

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

LCB File No. R074-15

November 3, 2015

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

AUTHORITY: §§1-4, 22 and 23, NRS 459.740; §§5-18, NRS 459.735 and 459.740; §19, NRS 459.704, 459.740 and 459.744; §§20 and 21, NRS 459.704 and 459.740.

A REGULATION relating to emergency planning; requiring that certain information relating to hazardous materials be available to the public at no cost; revising provisions relating to the grants and allocations provided by the State Emergency Response Commission for emergency planning and responding to certain accidents, motor vehicle crashes and incidents; revising provisions relating to the submission of an application for a grant or allocation to the Commission; revising provisions relating to the submission of a financial report to the Commission; requiring a person who does not pay certain fees charged by the Commission by the due date to pay a late fee; revising provisions relating to appeals of decisions of the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Emergency Response Commission to adopt regulations to carry out the provisions of the federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 et seq. **Section 1** of this regulation requires that certain information relating to hazardous materials filed with the Commission be provided to the public at no cost. **Section 3** of this regulation revises the definition of “local emergency planning committee” to include the Inter-Tribal Emergency Response Commission. **Section 4** of this regulation provides that if a local emergency planning committee fails to provide an emergency plan to the Planning and Training Subcommittee within a certain period, the emergency plan may be reviewed at the next meeting of the Planning and Training Subcommittee rather than in February of the following year.

Sections 5-18 of this regulation combine existing regulations relating to the provision of funding to local emergency planning committees and state agencies by the Commission for emergency planning and responding to accidents, motor vehicle crashes and incidents involving hazardous materials. **Section 6** clarifies that the Commission may approve an application for funding for all or part of the amount requested or may deny the application. **Section 6** also provides that a state agency may also request funding to provide planning, training or equipment to certain persons and entities. **Section 7** provides that the Commission will notify each local

emergency planning committee and state agency before the deadline for submission of an application for a grant or allocation. **Section 10** requires a request for a grant or allocation for equipment, training or services provided by a consultant or contractor to include two or more competitive bids, an itemized list of the equipment or services and an itemized quote of the equipment or services. Additionally, **section 10** provides that any money allocated to a state agency by the Commission is subject to the State purchasing statutes and regulations.

Section 15 provides that a request for advance funding for certain expenditures will be verified and processed by the staff of the Commission. If a local emergency planning committee or state agency fails to return advance funding to the Commission that was unused or in excess of an expenditure authorized in a grant or allocation, **section 15** also specifies that the Commission may withhold additional funding from the local emergency planning committee or state agency until the advance funding is returned. **Section 17** provides that if a financial report is more than 60 days past due, the Commission: (1) will withhold, rather than may withhold, funding from the local emergency planning committee or state agency until the report is submitted; and (2) may deny any requests from the local emergency planning committee or state agency to reimburse expenditures authorized in a grant or allocation. **Section 18** provides that a request to revise the use of a grant or allocation of money must be approved by the Commission, not the Chair of the Funding Committee, at the next regularly scheduled meeting of the Commission.

Sections 19-21 of this regulation revise the existing fee provisions relating to hazardous materials and services of the Commission. **Section 19** adds a late fee to the existing fees, providing that if a person fails to pay certain required fees by the date on which the fees are due, the person will be charged a late fee of 10 percent of the total amount of the fees due. **Section 20** provides that if a person fails to pay certain required fees, the Commission: (1) will provide written or electronic notice to the person; (2) after 60 days, will submit the matter to the State Controller, rather than the Attorney General, for collection proceedings; and (3) may refer the matter to the appropriate agency for legal proceedings. **Section 22** revises the procedures for appealing a decision to the Commission.

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

1. Pursuant to subsection 6 of NRS 459.742, 42 U.S.C. §§ 11001 et seq. and 49 U.S.C. §§ 5101 et seq., information filed with the Commission relating to hazardous materials is a public record.

2. Upon request, information relating to hazardous materials filed with the Commission will be provided at no cost to any person requesting such information.

Sec. 2. NAC 459.9912 is hereby amended to read as follows:

459.9912 As used in NAC 459.9912 to 459.99189, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.99121 to 459.99128, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 459.991265 is hereby amended to read as follows:

459.991265 “Local emergency planning committee” means ~~the~~ *a* committee appointed by the Commission pursuant to 42 U.S.C. § 11001 ~~H~~, *and includes the Inter-Tribal Emergency Response Commission.*

Sec. 4. 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 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 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.~~ *at the next regularly scheduled meeting of the Planning and Training Subcommittee.*

Sec. 5. NAC 459.99135 is hereby amended to read as follows:

459.99135 Pursuant to NRS *459.735 and* 459.742 and in accordance with the provisions set forth in NAC 459.99138 ~~to~~, *459.99139 and* 459.99146, ~~inclusive,~~ the Commission may:

1. Use the fees collected by the Commission pursuant to NAC 459.9918 ~~to 459.991825,~~ ~~inclusive,~~ and deposited in the Contingency Account for Hazardous Materials to issue grants to local emergency planning committees *or allocate money to state agencies* for ~~the~~:

(a) The operating, planning, training and equipment needs of the local emergency planning committees ~~to carry~~ *or state agencies, as applicable, in carrying* out the emergency plans of the local emergency planning committees ~~or~~ *or state agencies; or*

(b) Training and equipping state and local personnel to respond to accidents, motor vehicle crashes and incidents involving hazardous materials;

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 *or allocate money to state agencies* for the planning, training, supply and equipment needs of the local emergency planning committees *or state agencies, as applicable*, to support preparedness to combat terrorism; 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 *or allocate money to state agencies* for ~~the~~ :

(a) *The* planning and training needs of the local emergency planning committees ~~to carry~~ *or state agencies, as applicable, in carrying* out the emergency plans of the local emergency planning committees ~~or~~ *or state agencies; or*

(b) *Training and equipping state and local personnel to respond to accidents, motor vehicle crashes and incidents involving hazardous materials.*

Sec. 6. NAC 459.99136 is hereby amended to read as follows:

459.99136 1. A local emergency planning committee , ~~for~~ an authorized representative acting on behalf of a local emergency planning committee *or the head of a state agency* may submit an application ~~for a grant~~ *to the Commission* pursuant to the provisions of NAC 459.99138 ~~to~~ *459.99139 and* 459.99146 . ~~inclusive.~~ The Commission may approve the application for *all or part of* the ~~grant but~~ *amount requested or deny the application. If the Commission denies the application, the local emergency planning committee or state agency may reapply for a grant or allocation, as applicable.*

2. *The Commission* will not provide funding for ~~the~~ :

(a) A grant unless ~~the~~ , *before submitting the application, the* local emergency planning committee has met and approved the amount of funding requested in the application ~~+~~
 ~~—2.~~ ; *or*

(b) *An allocation unless, before submitting the application, the head of the state agency has determined and approved the amount of funding requested in the application.*

3. In submitting an application for a grant *or allocation* pursuant to NAC 459.99138 ~~to~~, *459.99139 and* 459.99146, ~~inclusive,~~ a local emergency planning committee *or state agency, as applicable*, may request funding to provide planning, training and equipment to certain persons and entities, including, without limitation:

- (a) State and local entities;
- (b) Private companies;
- (c) Nonprofit corporations;
- (d) ~~Public utilities~~ *Utilities* owned and operated by political subdivisions of the State; and
- (e) General improvement districts involved in preventing and responding to incidents involving hazardous materials or mitigating such incidents.

Sec. 7. NAC 459.99137 is hereby amended to read as follows:

459.99137 The Commission will ~~send application forms for grants to~~ *notify* each local emergency planning committee *and state agency* not later than 6 weeks before the deadline for submission of an application for a grant *or allocation, as applicable*, to the Commission. ~~By the local emergency planning committees.~~

Sec. 8. 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 NAC 459.9918 ~~to 459.991825, inclusive,~~ 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. 9. NAC 459.99139 is hereby amended to read as follows:

459.99139 ~~{A}~~

1. Except as otherwise provided in subsection 2, a local emergency planning committee or state agency may, in its application for a grant or allocation, as applicable, from the Commission, request ~~{grant}~~ money to carry out its emergency plan or to train state and local personnel to respond to accidents, motor vehicle crashes and incidents involving hazardous materials, as applicable, for:

(a) Planning, training, equipment or services to be provided by a consultant or contractor that relate to planning or training from the ~~{fees}~~ :

(1) Fees collected by the Commission pursuant to NAC 459.9918 ~~{to 459.991825, inclusive, for planning that is necessary to carry out the emergency plan of the local emergency planning committee}~~ ; or

(2) Money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005; or ~~{pursuant}~~

(b) Planning to support preparedness to combat terrorism from the fees collected by the Commission pursuant to subsection 4 of NRS 482.379365 . ~~{for planning to support preparedness to combat terrorism.}~~

2. A local emergency planning committee or state agency may not request a grant or allocation, as applicable, from the Commission for training in accordance with:

(a) Paragraph (a) of subsection 1 unless a training program provided by the State Fire Marshall pursuant to NRS 477.039 cannot be provided within the 6-month period immediately following the date on which the request for a grant or allocation is made.

(b) Paragraph (b) of subsection 1 unless a training program provided by the Division of Emergency Management of the Department of Public Safety cannot be provided within the 6-month period immediately following the date on which the request for a grant or allocation is made.

Sec. 10. NAC 459.99146 is hereby amended to read as follows:

459.99146 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 money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 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 to the Commission for a grant or allocation made pursuant to ~~{subsection 1}~~ *this section and NAC 459.99138 and 459.99139* must include, without limitation:

(a) Two or more competitive bids that were submitted to the local emergency planning committee *or state agency* by *equipment vendors, training providers*, consultants or contractors;

(b) An itemized list of the *equipment or* scope of the services to be provided by the *equipment vendor, training provider*, consultant or contractor ~~{who was}~~ selected by the local emergency planning committee ~~{}~~ *or state agency*; and

(c) An itemized quote for the costs of the *equipment or* services of the *equipment vendor, training provider*, consultant or contractor.

2. The expenditure of any money allocated by the Commission to a state agency pursuant to this section is subject to the provisions of chapter 333 of NRS and chapter 333 of NAC.

Sec. 11. NAC 459.99147 is hereby amended to read as follows:

459.99147 The Commission ~~{may:}~~ *will:*

1. Place each application for *a* grant ~~{money}~~ *or allocation* that is submitted to the Commission *and meets the application guidelines, as determined by the staff of the Commission*, on an agenda for consideration at a future meeting of the Commission;
2. Review each application for *a* grant ~~{money}~~ *or allocation* that is submitted by a local emergency planning committee ~~{:}~~ *or state agency, as applicable;* and
3. Award *a* grant ~~{money}~~ to a local emergency planning committee *or allocate money to a state agency* based on the following factors:
 - (a) The availability of money for grants *or allocations* in the Contingency Account for Hazardous Materials;
 - (b) Whether the application ~~{for grant money}~~ satisfies the conditions set forth in NAC 459.99138 ~~{to}~~ *459.99139 and* 459.99146 ; ~~{inclusive;}~~ and
 - (c) Whether the local emergency planning committee *or state agency* has complied with all applicable statutes ~~{:}~~ *and* regulations . ~~{and policies.}~~

Sec. 12. NAC 459.99148 is hereby amended to read as follows:

459.99148 Upon the determination of the Commission to award a grant to a local emergency planning committee ~~{:}~~ *or allocate money to a state agency*, the Commission will prepare documentation of the ~~{award}~~ *grant or allocation, as applicable*, and keep such documentation on file with the Commission.

Sec. 13. 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 ~~{}~~ *or state agency*, the local emergency planning committee *or state agency, as applicable*, must complete and submit to the Commission the following forms provided by the Commission:

1. The Certified Assurances ~~{Form}~~ *For State Agencies form*, indicating that the local emergency planning committee *or state agency* agrees to comply with the rules and regulations governing the grant ~~{money awarded in the grant.}~~ *or allocation, as applicable*. The form must be signed by ~~{the chair}~~ :

(a) For a local emergency planning committee, an authorized representative of the local emergency planning committee and a designee of the appropriate ~~{governmental}~~ entity for which the ~~{grant}~~ money has been awarded ~~{}~~ ; and

(b) For a state agency, an authorized representative of the state agency.

2. The *LEPC* Compliance Certification ~~{Form}~~ *form*, indicating that the local emergency planning committee *or state agency* has complied with the administrative requirements for a grant ~~{}~~ *or allocation, as applicable*.

Sec. 14. 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 *or allocated to a state agency* by the Commission will be disbursed on the basis of reimbursement for expenditures authorized in the grant ~~{}~~ *or allocation, as applicable*.

2. If a local emergency planning committee *or state agency* seeks to be reimbursed for an expenditure authorized in the grant ~~{}~~ *or allocation, as applicable*, the local emergency planning committee *or state agency* must submit a request for reimbursement to the Commission not later

than 30 days after the last day of the quarter or 45 days after the end of the ~~{award}~~ period ~~{}~~ *for which the money was granted or allocated, as applicable.*

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 ~~{}~~ *or state agency.*

4. Within 5 working days after receiving a request for reimbursement, the *staff of 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 *or state agency* is requesting reimbursement is authorized in the grant. If the ~~{Commission approves the request,}~~ *expenditure is authorized,* the *staff of the* Commission will process the payment within 1 working day after ~~{approval of the request,}~~ *the audit has been completed.*

Sec. 15. NAC 459.99152 is hereby amended to read as follows:

459.99152 1. If a local emergency planning committee *or state agency* has an expected expenditure exceeding \$2,000, the local emergency planning committee *or state agency, as applicable,* may submit a request to the Commission for advance funding.

2. The request for advance funding must include a financial report, on a form approved by the Commission, consisting of a copy of the purchase order indicating the date of processing for the purchase and the cost of the purchase.

3. Within 5 working days after receiving a request for advance funding, the *staff of the* Commission will verify that the expenditure for which the local emergency planning committee *or state agency* is requesting advance funding is authorized in the grant ~~{}~~ *or allocation, as applicable.* If the ~~{Commission approves the}~~ request ~~{}~~ *meets the criteria approved by the Commission for advance funding, as determined by the staff of the Commission,* the *staff of*

the Commission will process the payment to the local emergency planning committee ~~or~~ *or state agency, as applicable.*

4. Within 30 days after a check for advance funding is ~~issued to~~ *received by* a local emergency planning committee ~~or~~ *or state agency*, the local emergency planning committee *or state agency, as applicable*, shall submit to the Commission a financial report, on a form approved by the Commission, that includes any invoices for the expenditure and proof of payment.

5. If the expenditure is not made within 30 days after a check for advance funding is ~~issued to~~ *received by* a local emergency planning committee ~~or~~ *or state agency*, the local emergency planning committee *or state agency, as applicable*, must return to the Commission the amount of the advance funding within 45 days after the ~~issuance~~ *receipt* of the check for advance funding.

6. If a check for advance funding ~~issued to a local emergency planning committee~~ is in excess of the actual expenditure, the local emergency planning committee *or state agency, as applicable*, must return to the Commission the amount of the advance funding that is in excess of the actual expenditure within 45 days after the date of ~~issuance~~ *receipt* of the check for advance funding.

7. If a local emergency planning committee *or state agency* fails to return an amount of advance funding as required pursuant to this section, the Commission may withhold funding from the local emergency planning committee ~~in the future~~ *or state agency, as applicable, until the amount of the advance funding is returned.*

8. As used in this section, “advance funding” means an advance of the ~~grant~~ money awarded *or allocated* to pay for any expenditures ~~authorized by the Commission.~~

Sec. 16. NAC 459.99153 is hereby amended to read as follows:

459.99153 Unless a financial report is submitted pursuant to NAC 459.99151 or 459.99152, a local emergency planning committee *or state agency* must submit to the Commission a quarterly financial report. The quarterly financial report must be submitted on a form approved by the Commission not later than 30 days after the last day of the quarter indicating that no expenditures were made during that quarter.

Sec. 17. NAC 459.99154 is hereby amended to read as follows:

459.99154 If a financial report required to be submitted pursuant to NAC 459.99151, 459.99152 or 459.99153:

1. Is at least 30 days past due but less than 45 days past due, the Commission will notify the ~~chair~~ *authorized representative* of the local emergency planning committee *or state agency* required to submit the financial report.

2. Is at least 45 days past due but less than 60 days past due, the Commission will notify the designee of the appropriate governmental entity for which the grant has been awarded ~~+~~ *or the head of the state agency, as applicable.*

3. Is at least 60 days past due, the Commission ~~{may in the future}~~ :

(a) Will withhold funding from the local emergency planning committee or state agency that is required to submit the financial report ~~+~~ until the financial report has been submitted to the Commission.

(b) May deny a request from the local emergency planning committee or state agency for reimbursement of expenditures authorized in a grant or allocation, as applicable.

Sec. 18. NAC 459.99156 is hereby amended to read as follows:

459.99156 1. If circumstances pertaining to the use of a grant ~~{money}~~ *or allocation* change after the award of a grant to a local emergency planning committee ~~+~~ *or an allocation to*

a state agency, the local emergency planning committee *or state agency, as applicable*, shall submit to the Commission a request ~~[, on a form approved by the Commission,]~~ to revise the use of the ~~[grant]~~ money for another purpose.

2. If the request to revise the use of ~~[grant]~~ money constitutes a change of 10 percent or more of the total amount of the grant *or allocation* or constitutes a significant change to the scope of the intent of the original ~~[grant]~~ application, before the local emergency planning committee *or state agency, as applicable*, may carry out the change, the request must be ~~[-~~
~~—(a) Approved]~~ *approved* by the ~~[Chair of the Funding Committee; and~~
~~—(b) If required by the Chair of the Funding Committee, reviewed and approved by the~~
~~Funding Committee on the record at a meeting of the Funding Committee.]~~ *Commission at the*
next regularly scheduled meeting of the Commission.

3. ~~[The Chair of the Funding Committee will approve or deny a request described in~~
~~subsection 2 within 5 working days after receiving the request. If applicable, the Funding~~
~~Committee will, within 5 working days, schedule a meeting to review the request.]~~ The local
emergency planning committee *or state agency, as applicable*, will be notified of any action
taken concerning the request within 5 working days after the action is taken.

Sec. 19. NAC 459.9918 is hereby amended to read as follows:

459.9918 *1.* The Commission will charge a person for whom it performs a service or
regulatory activity the fees set forth in the following schedule:

~~[1. For processing a report filed with the Commission pursuant to 40 C.F.R. Part 370,~~
Subpart

~~B, except for a report of an extremely hazardous material pursuant to NAC 459.99181.....\$100~~

~~—2.— For each hour or fraction thereof that an employee, agent, contractor or other designee of the Commission spends in responding to a request for information, except for a request for information made pursuant to 40 C.F.R. Part 370, Subpart C—\$50}~~

(a) Pursuant to subsection 2 of NRS 459.744:

(1) The filing fee required for each facility in which extremely hazardous material is stored is \$100; and

(2) The surcharge required for each ton of extremely hazardous material stored in excess of 1 ton is \$100 per ton.

(b) Pursuant to subsection 3 of NRS 459.744:

(1) The filing fee required for each facility in which extremely hazardous material is manufactured is \$100; and

(2) The surcharge required for each ton of extremely hazardous material manufactured for transport in this State is \$100 per ton.

(c) Pursuant to subsection 4 of NRS 459.744, the reporting fee required for each person who is required to submit a toxic chemical release form is \$500.

2. Except as otherwise provided in subsection 3, if a fee required pursuant to this section has not been paid by the date on which payment is due, a late charge will be assessed as an administrative fee for processing in the amount of 10 percent of the total amount of the fees due. The charge will be assessed beginning at the end of the first business day after the fee is due and every 30 days thereafter. No person may store or manufacture for transport an extremely hazardous material until the fees required pursuant to this section are paid.

3. The Commission will not require any one person to pay, in the aggregate, more than \$7,500 in fees imposed pursuant to subsections 1 and 2 for any calendar year.

Sec. 20. 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, 459.99182 or 459.991825 on}~~ :

1. On or before the applicable due date, the Commission will send a written *or electronic* 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, 459.99182 or 459.991825 within 90}~~ *Within 60* days after receiving written *or electronic* notification of failure to pay pursuant to subsection 1, the Commission will submit the matter to the ~~{Attorney General}~~ *State Controller pursuant to NRS 353C.195* to initiate *collection* proceedings against the person.

3. The Commission may refer the matter to the appropriate agency to initiate legal proceedings.

Sec. 21. 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,~~
~~459.99182 or 459.991825,}~~ *and notifies the Commission in writing of the overpayment or the Commission discovers the overpayment in the normal course of business,* 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, 459.99182 or~~

~~459.991825-]~~, *unless the person submits a written request to the Commission for a refund of the amount of the overpayment.*

Sec. 22. NAC 459.99189 is hereby amended to read as follows:

459.99189 1. If a local emergency planning committee or a state agency is not satisfied with a 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}~~ *Chair* of the Commission. The appeal must be filed in writing, including the grounds for the appeal and any supporting documentation, within 35 *calendar* days after 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}~~ *Chair* or his or her designee shall ~~{present a report to}~~ *place the item on the agenda for the next meeting of* 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 or her 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}~~ *3* days before the date of the meeting in which an appeal will be heard, the ~~{Executive Director}~~ *Chair* or his or her 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}~~ *appeal* 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}~~ *Chair* or his or her designee shall mail to the participant by first-class mail notice of the decision of the Commission within ~~{15}~~ *30* days after the decision is rendered.

7. ~~{A decision by the}~~ *The* Commission ~~{regarding an appeal is final.}~~ *will reconsider its decision only if the local emergency planning committee or state agency presents substantial, new information to the Commission that a reasonable person would consider to be relevant to the appeal.*

Sec. 23. NAC 459.99141, 459.99142, 459.99143, 459.99144, 459.99145, 459.99161, 459.99162, 459.99163, 459.99164, 459.99165, 459.99166, 459.99167, 459.99168, 459.99169, 459.99171, 459.99172, 459.99173, 459.99174, 459.99175, 459.99177, 459.99181, 459.99182, 459.991825 and 459.991835 are hereby repealed.

TEXT OF REPEALED SECTIONS

459.99141 Requests for money from proceeds of certain fees to pay for training. (NRS 459.735, 459.740)

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 NAC 459.9918 to 459.991825, inclusive, for training that is necessary to carry out the emergency plan of the local emergency planning committee or pursuant to subsection 4 of NRS 482.379365 for training to support preparedness to combat terrorism.

2. Except for grant money to attend a training conference, a local emergency planning committee may not request grant money from the Commission pursuant to subsection 1:

(a) To pay for training that is necessary to carry out the emergency plan of the local emergency planning committee 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.

(b) To pay for training to support preparedness to combat terrorism unless the local emergency planning committee previously submitted a request to the Division of Emergency Management of the Department of Public Safety to participate in a training program provided by the Division and the Division declined to provide such training.

459.99142 Requests for money from proceeds of certain fees to pay for services of consultant or contractor. (NRS 459.735, 459.740)

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 NAC 459.9918 to 459.991825, inclusive, 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 or pursuant to subsection 4 of NRS 482.379365 for planning or training to support preparedness to combat terrorism.

2. A request made pursuant to subsection 1 must include, without limitation:

- (a) Two or more competitive bids that were submitted to the local emergency planning committee by consultants or contractors;
- (b) An itemized list of the scope of the services to be provided by the consultant or contractor who was selected by the local emergency planning committee; and
- (c) An itemized quote for the costs of the services to be provided by the consultant or contractor.

459.99143 Requests for money from proceeds of certain fees to pay for equipment.
(NRS 459.735, 459.740)

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 NAC 459.9918 to 459.991825, inclusive, for equipment that is necessary to carry out the emergency plan of the local emergency planning committee or pursuant to subsection 4 of NRS 482.379365 for equipment to support preparedness to combat terrorism.

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 or to support preparedness to combat terrorism 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.

459.99144 Requests for money from federal funding to pay for planning. (NRS 459.735, 459.740) A local emergency planning committee may, in its application for a grant from the Commission, request grant money from the money awarded to the Commission by the

Federal Government pursuant to 42 U.S.C. § 11005 for planning that is necessary to carry out the emergency plan of the local emergency planning committee.

459.99145 Requests for money from federal funding to pay for training. (NRS 459.735, 459.740)

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 money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 for training that is necessary to carry out the emergency plan of the local emergency planning committee.

2. Except for money to attend a training conference, 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.

459.99161 Authority of Commission: Allocation of money from Contingency Account for Hazardous Materials. (NRS 459.735, 459.740) 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 to 459.991825, inclusive, 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;

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 planning, training, supply and equipment needs of state and local personnel to support preparedness to combat terrorism; 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.

459.99162 Application for allocation of money; determination and approval of amount to request. (NRS 459.735, 459.740) In accordance with the provisions set forth in NAC 459.99163 to 459.99167, inclusive, a state agency which wishes to provide training or equipment to state and local personnel to respond to accidents and incidents involving hazardous materials may submit an application to the Commission for an allocation of money for such training or equipment from the Contingency Account for Hazardous Materials on a form approved by the Commission. Before such a state agency may submit an application for an allocation of money pursuant to the provisions of NAC 459.99163 to 459.99167, inclusive, the head of the state agency must determine and approve, based upon the needs of the state agency, the amount of funding the state agency will request in the application.

459.99163 Requests for money from proceeds of certain fees to pay for training. (NRS 459.735, 459.740)

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 NAC 459.9918 to 459.991825,

inclusive, for training state and local personnel to respond to accidents and incidents involving hazardous materials or pursuant to subsection 4 of NRS 482.379365 for training to support preparedness to combat terrorism.

2. Except for an allocation of money to attend a training conference, a state agency may not request money from the Commission pursuant to subsection 1:

(a) To pay for training state and local personnel to respond to accidents and incidents involving hazardous materials 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.

(b) To pay for training to support preparedness to combat terrorism unless the state agency previously submitted a request to the Division of Emergency Management of the Department of Public Safety to participate in a training program provided by the Division and the Division declined to provide such training.

459.99164 Requests for money from proceeds of certain fees to pay for services of consultant or contractor. (NRS 459.735, 459.740)

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 NAC 459.9918 to 459.991825, inclusive, 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 or pursuant to subsection 4 of NRS 482.379365 for training to support preparedness to combat terrorism.

2. A request made pursuant to subsection 1 must include, without limitation:

- (a) Two or more competitive bids that were submitted to the state agency by consultants or contractors;
- (b) An itemized list of the scope of the services to be provided by the consultant or contractor who was selected by the state agency; and
- (c) An itemized quote for the costs of the services to be provided by the consultant or contractor.

459.99165 Requests for money from proceeds of certain fees to pay for equipment. (NRS 459.735, 459.740)

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 NAC 459.9918 to 459.991825, inclusive, for equipping state and local personnel to respond to accidents and incidents involving hazardous materials or pursuant to subsection 4 of NRS 482.379365 for equipment to support preparedness to combat terrorism.

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 or to support preparedness to combat terrorism 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.

459.99166 Requests for money from federal funding to pay for training. (NRS 459.735, 459.740)

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 an

allocation from the money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 for training state and local personnel to respond to accidents or incidents involving hazardous materials.

2. Except for grant money to attend a training conference, 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.

459.99167 Requests for money from federal funding to pay for services of consultant or contractor. (NRS 459.735, 459.740)

1. A state agency may, in its application for an allocation of money from the Commission submitted pursuant to NAC 459.99162, request an allocation from the money awarded to the Commission by the Federal Government pursuant to 42 U.S.C. § 11005 for services to be provided by a consultant or contractor which relate to planning or training 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) Two or more competitive bids that were submitted to the state agency by consultants or contractors;

(b) An itemized list of the scope of the services to be provided by the consultant or contractor who was selected by the state agency; and

(c) An itemized quote for the costs of the services to be provided by the consultant or contractor.

459.99168 Review of applications and allocation of money. (NRS 459.735, 459.740)

The Commission may:

1. Place each application for an allocation of money from the Contingency Account for Hazardous Materials that is submitted to the Commission by a state agency for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials on an agenda for consideration at a future meeting of the Commission;
2. Review each application for an allocation of money that is submitted by a state agency;
and
3. Allocate money to a state agency:
 - (a) Based on the availability of money in the Contingency Account for Hazardous Materials;
and
 - (b) If the application for an allocation of money satisfies the conditions set forth in NAC 459.99163 to 459.99167, inclusive.

459.99169 Documentation of allocations of money. (NRS 459.735, 459.740) Upon the determination of the Commission to allocate money to a state agency for training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials, the Commission will prepare documentation of the allocation of money and keep such documentation on file with the Commission.

459.99171 Completion and submission of certain forms. (NRS 459.735, 459.740)
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 or to support preparedness to combat terrorism, 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 or her designee.

2. The 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.

459.99172 Reimbursement of expenditures: Requirements for disbursement of money.
(NRS 459.735, 459.740)

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 last day of the quarter or 45 days after the end of the award period.

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.

459.99173 Advance funding for expected expenditures exceeding \$2,000. (NRS 459.735, 459.740)

1. 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 and which has an expected expenditure exceeding \$2,000 may submit a request to the Commission for advance funding.

2. The request for advance funding must include a financial report, on a form approved by the Commission, consisting of a copy of the purchase order indicating the date of processing for the purchase and the cost of the purchase.

3. Within 5 working days after receiving a request for advance funding, the Commission will verify that the expenditure for which the state agency is requesting advance funding is authorized in the documentation of the allocation of money. If the Commission approves the request, the Commission will process the payment to the state agency.

4. Within 30 days after a check for advance funding is issued to the state agency, the state agency shall submit to the Commission a financial report, on a form approved by the Commission, that includes any invoices for the expenditure and proof of payment.

5. If the expenditure is not made within 30 days after a check for advance funding is issued to the state agency, the state agency must return to the Commission the amount of the advance funding within 45 days after the issuance of the check for advance funding.

6. If a check for advance funding issued to the state agency is in excess of the actual expenditure, the state agency must return to the Commission the amount of the advance funding

that is in excess of the actual expenditure within 45 days after the date of issuance of the check for advance funding.

7. If the state agency fails to return an amount of advance funding as required pursuant to this section, the Commission may withhold funding from the state agency in the future.

8. As used in this section, “advance funding” means an advance of the money allocated to pay for any expenditures.

459.99174 Quarterly financial reports. (NRS 459.735, 459.740) Unless a financial report is submitted pursuant to NAC 459.99172 or 459.99173, 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 must submit to the Commission a quarterly financial report. The quarterly financial report must be submitted on a form approved by the Commission not later than 30 days after the last day of the quarter indicating that no expenditures were made during that quarter.

459.99175 Past due financial reports. (NRS 459.735, 459.740) If a financial report required to be submitted pursuant to NAC 459.99172, 459.99173 or 459.99174:

1. Is at least 30 days past due but less than 45 days past due, the Commission will notify the state agency required to submit the financial report.

2. Is at least 45 days past due but less than 60 days past due, the Commission will notify the head of the state agency required to submit the financial report.

3. Is at least 60 days past due, the Commission may in the future withhold funding from the state agency required to submit the financial report.

459.99177 Request to revise use of money after allocation. (NRS 459.735, 459.740)

1. If circumstances pertaining to the use of money change after the Commission approves the allocation of money to a state agency, the state agency shall submit to the Commission a request, on a form approved by the Commission, to revise the use of the money for another purpose.

2. If the request to revise the use of money constitutes a change of 10 percent or more of the total amount of the money allocated or constitutes a significant change to the scope of the intent of the original application, before the state agency may carry out the change, the request must be:

(a) Approved by the Chair of the Funding Committee; and

(b) If required by the Chair of the Funding Committee, reviewed and approved by the Funding Committee on the record at a meeting of the Funding Committee.

3. The Chair of the Funding Committee will approve or deny a request described in subsection 2 within 5 working days after receiving the request. If applicable, the Funding Committee will, within 5 working days, schedule a meeting to review the request. The state agency will be notified of any action taken concerning the request within 5 working days after the action is taken.

459.99181 Fees for storage of extremely hazardous materials. (NRS 459.704, 459.740, 459.744)

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.

459.99182 Fees for manufacture for transport of extremely hazardous material. (NRS 459.704, 459.740, 459.744)

1. The filing fee required pursuant to paragraph (a) of subsection 3 of NRS 459.744 is \$100.
2. The surcharge required pursuant to paragraph (b) of subsection 3 of NRS 459.744 is \$100 for each ton of material which is manufactured for transport in this State.
3. In accordance with subsection 3 of NRS 459.744, the Commission will not require any person to pay more than \$2,000 in fees imposed pursuant to this section for any calendar year.

459.991825 Reporting fee for submission of toxic chemical release form. (NRS 459.704, 459.740, 459.744) 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.

459.991835 Limitation on amount of certain fees. (NRS 459.704, 459.740, 459.744)
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 459.991825 for any calendar year.