hereby amended to read as follows:

459.99165 1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request money from the fees collected by the Commission pursuant to ~~[subsection 4 of NRS 482.379365 and]~~ NAC 459.9918 to 459.991825, inclusive, for equipping state and local personnel to respond to accidents and incidents involving hazardous materials ~~[.]~~ *or pursuant to subsection 4 of NRS 482.379365 for equipment to support preparedness to combat terrorism.*

2. Except as otherwise provided in this subsection, the request for equipment must be for equipment designated on the list of appropriate equipment for matters relating to emergency response of hazardous materials *or to support preparedness to combat terrorism* that is provided by the Commission. The state agency may include a request for equipment not designated on the list provided by the Commission if the state agency includes a quote for the cost of the equipment in the application.

Sec. 15. NAC 459.99166 is hereby amended to read as follows:

459.99166 1. Except as otherwise provided in subsection 2, a state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request an allocation from the money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 for training state and local personnel to respond to accidents or incidents involving hazardous materials.

2. ~~[A]~~ *Except for grant money to attend a training conference, a* state agency may not request money from the Commission pursuant to subsection 1 to pay for training unless the state agency previously submitted a request to the State Fire Marshal to participate in a training program provided by the State Fire Marshal pursuant to NRS 477.039 and the State Fire Marshal declined to provide such training.

Sec. 16. NAC 459.99167 is hereby amended to read as follows:

459.99167 1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request an allocation from the money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 for services to be provided by a consultant or contractor which relate to *planning or* training state and local personnel to respond to accidents and incidents involving hazardous materials.

2. A request made pursuant to subsection 1 must include, without limitation:

(a) ~~[[The]]~~ *Two or more competitive bids that were submitted to the state agency by consultants or contractors;*

(b) *An itemized list of the* scope of the services to be provided by the consultant or contractor ~~[[~~ *who was selected by the state agency;* and

~~[[b) A]]~~

(c) *An itemized* quote for the costs of the services to be provided by the consultant or contractor . ~~[[, which must not exceed \$450 per day.]]~~

Sec. 17. NAC 459.99171 is hereby amended to read as follows:

459.99171 Before any money may be distributed by the Commission to a state agency for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials ~~[[~~ *or to support preparedness to combat terrorism,* the state agency must complete and submit to the Commission the following forms provided by the Commission:

1. The Certified Assurances Form indicating that the state agency agrees to comply with the rules and regulations governing the allocation of money by the Commission. The form must be signed by the head of the state agency or his designee.

2. The Compliance Certification Form indicating that the state agency has complied with the administrative requirements for an allocation of money from the Contingency Account for Hazardous Materials.

Sec. 18. NAC 459.99177 is hereby amended to read as follows:

459.99177 1. If circumstances pertaining to the use of money change after the Commission approves the allocation of money to a state agency , ~~for training or equipping state and local personnel to respond to accidents and incidents involving hazardous materials,~~ the state agency ~~may~~ *shall* submit to the Commission a request, on a form approved by the Commission, to revise the use of the money for another purpose.

2. ~~Except as otherwise provided in subsection 4, if~~ *If* the request to revise the use of money constitutes a change of 10 percent or more of the total amount of the money allocated or constitutes a significant change to the scope of the intent of the original application, before the state agency may carry out the change, the request must be:

(a) Approved by the Chairman of the Funding Committee; and

(b) If required by the Chairman of the Funding Committee, reviewed and approved by the Funding Committee on the record at a meeting of the Funding Committee.

3. The Chairman of the Funding Committee will approve or deny a request described in subsection 2 within 5 working days after receiving the request. If applicable, the Funding Committee will, within 5 working days, schedule a ~~hearing~~ *meeting* to review the request. The state agency will be notified of any action taken concerning the request within 5 working days after the action is taken.

~~[4.—A state agency may appeal any action taken pursuant to this section to the Commission. If the state agency appeals an action pursuant to this subsection, the state agency may carry out a~~

~~change described in subsection 2 upon approval by the Commission on the record at a meeting of the Commission.]~~

Sec. 19. NAC 459.99189 is hereby amended to read as follows:

459.99189 1. If a local emergency planning committee or a state agency is not satisfied with a ~~[grant-related]~~ decision by the Commission or by a staff member of the Commission, the local emergency planning committee or state agency may file an appeal with the Executive Director of the Commission. The appeal must be filed in writing, including the grounds for the appeal and any supporting documentation, within 35 days after the receipt of notice by the local emergency planning committee or state agency of the original decision.

2. Except as otherwise provided in this subsection, after the receipt of an appeal pursuant to this section, the Executive Director or his designee shall present a report to the Commission at its next meeting. If an appeal is received after the deadline for placing items on the agenda for the next meeting of the Commission, the Executive Director or his designee shall present the report to the Commission at its next following meeting. The report presented to the Commission will include the grounds for the appeal, supporting documentation, information concerning the claim and recommendations for action by the Commission.

3. Not later than 10 days before the date of the meeting in which an appeal will be heard, the Executive Director or his designee shall notify the local emergency planning committee or state agency in writing of the date, time and place of the meeting.

4. The local emergency planning committee or state agency may appear in person to present the reason for appeal.

5. The Commission may render a decision on the claim at the time of the meeting or may defer action to a future meeting if additional information is required for review.

6. The Executive Director or his designee shall mail to the participant by first-class mail notice of the decision of the Commission within 15 days after the decision is rendered.

7. A decision by the Commission regarding an appeal is final.

Sec. 20. NAC 459.99176 is hereby repealed.

TEXT OF REPEALED SECTION

459.99176 Annual progress reports.

1. On or before July 31 of each year, a state agency which receives an allocation of money from the Commission for training or equipping state and local personnel to respond to accidents and incidents involving hazardous materials shall submit an annual progress report to the Commission, on a form approved by the Commission, concerning the money allocated to the state agency.

2. An annual progress report submitted pursuant to subsection 1 must include, without limitation:

(a) The activities performed during the year relating to the allocation received from the Commission; and

(b) Information concerning the progress of the state agency in achieving the goals and objectives outlined in its application for an allocation of money.

3. The Commission will review each annual progress report to ensure that the activities of the state agency are in compliance with the goals and objectives outlined in its application for an allocation of money.

4. If the state agency fails to submit the annual progress report on or before July 31 of each year, the Commission may withhold funding from the state agency in the future.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R120-08**

The State Emergency Response Commission adopted regulations assigned LCB File No. R120-08 which pertain to chapter 459 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

The State Emergency Response Commission (SERC) seeks to revise current administrative codes governing the way it does business. The topics of the revisions to the regulations relate to clarification of grant management.

The revisions are made to include current policies in the regulations. These revisions are not a change from current practices.

The agencies affected by the grant management regulations are the Local Emergency Planning Committees (LEPCs), one in each county, as they are the grantees/subgrantees. State agencies which are awarded funds are also affected by the regulations.

Description of how comment from public and affected businesses was solicited

Public comment on these regulations was solicited by sending agendas of the NAC Workshop and the Notice of Public Hearing to the chairmen of all LEPCs and to state agencies involved in these processes. Copies of the agendas were also sent to all SERC members. The agendas were posted at the SERC office, the State Capitol Building, the Grant Sawyer State Building, the SERC website and the place of the proceedings. The Notice of Public Hearing was also posted at the main public library in each county. The appropriate copies were filed with the State Library.

Number of persons attending meetings and submission of written statements and summary of response from public and affected business

The Workshop was held September 3, 2008. In attendance were one SERC member and SERC staff. No member of the regulated community or the general public was present to comment.

The Public Hearing was held October 9, 2008. In attendance were one SERC member, four members of the public and SERC staff. No discussions or comments were offered regarding the proposed regulations. There was no public discussion or objections to the proposed regulations.

An opportunity to furnish written statements was provided with the due date of October 1, 2008. No written statements were received by the SERC.

Summary of response from public and affected businesses

There was no response from the public or the LEPCs.

Explanation of how to obtain a copy of the summary

Interested persons may obtain a copy of the minutes of these proceedings by contacting the State Emergency Response Commission at mailing address: 2621 Northgate Lane, Ste. 10, Carson

City, NV 89706; phone: 775-687-6973; or e-mail: Suzanne Adam, Administrative Assistant, at sadam@dps.state.nv.us.

Summary of reasons for adopting regulation without change

The SERC conducted a workshop and public hearing on the proposed changes to the NAC. No public comments were offered. The meeting to adopt the proposed changes was held on October 9, 2008. With no comments, recommended changes or objections, the proposed NACs were adopted by the SERC.

Estimated economic effect on public and businesses affected

The proposed changes will not economically affect (adverse or beneficial, immediate or long-term) the public or the LEPCs or state agencies receiving grant funds from the SERC.

Cost of enforcing the regulation

There will be no additional operating costs to enforce these regulations.

Explanation of other regulation which this regulation duplicates

There are no known overlaps or duplications of other state or local governmental agency regulations. There are no known overlaps or duplications of federal regulations.