

**ADOPTED REGULATION OF THE DIRECTOR OF
THE DEPARTMENT OF PUBLIC SAFETY**

LCB File No. R168-03

Effective December 16, 2003

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

AUTHORITY: §§1-24, NRS 459.721 and 459.725.

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

Sec. 2. *“Uniform application” has the meaning ascribed to it in NRS 459.703.*

Sec. 3. *“Uniform program” has the meaning ascribed to it in NRS 459.7032.*

Sec. 4. NAC 459.975 is hereby amended to read as follows:

459.975 As used in NAC 459.975 to 459.991, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC ~~[459.9751]~~ *459.97515* to 459.9758, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 459.97525 is hereby amended to read as follows:

459.97525 “Hazardous material” ~~[means any substance or combination of substances, including any hazardous material, hazardous waste, hazardous substance, or marine pollutant:~~

~~—1.— Of a type and amount for which a vehicle transporting the substance must be placarded pursuant to 49 C.F.R. Part 172;~~

~~—2.— Of a type and amount for which a uniform hazardous waste manifest is required pursuant to 40 C.F.R. Part 262;~~

~~—3.— Which is transported in bulk packaging, as defined in 49 C.F.R. § 171.8; or~~

~~—4.— Identified as a hazardous material pursuant to NRS 459.710.]~~ *has the meaning ascribed to it in NRS 459.7024.*

Sec. 6. NAC 459.97575 is hereby amended to read as follows:

459.97575 ~~["Triennial"]~~ *“Uniform permit”* means a permit for the transportation of hazardous material *established pursuant to 49 U.S.C. § 5119 to regulate the transportation of hazardous materials and* issued pursuant to NAC ~~[459.981]~~ *459.9805* or the corresponding statute or regulation of a participating state.

Sec. 7. NAC 459.9754 is hereby amended to read as follows:

459.9754 “Participating state” means a state that has entered into a reciprocal agreement with this state ~~[.]~~ *to participate in the uniform program.*

Sec. 8. NAC 459.9756 is hereby amended to read as follows:

459.9756 ~~["Registration and"]~~ “Permit Section” means the ~~[Hazardous Material Registration and]~~ Permit Section of the Division.

Sec. 9. NAC 459.976 is hereby amended to read as follows:

459.976 ~~[The]~~ *Except as otherwise provided in this section, the* provisions of NAC 459.975 to 459.991, inclusive, *and sections 2 and 3 of this regulation* apply to any person who transports hazardous material in this state. *Except as otherwise provided by federal law, the provisions of NAC 459.975 to 459.991, inclusive, and sections 2 and 3 of this regulation do not apply to the transportation of a hazardous material by any vehicle that is owned and operated by the Federal Government, this state or any political subdivision of this state.*

Sec. 10. NAC 459.977 is hereby amended to read as follows:

459.977 1. The provisions of 49 C.F.R. Parts ~~[171, 172, 177, 178, 383, 387, and 390 to 397, inclusive,]~~ **40, 100 to 180, inclusive, and 325 to 399, inclusive,** are hereby adopted by reference as they existed on October 1, ~~[1994.]~~ **2003.** Each motor vehicle used for the transportation of hazardous materials in this state must, and each driver of such a vehicle shall, comply with those provisions.

2. A copy of the publications which contain these parts may be obtained ~~[from]~~ :

(a) **From** the Superintendent of Documents, ~~[United States Government Printing Office, Washington, D.C. 20402.]~~ **P.O. Box 371954, Pittsburgh, Pennsylvania, 15250-7954.** The price is:

~~[(a) For Parts 171, 172, and 177]~~ (1) **For part 40** ~~[\$30]~~ **\$44**

~~[(b) For Part 178]~~ (2) **For Parts 100 to 185, inclusive** ~~[20]~~ **60**

~~[(c)]~~ (3) **For Parts ~~[383, 387, and 390 to 397,]~~ 325 to 399, inclusive** ~~[27]~~ **60**

(b) **At the Internet address** ~~<~~<http://www.gpoaccess.gov/cfr/index.html>~~>~~.

Sec. 11. NAC 459.978 is hereby amended to read as follows:

459.978 Any written communication with or payment made to the ~~[Registration and]~~ Permit Section pursuant to NAC 459.975 to 459.991, inclusive, **and sections 2 and 3 of this regulation** must be mailed to the Nevada Highway Patrol, ~~[Hazardous Material Registration and]~~ Permit Section, 555 Wright Way, Carson City, Nevada 89711-0590.

Sec. 12. NAC 459.979 is hereby amended to read as follows:

459.979 Except as otherwise provided in NAC 459.980 and 459.984, any person who transports hazardous materials in a vehicle upon a public highway in this state ~~[must obtain a certificate of registration and triennial]~~ **shall register with and obtain a uniform** permit from:

1. The Division, if:

- (a) The person's principal place of business is located in this state; or
- (b) The person's principal place of business is located in a state other than this state or a participating state, and the mileage over which the person transported hazardous material during the preceding year is higher in this state than any participating state;

2. The participating state in which:

- (a) The person's principal place of business is located; or
- (b) The mileage over which the person transported hazardous material during the preceding year is the highest, if:

(1) The person's principal place of business is located in a state other than Nevada or a participating state; and

(2) The mileage over which the person transported hazardous material during the preceding year is higher in the participating state than in Nevada; or

3. Any state designated by a governing board appointed pursuant to ~~the reciprocal agreement,~~ *the uniform program* if:

- (a) The person petitions the governing board for such a designation; and
- (b) The entity from whom the petitioner would otherwise be required to obtain ~~the certificate of registration and triennial~~ *a uniform* permit pursuant to this section agrees that the designation:

(1) Furthers the administration of the reciprocal agreement; and

(2) Does not allow the petitioner to evade any pending action by that entity.

Sec. 13. NAC 459.980 is hereby amended to read as follows:

459.980 1. A vehicle which is the subject of a lease agreement may be used to transport hazardous materials in this state if:

(a) The lessee or lessor of the vehicle has obtained a ~~certificate of registration and triennial~~ *uniform* permit from the entity prescribed in NAC 459.979;

(b) The ~~certificate of registration and triennial permit have~~ *uniform permit has* not expired or been suspended; and

(c) A legible copy of the lease agreement ~~[, certificate of registration, and triennial]~~ *and uniform* permit are carried in the driver's compartment of the vehicle.

2. If a leased vehicle is used for the transportation of hazardous material pursuant to this section otherwise than under the authority of a ~~certificate of registration and triennial~~ *uniform* permit issued to the lessee of the vehicle, the lessor of the vehicle is liable for the operation of the vehicle and actions of its drivers, including liability for any failure by the vehicle and its drivers to comply with:

(a) Any terms, conditions, or certifications set forth in the ~~triennial~~ *uniform* permit of the lessor; and

(b) Any state or federal statutes or regulations regarding the transportation of hazardous material,

↳ to the same extent as if the vehicle was owned and operated by the lessor and its drivers were employed by the lessor.

Sec. 14. NAC 459.9805 is hereby amended to read as follows:

459.9805 1. A person seeking to obtain a ~~certificate of registration~~ *uniform permit* from the Division, or to renew a ~~certificate of registration~~ *uniform permit* issued by the Division, must submit to the ~~[Registration and]~~ Permit Section:

(a) A completed *uniform* application for the issuance or renewal of a ~~certificate of registration,~~ *uniform permit*, on the form prescribed by the Division;

- (b) A general processing fee of \$125;
- (c) The apportioned registration fee:
 - (1) For this state, as prescribed by subsection 2; and
 - (2) For each participating state in which the person transports hazardous material;
- (d) A permit review fee of \$500 to be paid once every 3 years; and
- (e) A reasonable fee to cover the administrative expenses of any costs incurred pursuant to ~~subsection 2 of NRS 459.707 and~~ NAC 459.98055.

↪ A ~~certificate of registration~~ *uniform permit* will not be issued or renewed pursuant to this section until the required *uniform* application and fees have been received by the ~~Registration and~~ Permit Section.

2. Except as otherwise provided in this subsection, the apportioned registration fee for this state is the amount obtained by multiplying \$125 by the product of:

- (a) The total number of power units used by the applicant for the transportation of all his shipments during the preceding year;
- (b) The applicant's total mileage for the transportation of all his shipments in this state during the preceding year divided by the applicant's total mileage for the transportation of all his shipments in all states and countries during the preceding year; and
- (c) If the applicant's shipments of hazardous material are by:
 - (1) Full loads only, the total number of his shipments of hazardous material in this state during the preceding year divided by the total number of all his shipments in this state during the preceding year;
 - (2) Partial loads only, the total weight of his shipments containing hazardous material in this state during the preceding year divided by the total weight of all his shipments in this state

during the preceding year, calculated exactly or to the number midway between the two deciles closest to the person's estimate of that amount; or

(3) Both full and partial loads, the sum obtained by adding:

(I) The percentage of his total shipments of hazardous material in this state during the preceding year which were by full loads times the number obtained by performing the calculation set forth in subparagraph (1) as if all his shipments of hazardous material in this state during the preceding year were by full loads; and

(II) The percentage of his total shipments of hazardous material in this state during the preceding year which were by partial loads times the number obtained by performing the calculation set forth in subparagraph (2) as if all his shipments of hazardous material in this state during the preceding year were by partial loads,

↪ calculated exactly or to the number midway between the two deciles closest to the person's estimate of that amount.

3. A ~~[certificate of registration]~~ *uniform permit* issued pursuant to this section expires ~~[12 months after its issuance.]~~ *on:*

(a) December 31 of the year in which the uniform permit was issued if the uniform permit was issued by the Division for a calendar year; or

(b) June 30 of the year in which the uniform permit was issued if the uniform permit was issued by the Division for a fiscal year.

4. *Except as otherwise provided in subsection 5, a motor carrier who transports hazardous waste in this state shall complete all parts of the uniform application except part III.*

5. *A motor carrier shall complete all sections of the uniform application if he transports:*

(a) Radioactive waste in this state; or

(b) Hazardous waste in a participating state that requires completion of part III of the uniform application.

6. If a motor carrier is required by subsection 5 to complete all sections of the uniform application, the motor carrier shall pay a fee:

(a) For the performance of a background investigation required pursuant to the uniform program. The fee for the background investigation is the actual cost of the investigation. The Permit Section shall inform the applicant of the estimated cost of the investigation, and the Permit Section must receive a fee in that amount before an investigation will begin. Any unexpended portion of the fee will be refunded to the applicant, regardless of the outcome of the investigation.

(b) For on-site investigations by the Division.

Sec. 15. NAC 459.98055 is hereby amended to read as follows:

459.98055 1. In addition to any other information required by law, the Division may require the principal officers of an applicant to submit a fingerprint card with its *uniform* application. Fingerprints must be taken by a recognized law enforcement agency.

2. For the purposes of this section, principal officer means any person having responsibility, control, or influence over the environmental, waste management or transportation operations of the applicant.

Sec. 16. NAC 459.982 is hereby amended to read as follows:

459.982 If there is any change in the information contained in ~~{an}~~ *a uniform* application to the Division for the issuance or renewal of a ~~{certificate of registration or a triennial}~~ *uniform* permit, the holder of the ~~{certificate of registration or triennial}~~ *uniform* permit shall, within 1

year after the change occurs, give written notice of the change to the ~~[Registration and]~~ Permit Section.

Sec. 17. NAC 459.983 is hereby amended to read as follows:

459.983 1. The original of any ~~[certificate of registration and triennial]~~ *uniform* permit must be:

(a) Maintained by the holder at his principal place of business, as listed in his *uniform* application ~~[for a certificate of registration]~~ or as stated pursuant to NAC 459.982; and

(b) Made available for inspection upon request by any peace officer.

2. A legible copy of the ~~[certificate of registration and triennial]~~ *uniform* permit must be carried in the driver's compartment of the vehicle at all times while the vehicle is being used to transport hazardous materials.

Sec. 18. NAC 459.984 is hereby amended to read as follows:

459.984 1. A person may, not more than once during any period of 3 consecutive months, obtain a single-trip permit in lieu of a ~~[certificate of registration and triennial]~~ *uniform* permit, from any authorized vendor before or at the time of entry into this state.

2. A single-trip permit:

(a) Is valid for only a single vehicle and shipment of hazardous material within or through this state.

(b) Must be carried in the driver's compartment of the vehicle for which it is issued, and must not be duplicated.

(c) Expires 72 hours after its issuance.

3. The fee for a single-trip permit is \$125.

Sec. 19. NAC 459.987 is hereby amended to read as follows:

459.987 1. Any accident or incident involving hazardous materials must be reported to the Division in the manner provided by NRS ~~[459.720 if, as a result of the accident or incident:~~

~~—(a) A person dies or requires hospitalization;~~

~~—(b) Damage to property occurs in an amount exceeding \$50,000;~~

~~—(c) Any fire, breakage, spill or suspected contamination of radioactive material or etiological agents occurs; or~~

~~—(d) There is, in the judgment of the person responsible for the materials, a significant threat to life or property.] 459.718.~~

2. Any such report must be submitted on a form prescribed by the Division or on the form prescribed for the hazardous material incident report by the *United States* Department of Transportation (Form No. 5800.1).

Sec. 20. NAC 459.988 is hereby amended to read as follows:

459.988 If an incident occurs involving hazardous materials, the expenses for which reimbursement may be sought pursuant to NRS 459.760 and 459.770:

1. Include any expenses incurred for immediate action taken to prevent injury to persons or property.

2. Are the obligation, jointly and severally, of:

(a) The holder of the ~~[certificate of registration and triennial]~~ *uniform* permit, or of the single-trip permit, pursuant to which the hazardous materials are being transported or, if the materials are transported without a ~~[certificate of registration and triennial]~~ *uniform* permit, or a single-trip permit, the person who is required to obtain the ~~[certificate of registration and triennial]~~ *uniform* permit, or the single-trip permit, pursuant to the provisions of NAC 459.979 or 459.984; and

(b) Each agent or employee of the person described in paragraph (a).

Sec. 21. NAC 459.989 is hereby amended to read as follows:

459.989 1. The Division may deny or refuse to renew a ~~certificate of registration or triennial~~ *uniform* permit or may take other disciplinary action as provided in this section if, in connection with the transportation of hazardous materials, the applicant or holder:

(a) Violates any out-of-service regulation of the *United States* Department of Transportation, compliance with which is his responsibility;

(b) Violates any ~~other~~ provision of NRS 459.700 to 459.780, inclusive, or NAC 459.975 to 459.991, inclusive ~~;~~, *and sections 2 and 3 of this regulation;*

(c) Knowingly provides false or misleading information in his application for a ~~certificate of registration or triennial~~ *uniform* permit;

(d) Knowingly uses a forged ~~certificate of registration or triennial~~ *uniform* permit or a ~~certificate of registration or triennial~~ *uniform* permit which has been altered;

(e) Except as otherwise provided by NAC 459.980, allows the ~~certificate of registration or triennial~~ *uniform* permit to be used by a person who is not his agent or employee; or

(f) Is found to be an unsatisfactory carrier as the result of a safety review or safety management audit conducted by the *United States* Department of Transportation ~~;~~, *Federal Motor Carrier Safety Administration or by the Department of Public Safety.*

2. If, within any period of 12 consecutive months, the holder of a ~~triennial~~ *uniform* permit issued by the Division accrues the designated number of violations which are grounds for disciplinary action, the Division will:

(a) For three violations, mail a warning notice to the holder at his last known address.

(b) For four violations, mail a warning notice to the holder as provided in paragraph (a) and review the status of the ~~triennial~~ *uniform* permit with the holder in person or by telephone.

(c) For five violations, suspend the ~~triennial~~ *uniform* permit for not less than 30 days.

(d) For six violations, suspend the ~~triennial~~ *uniform* permit for not less than 90 days.

(e) For seven or more violations, suspend the ~~triennial~~ *uniform* permit for not less than 12 months.

↪ In any case it deems appropriate, the Division may impose a sanction greater than that otherwise prescribed by this subsection.

Sec. 22. NAC 459.990 is hereby amended to read as follows:

459.990 1. Not less than 15 days before it denies, refuses to renew, or suspends a ~~certificate of registration or triennial~~ *uniform* permit pursuant to NAC 459.989, the Division will give notice of its intended action to the applicant or holder by certified mail sent to his principal place of business.

2. Any holder or applicant who receives a notice pursuant to subsection 1 and who is aggrieved by the intended action of the Division may make a written request for a hearing on the matter before the Director or his designee. Any such request must be made by certified mail and must be postmarked not later than 10 days after the date the holder or applicant receives the notice mailed pursuant to subsection 1.

3. If a request for a hearing is made pursuant to subsection 2, the Division will schedule the hearing for a date not later than 30 days after the date it receives the request. Any hearing held pursuant to this section must be held in Carson City.

Sec. 23. NAC 459.991 is hereby amended to read as follows:

459.991 1. The Division may reinstate a ~~triennial~~ *uniform* permit which has previously been suspended pursuant to NAC 459.989 if the holder corrects the violation and otherwise complies with the provisions of NRS 459.700 to 459.780, inclusive, and NAC 459.975 to 459.991, inclusive ~~and~~, *and sections 2 and 3 of this regulation.*

2. In such a case, upon the request of the holder, the Division will give written notice to the holder by certified mail of the conditions of reinstatement and any deadline for compliance with those conditions.

Sec. 24. NAC 459.9751 and 459.981 are hereby repealed.

TEXT OF REPEALED SECTIONS

459.9751 “Certificate of registration” defined. “Certificate of registration” means a certificate of registration for the transportation of hazardous material issued pursuant to NAC 459.9805 or the corresponding statute or regulation of a participating state.

459.981 Triennial permit: Application for issuance or renewal; fee; expiration.

1. A person seeking to obtain a triennial permit from the Division, or to renew a triennial permit issued by the Division, must submit to the Registration and Permit Section:

(a) A completed application for the issuance or renewal of the triennial permit, on the form prescribed by the Division;

(b) A completed application for the issuance or renewal of a certificate of registration, on the form prescribed by the Division; and

(c) The fee prescribed by subsection 2.

↳ A triennial permit will not be issued or renewed pursuant to this section until the required applications and fee have been received by the Registration and Permit Section.

2. Except as otherwise provided in this subsection, the fee for the issuance or renewal of a triennial permit issued pursuant to this section for a motor carrier's fleet is \$125 for each power unit used by the motor carrier to transport hazardous material. The fee will not be prorated or refunded.

3. A triennial permit issued or renewed pursuant to this section expires 3 years after the date on which the issuance or renewal becomes effective.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R168-03**

The Department of Public Safety adopted regulations assigned LCB File No. R168-03 which pertain to chapter 459 of the Nevada Administrative Code on December 3, 2003.

Notice date: 10/17/2003
Hearing date: 12/3/2003

Date of adoption by agency: 12/3/2003
Filing date: 12/16/2003

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Public comment was solicited through a Notice of a workshop, and at the workshop on December 3, 2003. The Notice of Workshop, and the proposed amendments to NAC 459 were mailed on October 17, 2003 to all county libraries; the State of Nevada Library; division offices in Elko, Las Vegas and Reno; at Department of Public Safety in Carson City; to Department of Motor Vehicles and the Transportation Services Authority; to the Nevada Motor Transport Association and the Associated General Contractors. The proposed amendments were also posted to the Division's Internet web site at <http://ps.state.us/nhp/ar.htm>.

Interested persons may obtain a copy of the summary at the Division's Internet web site at <http://ps.state.us/nhp/ar.htm> or may request a copy by writing the Nevada Highway Patrol, Attn. Mr. James Rhode, 555 Wright Way, Carson City, NV 89711.

2. The number of persons who:

a. Attended each hearing:

- i. At the Workshop to solicit comments: 8
 1. James Rhode, NHP
 2. Lt. Bill Bainter, NHP
 3. Lt. Kevin Tice, NHP
 4. Sgt. Carl Johnson, NHP
 5. Sgt. Harvey Weathford, NHP
 6. William Bensmiller, FMCSA¹
 7. A.R. Fairman, No Stress Express
 8. John Cardiner, Sunshine Taxi
- ii. At the Public Hearing: 8
 1. James Rhode, NHP
 2. Lt. Bill Bainter, NHP

¹ Federal Motor Carrier Safety Administration (FMCSA)

- 3. Sgt. Carl Johnson, NHP
 - 4. Sgt. Harvey Weathford, NHP
 - 5. William Bensmiller, FMCSA
 - 6. Amy Levine, NMTA²
 - 7. John Madole, AGC³
 - 8. Mike Rich, AGC
- b. Testified at each hearing:
- i. At the workshop: 3
 - ii. At the Public Hearing: 3
- c. Submitted to the agency written comments:
- i. Prior to Workshop and/or Public Hearing: 0
 - ii. At the Workshop: 1
 - 1. William Bensmiller, FMCSA

3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary.

Comment was solicited from affected business through a Notice of a workshop; mailing of the Notice of Workshop, and the proposed amendments to NAC 706, to the Nevada Motor Transport Association and Associated General Contractors. The proposed amendments were also posted to the Division's Internet web site at <http://ps.state.us/nhp/ar.htm>.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted at the Notice of Intent to Act Upon A Regulation meeting (Public Hearing), December 3, 2003 with no changes to proposed amendments. There were no negative commentors in attendance at the meeting. The Agency received one written comment at the workshop concerning the proposed amendments. The written comments received supported the proposed amendments.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- a. Both adverse and beneficial effects; and
- b. Both immediate and long-term effects.
 - a. The proposed amendments are expected to have an immediate benefit on the safety of the regulated industry and the motoring public in ensuring the safe and uneventful transportation of placarded quantities of hazardous materials. The Department does not foresee any adverse effects.
 - b. Immediate and long-term effects include the ease of understanding the rules and their relationship to statute and vehicle and driver safety.

² Nevada Motor Transport Association (NMTA)

³ Associated General Contractors (AGC)

6. The estimated cost to the agency for enforcement of the adopted regulation.

The agency does not envision any increased costs associated with enforcement of the proposed amendment, which primarily updates references to federal provisions and harmonizes the language between NRS 459.700 to 459.730 and NAC 459.975 to 459.991.

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

There are no other state or government agency regulations that the proposed amendments duplicate.

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

The agency does not believe that the proposed amendments are more stringent than federal regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This proposed regulation does not provide or involve a new fee.