

## LCB File No. R168-03

### PROPOSED REGULATION OF THE NEVADA HIGHWAY PATROL DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY

Explanation: Matter in *italics* is new; matter in brackets ~~[-]~~ to be omitted.

Authority: Chapter 557, Statutes of Nevada 1993

Nevada Administrative Code Chapter 459

#### TRANSPORTATION OF HAZARDOUS MATERIALS ON PUBLIC HIGHWAYS

459.975 Definitions. As used in NAC 459.975 to 459.991, inclusive, unless the context otherwise requires, the words and terms defined in NAC 459.9751 to 459.9758, inclusive, have the meanings ascribed to them in those sections.

*“Base State” defined. “Base state: means a participating state designated by a motor carrier pursuant to the uniform program as the base state of the motor carrier.*

459.9751 ~~“[Certificate of registration] Uniform Permit”~~ defined. ~~“[Certificate of registration] Uniform Permit”~~ means a ~~[certificate of registration] Uniform 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 459.9805 or the corresponding statute or regulation of a participating state.

459.97515 “Director” defined. “Director” means the director of the department of public safety.

459.9752 “Division” defined. “Division” means the Nevada Highway Patrol division of the department of public safety.

459.97525 “Hazardous material” defined. “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.

459.9753 “Motor carrier” defined. “Motor carrier” means a person who owns or operates one or more motor vehicles used to transport hazardous material.

459.97535 “Motor vehicle” defined. “Motor vehicle” has the meaning ascribed to it in NRS 706.096.

459.9754 “Participating state” defined. “Participating state” means a state that has entered into a reciprocal agreement with this state *to participate in the Uniform program*.

***“Placarding” defined. “Placarding has the meaning ascribed to it in 49CFR, Part 172 or as authorized in 49 CFR, Part 171.12a.***

459.97545 “Person” defined. “Person” means a natural person, any agency of the Federal Government, any agency or political subdivision of this state, any form of business or social organization, and any other legal entity, including, but not limited to, a corporation, partnership association, trust, or unincorporated organization.

459.9755 “Principal place of business” defined. “Principal place of business” means the place where a person maintains his central records relating to the transportation of hazardous material.

459.97555 “Reciprocal agreement” defined. “Reciprocal agreement” means an agreement entered into by this state and another state to:

1. Participate in a program for the reciprocal registration and permitting of persons who transport hazardous material: and
2. Appoint a governing board to assist in the administration of the agreement and the interpretation of its terms.

459.9756 “~~Registration and~~ Permit section” defined. “~~Registration and~~ Permit section” means the ~~hazardous material registration and~~ permit section of the division.

459.97565 “Single-trip permit” defined. “Single-trip permit” means a permit for the transportation of hazardous material which is issued pursuant to NAC 459.984 and valid only in the State of Nevada.

459.9757 “Transport” and “transportation” defined. “Transport” or “transportation” means the movement of property on any public highway.

459.97575 “~~Triennial~~ *Uniform* permit” defined. “~~Triennial~~ *Uniform* permit” means a permit for the transportation of hazardous material issued pursuant to NAC 459.981 or the corresponding statute or regulation of participating state.

***“Uniform application” defined. “Uniform application” means an application to register and obtain a permit for the transportation of hazardous materials pursuant to the uniform program.***

459.9758 “Vehicle” defined. “Vehicle” has the meaning ascribed to it in NRS 706.146.

459.976 Applicability. The provisions of NAC 459.975 to 459.991, inclusive, 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 do not apply to the transportation of a hazardous material by any vehicle which is owned and operated by the Federal Government, this state or any political subdivision of this state.*

459.977 Adoption by reference of provisions of Code of Federal Regulations.

1. The provisions of 49 C.F.R. Parts ~~[171, 172, 173, 177, 178, 383, 387, and 390 to 397, inclusive]~~40, 100 to 185, and 325 to 399, are hereby adopted by reference ~~[November 1, 1994]~~ as of the federal register dated October 1, 2003.

**(COMMENT: Determine exact date of publication.)**

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]~~ volumes which contain these parts may be obtained from

1. the Superintendent of Documents ~~[United States Government Printing Office]~~

*P. O. Box 371954, Pittsburgh, Pennsylvania, 15250-7954.* The price is:

(a) For Parts ~~[171, 172, and 177]~~ 100 to 185 .....\$~~[30]~~ 60

(b) For Part~~s~~ ~~[178]~~ 40 .....\$~~[20]~~44

(c) For Parts ~~[383, 387, and 390 to 397]~~ 325 to 399~~[-, inclusive]~~.....\$~~[27]~~ 60 or

**2. Electronically published at<sup>1</sup>**

**(a) For Parts 100 to 185 at**

[http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_49/49tab\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_49/49tab_00.html)

**(b) For Part 40 at**

[http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_49/49cfr40\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_49/49cfr40_00.html)

**(c) For Parts 325 to 399 at**

[http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_49/49tab\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_49/49tab_00.html)

459.978 Address for communications and payments. Any written communication with or payment made to the ~~[registration and]~~ permit section pursuant to NAC 459.975 to 459.991, inclusive, must be mailed to the Nevada Highway Patrol, ~~[Hazardous Materials Registration and]~~ Permit Section, 555 Wright Way, Carson City, Nevada 89711-0590.

459.979 Certificate of registration and ~~[triennial]~~ Uniform permit required; sources for obtainment. **1.** 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 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

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Note to LCB reviewer: Brenda Erdoes approved electronic published language through Brad Wilkinson, July 14, 2003.

(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 ~~[a 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]~~ *Uniform* permit pursuant to this section agrees that the designation:

(1) Furthers the administration of the ~~[reciprocal agreement]~~ *Uniform program*; and

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

*2. A motor carrier transporting hazardous materials shall complete all parts of the Uniform application except for part III.*

*3. A motor carrier transporting radioactive waste in this state or a hazardous waste in a participating state which requires completion of part III of the uniform application shall complete all parts of the Uniform application.*

459.980 Use of vehicle under lease.

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]~~ *Uniform* permit have not expired or been suspended; and

(c) A legible copy of the lease agreement, certificate of registration, and ~~[triennial]~~ *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.

459.9805 ~~[Certificate of registration]~~ *Uniform permit*: Application for issuance or renewal; fees; expiration.

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 application for the issuance or renewal of a certificate of registration, 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 calculations 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 time 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 issued pursuant to this section expires ~~12 months after its issuance~~ *on December 31 of each year or June 30 of each year.*

459.98055 Authority of division to require fingerprints from principal officers of applicant.

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.

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

1. A person seeking to obtain a ~~triennial~~ *Uniform* permit from the division, or to renew a ~~triennial~~ *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 the ~~triennial~~ *Uniform* permit, ~~on the form prescribed by the division~~;

(b) A completed *Uniform* 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~~ *Uniform* permit will not be issued or renewed pursuant to this section until the required *Uniform* application ~~s~~ and fee have been received by the ~~registration and~~ permit section.

2. *Except as otherwise required by federal law or in this subsection a motor carrier transporting radioactive waste in this state, or a hazardous waste in other participating states requiring completion of part III of the uniform application must provide all information required on the Uniform application including any information required from a motor carrier who transports hazardous waste.*

(a) *The fee for performing the uniform program electronic database background investigation will be the actual costs incurred. The permit section will inform the applicant of the estimated costs and these fees must be received by the permit section before any background investigation is begun. Regardless of the investigation outcome, any unexpended fees will be refunded to the applicant.*

(b) *Fees for on-site investigations by the division*

~~2~~ 3. Except as otherwise provided in this subsection, the fee for the issuance or renewal of a ~~triennial~~ *Uniform* permit issued pursuant to this section for a motor carrier's fleet is \$125 for each *apportioned* power unit used by the motor carrier to transport hazardous material. The fee will not be prorated or refunded.

~~3~~ 4. A ~~Triennial~~ *Uniform* permit issued or renewed pursuant to this section expires 3 years after the date on which the issuance or renewal becomes effective.

459.982 ~~Certificate of registration or triennial~~ *Uniform* permit: change in information on *uniform* application. If there is any change in the information contained in a ~~n~~ *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.

459.983 ~~Certificate of registration and triennial~~ *Uniform* permit: Maintenance at place of business; inspection; copy required in vehicle during transportation.

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.

459.984 Single-trip permit: Obtainment; use; expiration; fee.



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.

459.986 Inspection of vehicles ; verification of drivers' qualifications.

1. Any vehicle used to transport hazardous materials in this state is subject to inspection.

2. The qualifications of the driver of a vehicle used to transport hazardous materials in this state are subject to verification.

3. Any such inspection will be conducted by employees of the division, in conformity with the national uniform inspection procedure and vehicle and driver out-of-service standards adopted by the Commercial Vehicle Safety Alliance and by the division.

459.9865 Provision of notice before transportation of radioactive waste. A person who transports radioactive waste shall notify the division not less than 4 hours nor more than 48 hours before he begins to transport the waste in the state. As used in this section, "radioactive waste" includes low-level waste as defined in NRS 459.007.

459.987 Reporting certain accidents and incidents.

1. Any accident or incident involving hazardous materials must be reported to the division in the manner provided by NRS 459.~~720~~ **718** ~~[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].~~

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 U. S. Department of Transportation (Form No. 5800.1).

459.988 Reimbursement of expenses for response to spill or accident. 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).

459.989 Disciplinary action: Grounds; imposition of sanctions.

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 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;

(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 Department *or the U. S. Department of Transportation, Federal Motor Carrier Safety Administration.*

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 permit with the holder in person or by telephone.

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

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

(e) For seven or more violations, suspend the triennial 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

459.990 Disciplinary action: Notice of intended action; request for hearing; time and place of hearing.

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.

459.991 Disciplinary action: Reinstatement of ~~triennial~~ *Uniform* permit.

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.

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.