

Steve Sisolak
Governor



George Togliatti
Director

Sheri Brueggemann
Deputy Director

State Emergency Response Commission

Mike Dzyak
State Fire Marshal

Stewart Facility
107 Jacobsen Way
Carson City, Nevada 89711
Telephone (775) 684-7511 - Fax (775) 684-7519

December 13, 2022

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the State Emergency Response Commission

The State Emergency Response Commission (SERC) will hold a public hearing at 10:30am on December 13, 2022, at 107 Jacobsen Way, Classroom C, Carson City, NV 89711. The purpose of the public hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to Chapter 459 (459.9912 – 459.99189) of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation.

LCB file R059-22P: The proposed regulation is to: define the Legislative Committee, Policy Committee, Radiological Committee; clarification of the Bylaws Committee duties; replacing and/or updating words in text; clarifying and/or simplifying language; and clarification of collection process.

2. Either the terms or the substance of the regulations to be amended or a description of the subjects and issues involved.

Areas in the regulation for amendments are:

Section 1 Chapter 459 - "amended by adding thereto the provisions set forth as sections, 2, 3 and 4 of this regulation"

NAC 459.99121 – "Bylaws Committee"

NAC 4529.99123 – "Emergency Plan"

NAC 459.99132 – "Local emergency planning committees: Administrative duties"

NAC 459.99133 – "Emergency plans: Establishment, review and approval; correction of deficiencies; failure to comply"

NAC 459.99141 – “Requests for money from proceeds of certain fees to pay for training”

NAC 459.99163 – “Requests for money from proceeds of certain fees to pay for training”

NAC 459.99183 – “Failure to pay required fee when due”

NAC 459.99189 – “Appeal of decision of Commission or staff member of Commission”

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include: (a) both adverse and beneficial effects; and (b) both immediate and long-term effects.

The estimated economic effect of the regulation on the business which it is to regulate will have neither adverse nor beneficial effects and neither immediate nor long-term effects. The estimated economic effect of the regulation on the public which it is to regulate will have neither adverse nor beneficial effects and neither immediate nor long-term effects.

4. Methods used by the agency in determining the impact on a small business pursuant to subsection 3 of NRS 233B.0608.

The State Emergency Response Commission has considered the two factors in NRS 233B.0608 (1) and has determined that a Small Business Impact Statement is not required pursuant to NRS 233B.0609 based upon the following:

Any proposed regulation amendments will not impose a direct and significant economic burden upon a small business and will not directly restrict the formation, operation, or expansion of a small business.

The State Emergency Response Commission is statutorily directed by:

NRS 459.738 (1) “.....is hereby created for the purpose of carrying out the provisions of 42 U.S.C. 11001 et seq. and other matters relating thereto.”

NRS 459.740 (1) “Adopt regulations for the purpose of enforcing its responsibilities pursuant to 42 U.S.C. 11001 et seq.”

NRS 459.740 (2) “Accept gifts and grants of money and other revenues for the purpose of enforcing its responsibilities pursuant to 42 U.S.C 1001 et seq.”

NRS 459.742 (1) “Enter into contracts, leases or other agreements or transactions.”

NAC 459.99135 Authority of Commission: Grants of money from Contingency Account for Hazardous Materials. (NRS 459.735, 459.740) Pursuant to NRS 459.742 an in accordance with the provisions set forth in NAC 459.99138 to 459.99146, inclusive, the Commission may: (1), (2), (3) “.....issue grant to local emergency planning committees.....”

NAC 459.99161 Authority of Commission: Allocation of money from Contingency Account for Hazardous Materials. (NRS 459.735, 459.740) 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), (2), (3) “.....Allocate.....to state agencies.....”

5. The estimate cost to the agency for enforcement of the proposed regulation.

There will be no cost to the agency for enforcement of the proposed regulations.

6. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

There are no overlaps or duplications of other state or local governmental agencies or a federal regulation.

7. If the regulation is required pursuant to federal laws, a citation and description of the federal law.

No regulation is required pursuant to federal laws.

8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

No regulation includes provisions which are more stringent than a federal regulation that regulates the same activity.

9. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the State Emergency Response Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form, to State Emergency Response Commission, 107 Jacobsen Way, Carson City, NV 89711. Written submissions must be received by the State Emergency Response Commission on or before December 9, 2022. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the State Emergency Response Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be Amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Amended will be available at the State Emergency Response Commission, 107 Jacobsen Way, Carson City, NV 89711, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against adoption.

This notice of hearing has been posted at the following locations:

State Emergency Response Commission – 107 Jacobsen Way – Carson City
Nevada State Library & Archives – 100 North Stewart Street – Carson City
Grant Sawyer Building – 555 East Washington Street – Las Vegas
Department of Transportation – 123 East Washington Avenue – Las Vegas
Department of Transportation – 1263 Stewart Street – Carson City
Department of Transportation – 1951 Idaho Street – Elko
Department of Transportation – 1401 East Aultman Street – Ely

Carson City Library – 900 North Roop Street – Carson City
Churchill County Library – 553 South Main Street – Fallon
Las Vegas – Clark County Library District – 833 Las Vegas Blvd N – Las Vegas
Douglas County Public Library – 1625 Library Lane – Minden
Elko County Library – 720 Court Street – Elko
Esmeralda County Library – Corner of Crook & 4th Street, PO Box 430 – Goldfield
Eureka County Library – 80 South Monroe Street – Eureka
Humboldt County Library – 85 East 5th Street – Winnemucca
Battle Mountain Branch Library (Lander County) – 625 S Broad St – Battle Mountain
Lincoln County Library – 63 Main Street – Pioche
Lyon County Library System – 20 Nevin Way – Yerington
Mineral County Public Library – 110 1st Street (1st and A) PO Box 1390 – Hawthorne
Pershing County Library – 1125 Central Avenue – Lovelock
Storey County Clerk’s Office – Drawer D – Virginia Street
Tonopah Public Library – 167 South Central Street, PO Box 449 – Tonopah
Washoe County Library System – 301 South Center Street – Reno
White Pine County Library – 950 Campton Street – Ely

Electronically Posted pursuant to NRS 241.020(4)

SERC web site – <http://serc.nv.gov>
Nevada Public Notice Website – <https://notice.nv.gov>
Legislative Council Bureau Website – <https://leg.state.nv.us>

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

LCB File No. R059-22

June 23, 2022

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

AUTHORITY: §§ 1-9 and 13, NRS 459.740; §§ 10 and 11, NRS 459.735 and 459.740; § 12, NRS 459.704 and 459.740.

A REGULATION relating to emergency planning; authorizing the State Emergency Response Commission to establish certain committees; revising provisions related to emergency plans and local emergency planning committees; providing that the Commission will annually review its bylaws; eliminating obsolete references to the Department of Public Safety; providing that the Commission will assign the debt for certain unpaid fees to the State Controller for collection; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the State Emergency Response Commission to adopt regulations for the purpose of enforcing its responsibilities pursuant to federal law. (NRS 459.740) Existing federal law requires the Commission to fulfill various duties related to emergency response, including the appointment, supervision and coordination of local emergency planning committees and the establishment of procedures for receiving and processing information. (42 U.S.C. §§ 11001 et seq.)

Section 2 of this regulation authorizes the Commission to establish a legislative committee to assist the Commission in matters concerning changes to federal and state laws and regulations which relate to the responsibilities of the Commission.

Section 3 of this regulation authorizes the Commission to establish a policy committee to assist the Commission in: (1) matters concerning policy, including, without limitation, implementing or amending policies that are consistent with federal and state laws and regulations and are relevant to the Commission; and (2) implementing or complying with any audit findings that affect the Commission.

Section 4 of this regulation authorizes the Commission to establish a radiological committee to assist the Commission in supporting state agencies, local governments and tribal governments in implementing provisions of the State of Nevada Preventative Radiological and Nuclear Detection Concept of Operations and the State of Nevada Radiological and Nuclear Detection Sustainment Plan.

Existing regulations provide that, in accordance with the requirements of federal law, the Commission will: (1) designate emergency planning districts in this State to facilitate the preparation and implementation of emergency plans; and (2) establish a local emergency

planning committee for an emergency planning district. Existing regulations further require a local emergency planning committee to establish an emergency plan that complies with certain guidelines and annually submit such emergency plan to the Planning and Training Subcommittee. Through its Planning and Training Subcommittee, the Commission will annually review the emergency plan of each local emergency district and approve the emergency plan if it complies with certain guidelines for emergency plans. (NAC 459.99131, 459.99133) **Section 9** of this regulation provides instead that a local emergency planning committee must annually submit the emergency plan to the Commission for the Planning and Training Subcommittee to review and approve.

Existing regulations define the term “emergency plan” to mean an emergency plan established by a local emergency planning committee to respond to an emergency caused by the release of a hazardous material. (NAC 459.99123) **Section 6** of this regulation provides instead that the term “emergency plan” means a plan established by a local emergency planning committee to respond to an emergency caused by the release of a hazardous material.

Existing regulations provide that the Commission, through its Bylaws Committee, will annually review the bylaws of each local emergency planning committee to ensure compliance with federal and state laws and regulations. (NAC 459.99131) **Section 7** of this regulation provides that the Commission, through its Bylaws Committee, will annually review such bylaws to also ensure compliance with any other requirements set forth by the Commission. **Sections 5 and 7** of this regulation provide that the Commission, through its Bylaws Committee, will annually review the bylaws of the Commission.

Existing regulations require each local emergency planning committee to: (1) annually submit to the Bylaws Committee a copy of its bylaws and a list of its members; and (2) submit to the Commission a copy of the agenda and minutes of every meeting. (NAC 459.99132) **Section 8** of this regulation requires instead that each local emergency planning committee: (1) annually submit to the Commission a copy of its bylaws and a list of its members; and (2) submit to the Commission a copy of the agenda and minutes of every meeting at the same time the agenda and minutes are each made available to the public.

Existing law creates the Division of Emergency Management within the Office of the Military. (NRS 414.040) **Sections 10 and 11** of this regulation eliminate obsolete references to the Division being within the Department of Public Safety.

Existing regulations set forth: (1) fees for certain services and regulatory activities of the Commission; (2) fees required for facilities in which extremely hazardous material is stored; (3) fees for extremely hazardous material manufactured for transport; and (4) reporting fees for submission of a toxic release form. (NAC 459.9918, 459.99181, 459.99182, 459.991825) Existing regulations further provide that if a person fails to pay such fees, the Commission will send a written notice to the person. If the person fails to pay such fees within 90 days after receiving such written notification, the Commission will submit the matter to the Attorney General to initiate proceedings against the person, as the failure to pay such fees is a misdemeanor. (NRS 459.775, NAC 459.99183) **Section 12** of this regulation provides that the Commission will also assign the debt for collection of the unpaid fees to the State Controller.

Existing regulations set forth a process for a local emergency planning committee or state agency to file an appeal of a decision by the Commission or by a staff member of the Commission with the Executive Director of the Commission. (NAC 459.99189) **Section 13** of this regulation provides instead that such an appeal may be filed with the Administrator of the Commission.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *The Commission may establish a legislative committee to assist the Commission in matters concerning changes to federal and state laws and regulations which relate to the responsibilities of the Commission.*

Sec. 3. *The Commission may establish a policy committee to assist the Commission in:*

1. Matters concerning policy, including, without limitation, implementing or amending policies that are consistent with federal and state laws and regulations and which relate to the responsibilities of the Commission; and

2. Implementing or complying with any audit findings that affect the Commission.

Sec. 4. *The Commission may establish a radiological committee to assist the Commission in providing support to state agencies, local governments and tribal governments in implementing provisions of the State of Nevada Preventative Radiological and Nuclear Detection Concept of Operations and the State of Nevada Radiological and Nuclear Detection Sustainment Plan.*

Sec. 5. NAC 459.99121 is hereby amended to read as follows:

459.99121 “Bylaws Committee” means the committee established by the Commission to review annually the *bylaws of the Commission and the* bylaws *and membership list* of a local emergency planning committee.

Sec. 6. NAC 459.99123 is hereby amended to read as follows:

459.99123 “Emergency plan” means ~~[an emergency]~~ a plan established by a local emergency planning committee pursuant to NAC 459.99133 to respond to an emergency caused by the release of a hazardous material.

Sec. 7. NAC 459.99131 is hereby amended to read as follows:

459.99131 In accordance with the requirements of 42 U.S.C. §§ 11001 et seq., the Commission will:

1. Designate emergency planning districts in this State to facilitate the preparation and implementation of emergency plans. The Commission may revise the designation of an emergency planning district at its discretion.
2. Designate the facilities that are within the jurisdiction of each emergency planning district.
3. Within 30 days after the designation of an emergency planning district, establish a local emergency planning committee for the emergency planning district and appoint the members to serve on the local emergency planning committee. The Commission may, at its discretion, revise the appointment of any member to a local emergency planning committee. An interested person may petition the Commission for a modification of the membership of a local emergency planning committee.
4. Supervise and coordinate the activities of each local emergency planning committee.
5. Through the Planning and Training Subcommittee, annually review the emergency plan of each local emergency planning committee and approve the emergency plan if it complies with the guidelines for emergency plans published by the National Response Team established pursuant to the National Contingency Plan set forth in 42 U.S.C. § 9605. The Commission may make recommendations to a local emergency planning committee for revisions of the emergency

plan to ensure coordination of the emergency plan with the emergency plan established by any other local emergency planning committee.

6. Through the Bylaws Committee, annually review the bylaws of each local emergency planning committee to ensure compliance with federal and state laws and regulations ~~[]~~ *and any other requirements set forth by the Commission.*

7. Through the Bylaws Committee, annually review the bylaws of the Commission.

Sec. 8. NAC 459.99132 is hereby amended to read as follows:

459.99132 Each local emergency planning committee shall:

1. Appoint a chair;

2. Adopt rules for the performance of its duties and functions;

3. Annually submit to the ~~[Bylaws Committee]~~ *Commission* a copy of its bylaws and a list of the members of the local emergency planning committee;

4. Hold quarterly meetings;

5. Submit to the Commission a copy of the agenda and minutes of every meeting ~~[]~~ *at the same time that the agenda and minutes are each made available to the public;*

6. Annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, inventory forms and any follow-up notices are available for public review pursuant to 42 U.S.C. § 11044;

7. Submit to the Commission an affidavit of publication stating that the local emergency planning committee has complied with the requirement of subsection 6; and

8. Submit to the Commission a Compliance Certification Form indicating that the local emergency planning committee has complied with administrative requirements.

Sec. 9. NAC 459.99133 is hereby amended to read as follows:

459.99133 1. Each local emergency planning committee shall:

(a) In compliance with the guidelines for emergency plans published by the National Response Team established pursuant to the National Contingency Plan set forth in 42 U.S.C. § 9605, establish an emergency plan;

(b) Annually review the emergency plan; and

(c) On or before January 31 of each year, submit *to the Commission* the emergency plan ~~to~~ *for* the Planning and Training Subcommittee ~~for~~ *to* review and ~~approval.~~ *approve.*

2. If the Planning and Training Subcommittee identifies any deficiency in the emergency plan submitted by the local emergency planning committee and notifies the local emergency planning committee of the deficiency, the local emergency planning committee shall, within 45 days after receipt of notification by the Planning and Training Subcommittee:

(a) Revise the emergency plan to correct the deficiency; and

(b) Submit the revised emergency plan to the Planning and Training Subcommittee for approval.

3. If a local emergency planning committee fails to submit an emergency plan on or before January 31 of each year pursuant to subsection 1 or fails to submit a revised emergency plan within 45 days after receipt of notification of any deficiency pursuant to subsection 2, the local emergency planning committee is ineligible for any funding available from the Commission until the Planning and Training Subcommittee reviews and approves the emergency plan in February of the following year.

Sec. 10. 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 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. 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:

(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~~ *Office of the Military* to participate in a training program provided by the Division and the Division declined to provide such training.

Sec. 11. 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 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. 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:

(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~~ *Office of the Military* to participate in a training program provided by the Division and the Division declined to provide such training.

Sec. 12. NAC 459.99183 is hereby amended to read as follows:

459.99183 1. If a person fails to pay a fee required pursuant to NAC 459.9918, 459.99181, 459.99182 or 459.991825 on or before the applicable due date, the Commission will send a written notice to the person stating that the fee has not been paid and notifying the person of the provisions of subsection 2.

2. If a person fails to pay a fee required pursuant to NAC 459.9918, 459.99181, 459.99182 or 459.991825 within 90 days after receiving written notification of failure to pay pursuant to subsection 1, the Commission will ~~submit the matter to the Attorney General to initiate proceedings against the person~~ *assign the debt for collection to the State Controller pursuant to NRS 353C.195.*

Sec. 13. 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 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~~ *Administrator* 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~~ *Administrator* or his or her 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~~ *Administrator* or his or her 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~~ *Administrator* or his or her 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~~ *Administrator* or his or her 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.