

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

**LCB File No. R133-03**

Effective March 26, 2004

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

AUTHORITY: §§1-29 and 46-48, NRS 459.740; §§30-45, NRS 459.735; §§49-51, NRS 459.740 and 459.744.

A REGULATION relating to hazardous materials; requiring the State Emergency Response Commission to establish emergency planning districts and local emergency planning committees to prepare and implement emergency plans to respond to emergencies caused by the release of hazardous materials; authorizing the Commission to issue certain grants to local emergency planning committees to carry out the emergency plans of the committees; authorizing the Commission to allocate certain money to state agencies for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials; providing a regulatory cap on fees for the storage and manufacture of hazardous materials; and providing other matters properly relating thereto.

**Section 1.** Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 47, inclusive, of this regulation.

**Sec. 2.** *“Bylaws Committee” means the committee established by the Commission to review annually the bylaws of a local emergency planning committee.*

**Sec. 3.** *“Emergency plan” means an emergency plan established by a local emergency planning committee pursuant to section 9 of this regulation to respond to an emergency caused by the release of a hazardous material.*

**Sec. 4.** *“Facility” includes any group of activities which are involved in the storage, use or manufacture of extremely hazardous materials, are located on one or more contiguous properties and are owned, operated or controlled by the same person.*

**Sec. 5.** *“Funding Committee” means the committee established by the Commission to assist the Commission in matters concerning funding.*

**Sec. 6.** *“Planning and Training Subcommittee” means the subcommittee appointed by the Funding Committee to assist the Committee in matters concerning planning and training for emergency response.*

**Sec. 7.** *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.*

**Sec. 8.** *Each local emergency planning committee shall:*

*1. Appoint a chairman;*

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

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

**Sec. 9.** *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 the emergency plan to the Planning and Training Subcommittee for review and approval.*

*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 the revised emergency plan within 45 days after receipt of notification of any deficiency, 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.** *Pursuant to NRS 459.742 and in accordance with the provisions set forth in sections 13 to 20, inclusive, of this regulation, the Commission may:*

*1. Use the fees collected by the Commission pursuant to NAC 459.9916, 459.9917 and 459.9919 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; and*

*2. 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. 11. 1.** *Before a local emergency planning committee may submit an application for a grant pursuant to the provisions of sections 13 to 20, inclusive, of this regulation, the local emergency planning committee must meet to determine and approve, based upon the needs of its emergency planning district, the amount of funding it will request in the application.*

**2.** *In submitting an application for a grant pursuant to sections 13 to 20, inclusive, of this regulation, 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. 12.** *The Commission will send application forms for grants to each local emergency planning committee not later than 6 weeks before the deadline for submission of an application for a grant to the Commission by the local emergency planning committees.*

**Sec. 13.** *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 NAC 459.9916, 459.9917 and 459.9919 and deposited in the Contingency Account for Hazardous Materials 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. 14.** *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 459.9916, 459.9917 and 459.9919 for planning that is necessary to carry out the emergency plan of the local emergency planning committee.*

**Sec. 15. 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 459.9916, 459.9917 and 459.9919 for training that is necessary to carry out the emergency plan of the local emergency planning committee.*

**2.** *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. 16. 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 NAC 459.9916, 459.9917 and 459.9919 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 scope of the services to be provided by the consultant or contractor; and*

*(b) A quote for the costs of the services to be provided by the consultant or contractor,*

*which must not exceed \$450 per day.*

**Sec. 17. 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 NAC 459.9916, 459.9917 and 459.9919 for equipment that is necessary to carry out the emergency plan of the local emergency planning committee.*

*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 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. 18.** *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 planning that is necessary to carry out the emergency plan of the local emergency planning committee.*

**Sec. 19. 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 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. 20.** *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 scope of the services to be provided by the consultant or contractor; and*

*(b) A quote for the costs of the services of the consultant or contractor, which must not exceed \$450 per day.*

**Sec. 21.** *The Commission may:*

*1. Place each application for grant money that is submitted to the Commission on an agenda for consideration at a future meeting of the Commission;*

*2. Review each application for grant money that is submitted by a local emergency planning committee; and*

*3. Award grant money to a local emergency planning committee:*



*(a) Based on the availability of money for grants in the Contingency Account for Hazardous Materials; and*

*(b) If the application for grant money satisfies the conditions set forth in sections 13 to 20, inclusive, of this regulation.*

*Sec. 22. Upon the determination of the Commission to award a grant to a local emergency planning committee, the Commission will prepare documentation of the award and keep such documentation on file with the Commission.*

*Sec. 23. Before any grant money may be distributed by the Commission to a local emergency planning committee, the local emergency planning committee must complete and submit to the Commission the following forms provided by the Commission:*

*1. The Certified Assurances Form indicating that the local emergency planning committee agrees to comply with the rules and regulations governing the grant money awarded in the grant. The form must be signed by the chairman of the local emergency planning committee and a designee of the appropriate governmental entity for which the grant has been awarded.*

*2. The Grant Eligibility Certification Form indicating that the local emergency planning committee has complied with the administrative requirements for a grant.*

*Sec. 24. 1. Except as otherwise provided in section 25 of this regulation, the grant money awarded to a local emergency planning committee by the Commission will be disbursed on the basis of reimbursement for expenditures authorized in the grant.*

*2. If a local emergency planning committee seeks to be reimbursed for an expenditure authorized in the grant, the local emergency planning committee must submit a request for*

*reimbursement to the Commission not later than 30 days after the local emergency planning committee makes the expenditure.*

*3. A request for reimbursement must include a financial report, on a form approved by the Commission, consisting of an accounting of the expenditure, the invoice for the expenditure and proof of payment by the local emergency planning committee.*

*4. Within 5 working days after receiving a request for reimbursement, the Commission will conduct an audit of the financial report submitted to the Commission to ensure that the expenditure for which the local emergency planning committee is requesting reimbursement is authorized in the grant. If the Commission approves the request, the Commission will process the payment within 1 working day after approval of the request.*

**Sec. 25.** *1. If a local emergency planning committee has an expected expenditure exceeding \$2,000, the local emergency planning committee may submit a request to the Commission for advance funding.*

*2. The request for advance funding must include a financial report, on a form approved by the Commission, consisting of a copy of the purchase order indicating the date of processing for the purchase and the cost of the purchase.*

*3. Within 5 working days after receiving a request for advance funding, the Commission will verify that the expenditure for which the local emergency planning committee is requesting advance funding is authorized in the grant. If the Commission approves the request, the Commission will process the payment to the local emergency planning committee.*

*4. Within 30 days after a check for advance funding is issued to a local emergency planning committee, the local emergency planning committee shall submit to the Commission*

*a financial report, on a form approved by the Commission, that includes any invoices for the expenditure and proof of payment.*

*5. If the expenditure is not made within 30 days after a check for advance funding is issued to a local emergency planning committee, the local emergency planning committee must return to the Commission the amount of the advance funding within 45 days after the issuance of the check for advance funding.*

*6. If a check for advance funding issued to a local emergency planning committee is in excess of the actual expenditure, the local emergency planning committee must return to the Commission the amount of the advance funding that is in excess of the actual expenditure within 45 days after the date of issuance of the check for advance funding.*

*7. If a local emergency planning committee fails to return an amount of advance funding as required pursuant to this section, the Commission may withhold funding from the local emergency planning committee in the future.*

*8. As used in this section, “advance funding” means an advance of the grant money awarded to pay for any expenditures.*

**Sec. 26.** *Unless a financial report is submitted pursuant to section 24 or 25 of this regulation, a local emergency planning committee must submit to the Commission a quarterly financial report. The quarterly financial report must be submitted on a form approved by the Commission not later than 30 days after the last day of the quarter indicating that no expenditures were made during that quarter.*

**Sec. 27.** *If a financial report required to be submitted pursuant to section 24, 25 or 26 of this regulation:*

*1. Is at least 30 days past due but less than 45 days past due, the Commission will notify the chairman of the local emergency planning committee required to submit the financial report.*

*2. Is at least 45 days past due but less than 60 days past due, the Commission will notify the designee of the appropriate governmental entity for which the grant has been awarded.*

*3. Is at least 60 days past due, the Commission may in the future withhold funding from the local emergency planning committee required to submit the financial report.*

**Sec. 28.** *1. On or before July 31 of each year, a local emergency planning committee which receives a grant from the Commission shall submit an annual progress report to the Commission, on a form approved by the Commission, concerning the grant awarded to the local emergency planning committee.*

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

*(a) The grant activities performed during the year; and*

*(b) Information concerning the progress of the local emergency planning committee in achieving the goals and objectives outlined in its grant application.*

*3. The Commission will review each annual progress report to ensure that the activities of the local emergency planning committee are in compliance with the goals and objectives outlined in the grant.*

*4. If the local emergency planning committee fails to submit the annual progress report on or before July 31 of each year, the Commission may withhold funding from the local emergency planning committee in the future.*

**Sec. 29. 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 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 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 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. 30.** *Pursuant to paragraph (d) of subsection 2 of NRS 459.735 and in accordance with the provisions set forth in sections 32 to 36, inclusive, of this regulation, the Commission may:*

*1. Allocate the fees collected by the Commission pursuant to NAC 459.9916, 459.9917 and 459.9919 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; and*

*2. 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. 31.** *In accordance with the provisions set forth in sections 32 to 36, inclusive, of this regulation, a state agency which wishes to provide training or equipment to state and local personnel to respond to accidents and incidents involving hazardous materials may submit an application to the Commission for an allocation of money for such training or equipment from the Contingency Account for Hazardous Materials on a form approved by the Commission. Before such a state agency may submit an application for an allocation of money pursuant to the provisions of sections 32 to 36, inclusive, of this regulation, the head of the state agency must determine and approve, based upon the needs of the state agency, the amount of funding the state agency will request in the application.*

**Sec. 32.** *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 section 31 of this regulation, request money from the fees collected by the Commission pursuant to NAC*

*459.9916, 459.9917 and 459.9919 for training state and local personnel to respond to accidents and incidents involving hazardous materials.*

*2. 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. 33.** *1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to section 31 of this regulation, request money from the fees collected by the Commission pursuant to NAC 459.9916, 459.9917 and 459.9919 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.*

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

*(a) The scope of the services to be provided by the consultant or contractor; and*

*(b) A quote for the costs of the services to be provided by the consultant or contractor, which must not exceed \$450 per day.*

**Sec. 34.** *1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to section 31 of this regulation, request money from the fees collected by the Commission pursuant to NAC 459.9916, 459.9917 and 459.9919 for equipping state and local personnel to respond to accidents and incidents involving hazardous materials.*

*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 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. 35. 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 section 31 of this regulation, 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 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. 36. 1.** *A state agency may, in its application for an allocation of money from the Commission submitted pursuant to section 31 of this regulation, 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 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 scope of the services to be provided by the consultant or contractor; and*

*(b) A quote for the costs of the services to be provided by the consultant or contractor,*

*which must not exceed \$450 per day.*

**Sec. 37.** *The Commission may:*

*1. Place each application for an allocation of money from the Contingency Account for Hazardous Materials that is submitted to the Commission by a state agency for training and*



*equipping state and local personnel to respond to accidents and incidents involving hazardous materials on an agenda for consideration at a future meeting of the Commission;*

*2. Review each application for an allocation of money that is submitted by a state agency; and*

*3. Allocate money to a state agency:*

*(a) Based on the availability of money in the Contingency Account for Hazardous Materials; and*

*(b) If the application for an allocation of money satisfies the conditions set forth in sections 32 to 36, inclusive, of this regulation.*

*Sec. 38. Upon the determination of the Commission to allocate money to a state agency for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials, the Commission will prepare documentation of the allocation of money and keep such documentation on file with the Commission.*

*Sec. 39. 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, 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 Grant Eligibility 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. 40. 1.** *Except as otherwise provided in section 41 of this regulation, the money allocated to a state agency for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials by the Commission from the Contingency Account for Hazardous Materials will be disbursed on the basis of reimbursement for expenditures authorized in the allocation of money.*

*2. If the state agency seeks to be reimbursed for an expenditure authorized in the allocation of money, the state agency must submit a request for reimbursement to the Commission not later than 30 days after the state agency makes the expenditure.*

*3. A request for reimbursement must include a financial report, on a form approved by the Commission, consisting of an accounting of the expenditure, the invoice for the expenditure and proof of payment by the state agency.*

*4. Within 5 working days after receiving a request for reimbursement, the Commission will conduct an audit of the financial report submitted to the Commission to ensure that the expenditure for which the state agency is requesting reimbursement is authorized in the allocation of money. If the Commission approves the request, the Commission will process the payment within 1 working day after approval of the request.*

**Sec. 41. 1.** *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 and which has an expected expenditure exceeding \$2,000 may submit a request to the Commission for advance funding.*

*2. The request for advance funding must include a financial report, on a form approved by the Commission, consisting of a copy of the purchase order indicating the date of processing for the purchase and the cost of the purchase.*

3. *Within 5 working days after receiving a request for advance funding, the Commission will verify that the expenditure for which the state agency is requesting advance funding is authorized in the documentation of the allocation of money. If the Commission approves the request, the Commission will process the payment to the state agency.*

4. *Within 30 days after a check for advance funding is issued to the state agency, the state agency shall submit to the Commission a financial report, on a form approved by the Commission, that includes any invoices for the expenditure and proof of payment.*

5. *If the expenditure is not made within 30 days after a check for advance funding is issued to the state agency, the state agency must return to the Commission the amount of the advance funding within 45 days after the issuance of the check for advance funding.*

6. *If a check for advance funding issued to the state agency is in excess of the actual expenditure, the state agency must return to the Commission the amount of the advance funding that is in excess of the actual expenditure within 45 days after the date of issuance of the check for advance funding.*

7. *If the state agency fails to return an amount of advance funding as required pursuant to this section, the Commission may withhold funding from the state agency in the future.*

8. *As used in this section, “advance funding” means an advance of the money allocated to pay for any expenditures.*

**Sec. 42.** *Unless a financial report is submitted pursuant to section 40 or 41 of this regulation, 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 must submit to the Commission a quarterly financial report. The quarterly financial report must be submitted on a form approved by the Commission not later*

*than 30 days after the last day of the quarter indicating that no expenditures were made during that quarter.*

**Sec. 43.** *If a financial report required to be submitted pursuant to section 40, 41 or 42 of this regulation:*

*1. Is at least 30 days past due but less than 45 days past due, the Commission will notify the state agency required to submit the financial report.*

*2. Is at least 45 days past due but less than 60 days past due, the Commission will notify the head of the state agency required to submit the financial report.*

*3. Is at least 60 days past due, the Commission may in the future withhold funding from the state agency required to submit the financial report.*

**Sec. 44.** *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; 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.*

**Sec. 45. 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 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 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 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. 46. 1.** *If a person fails to pay a fee required pursuant to NAC 459.9916, 459.9917 or 459.9919 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 459.9916, 459.9917 or 459.9919 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.*

**Sec. 47.** *If a person has overpaid a fee required pursuant to NAC 459.9916, 459.9917 or 459.9919, the Commission will:*

- 1. Send a written notice to the person indicating the amount of the overpayment; and*
- 2. Unless the person submits a request for a refund of the amount of the overpayment, credit the account of the person in the amount of the overpayment to be applied toward future fees imposed upon the person pursuant to NAC 459.9916, 459.9917 or 459.9919.*

**Sec. 48.** NAC 459.9912 is hereby amended to read as follows:

459.9912 As used in NAC 459.9912 to 459.9919, inclusive, *and sections 2 to 47, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.9913, 459.9914 and 459.9915 *and sections 2 to 6, inclusive, of this regulation* have the meanings ascribed to them in those sections.

**Sec. 49.** NAC 459.9916 is hereby amended to read as follows:

459.9916 ~~Except as otherwise provided in subsection 2 of NRS 459.744, the~~ *The* Commission will charge a person for whom it performs a service or regulatory activity the fees set forth in the following schedule:

1. For processing a report filed with the Commission pursuant to 40 C.F.R. Part 370, Subpart B, except for a report of an extremely hazardous material pursuant to NAC 459.9917..... \$100

2. For each hour or fraction thereof that an employee, agent, contractor or other designee of the Commission spends in responding to a request for information, except for a request for information made pursuant to 40 C.F.R. Part 370, Subpart C..... \$50

**Sec. 50.** NAC 459.9917 is hereby amended to read as follows:

459.9917 1. The filing fee required pursuant to ~~subparagraph (1) of paragraph (b)~~ **paragraph (a)** of subsection ~~2~~ **2** of NRS 459.744 is \$100 for each facility in which extremely hazardous material is stored.

2. The surcharge required pursuant to ~~subparagraph (2) of~~ paragraph (b) of subsection ~~2~~ **2** of NRS 459.744 is \$100 per ton for each ton of material stored in excess of 1 ton.

**3. *The Commission will not require any person to pay more than \$7,500 in fees imposed pursuant to this section for any calendar year.***

**Sec. 51.** NAC 459.9919 is hereby amended to read as follows:

459.9919 1. The filing fee required pursuant to ~~subparagraph (1) of paragraph (e)~~ **paragraph (a)** of subsection ~~3~~ **3** of NRS 459.744 is \$100.

2. The surcharge required pursuant to ~~subparagraph (2) of paragraph (e)~~ **paragraph (b)** of subsection ~~3~~ **3** of NRS 459.744 is \$100 for each ton of material which is manufactured for transport in this state.

**3. *In accordance with subsection 3 of NRS 459.744, the Commission will not require any person to pay more than \$2,000 in fees imposed pursuant to this section for any calendar year.***

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R133-03**

The State Emergency Response Commission adopted regulations assigned LCB File No. R133-03 which pertain to chapter 459 of the Nevada Administrative Code on December 11, 2003.

**Notice date:** 10/21/2003  
**Hearing date:** 11/20/2003

**Date of adoption by agency:** 12/11/2003  
**Filing date:** 1/30/2004

**INFORMATIONAL STATEMENT**

The State Emergency Response Commission (SERC) seeks to establish additional administrative codes governing the way it does business. The topics of the regulations relate to grant management policies and an increase from \$5,000 to \$7,500 in the maximum fee amount collected from facilities who store extremely hazardous materials.

The agencies affected by the grant management policies are the Local Emergency Planning Committees (LEPCs), one in each county, and state agencies which train and equip state and local personnel to respond to incidents involving hazardous materials, as they are the grantees/subgrantees.

The increase in the maximum fee will affect publicly and privately owned facilities who report, as designated by federal law, on the storage and/or manufacture of quantities of chemicals, and/or report toxic release inventories. Currently there are approximately 25 facilities who reach the existing maximum fee of \$5,000.

**Description of how comment from public and affected business 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 approximately 650 facilities who currently submit reports as stated above. Copies of the agendas were also sent to all SERC members, the Nevada Manufacturer's Association, and the one individual on the agency mailing list for receipt of notice of proposed regulations. The agendas were posted at the main public library in each county, the places of the proceedings, and on the LCB website. 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 for November 18, 2003. In attendance were five SERC members and ten members of the public. There were two discussions related to the regulations as presented. Expressed by a SERC member was the apparent improper placement of the regulation regarding the increase in the maximum fee. Also expressed by a SERC member and business owner was concerns of the need for the fee increase. Further discussions by the public were held regarding specific issues arising with a specific LEPC, however these issues did not affect the policies subject to these proposed regulations.



The Public Hearing was held November 20, 2003. In attendance were ten SERC members and four members of the public. Discussions were held as to some grammar and some “clean-up” language changes in the draft proposed regulations. Discussion was also held as to the proper placement of the maximum fee within the 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 November 30, 2003. No written statements have been received by the SERC.

#### **Explanation of how to obtain a copy of the summary**

Interested persons may obtain a copy of the transcripts of these proceedings by contacting the State Emergency Response Commission at mailing address: 555 Wright Way, Carson City, Nv 89711; phone: 775-687-6973; or e-mail: Cheryl Folkers, Administrative Assistant, at [cfolkers@dps.state.nv.us](mailto:cfolkers@dps.state.nv.us).

#### **Summary of change in proposed regulation**

The SERC meeting to adopt the proposed regulation was held on December 11, 2003. Comments from the workshop and the public hearing were considered fully. The draft regulations with recommended changes based on discussions held at the public hearing were presented. Most of the recommended changes were made to clarify the proposed regulations. Proposed substantive changes adopted are:

- 1) Sec. 4, changes the definition of “facility”
- 2) add Sec. 6, a definition of “person” to include privately owned facilities or business entity;
- 3) Sec. 13, the Commission may provide money to LEPCs who are in compliance with applicable statutes, regulations and policies;
- 4) remove Sec. 17 (3) regarding HazMat Explo Conference.
- 5) Sec. 21, remove “members of board of county commissioners of the emergency planning district” and include “signatory designated by the appropriate political subdivision”;
- 6) add Sec. 26 regarding past due financial reports to cover all reporting (this was originally included as Sec. 24 (2) which referred only to quarterly reports filed in which there are no expenditures for the quarter);
- 7) delete Sec. 26 (2) relating to approval of project change and (5) regarding ratification of project changes by the Funding Committee;
- 8) delete Sec. 31 (3) re increase of maximum fee regarding storage of hazardous materials;
- 9) Add sections for Commission to allocate money to state agencies which train and equip state and local personnel to respond to incidents involving hazardous material.

#### **Estimated economic effect on public and businesses affected**

The proposed changes will economically affect public facilities and businesses who report on storage of extremely hazardous materials or threshold planning quantities of hazardous materials. Based on the fee schedule included in these regulations, the maximum amount to be collected from a person for storage is increased from \$5,000 to \$7,500. This increase will affect approximately 25 facilities who are currently paying the maximum fee of \$5,000. This increase

could result in either an increase in fees collected or a decrease in the amount of hazardous materials or extremely hazardous materials stored and/or manufactured at a facility resulting in no monetary change to the company. Increase in fees collected could result in an additional \$62,500 collected and granted to first responders to respond to hazardous materials incidents. A decrease in the amount of hazardous materials on site could result in a decrease of the risk for a hazardous materials incident.

**Cost of enforcing the regulation**

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

**Explanation of other regulation which this regulation duplicates**

In regards to the SERC establishing the LECPs, this regulation partially duplicates the federal Superfund Amendment Reauthorization Act, Title III. The federal agency is the U.S. Environmental Agency. This regulation is not more stringent than the federal regulations.

**If the regulation increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used**

The SERC expects to collect an additional \$62,500 in reporting fees due to the increase in the maximum amount collected. The fees will be awarded to the LEPCs or state agencies which train or equip state and local personnel to respond to incidents involving hazardous materials through the current grant and allocation process. The funds will be used for planning, training and equipping local first responders to prevent, respond to and mitigate hazardous materials incidents.