

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

LCB File No. R203-05

Effective February 23, 2006

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

AUTHORITY: §§1-5, NRS 459.721 and 459.725.

A REGULATION relating to hazardous materials; revising provisions governing the transportation of hazardous materials on public highways; and providing other matters properly relating thereto.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto a new section to read as follows:

A motor carrier shall not transport upon a public highway of this State any hazardous material set forth in 49 C.F.R. § 385.403, in the quantity indicated for each, unless the motor carrier:

1. Holds a uniform permit and a safety permit issued by the Federal Motor Carrier Safety Administration of the United States Department of Transportation;

2. Has a “Satisfactory” safety rating assigned by the Federal Motor Carrier Safety Administration as required by 49 C.F.R. § 385.407(a);

3. Certifies that it has a satisfactory security program as required by 49 C.F.R. § 385.407(b), including:

(a) A written route plan that meets the requirements of 49 C.F.R. § 397.101; and

(b) A communication plan that allows for contact between the operator of a motor vehicle used to transport such hazardous material and the motor carrier, to meet the periodic contact requirements set forth in 49 C.F.R. § 385.415(c)(1);

4. Does not have a crash rate in the top 30 percent of the national average, as indicated in the Motor Carrier Management Information System of the Federal Motor Carrier Safety Administration;

5. Does not have a driver, vehicle, hazardous materials, or a total out-of-service rate in the top 30 percent of the national average, as indicated in the Motor Carrier Management Information System of the Federal Motor Carrier Safety Administration;

6. Requires all of its hazardous materials employees to complete successfully the security training required by 49 C.F.R § 172.704(a)(4) and (a)(5); and

7. Registers with the Research and Special Programs Administration of the United States Department of Transportation in accordance with 49 C.F.R. Part 107, Subpart G.

Sec. 2. NAC 459.976 is hereby amended to read as follows:

459.976 Except as otherwise provided in this section, the provisions of NAC 459.975 to 459.991, inclusive, *and section 1 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 section 1 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 3. NAC 459.977 is hereby amended to read as follows:

459.977 1. The provisions of 49 C.F.R. Parts 40, 100 to 180, inclusive, and 325 to 399, inclusive, are hereby adopted by reference as they existed on October 1, ~~2003.~~ **2005.** 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:

(a) From the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania, 15250-7954. The price is:

- (1) For Part 40.....~~[\$44]~~ **\$60**
- (2) For Parts 100 to 185, inclusive.....~~[60]~~ **63**
- (3) For Parts 325 to 399, inclusive.....~~[60]~~ **64**

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

Sec. 4. 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 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.

4. A single-trip permit must not be used to transport any hazardous material set forth in 49 C.F.R. § 385.403, unless the motor carrier holds a safety permit issued by the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

Sec. 5. NAC 459.989 is hereby amended to read as follows:

459.989 ~~{1. The}~~

In addition to the provisions set forth in NRS 459.7058, the Division may deny, ~~{or}~~ refuse to renew *or suspend* a 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)}~~ 1. Violates any out-of-service regulation of the United States Department of Transportation, compliance with which is his responsibility;

~~{(b)}~~ 2. Violates any provision of NRS 459.700 to 459.780, inclusive, or NAC 459.975 to 459.991, inclusive ~~{;~~

~~{(c)}~~ *, and section 1 of this regulation;*

3. Knowingly provides false or misleading information in his application for a uniform permit;

~~{(d)}~~ 4. Knowingly uses a forged uniform permit or a uniform permit which has been altered;

~~{(e)}~~ 5. Except as otherwise provided by NAC 459.980, allows the uniform permit to be used by a person who is not his agent or employee; ~~{or}~~

~~{(f)}~~ 6. 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 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 uniform permit with the holder in person or by telephone.~~

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

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

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

7. Fails to submit a renewal application and the appropriate fees as required by NAC 459.9805;

8. Fails to comply with any applicable requirement of or any order issued pursuant to:

(a) The Federal Motor Carrier Safety Regulations of the United States Department of Transportation;

(b) The Hazardous Materials Regulations set forth in 49 C.F.R. Parts 171 to 180, inclusive; or

(c) Any statute or regulation of this State governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport hazardous materials; or

9. Loses its right to operate or has its registration suspended in accordance with 49 C.F.R. § 386.83 or 386.84 for failure to pay a civil penalty or abide by a payment plan.

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

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R203-05**

The Director of the Department of Public Safety adopted regulations assigned LCB File No. R203-05 which pertain to chapter 459 of the Nevada Administrative Code on January 5, 2006.

Notice date: 12/2/2005
Hearing date: 1/5/2006

Date of adoption by agency: 1/5/2006
Filing date: 2/23/2006

INFORMATIONAL STATEMENT

On January 05, 2006 the Department of Public Safety held a workshop and public hearing for proposed regulation adoptions in accordance with Nevada Revised statute 233B.061.

The proposed regulations for adoption have been assigned: LCB File Number R203-05 and R204-05.

The proposed regulations for adoption are: Chapter 459 of Nevada Administrative Code as amended and Nevada Administrative Code 706.247 as amended.

- (a) On December 02, 2005, The Nevada Highway Patrol sent notice of the scheduled workshop and public hearing to interested Associations and Governmental Agencies. A list of the agencies notified is attached.
- (b) The following persons attended the workshop and public hearing:

LAS VEGAS

Sergeant Ken Roll- DPS
Sergeant Joseph Smith- DPS
Trooper Elmer Johnson- DPS
Ron Levine- NMTA

RENO

Lieutenant Bill Bainter- DPS
Lieutenant Gary Johnson- DPS
Daryl Capurro- NMTA
Ray Roach- NMTA

CARSON CITY

Acting Lieutenant Scott Swain- DPS
Sergeant Steve Griswold- DPS
ASO James Rhose- DPS (Hearing Officer)

ELKO

Captain Mark Malloy- DPS
Sergeant Randy Jackson- DPS

Testimony was provided at the workshop by the following:

1. Sergeant Steve Griswold- DPS
2. Captain Mark Malloy- DPS
3. Lieutenant Bill Bainter- DPS
4. Daryl Cappuro- NMTA

There were no written statements submitted to the agency.

- (c) On December 02, 2005, The Nevada Highway Patrol sent notice of the scheduled workshop and public hearing to interested Associations and Governmental Agencies. A list of the agencies notified is attached. The Nevada Highway Patrol received no written responses for the proposed adoptions.
- (d) A change in the regulation is proposed prior to adoption.
- (e) The proposed regulation adoptions will not have any additional economic effect on the business which they regulate, the public, or the State.
- (f) There will be no additional costs related to the enforcement of the proposed regulation adoptions.
- (g) The regulations enforced by Nevada Environmental Protection Agency mirrors federal regulations for the transportation of hazardous substance and hazardous waste. The Nevada Environmental Protection Agency does not have jurisdiction on Nevada Highway's, which requires the Nevada Highway Patrol to adopt regulations for transportation.

The intent of the regulation adoption is to duplicate Federal Motor Carrier Safety Regulations.

- (h) The regulations proposed to adopt are not more stringent than federal regulations.
- (i) The proposed regulations adopted will not mandate any additional fees.