

PROPOSED REGULATION OF THE STATE
EMERGENCY RESPONSE COMMISSION

LCB File No. R133-03

October 6, 2003

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

AUTHORITY: §§1-29, NRS 459.740; §§30-32, NRS 459.740 and 459.744.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 28, 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” has the meaning ascribed to it in NRS 459.381.*

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 revise the appointment of any member to a local emergency planning committee at its discretion or at the request of an interested person who has petitioned 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, review annually 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 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 chairperson;

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 established by the Commission 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 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 14 to 18, 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 a grant to a local emergency planning committee for the planning, training, operating and equipment needs of the local emergency planning committee to carry out the emergency plan of the local emergency planning committee; 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 a grant to a local emergency planning committee for the planning and training needs of the local emergency planning committee to carry out the emergency plan of the local emergency planning committee.

Sec. 11. *1. Before a local emergency planning committee may submit an application for a grant pursuant to the provisions of sections 14 to 18, 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 14 to 18, 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. At least 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 must be automatically provided to a 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. 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 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. 15. 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 services to be provided by a consultant or contractor 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. 16. *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 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. 17. *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 necessary to carry out the emergency plan of the local emergency planning committee.*

2. Except as otherwise provided in subsection 3, 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.

3. If the request for grant money for training involves a request to participate in the HazMat Exploratory 7 Training Conference on matters relating to hazardous materials presented by the Local Emergency Response Committee of Clark County, the local emergency planning committee may request grant money directly from the Commission for such training.

Sec. 18. *1. 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 services to be provided by a consultant or contractor 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. 19. *The Commission will:*

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 14 to 18, inclusive, of this regulation.

Sec. 20. 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. 21. 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 members of the board of county commissioners of the emergency planning district for which the grant has been awarded and the chairman of the local emergency planning committee.

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

Sec. 22. 1. Except as otherwise provided in section 23 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. 23. 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, consisting of 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 submit a financial report or 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. 24. *1. Unless a financial report is submitted pursuant to section 22 or 23 of this regulation, a local emergency planning committee must submit to the Commission a quarterly financial report for the fiscal year. 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.*

2. If a quarterly financial report required to be submitted pursuant to subsection 1:

(a) 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.

(b) Is at least 45 days past due but less than 60 days past due, the Commission will notify the appropriate board of county commissioners.

(c) Is at least 60 days past due, the Commission may withhold funding from the local emergency planning committee in the future.

Sec. 25. 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 obtaining 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. 26. 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 3, if the change in circumstances relates to a matter concerning the personnel of the local emergency planning committee, the Executive

Director of the Commission may approve the change without the approval of the Commission, the Funding Committee or the Chairman of the Funding Committee.

3. Except as otherwise provided in subsection 6, 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.

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

5. Each approval pursuant to paragraph (a) of subsection 3 of a change in the use of grant money will be ratified at the next scheduled meeting of the Funding Committee.

6. 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 3 upon approval by the Commission on the record at a meeting of the Commission.

Sec. 27. 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. 28. *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 in which the person has overpaid a fee; 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. 29. 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 28, 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. 30. 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. 31. 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 ~~[H]~~ **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 ~~[H]~~ **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. 32. 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 ~~[H]~~ **3** of NRS 459.744 is \$100.

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