

## LCB File No. R203-05

### 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

NAC 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 459.97515 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.

NAC 459.97575 ~~[459.97541]~~ “Uniform permit” defined. “Uniform permit” means a 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.

NAC 459.97515 “Director” defined. “Director” means the Director of the Department of Public Safety.

NAC 459.9752 “Division” defined. “Division” means the Nevada Highway Patrol, Division of the Department of Public Safety.

NAC 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.

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

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

NAC 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 49 CFR, Part 172 or as authorized in 49 CFR, Part 171.12a.

NAC 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.

NAC 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.

NAC 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.

NAC 459.97543 “Permit Section” defined. ~~[459.9756]~~ “Permit Section” means the Permit Section of the Division.

NAC 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.

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

NAC 459.97575 ~~[459.97573]~~ “Uniform permit” defined. “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.

NAC 459.97573 “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.

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

NAC 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, inclusive, 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.

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

1. The provisions of **49 C.F.R.** Parts 40, 100 to 185, inclusive, and 325 to 399, inclusive, are hereby adopted by reference as *those regulations existed on October 1, 2005* ~~[the federal register dated October 1, 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.

A copy of the volumes which contain these parts may be obtained from

1. The Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania, 15250-7954. The price is:

- (a) For Parts 100 to 185 .....**\$63** ~~[\$60]~~
- (b) For Part 40.....\$44
- (c) For Parts 325 to 399 .....**\$64** ~~[\$60]~~ or

2. Electronically published at

(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)

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

New Section: *Transportation of federally required safety permit material.*

***1. An interstate or intrastate motor carrier may not transport any of the following materials, in the quantity indicated for each, unless the motor carrier holds a U.S. DOT Safety Permit and holds a Uniform Program Permit:***

***(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR, part 173.403;***

***(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material or an amount of a Division 1.5 (explosive) material requiring placarding under 49 CFR, part 172;***

***(c) More than one liter (1.08 quarts) per package of a "material poisonous by inhalation," as defined in 49 CFR, part 171.8, that meets the criteria for "hazard zone A," as specified in 49 CFR, part 173.116(a) or 173.133(a);***

***(d) A "material poisonous by inhalation," as defined in 49 CFR, part 171.8, that meets the criteria for "hazard zone B," as specified in 49 CFR, part 173.133(a) in a bulk packaging (capacity greater than 450 liters ~~[119 gallons]~~);***

***(e) A "material poisonous by inhalation," as defined in 49 CFR, part 171.8, that meets the criteria for "hazard zone C," or "hazard zone D," as specified in 49 CFR, part 173.116(a), in a packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons); or***

*(f) A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons).*

*2. A motor carrier transporting one of the materials identified above must*

*(a) Hold a current U.S. DOT Satisfactory safety rating;*

*(b) Certify that it has a satisfactory security program as required in 49 CFR, part 385.407(b), including:*

*a. A written route plan,*

*b. A communications plan that allows for contact between the motor vehicle operator and the motor carrier to meet the requirements in 49 CFR, part 385.415(c)(1);*

*(c) Must not have a crash rate in the top 30 percent of the national average, as indicated in the U.S. DOT, Federal Motor Carrier Safety Administration's Motor Carrier Management Information System (MCMIS);*

*(d) Must 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 MCMIS;*

*(e) Successful completion by all hazmat employees of the security training required in 49 CFR, part 172.704 (a)(4) and (a)(5); and*

*(f) Registration with the Research and Special Programs Administration of the U.S. DOT in accordance with 49 CFR, part 107, subpart G.*

NAC 459.979 Registration and 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 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 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 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.

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.

NAC 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 Uniform permit from the entity prescribed in NAC 459.979;

(b) The certificate of registration and Uniform permit have not expired or been suspended; and

(c) A legible copy of the lease agreement, certificate of registration 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 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 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.

NAC 459.9805 Uniform permit: Uniform application for issuance or renewal; fees; expiration.

1. A person seeking to obtain a uniform permit from the Division, or to renew a uniform permit issued by the Division, must submit to the 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 Uniform permit will not be issued or renewed pursuant to this section until the required Uniform application and fees have been received by the 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 multiplied by 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 multiplied by 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 on December 31 of each year or June 30 of each year.

NAC 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.

NAC 459.9805 ~~[459.981]~~ Uniform Permit: Application for issuance or renewal ; fee; expiration.

1. A person seeking to obtain a Uniform Permit from the division, or to renew a Uniform permit issued by the division, must submit to the permit section:

(a) A completed Uniform application for the issuance or renewal of the Uniform permit;

(b) A completed Uniform application for the issuance or renewal of a certificate of registration,; and

(c) The fee prescribed by subsection 2.

A Uniform permit will not be issued or renewed pursuant to this section until the required Uniform application and fee have been received by the 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

3. Except as otherwise provided in this subsection, the fee for the issuance or renewal of a 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.

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

NAC 459.982 Uniform Permit: change in information in uniform application. If there is any change in the information contained in a Uniform application to the Division for the issuance or renewal of a Uniform permit, the holder of the Uniform permit shall, within 1 year after the change occurs, give written notice of the change to the Permit Section.

NAC 459.983 Uniform Permit: Maintenance at place of business; inspection; copy required in vehicle during transportation.

1. The original of any Uniform permit must be:

(a) Maintained by the holder at his principal place of business, as listed in his Uniform application 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 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.

NAC 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 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 shall not be used to transport the four federally permitted hazardous materials contained in 49 CFR 385.403, unless the motor carrier holds a U.S. DOT Safety Permit.***

NAC 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.

NAC 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 this State. As used in this section, “radioactive waste” includes low-level waste as defined in NRS 459.007.

NAC 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 459.718.

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

NAC 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 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 Uniform Permit, or a single-trip permit, the person who is required to obtain the 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).

NAC 459.989 Disciplinary action: Grounds; imposition of sanctions.

1. The Division may deny or refuse to renew 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) Violates any out-of-service regulation of the Department of Transportation, compliance with which is his responsibility;

(b) Violates any 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 Uniform Permit;

(d) Knowingly uses a forged Uniform Permit or a Uniform Permit which has been altered;

(e) 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) 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 *or 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.]~~

*(g) Fails to submit a renewal application, and the appropriate fees.*

*(h) Fails to maintain a satisfactory security plan.*

*(i) Fails to comply with applicable requirements in the FMCSRs, the HMRs or State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials.*

*(j) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs or state requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials.*

*(k) Fails to maintain the minimum required financial responsibility.*

*(l) Fails to maintain current hazardous materials registration with the Research and Special Programs Administration of the U.S. DOT.*

*(m) Loses its operating rights or has its registration suspended in accordance with 49 CFR, part 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.

NAC 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 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.

NAC 459.991 Disciplinary action: Reinstatement of Uniform Permit.

1. The Division may reinstate a 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.