

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

LCB File No. R177-05

February 23, 2006

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

AUTHORITY: §§1-3, 6-9 and 29, NRS 459.740; §§4, 5 and 26, NRS 459.704, 459.740 and 459.744; §§10-25, NRS 459.735 and 459.740; §§27 and 28, NRS 459.704 and 459.740.

A REGULATION relating to hazardous materials; requiring a local emergency planning committee to annually implement an emergency plan by exercise, drill or response to a real event; establishing a reporting fee; limiting the amount of fees imposed each calendar year; establishing a process of appeal for a local emergency planning committee or a state agency that is not satisfied with a grant-related decision; revising the provisions governing the administrative duties of a local emergency planning committee; revising the provisions governing the funding for local emergency planning committees and state agencies; revising the provisions governing the imposition and payment of fees; 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 6, inclusive, of this regulation.

Sec. 2. *“Local emergency planning committee” means the committee appointed by the Commission pursuant to 42 U.S.C. § 11001.*

Sec. 3. 1. *Each local emergency planning committee shall:*

(a) Annually implement the emergency plan required pursuant to NAC 459.99133 by exercise, drill or response to a real event; and

(b) Submit to the Commission a report of the exercise, drill or response to a real event.

2. *If a local emergency planning committee fails to meet the requirements of this section, the Commission may suspend the current unencumbered funds of the local emergency*

planning committee and deem the local emergency planning committee ineligible for any future grants until the requirements of this section are met.

Sec. 4. *The reporting fee required pursuant to subsection 4 of NRS 459.744 is \$500 for each person who is required to submit a toxic chemical release form pursuant to 42 U.S.C. §§ 11001 et seq.*

Sec. 5. *The Commission will not require any person to pay more than \$7,500 in fees imposed pursuant to subsection 1 of NAC 459.9918, NAC 459.99181 or section 4 of this regulation for any calendar year.*

Sec. 6. 1. *If a local emergency planning committee or a state agency is not satisfied with a grant-related decision by the Commission or by a staff member of the Commission, the local emergency planning committee or state agency may file an appeal with the Executive Director of the Commission. The appeal must be on a form provided by the Commission and must be filed within 35 days of the receipt of notice by the local emergency planning committee or state agency of the original decision.*

2. *Except as otherwise provided in this subsection, after the receipt of an appeal pursuant to this section, the Executive Director or his designee shall present a report to the Commission at its next meeting. If an appeal is received after the deadline for placing items on the agenda for the next meeting of the Commission, the Executive Director or his designee shall present the report to the Commission at its next following meeting. The report presented to the Commission will include the grounds for the appeal, supporting documentation, information concerning the claim and recommendations for action by the Commission.*

3. *Not later than 10 days before the date of the meeting in which an appeal will be heard, the Executive Director or his designee shall notify the local emergency planning committee or state agency in writing of the date, time and place of the meeting.*

4. *The local emergency planning committee or state agency may appear in person to present the reason for appeal.*

5. *The Commission may render a decision on the claim at the time of the meeting or may defer action to a future meeting if additional information is required for review.*

6. *The Executive Director or his designee shall mail to the participant by first-class mail notice of the decision of the Commission within 15 days after the decision is rendered.*

7. *A decision by the Commission regarding an appeal is final.*

Sec. 7. NAC 459.9912 is hereby amended to read as follows:

459.9912 As used in NAC 459.9912 to 459.99184, inclusive, *and sections 2 to 6, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.99121 to 459.99128, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

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

459.99132 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 *to the Bylaws Committee* a copy of its bylaws and a list of the members of the local emergency planning committee ~~[to the Bylaws Committee.]~~;
4. *Hold quarterly meetings;*
5. *Submit to the Commission a copy of the agenda and minutes of every meeting;*

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

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

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

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

459.99133 1. Each local emergency planning committee shall:

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

(b) Annually review the emergency plan; and

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

Sec. 10. NAC 459.99135 is hereby amended to read as follows:

459.99135 Pursuant to NRS 459.742 and in accordance with the provisions set forth in NAC 459.99138 to 459.99146, inclusive, the Commission may:

1. Use the fees collected by the Commission pursuant to NAC 459.9918, 459.99181 and 459.99182 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 the fees collected pursuant to subsection 4 of NRS 482.379365 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*

3. 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. NAC 459.99138 is hereby amended to read as follows:

459.99138 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 *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 ~~[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. 12. NAC 459.99139 is hereby amended to read as follows:

459.99139 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 *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 for planning that is necessary to carry out the emergency plan of the local emergency planning committee.

Sec. 13. NAC 459.99141 is hereby amended to read as follows:

459.99141 1. Except as otherwise provided in subsection 2, a local emergency planning committee may, in its application for a grant from the Commission, request grant money from the fees collected by the Commission pursuant to *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 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. 14. NAC 459.99142 is hereby amended to read as follows:

459.99142 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 *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 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. 15. NAC 459.99143 is hereby amended to read as follows:

459.99143 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 *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 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. 16. NAC 459.99147 is hereby amended to read as follows:

459.99147 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~~ *based* on the *following factors*:

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

~~—(b) If~~

(b) *Whether* the application for grant money satisfies the conditions set forth in NAC 459.99138 to 459.99146, inclusive ~~;~~ *and*

(c) *Whether the local emergency planning committee has complied with all applicable statutes and regulations.*

Sec. 17. NAC 459.99149 is hereby amended to read as follows:

459.99149 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]~~ *Compliance* Certification Form indicating that the local emergency planning committee has complied with the administrative requirements for a grant.

Sec. 18. NAC 459.99151 is hereby amended to read as follows:

459.99151 1. Except as otherwise provided in NAC 459.99152, 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.]~~ *last day of the quarter.*

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. 19. NAC 459.99161 is hereby amended to read as follows:

459.99161 Pursuant to paragraph (d) of subsection 2 of NRS 459.735 and in accordance with the provisions set forth in NAC 459.99163 to 459.99167, inclusive, the Commission may:

1. Allocate the fees collected by the Commission pursuant to NAC 459.9918, 459.99181 and 459.99182 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 the fees collected pursuant to subsection 4 of NRS 482.379365 and deposited in the Contingency Account for Hazardous Materials to state agencies for the operating, planning, training and equipment needs of state and local personnel to respond to accidents and incidents involving hazardous materials; and*

3. 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. 20. NAC 459.99163 is hereby amended to read as follows:

459.99163 1. Except as otherwise provided in subsection 2, a state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request money from the fees collected by the Commission pursuant to *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 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. 21. NAC 459.99164 is hereby amended to read as follows:

459.99164 1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request money from the fees collected by the Commission pursuant to *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 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. 22. NAC 459.99165 is hereby amended to read as follows:

459.99165 1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request money from the fees collected by the Commission pursuant to *subsection 4 of NRS 482.379365 and* NAC 459.9918, 459.99181 and 459.99182 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. 23. NAC 459.99171 is hereby amended to read as follows:

459.99171 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]~~ *Compliance* 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. 24. NAC 459.99172 is hereby amended to read as follows:

459.99172 1. Except as otherwise provided in NAC 459.99173, 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.]~~ *last day of the quarter.*

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. 25. NAC 459.99176 is hereby amended to read as follows:

459.99176 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 ~~;~~ *relating to the allocation received from the Commission;* 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. 26. NAC 459.99181 is hereby amended to read as follows:

459.99181 1. The filing fee required pursuant to paragraph (a) of subsection 2 of NRS 459.744 is \$100 for each facility in which extremely hazardous material is stored.

2. The surcharge required pursuant to paragraph (b) of subsection 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. 27. NAC 459.99183 is hereby amended to read as follows:

459.99183 1. If a person fails to pay a fee required pursuant to NAC 459.9918, 459.99181 or 459.99182 *or section 4 of this regulation* on or before the applicable due date, the Commission will send a written notice to the person stating that the fee has not been paid and notifying the person of the provisions of subsection 2.

2. If a person fails to pay a fee required pursuant to NAC 459.9918, 459.99181 or 459.99182 *or section 4 of this regulation* 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. NAC 459.99184 is hereby amended to read as follows:

459.99184 If a person has overpaid a fee required pursuant to NAC 459.9918, 459.99181 or 459.99182 ~~{}~~ *or section 4 of this regulation*, 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 459.9918, 459.99181 or 459.99182 ~~H~~ *or section 4 of this regulation.*

Sec. 29. NAC 459.99155 is hereby repealed.

TEXT OF REPEALED SECTION

459.99155 Annual progress reports.

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.